

HIRE CONTRACT CONDITIONS

These Hire Contract Conditions apply to the exclusion of any other conditions proposed by the Customer, unless otherwise agreed by Kennards and the Customer in writing. Kennards agrees to hire Equipment to the Customer on terms set out in this document. If the Customer wishes to hire Equipment the Customer must complete and sign (or otherwise accept in the manner required by Kennards) a Hire Schedule and such other documents as Kennards may require. Each Hire Schedule is not a separate contract but forms a part of this hire agreement between Kennards and the Customer, together with any credit application, guarantee and indemnity or other contractual documents. Kennards may in its absolute discretion decline to hire Equipment to the Customer at any time if it has reasonable cause to do so.

Amendment: These Hire Contract Conditions may be changed by Kennards from time to time by Kennards giving notice of the amendment to the Customer. Notice is deemed given (whether or not actually received) when Kennards does any of the following: (a) sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer; (b) publishes the amended terms on its website www.kennardshire.co.nz; or (c) displays the amended terms at premises from which Kennards conducts hire operations.

Changes to these hire Contract Conditions will only apply to Hire Schedules entered into after the change occurs.

1. Interpretation of Words in this Contract;

Commencement – means the date when the Customer takes possession of the Equipment.

Equipment – means any kind of equipment, vehicles or tools including but not limited to the following kinds of goods or goods suitable for the following kinds of uses: cleaning; cooling and/or heating; entertainment; waste management; landscaping and gardening; plumbing; fencing and covering; lifting; access; air and air compression; pumping and fluid management; welding; compaction; concrete & masonry; flooring; earthmoving; floor care and cleaning, generation and power distribution; ground equipment and shoring; ladders and scaffolding; propping; lighting; materials handling; offshore pumps; safety equipment; storage; site accommodation including portable buildings and portable toilets; traffic management including road barriers; signage; vehicles including trucks, vans and trailers, and includes tools and parts and accessories for any of the foregoing.

Hire Charge – means the amounts shown on the Hire Schedule payable by the Customer to hire the Equipment.

Hire Period – means from Commencement until the end of the period shown on the Hire Schedule. The Hire Period may only be extended for one or more definite periods and in each case this can only be done if the Customer requests it and if Kennards agrees. Kennards may issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period.

Hire Schedule – means a document which Kennards may require the Customer to sign (or accept in a way Kennards requires) including particulars of the Equipment and the Hire Period and such other information as Kennards may decide to require.

Kennards – means the company or companies listed on the Hire Schedule.

Kilometre Charge – means the amount payable for the kilometres that a Motor Vehicle has, in the reasonable opinion of Kennards, travelled during the Hire Period.

Motor Vehicle – means a truck or utility but not any other equipment such as a scissor lift, trailer or bobcat.

Remote Area – means any location which is more than 50 kilometres from the Kennards branch from where the Equipment is hired.

2. Kennards Obligations

Kennards will:

- 2.1 Allow the Customer to take and use the Equipment for the Hire Period;
- 2.2 Provide the Equipment to the Customer clean and in good working order;
- 2.3 Collect the Equipment within 5 days of being requested to do so by the Customer and issuing to the Customer a customer pick up number.

NOTE TO CUSTOMER: You must return the Equipment at your expense when due back unless you obtain a customer pick up number from Kennards.

3. Obligations of the Customer

The Customer must:

- 3.1 Deliver the Equipment to Kennards when it is due back;
- 3.2 Return the Equipment to Kennards clean and in good repair;
- 3.3 Satisfy itself at Commencement that the Equipment is suitable for its purposes;
- 3.4 Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by Kennards or posted on the Equipment;
- 3.5 **Indemnify** Kennards for all injury and/or damage 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;
- 3.6 Ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised;
- 3.7 Ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold any relevant current certificate of competency and/or are fully licensed to operate or erect such Equipment;
- 3.8 Conduct a thorough hazard and risk assessment before using the Equipment and comply with all occupational health and safety laws relating to the Equipment and its operation;

3.9 Safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify Kennards in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Customer;

3.10 Operate the Equipment with an adequate motor vehicle and/or power source;

3.11 Report and provide full details in writing to Kennards of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.

The Customer must NOT:

3.12 Tamper with, damage or repair the Equipment;

3.13 Lose or part with possession of the Equipment;

3.14 Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;

3.15 Allow any person to drive a Motor Vehicle if the person:

- (a) does not hold a full driver's licence to drive that class of Motor Vehicle; or
- (b) is affected by drugs and/or alcohol.

3.16 Exceed the recommended or legal load and capacity limits of the Equipment;

3.17 Use or carry any illegal, prohibited or dangerous substance in or on the Equipment.

3.18 Exceed the recommended or legal speed limit for the Equipment.

4. No Assignment by Customer

4.1 This Agreement is personal to the Customer and is not capable of assignment by the Customer, but this shall not prevent employees of the Customer using the Equipment in accordance with the terms of this agreement.

