

CONTRACT TERMS & CONDITIONS

Hireworx New Zealand Limited CN 7710716 GST No: 130031374



NOTE TO CUSTOMER

Please read this as it contains terms and conditions which may impact on you, including that; (a) the liability of Hireworx to its Customers is excluded in some circumstances; and (b) Customers may be liable for damage to goods that are hired by them.

1.Terms and Conditions

1.1.The following terms and conditions shall apply and are incorporated into any agreement for the hire of equipment between the Customer and Hireworx.

2.Hire Period

2.1.Equipment may be hired for periods in multiples of 4 hours subject to a minimum hire period of **4** hours.

2.2.The hire period commences when:

- (a)the Equipment is handed to the Customer; or
- (b)a key or keys to operate the Equipment is handed to the Customer; or
- (c)access to the Equipment is provided to the Customer, whichever is the earlier.

2.3.The hire period ends at the Agreed Return Time.

3.Return of Equipment

3.1.The Customer must return the Equipment, in the same order and condition as at the commencement of the hire period, to the Return Location on or before the Agreed Return Time.

3.2.Hireworx is authorised to recover the Equipment if it is not returned in accordance with clause 3.1. The Customer irrevocably authorises, and (where required) must use its best endeavours to obtain all necessary authorisations and consents, to allow Hireworx together with all necessary tools, equipment and machinery, to enter into any site or premises owned, occupied or controlled by the Customer, or any other site or premises on which the Equipment is located, to recover the Equipment.

3.3.The Customer is responsible for any loss, theft or damage to all or any part of the Equipment and indemnifies Hireworx against all costs, expenses and losses in connection with any loss of or damage to any Equipment including any indirect or consequential loss.

4.Hire Charges and Estimates

4.1.Where an Estimate is provided by Hireworx unless otherwise agreed in writing, the Estimate shall be valid for **14** days from the date of issue.

4.2.Where no hire charge is stated in an Estimate or otherwise provided in writing by Hireworx, the Hire Charge shall be deemed to be the standard rate charged by Hireworx for such equipment at the time the Customer hires the Equipment.

4.3.The Customer shall pay Hireworx the Hire Charge together with any Additional Charges:

- (a)at the Agreed Return Time;
- (b)at the Actual Return Time; or
- (c)on the termination of this Agreement in accordance with clause 11, whichever is the earlier.

4.4.No allowance whatsoever shall be made for any time during which the Equipment is not able to be used by the Customer for any reason whatsoever (including if the Equipment is faulty, breaks down or if any warning light or similar is activated) unless otherwise agreed in writing by Hireworx.

4.5.No allowance whatsoever shall be made if the Customer returns the Equipment prior to the Agreed Return Time unless otherwise agreed in writing by Hireworx. For the avoidance of doubt, the Customer acknowledges and agrees that it will pay the Hire Charge and any Additional Charges for the Agreed Hire Time regardless of whether the Equipment is required for the entire Agreed Hire Time or if the Equipment is returned to Hireworx prior to the Agreed Return Time.

5.Bond

5.1.The Customer shall pay the Bond to Hireworx on or before the Hire Start Time.

5.2.Any bond paid by the Customer to Hireworx, less any deduction in accordance with clause 5.3, will be refunded to the Customer at the Actual Return Time.

5.3.Hireworx may deduct any amounts owed by the Customer to Hireworx from any bond paid by the Customer to Hireworx.

6.Payment and Default Interest

6.1.All amounts specified in this Agreement and any Estimate are exclusive of GST unless otherwise indicated.

6.2.The Customer must make all payments due under this Agreement in full without set-off or deduction of any kind.

6.3.Interest may be charged on any amount owing by the Customer to Hireworx at the rate of **15%** per annum, compounded monthly, from the date that the amount is due until the date that payment is received by Hireworx.

6.4.Any expenses (including debt collection agency fees), disbursements and legal costs (including fees on a solicitor and own client basis) incurred by Hireworx in connection with the enforcement, or attempted enforcement, of any rights under this Agreement shall be paid by the Customer on demand.

6.5.The Customer's obligation to pay any amount to Hireworx under this Agreement shall continue despite any defect in, breakdown of, damage to, theft of, loss of, or accident involving the Equipment.

7.Equipment

7.1.The Customer acknowledges that all information, specifications, dimensions and descriptions of equipment furnished by Hireworx or otherwise contained in any Estimate, catalogue, price list, website or other advertising matter are an approximation only and no representation is made by Hireworx that the Equipment strictly complies with those particulars.

