

# HIRE & SALES CONTRACT TERMS AND CONDITIONS

## 1. CONDITIONS

1.1 The Conditions set out below shall apply to all contracts for the hire and/or sales of goods ("equipment") between Advanced Machinery Ltd ("the Owner") and the person hiring or buying the equipment ("Hirer"). These conditions shall not be modified, amended, waived, in whole or in part, except by written agreement between the parties.

## 2. CHARGES

- 2.1 Equipment may be hired for: a) half day period, b) daily, c) weekend, d) monthly or e) as agreed to in writing. The hire periods are as defined in clause 2.2, PROVIDED THAT the Hirer agrees that the Owner may charge extra on a pro rata basis for any equipment usage in excess of the maximum usage time as set out in clause 2.2, and subject always to the Owner's rights in clause 5. Certain equipment may carry minimum hiring periods.
- 2.2 Hire periods and maximum periods of usage are:
- (a) "Minimum period Half Day" means 4 hours (maximum usage 4.5 hours) or overnight providing the equipment is returned by 8.30am the following day.
  - (b) "Daily" 24 hours (maximum usage 8 hours)
  - (c) "Weekend" means Friday 1630hrs to 0830hrs the following Monday (Maximum usage 16 hours)
  - (d) "Weekly" means 7 days (maximum usage 45 hours)
  - (e) "Monthly" means 1 calendar month (maximum usage 180 hours)
- 2.3 The hire period begins from the time the equipment leaves the Owner's premises and runs until the equipment is returned or this hire agreement is terminated pursuant to clause 5.
- 2.4 The Hirer shall pay as invoiced for the hire period for all materials used, loss and damage waiver charges (if applicable), delivery/removal costs, excess use charges, damage to or loss of the equipment, cleaning costs (if any), default interest for late payment.
- 2.5 If the weekly charge rate is less than the accumulated daily hire charge, the weekly rate will apply; if the monthly charge rate is less than the accumulated weekly rate the monthly rate will apply.

## 3. PAYMENT AND DEFAULT INTEREST

- 3.1 All charges are plus GST unless otherwise indicated.
- 3.2 For hire of equipment:
- (a) the Hirer may be required to pay a deposit of not less than the estimated total charge.
  - (b) on return of the equipment in good order and condition, the actual total charges will be calculated and the Hirer will either pay or be refunded with the difference between the deposit and the actual total charge.
- 3.3 For purchase of equipment, the Hirer will pay the Owner the agreed price. Risk passes on delivery of the equipment.
- 3.4 Any agreed discount for charge account customers is claimable ONLY if the account is paid by the 20TH OF THE MONTH following the date of invoice. The Hirer must not make any claim for credit more than 14 days after the date of invoice.
- 3.5 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 Owner's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 3.6 If the Hirer owes the Owner any money the Hirer shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Hirer basis, the Owner's collection agency costs, and bank dishonour fees).
- 3.7 Without prejudice to any other remedies the Owner may have, if at any time the Hirer is in breach of any obligation (including those relating to payment) under these terms and conditions the Owner may suspend or terminate the supply of Equipment to the Hirer. The Owner will not be liable to the Hirer for any loss or damage the Hirer suffers because the Owner has exercised its rights under this clause.
- 3.8 Without prejudice to the Owner's other remedies at law the Owner shall be entitled to cancel all or any part of any order of the Hirer which remains unfulfilled and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Owner becomes overdue, or in the Owner's opinion the Hirer will be unable to make a payment when it falls due;
  - (b) the Hirer becomes insolvent, 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer.

## 4. DELIVERY AND REMOVAL

- 4.1 Delivery and removal charges payable by the Hirer in addition to the hire/purchase costs.
- 4.2 The Hirer authorises the Owner to bring the Owner's vehicle onto the place where the equipment is to be used or is located to deliver and/or remove the equipment, either on the expiry of the hire period or on the breach by the Hirer of any term in this contract. The Hirer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner's actions under this clause.
- 4.3 The Hirer must make any requests for removal by telephone at completion of the hire to the initiating depot.