4.2 Kennards may assign its rights under this agreement without the consent of the Customer or any guarantor.

5. Payments by the Customer to Kennards

5.1 On or before Commencement (or as otherwise specifically agreed in writing with Kennards), the Customer will pay the Hire Charge.

5.2 Immediately on request by Kennards, the Customer will pay:

- (a) the new list price of any Equipment which is for whatever reason not returned to Kennards.

(NOTE TO CUSTOMER: Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the Equipment),

(b) all costs incurred in cleaning the Equipment;

(c) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer, unless expressly agreed otherwise in this Contract;

(d) stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the Customer's use of the Equipment;

(e) all costs incurred by Kennards in delivering and recovering possession of the Equipment;

(f) a late payment fee calculated daily at 3% per month on all amounts owing by the Customer not paid on time;

(g) the Kilometre Charge and any additional Hire Charges;

(h) the cost of fuels and consumables provided by Kennards and not returned by the Customer;

(i) any expenses and legal costs (including commission payable to a commercial agent) incurred by Kennards in enforcing this contract due to the Customer's default;

(j) all costs of repairing or replacing tyres, including road service; and

(k) if any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.

5.3 Without limiting the ability of Kennards to recover all amounts owing to it, the Customer irrevocably authorises Kennards to charge any amounts owing by the Customer to any credit card or account details of which are provided to Kennards.

6. Ownership / Retention of Title

All equipment supplied by Kennards to the Customer under this agreement shall remain the property of Kennards

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7. PPSA Law

- 7.1 If a 'security interest' for the purposes of the Personal Property Securities Act 1999 ("PPSA") arises in relation to the Equipment provided to the Customer under this agreement whether created or provided for by a lease for a term of more than 1 year or otherwise ("security interest") then the terms of this clause 7 shall apply.
- 7.2 The Customer must do anything (such as obtaining consents and signing documents) which Kennards requires for the purposes of:
 - (a) ensuring that Kennard's security interest is enforceable, perfected and otherwise effective under the PPSA;
 - (b) enabling Kennards to gain first priority for its security interest; and
 - (c) enabling Kennards to exercise rights in connection with the security interest.
- 7.3 The Customer agrees that nothing in sections 114(1)(a), 133 or 134 of the PPSA applies to this agreement, and waives its rights under sections 121, 125, 129, 131 and 132 of the PPSA.
- 7.4 Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else or grant or create any security interest in the Equipment unless Kennards (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Kennards and must be expressed to be subject to the rights of Kennards under this agreement. Customer may not vary a sub-hire without the prior written consent of Kennards (which may be withheld in its absolute discretion).
- 7.5 Customer must ensure that Kennards is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
- 7.6 To assure performance of its obligations under this agreement, the Customer hereby gives Kennards an irrevocable power of attorney to do anything Kennards considers the Customer should do under this agreement. Kennards may recover from Customer the cost of doing anything under this clause 7, including registration fees.

8. Damage Waiver

- 8.1 Damage Waiver is not insurance, but is an agreement by Kennards that the Customer's liability for damage to the Equipment can be limited in some circumstances only, to an amount called the Damage Waiver Excess.
- 8.2 Damage Waiver applies to all hires, subject to the conditions below, for no additional fee. The Damage Waiver Excess is the actual recovery and repair cost of the Equipment, or 20% of the current replacement cost of the Equipment as reasonably determined by Kennards using suppliers list prices, whichever is the lesser amount.

DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY in the following circumstances;

- (a) where the Equipment is lost or stolen;
 - (b) where the operator is not suitably licensed;
 - (c) where the operator is affected by drugs and/or alcohol;
 - (d) where the equipment has been wilfully damaged by the Customer or its employees or agents;
 - (e) where the damage is caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object whatsoever due to insufficient clearance;
 - (f) where the damage is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road; or
 - (g) where the damage is caused in any way by overloading.
- 8.3 The Customer may pay an additional Vehicle Waiver Plus Fee (excluding Customers on a restricted licence) in relation to the hire of Motor Vehicles, which will:
 - (a) reduce the Damage Waiver Excess in relation to Motor Vehicles;
 - (b) cover damage to a pantech or van body above cab height; and
 - (c) add a theft waiver component for Motor Vehicles. The theft waiver component is not insurance, but is an agreement by Kennards that the Customer's liability for theft or loss of the Motor Vehicle can be limited in some circumstances only to an amount called the Theft Waiver Excess.

Kennards will ask the Customer to pay the Vehicle Waiver Plus Fee on the hire of Motor Vehicles, but the Customer may decide to opt out of that payment.

The reduced Damage Waiver Excess and the Theft Waiver Excess apply to Motor Vehicles when the Vehicle Waiver Plus Fee is paid the Vehicle Waiver Plus Fee will be shown on the Hire Contract and will vary for different classes of vehicles.

- 8.4 The Customer may pay an additional Equipment Waiver Plus Fee in relation to the hire of medium and large equipment (being such Equipment as determined by Kennards from time to time), which will;
 - (a) reduce the Damage Waiver Excess in relation to medium and large equipment; and
 - (b) add a theft waiver component for medium and large machinery. The theft waiver component is not insurance, but is an agreement by Kennards that the Customer's liability for theft or loss of the Equipment can be limited in some circumstances only to an amount called the Theft Waiver Excess.