7.2.Hireworx reserves the right to substitute the Equipment with equipment that is similar to the Equipment in the event that the Equipment is unavailable for any reason.

7.3.The Customer acknowledges and agrees that no rights or interests of title or ownership in the Equipment pass to the Customer at any time.

8.Customer's Obligations

8.1.The Customer must satisfy itself prior to the commencement of the Hire Period that the Equipment is:

- (a)suitable for its purposes in all respects; and
- (b)free of all defects, damage or failure to comply with any information, specification, dimension or description.

8.2.The Customer hires the Equipment at the Customer's own risk and warrants to Hireworx that it is competent and qualified to use the Equipment.

8.3.The Customer is solely responsible for the Equipment from the commencement of the hire period until the Actual Return Time and must keep the Equipment in its own possession and control and not:

- (a)leave the Equipment unattended (unless it is stored securely and safely); or
- (b)allow the Equipment to be used by any other person.

8.4.The Customer:

- (a)will only use the Equipment in the manner that it was designed to be used and in accordance with all relevant laws (including the Health and Safety at Work Act 2015) and regulations in relation to the use of the Equipment;
- (b)will not use the Equipment if under the influence of alcohol or drugs;
- (c)will take proper and reasonable care of the Equipment;
- (d)will comply with all instructions and/or directions from Hireworx and/or the manufacturer of the Equipment relating to the use, control and maintenance of the Equipment;
- (e)must immediately notify Hireworx if all or any part of any Equipment is lost, stolen or damaged;
- (f)will immediately:
 - (i)cease using the Equipment; and
 - (ii)notify Hireworx,if the Equipment is faulty, breaks down or if any warning light or similar is activated;
- (g)must not remove, deface or obscure any marks of identification or ownership or registration on the Equipment.

8.5.The Customer indemnifies Hireworx for all injury and/or damage to the extent caused or contributed to by the Customer to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment.

9.Damage Waiver

9.1.The Damage Waiver is not insurance. Hireworx may, in some circumstances, limit the Customer's liability for damage to the Equipment to the Damage Waiver Excess. The Customer must pay for the Damage Waiver. Payment of the Damage Waiver is not a contract of insurance between the parties.

9.2.In the event of any loss of, or damage to, the Equipment which is covered by the Damage Waiver, the Customer must also pay the Damage Waiver Excess.

9.3.The Customer shall not be liable for any loss of, or damage to, the Equipment during the term of this Agreement provided that the Customer:

- (a)has at all times acted reasonably and with reasonable care;
- (b)has delivered to Hireworx a complete, correct, written report of the circumstances of such loss of, or damage to, the Equipment, including, in the case of any loss appearing to result from any criminal act, the applicable police compliant acknowledgement form, as soon as possible but in any event within **12** hours from the time that the Customer becomes aware of the loss or damage;
- (c)has complied with its obligations set out in the Agreement;
- (d)has assisted Hireworx, as reasonably required by Hireworx to recover the loss or damage.

9.4.The Damage Waiver does not cover:

- (a)theft of, or criminal damage to, the Equipment unless such Equipment is reasonably locked and secured;
- (b)damage or loss due to misuse, abuse or overloading of the Equipment or failure to take reasonable care of the Equipment;
- (c)loss or damage to any Equipment or items on which the Damage Waiver is not charged;
- (d)loss or damage of the Equipment arising from a breach by the Customer of the conditions of this Agreement;
- (e)loss or damage due to the Customer's breach of any special conditions or exclusions notified in writing by Hireworx;
- (f)loss or damage from the use of the Equipment in violation of any statute, regulation or by-law.

9.5.The Damage Waiver does not apply and will not limit the Customer's liability where:

- (a)the Customer, or operator, is not suitably licenced;
- (b)the operator is affected by drugs and/or alcohol;
- (c)the Equipment has been wilfully damaged while in the Customer's possession.

9.6.The parties agree that section 11 of the Insurance Law Reform Act 1977 will apply with respect to the exclusions in clause 9.4 as if this clause 9 constituted a contract of insurance (notwithstanding that this clause 9 is not a contract of insurance).

9.7.If the Damage Waiver does not cover or does not apply then, without limiting any other rights or remedies that may be available to Hireworx at law or under this Agreement, the Customer shall pay to Hireworx:

- (a)in the case of loss or irreparable damage, the market value of the Equipment;
- (b)in the case of damage, the full cost of all repairs to restore the Equipment to the condition it was in at the time of hire.