## 5. OWNER'S RIGHT TO CANCEL

- 5.1 If the Owner believes the equipment to be at risk for any reason whatsoever including but not limited to the manner of its use by the Hirer or adverse weather or work conditions, or that the Hirer is unable to, or might be unable to pay any hire charge or purchase price the owner may take action as necessary to retake possession of the equipment. Accordingly, the Hirer grants the Owner or will procure that the Owner is granted an Irrevocable right and authority to enter at any time onto any place where the equipment is situated or thought to be situated to remove the equipment.
- 5.2 The Hirer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner exercising its rights under this clause or otherwise acting to recover any equipment hired or monies payable by the Hirer pursuant to this contract.
- 5.3 The owner will not be liable to the Hirer or any other persons for any loss suffered or liability incurred arising from cancellation or repossession of the equipment.

## 6. NO ASSIGNMENT

- 6.1 This contract is personal to the Hirer and is not capable of assignment whether in whole or in part by the Hirer.

## 7. HIRER'S OBLIGATION

- 7.1 The Hirer is responsible for any loss or damage to the equipment (other than damage arising as a consequence of a breach by the Owner of the guarantees in the Consumers Guarantees Act 1993, should they apply, from the time the Hirer takes possession of the equipment until in the case of hired equipment, it is returned to the possession of the Owner. The cost of any replacement or repairs resulting from loss or damage shall be charged to the Hirer. The Hirer shall notify the Owner immediately if the equipment is lost or damaged, and shall follow any reasonable request by the Owner).
- 7.2 The Hirer shall:
- (a) notify the Owner immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Hirer is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - (b) satisfy itself at commencement that the Equipment is suitable for its purposes;
  - (c) 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 Owner or posted on the Equipment;
  - (d) 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 to operate the Equipment and shall provide evidence of the same to the Owner upon request;
  - (e) comply with all occupational health and safety laws relating to the Equipment and its operation;
  - (f) 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 Owner;
  - (g) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
  - (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 shall not permit the Equipment of 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) indemnify and hold harmless the Owner in respect of all claims arising out of the Hirer's use of the Equipment.

7.3 Immediately on request by the Owner the Hirer will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Owner;
  - (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 Hirer or the Hirer's agent;
  - (e) any lost hire fees the Owner would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
  - (f) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Owner's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer;
  - (g) the cost of fuels and consumables provided by the Owner and used by the Hirer.
  - (h) reimburse the Owner for any damage to or loss of or forfeiture of the equipment howsoever arising including (by way of example and not limited to) any loss or damage caused by overloading of electric tools and motors, incorrect electric current, lack of lubrication, blow outs and cuts to tyres, disappearance or theft of equipment, fire, damage in transit, negligence, misuse.
  - (i) except as permitted by the Consumer Guarantees Act 1993 not bring or threaten to bring claim against the Owner for loss or damage incurred or threatened against the Hirer or arising directly or indirectly from the Hirer's use of the equipment; and
  - (j) indemnify the Owner against any claim made by any person against the Owner for any loss suffered or liability incurred arising directly or indirectly out of the Hirer's use or possession of the equipment.
- 7.4 If the Hirer is not an individual, the person who signs this contract on behalf of the Hirer warrants that they have authority to bind the Hirer and will, in any event, be personally liable for the performance of the obligations of the Hirer.

## 8. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- 8.1 Hire or acquisition equipment may create a security interest in the equipment. If so, the provisions of this clause 8 apply. All terms in this clause 8 have the meaning given in the PPSA and section references are sections to sections of the PPSA.
- 8.2 On the request of the Owner, the Hirer shall promptly execute any documents, provide all necessary information and do anything else required by the Owner to ensure that the security interest created under this contract constitutes a perfected security interest in the equipment and their proceeds which will have priority over all other security interests in the equipment.
- 8.3 The Hirer will pay to the Owner all fees and expenses incurred by the Owner in relation to the filing of a financing statement in connection with this contract.
- 8.4 The Hirer agrees that nothing in sections 133 and 134 of the PPSA applies to this contract
- 8.5 To the extent they are applicable to the Hirer, the Hirer waives the Hirer's right to:
- (a) receive a notice under sections 114(1)(a);
  - (b) receive a statement of account under section 116;
  - (c) receive a surpluses distributed under section 117;
  - (d) recover any surplus under section 119;
  - (e) receive notice of any proposal of the Owner to retain the collateral under section 120(2);
  - (f) object to any proposal of the Owner to retain collateral under section 121;
  - (g) not have goods damaged in the event that the Owner were to remove an accession under section 125;
  - (h) receive notice of the removal of an accession under section 129;
  - (i) apply to the court for an order concerning the removal of an accession under section 131;
  - (j) redeem collateral under section 132; and
  - (k) receive a copy of any Verification Statement.