Kennards will ask the Customer to pay the Equipment Waiver Plus Fee on the hire of medium and large equipment, but the Customer may decide to opt out of that payment.

Payment of the Equipment Waiver Plus Fee is compulsory on all earth moving equipment, unless Kennards agrees to accept a certificate of insurance provided by the Customer at its own cost.

The reduced Damage Waiver Excess and the Theft Waiver Excess which apply to medium and large equipment when the Equipment Waiver Plus Fee is paid will be shown on the Hire Contract and will vary for different types of machinery.

- 8.5 **THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY FOR THEFT in the following circumstances;**
 - (a) where the Customer has failed to keep the Equipment in a securely locked

compound, or in the case of a Motor Vehicle, has failed to properly secure or lock the Motor Vehicle; or

- (b) where the Customer has failed to submit to Kennards a Police report on the theft within 7 days of the theft allegedly occurring.

In the event of Theft Waiver applying, hire fees will be charged to the Customer until the Police Report is provided to Kennards.

- 8.6 Damage Waiver or Theft Waiver will NOT apply where Kennards determines that any of the applicable circumstances in clauses 8.2(a)-(g) or 8.5(a)-(b) respectively have occurred, unless the Customer is able to establish otherwise to the reasonable satisfaction of Kennards.

9. Exclusion of Warranties and Liabilities.

- 9.1 Where the Consumer Guarantees Act 1993 ("CGA") applies, the Customer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.
- 9.2 Where the CGA applies and the Equipment is hired for business purposes the CGA is excluded to the fullest extent permitted by law.
- 9.3 To the extent that the CGA (or any other law which cannot be excluded) does not apply, Kennards makes no representations and gives no warranties other than those set out in these Hire Contract Conditions, and will not be liable to the Customer for any damages, costs or other liabilities whatsoever (including for consequential loss) in relation to the hiring of the Equipment by the Customer.
- 9.4 Kennards shall have no liability to the Customer, the guarantor or any other person whether in contract, tort or otherwise for any consequential or indirect damages or losses except to the extent otherwise mandatorily required by law.

10. Remote Hire

Where the Equipment is at any time hired by the Customer to be located in the Remote Area, the following clauses will also apply, in addition to the obligations of the Customer under Clause 3 and elsewhere in these Hire Contract Conditions;

- (a) The Customer will pay an additional charge for any delivery, servicing and repair of the Equipment, and for any other attendance at the Remote Area by Kennards ('Remote Area Charges'). The Remote Area Charges will be calculated on a per kilometre rate travelled by Kennards staff to and from the Remote Area, plus labour costs per staff member per hour (including travelling times) at scheduled rates, plus direct travelling cost including all airfares and accommodation charges incurred by Kennards and its staff in connection with travel to and from the Remote Area;
- (b) Multiple items of Equipment hire by a Customer on the one site will only be charged for one call out fee;
- (c) The Customer is responsible at its cost for daily maintenance and care of all Equipment in its possession, including daily checking of all fluids (fuel, oil, water, battery levels etc) and general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.

11. Breach of Hire Contract by Customer

If the Customer breaches any clause whatsoever of this Contract, or the Customer or any guarantor becomes bankrupt, insolvent or ceases business then;

11.1 Kennards shall be entitled to:

- (a) terminate this Contract; and/or
- (b) sue for recovery of all monies owing by the Customer; and/or
- (c) repossess the Equipment (and is authorized to enter any premises where the Equipment is located to do so), and any Damage and/or Theft Waiver referred to in clause 8 is immediately invalidated.

11.2 The Customer indemnifies Kennards in respect of any damages, costs or loss resulting from a breach by the Customer of any provision of this Contract.

12. Disputes

12.1 The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to Kennards in writing within 30 days of the Hire Contract date. In the event that no communication is received from the Customer within that 30 day period, the Hire Charges are deemed to be accepted by the Customer.

12.2 If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to Kennards), 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.

13. Privacy Act 1993

The Customer and any guarantor consent to Kennards obtaining such information and making such enquiries about either of them from any source, including credit reference and reporting agencies and companies related to Kennards, in relation to this agreement and disclosing information about either of them to credit reference agencies, companies related to Kennards, sureties, financiers of Kennards, the trustee under any debenture trust deed granted by Kennards or assignees or anyone who is considering becoming a surety or assignee. A person has the right to access personal information (within the meaning of the Privacy Act 1993) held by Kennards and request correction of any errors in that information.

14. Amendments

Kennards may amend these terms and conditions by notice to the Customer, or by displaying the amended terms on its website. From the date of that notice or display, the amended terms will apply to the hire of all Equipment commencing after the date of that notice or display.

15. Payments

All payments under this Agreement by the Customer must be made without set-off, counterclaim or withholding.

16. Governing Law

This Hire Contract is governed by the law of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.