9.8.If Hireworx has agreed in writing to allow the Customer not to purchase the Damage Waiver:

- (a)the Customer hires the Equipment at its sole risk; and
- (b)indemnifies Hireworx against any and all loss in respect of any loss of, or damage to, the Equipment, except where the loss or liability has arising due to the negligence of Hireworx or where Hireworx has willfully, negligently or recklessly supplied defective Equipment to the Customer.

10.PPSA

10.1.The Customer acknowledges and agrees that this Agreement constitutes a security agreement for the purposes of the PPSA and that Hireworx may register a financing statement on the PPSR to protect its title in and ownership of the Equipment. All equipment hired by the Customer from Hireworx is hired subject to a security interest in favour of Hireworx. The Customer must do anything, including obtaining consents and signing documents, which Hireworx requires for the purposes of ensuring that Hireworx's security interest is perfected, enforceable and effective under the PPSA, enabling Hireworx to obtain first priority for its security interest and enabling Hireworx to exercise its rights in connection with security interest.

10.2.If the Equipment becomes affixed to land or attached, fixed, or incorporated into any other property, title and ownership in the Equipment remains with Hireworx.

10.3.The Customer agrees that nothing in sections 114(1)(a), 133 or 134 of the PPSA applies to this Agreement. The Customer waives its rights under sections 121, 125, 129, 131 and 132 of the PPSA. The Customer waives its rights to receive verification that Hireworx's security interest in the Equipment has been registered on the PPSR.

10.4.The Customer must not lease, hire, bail or give possession of the Equipment to any else or grant or create any security interest in the Equipment.

11.Right to Terminate

11.1.Hireworx may terminate this Agreement by verbal or written notice to the Customer with immediate effect if:

- (a)the Customer does not pay any amount owed to Hireworx on the due date;
- (b)the Customer fails to comply with or otherwise breaches any term of this Agreement or any other agreement between Hireworx and the Customer;
- (c)the Customer is unable to pay its debts or is deemed or presumed to be unable to pay its debts, or stops or threatens to stop payments;
- (d)a receiver, administrator or similar official is appointed in relation to any asset of the Customer or the Customer requests the appointment of, or an application is made for the appointment of, any of those officials;
- (e)an application is made or any steps taken for the bankruptcy or liquidation of the Customer or the Customer is declared or becomes bankrupt or insolvent;
- (f)all or any part of any Equipment is seized by any other creditor of the Customer or any other creditor intimates that it intends to seize all or any part of any Equipment; or Hireworx believes (in its sole discretion) that:
- (i)the Equipment may be at risk for any reason whatsoever (including the manner of its use by the Customer or adverse weather or conditions);
- (ii)if the Customer is unable to, or in Hireworx's opinion will be unable to, pay any amount under this Agreement or otherwise owing to Hireworx.

11.2.The Customer indemnifies Hireworx against all costs, claims, damages, expenses or liability suffered or incurred by Hireworx whether arising directly or indirectly from Hireworx acting to recover any Equipment or otherwise in connection with the exercise or attempted exercise of any of its rights or remedies under this Agreement.

11.3.Upon termination of this Agreement the Customer shall immediately:

- (a)return all Equipment, in the same order and condition as at the commencement of the hire period, to the Return Location; and
- (b)pay all amounts owed by the Customer to Hireworx.

11.4.Termination of this Agreement by Hireworx is without prejudice to any rights that Hireworx may have at law or under this Agreement.

12.Liability

12.1.Hireworx makes no warranty, guarantee or representation as to the state, quality or fitness of the Equipment for any purpose and, to the fullest extent permitted by law, all statutory or implied conditions, guarantees and warranties are excluded. For the avoidance of doubt, no warranty, guarantee or representation shall be implied by the description of the Equipment on the front page of this Agreement or by the provision of any information relating to the proper operation and maintenance of the Equipment.

12.2.To the fullest extent permitted by law Hireworx has no liability to the Customer for any direct or indirect or consequential loss or damage or for any loss of profit (or any other form of economic loss) howsoever arising.

12.3.Subject to clause 12.2, Hireworx limits its liability to the Customer, howsoever arising, to a maximum of the Hire Charge.

13.Collection and Use of Information

13.1.The Customer authorises Hireworx to:

- (a)obtain credit or trade references about the Customer from any suitable person and/or organization and to verify any such information provided; and
- (b)collect, retain, use and disclose information about the Customer to any persons as may be necessary or desirable to enable Hireworx to:
- (i)assess the Customer's creditworthiness;
- (ii)evaluate the hire of equipment by the Customer;
- (iii)enforce any of its rights under this Agreement;
- (iv)market any goods and/or services to the Customer.

