

Tool Hire Taranaki Limited – Terms & Conditions of Hire

1. Definitions

- 1.1 “Supplier” shall mean Tool Hire Taranaki Limited, its successors and assigns or any person acting on behalf of and with the authority of Tool Hire Taranaki Limited.
- 1.2 “Client” shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 “Equipment” shall mean all Equipment (including any accessories) supplied on hire by the Supplier to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Supplier to the Client.
- 1.4 “Minimum Hire Period” shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client.
- 1.5 “Price” means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the hire of Equipment as agreed between the Supplier and the Client in accordance with clause 5 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Equipment.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Supplier as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Equipment on the Client's behalf and/or to request any variation to the Equipment hire on the Client's behalf (such authority to continue until all requested hire has been completed or the Client otherwise notifies the Supplier in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Equipment on hire or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

- 4.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At the Supplier's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Supplier to the Client in respect of Equipment supplied; or
 - (b) the Supplier's current Price, at the date of delivery of the Equipment, according to the Supplier's current price list; or
 - (c) the Supplier's quoted price (subject to clause 5.2) which shall be binding upon the Supplier provided that the Client shall accept the Supplier's quotation in writing within thirty (30) days.
- 5.2 The Supplier reserves the right to change the Price in the event of a variation to the Supplier's quotation. Any variation from specifications (including, but not limited to, any variation as a result of additional services required due to unforeseen circumstances such availability of Goods, delays in transportation or as a result of any increase to the Supplier in the cost of materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) and labour) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at their time of completion.
- 5.3 At the Supplier's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this contract, which shall be refunded to the Client by within thirty (30) days of the return of the Equipment, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable charges payable by the Client under clause 14.2, and any outstanding balance thereof shall be due as per clause 5.4.
- 5.4 Time for payment for the Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
 - (a) on delivery of the Equipment;
 - (b) by way of instalments in accordance with the Supplier's payment schedule;
 - (c) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Supplier.
- 5.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

Tool Hire Taranaki Limited – Terms & Conditions of Hire

- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 5.8 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

6. Hire Period

- 6.1 Unless otherwise specified, the following meanings shall apply:
- (a) a half day hire is a maximum of five (5) hours;
 - (b) a full day's hire is a maximum of ten (10) hours;
 - (c) overnight hire is from 4:00pm – 8:00am the following day and is charged at the half day hire rate;
 - (d) weekly and/or monthly hire periods and rates will be at the agreement of both parties.
- 6.2 Hire Charges shall commence from the time the Equipment departs from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 6.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 6.4 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

7. Delivery

- 7.1 Delivery ("**Delivery**") of the Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Equipment at the Supplier's address; or
 - (b) the Supplier (or the Supplier's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.
- 7.2 At the Supplier's sole discretion the cost of delivery is included in the Price.
- 7.3 The Supplier may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by the Supplier for delivery of the Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Equipment to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Equipment as agreed solely due to any action or inaction of the Client, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. Risk

- 8.1 The Supplier retains property in the Equipment nonetheless; all risk for the Equipment passes to the Client on delivery.
- 8.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 8.3 The Client will insure, or self-insure, the Supplier's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 8.4 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.

9. Specifications

- 9.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Supplier's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Supplier.
- 9.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

10. Access

- 10.1 The Client shall ensure that the Supplier has clear and free access to the site at all times to enable them to deliver the Equipment. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.
- 10.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or Equipment as may be deemed necessary by the Supplier.

11. Title

- 11.1 The Equipment is and will at all time remain the absolute property of the Supplier.

Tool Hire Taranaki Limited – Terms & Conditions of Hire

- 11.2 If the Client fails to return the Equipment to the Supplier then the Supplier or the Supplier's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 11.3 The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 12. Personal Property Securities Act 1999 ("PPSA")**
- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Equipment and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.
- 12.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Equipment charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of the Supplier.
- 12.3 The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 12.1 to 12.5.
- 12.7 Subject to any express provisions to the contrary (including those contained in this clause 12) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13. Security and Charge**
- 13.1 In consideration of the Supplier agreeing to supply the Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 13.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.
- 14. Client's Responsibilities**
- 14.1 The Client shall:
- (a) maintain the Equipment as is required by the Supplier (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures);
 - (b) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident in connection with the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification.
 - (c) satisfy itself prior to taking delivery of the Equipment that the Equipment is suitable for its purposes;
 - (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by the Supplier or posted on the Equipment;
 - (e) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use, and where necessary, hold a current certificate of competency and/or are fully licensed;
 - (f) comply with all occupational health and safety laws relating to the Equipment and its operation;
 - (g) keep the Equipment in their own possession and control;
 - (h) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (i) employ the Equipment solely in its own work and not permit the Equipment or any part thereof to be used by any other party for any other work;
 - (j) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (k) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - (l) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
 - (m) on termination of the hire, deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to the Supplier.
- 14.2 Immediately on request by the Supplier the Client will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off, or not returned to Supplier;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
 - (d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
 - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;

Tool Hire Taranaki Limited – Terms & Conditions of Hire

- (f) any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
- (g) the cost of fuels and consumables provided by the Supplier and used by the Client;
- (h) any insurance excess payable in relation to a claim made by either the Client or the Supplier in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or the Supplier's.

15. Defects

- 15.1 The Client shall inspect the Equipment on delivery and shall within twenty-four (24) hours notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Equipment within a reasonable time following delivery if the Client believes the Equipment is defective in any way. If the Client shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to replacing the Equipment.

16. Warranty

- 16.1 No warranty is given by the Supplier as to the quality or suitability of the Equipment for any purpose and any implied warranty is expressly excluded. The Client shall indemnify and hold harmless the Supplier in respect of all claims arising out of the use of the Equipment.

17. Consumer Guarantees Act 1993

- 17.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).

18. Default and Consequences of Default

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies the Supplier may have under this contract, if the Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 18.4 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Equipment to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 18.5 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Supplier;
 - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

19. Cancellation

- 19.1 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Equipment on hire to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 19.2 The Supplier may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.
- 19.3 In the event that the Client wishes to cancel this agreement then the Client shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation or a direct result of the cancellation.

20. Privacy Act 1993

- 20.1 The Client authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by the Supplier from the Client directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 20.2 Where the Client is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 The Client shall have the right to request the Supplier for a copy of the information about the Client retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Client held by the Supplier.

21. Construction Contracts Act 2002

- 21.1 The Client hereby expressly acknowledges that:
- (a) the Supplier has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Supplier by a particular date; and
 - (iv) the Supplier has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if the Supplier suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if the Supplier exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to the Supplier under the Contractual Remedies Act 1979; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Supplier suspending work under this provision.

22. Wet Hire

- 22.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of the Supplier.
- 22.2 In the event of Wet Hire, the operator of the Equipment remains an employee of the Supplier and operates the equipment in accordance with the Client's instructions. The Supplier shall not be liable for any actions of the operator in following the Client's instructions.

23. Service of Notices

- 23.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

24. General

- 24.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the New Plymouth Court, New Zealand.
- 24.3 The Supplier shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions.
- 24.4 In the event of any breach of this contract by the Supplier the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Supplier exceed the Price of the Equipment.
- 24.5 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.
- 24.6 The Client agrees that the Supplier may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods to the Client.
- 24.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.
- 24.9 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.