## 9. DAMAGE WAIVER ON HIRE

- 9.1 If the Hirer has paid the Damage Waiver the Owner will waive the Hirer's liability (in terms of clause 7) for accidental damage (PROVIDED THAT the Hirer has at all times acted reasonably) or theft of any equipment from secure premises PROVIDED FURTHER THAT in the case of theft the Hirer shall immediately notify the Police (taking the name of the Police contact) and the Owner.
- 9.2 For the avoidance of doubt the Hirer acknowledges that the mysterious disappearance, loss or damage resulting from negligent acts or omissions of the Hirer, earthquake and war damage, punctures, and damage to tyres, cabin windows and glass, panel damage, breakages to glassware, crockery or cutlery ARE NOT COVERED by the damage waiver charge.
- 9.3 Special conditions or exclusions may apply depending on the nature or location of the Hirer's use of the equipment and these should be notified to the owner prior to the equipment leaving the Owner's premises.
- 9.4 The Owner requires the Hirer to take the Owner's damage waiver unless written confirmation of suitable Insurance cover is provided by the Hirer.
- 9.5 Excess: All claims are subject to an excess charge of \$750 for all registered rolling plant (motor vehicles), all other equipment, 25% of replacement cost, with a minimum of \$100 applying, up to a maximum of \$1000 for any one item of equipment.

## 10. LIMITATION OF LIABILITY

- 10.1 Except where the Owner is in breach of a guarantee in terms of the Consumer Guarantees Act 1993, the Hirer in entering into this contract acknowledges that in all other circumstances whatsoever the Owner shall not be liable for direct or consequential damage, loss or expense whatsoever and howsoever arising (whether in contract or in tort) including that resulting from the negligence of the Owner or arising by operation of law and whether suffered by the Hirer and/or third party for any amount that exceeds the amount actually paid by the Hirer to the Owner pursuant to this contract.
- 10.2 If the Hirer is acquiring the services for the purposes of a business as defined in the Consumer Guarantees Act 1993, the provisions of that Act do not apply.
- 10.3 If the Hirer is purchasing equipment, then except as prohibited by law, all guarantees in respect of the equipment, whether express or implied, are excluded.

## 11. GENERAL

- 11.1 Headings are inserted for convenience and shall not affect the construction of this contract. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words implying one gender include the other. A reference to a clause or sub clause is a reference to a clause or sub clause hereof. A reference to Owner includes its servants and agents.
- 11.2 If at any time any provision of this contract is or becomes illegal, invalid or unenforceable in any respect under the law of New Zealand, neither the legal validity nor enforceability of the remaining provisions hereof shall in any way be affected or impaired thereby to the intent that this contract should be construed as if the provision or part thereof in question has been deleted.
- 11.3 Equipment purchased from the Owner remains the property of the Owner until paid in full.
- ## 12. PRIVACY ACT 1993
- 12.1 The Hirer authorises the Owner or the Owner's agent to:
- (a) access, collect, retain and use any information about the Hirer;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Hirer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Hirer.
  - (b) disclose information about the Hirer, whether collected by the Owner from the Hirer directly or obtained by the Owner 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 Hirer.
- 12.2 Where the Hirer is an individual the authorities under clause 12.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 12.3 The Hirer shall have the right to request the Owner for a copy of the information about the Hirer retained by the Owner and the right to request the Owner to correct any incorrect information about the Hirer held by the Owner.