13.2.The Customer's request to hire the Equipment may be declined if the Customer fails to provide any requested information.

13.3.Where the Customer is a natural person:

- (a)the authorities under clause 13.1 are authorities or consents for the purposes of the Privacy Act 1993;

(b)the Customer has a right of access to personal information held by Hireworx and may seek correction of that information and require that the request be stored with that information. Hireworx may charge its reasonable costs of providing access to that information.

13.4.The Equipment may contain on-board devices, GPS tracking devices or similar devices which enable the Equipment to be connected to the internet and to send commands to, and receive certain information from, the Equipment including, but not limited to, location data, activity reports and speed, battery voltage and ignition statuses. The Customer expressly consents to Hireworx:

- (a) using such devices on the Equipment during the term of this Agreement (including the Agreed Hire Period); and
- (b) collecting, using and retaining the information from such devices.

Hireworx is the sole owner of the data provided or produced by all on-board devices, GPS tracking devices or similar devices installed or attached to the Equipment.

14.General

14.1.No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by Hireworx shall in any way limit or waive its right to subsequently require strict compliance with this Agreement.

14.2.If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of New Zealand, that will not affect or impair the legality, validity or enforceability of any other provision of this Agreement.

14.3.The Agreement is personal to the Customer and is not capable of assignment by the Customer. Hireworx may assign its rights under this Agreement without the consent of the Customer or any guarantor.

14.4.If a dispute arises relating to this Agreement, the hiring or the use of the Equipment (except in regard to payments due to Hireworx), the parties agree to take reasonable steps within a period of **10** days of the dispute arising to negotiate to settle the dispute with the assistance of Hire Industry Association of New Zealand Inc. before litigation.

14.5.This Agreement constitutes the entire terms and conditions of the agreement between Hireworx and the Customer in relation to the Equipment.

14.6.This Agreement is governed by the laws of New Zealand. The parties agree to submit to the non exclusive jurisdiction of the courts of New Zealand.

15.Definitions

15.1."Actual Return Time" means the date and time that all Equipment is returned to the Return Location.

15.2."Additional Charges" includes any:

- (a)Late Return Charges;
- (b)Cleaning Charges.

15.3."Agreed Hire Period" means, subject to clause 2.1, the hire period specified on the front page of this Agreement.

15.4."Agreed Return Time" means the return date and time specified on the front page of this Agreement.

15.5."Agreement" means this hire agreement including these terms and conditions and also includes any Estimate.

15.6."Bond" means the bond amount specified on the front page of this Agreement.

15.7."Cleaning Charge" means the cost of cleaning all or part of the Equipment as assessed by Hireworx in its sole discretion on the return of that Equipment to Hireworx.

15.8."Damage Waiver" means the amount specified on the front page of this Agreement.

15.9."Damage Waiver Excess" means, in the event of any loss, theft or damage to the Equipment which is covered by the Damage Waiver, the Customer must also pay an excess charge. The excess charge is **25%** of the market value of the Equipment (up to a maximum of **\$5,000**) plus GST for any one item of Equipment, or as otherwise agreed between the parties and detailed on the front page of this Agreement.

15.10."Equipment" means the equipment described on the front page of this Agreement and includes all attachments and accessories with that equipment.

15.11."Estimate" means any written estimate or quote regarding the hire of the Equipment which Hireworx has provided to the Customer.

15.12."GST" means Goods and Services Tax at the rate prevailing from time to time.

15.13."Hire Charge" means the hire charge specified on the front page of this agreement.

15.14."Hire Start Time" means the time that the hire period commences as determined in accordance with clause 2.2.

15.15."Hireworx" means Hireworx Limited and includes its directors, employees, contractors and agents.

15.16."Customer" means the person named as such on the front page of this Agreement and includes any person acting on behalf of, or with the authority of, that customer.

15.17."Late Return Charge" means Hireworx's standard hourly hire charge for the Equipment for the period commencing on the Agreed Return Time and ending on the Actual Return Time.

15.18."PPSA" means the Personal Property Securities Act 1999.

15.19."PPSR" means the Personal Property Securities Register.

15.20."Return Location" means the location that the Customer shall return the Equipment specified on the front page of this Agreement.

15.21."Termination Date" means the date on which this Agreement is terminated.



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