

Whangamata Hire

Terms and Conditions (“Conditions”)

1. CONDITIONS

1.1. The Conditions set out below shall apply and are incorporated into any contract for the hire and/or sale of goods (Goods) between Whangamata Party Hire (the “Owner”) and the person hiring the Goods (“Hirer”) (“Contract”). The Owner reserves the right to change these Conditions without notice. Any amended Conditions will be placed on Whangamata Party Hire website (www.whangamatapartyhire.co.nz) and shall apply with effect from the date they are placed on the website unless the amended Conditions specify a later date from which they are to apply.

2. CHARGES

2.1. Goods may be hired for a specific Event or on a Daily basis as agreed to in writing. The relevant hire period is set out in the Contract. 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 Goods usage in excess of the hire periods or the maximum usage times as set out in clause 2.2. Certain Goods may carry minimum hiring periods. The Hirer shall not be entitled to a refund or reduced hire charge if the Hirer chooses to return the Goods to the Owner before the end of the agreed hire period.

2.2. Hire periods and “maximum usage times” are:

- “Per Event” i.e. wedding or a party (maximum usage time 72 hours);
- “Daily” means 24 hours (maximum usage time “As agreed”);

2.3. The hire period, and corresponding rate, applies from the time the Goods leaves the company’s premises to the time that it is returned to the Owner’s premises and runs until the Goods is either returned to the Owner at the place of hire, removed by the Owner pursuant to clause 4, or when the Contract is terminated pursuant to clause 5.

2.4. The Hirer shall pay as invoiced for the hire period for all Goods used, loss and insurance charges (if applicable), delivery/removal costs, excess use charges, any damage to or loss of the Goods, cleaning costs (if any), and default interest for late payment.

2.5. Cleaning fees will be assessed and charged if the Hirer returns Goods that the Owner deems (in its sole discretion) to be excessively dirty.

3. PAYMENT AND DEFAULT INTEREST

3.1. All charges are inclusive of GST unless otherwise indicated, whereby the Hirer shall pay the charges plus GST.

3.2. A deposit is required to secure a booking with the balance being payable before pick up or delivery. The deposit payment forms part of the total payment due for the hire and is different from the bond payment.

3.3 Full payment is required before hiring commences, unless the Hirer has a credit account with the Owner:

3.3.1. the Hirer will be required to pay a bond to be determined by the owner based upon the estimated total charges; and

3.3.2. on return of the Goods in good order and condition, the actual total charges will be calculated and the Hirer will either pay the balance outstanding, or be refunded with the difference between the bond paid by the Hirer and the actual total charges.

3.4. The Hirer by accepting the goods or services agrees to the terms and conditions as laid down by the Owner and agrees to pay any costs of collection and all legal fees incurred by the Owner in the event of legal action becoming necessary.

3.5. The Hirer's obligations to pay charges and any other sums to the Owner shall continue despite any defect or breakdown of, theft of, or accident or damage caused to the Goods.

4. DELIVERY AND REMOVAL

4.1. Delivery and removal charges are payable by the Hirer and are in addition to the hire/purchase costs.

4.2. The Hirer is responsible for checking the Goods upon pick up or delivery. The Owner cannot accept responsibility for shortages or claims after the Hirer takes possession. Where the Hirer is not available to check Goods being delivered or collected, the Hirer shall not be entitled to subsequently dispute the amount of, or condition of the Goods recorded in writing as returned by the Owner at the time of return.

4.3. The Hirer shall be present at the delivery address to acknowledge receipt of Goods hired. If the Hirer is not present, the Owner may charge the Hirer \$20.00 per person per hour while the persons effecting delivery are waiting.

4.4. If applicable, Goods must be packed up, ready for loading, and assistance rendered for loading.

4.5 Ownership of the Goods remains at all times with the Owner. The Hirer has no right, title or interest in the Goods except insofar as they are hired to The Hirer in terms of this Contract. The Hirer shall forthwith on request by the Owner advise the Owner of the whereabouts of the Goods and allow the Owner or its agent or servants reasonable time to inspect and test the Goods,

4.6 The Hirer grants to the Owner, or will procure that the Owner is granted, an irrevocable right and authority to enter, and for the Owner to bring the Owner's vehicle at any time onto, the place where the Goods is to be used or is located to deliver and/or remove the Goods either on the expiry of the hire period or on termination of the Contract pursuant to clauses 5.1 or 5.2.

5. RIGHT TO TERMINATE

5.1. The Owner may terminate the Contract by notice with immediate effect if:

5.1.1. the Hirer fails to comply with any term of the Contract or any other agreement with the Owner;

5.1.2. the Owner believes the Goods may be at risk for any reason whatsoever, including the manner of its use by the Hirer, adverse weather or work conditions, the Hirer is unable to, or might be unable to, pay any charge, cost, purchase price or fee in connection with the Goods under these Conditions; or

5.1.3. any step is taken to appoint a receiver, manager, trustee in administration, liquidator, provisional liquidator, statutory manager, administrator or other like person of the whole or any part of the Hirer's assets or business.

5.2. Notwithstanding clause 5.1, the Owner may terminate the hire at any time without reason by giving the Hirer 48 hours' written notice.

5.3. The Hirer indemnifies the Owner against, and shall pay to the Owner upon demand, any cost (including legal costs), claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner acting to recover any Goods hired or monies payable by the Hirer pursuant to the Contract, or otherwise in connection with the exercise or attempted exercise of any of its rights or remedies under the Contract.

5.4. Upon termination of this Contract under clauses 5.1 or 5.2 the Hirer shall forthwith deliver the Goods to the Owner and shall pay to the Owner:

5.4.1. all rental and other moneys due to the Owner at the date of termination; and

5.4.2. the balance of all rental yet to accrue from the date of termination to the expiry of the term of the Contract discounted for early payment in such amount as the Owner at its sole discretion allows.

5.5. Termination of the Contract by the Owner is without prejudice to any rights that the Owner may have under this Contract.

5.6. The parties acknowledge that, notwithstanding the provisions of the Contractual Remedies Act 1979, the Hirer shall not be entitled to cancel or otherwise terminate the Contract.

6. CANCELLATION OF HIRE

If the Hirer, for any reason, terminates a booked hire or part of booking, irrespective of whether a bond has been paid or not, then the following fees will apply: If cancelled prior to 90 days of delivery and/or event date – 50% of deposit will be withheld If cancelled within 90 days of delivery and/or event date – 100% of deposit will be withheld In any circumstances where cancellation occurs and the company has incurred additional costs such as loading of vehicles, transportation of equipment, or utilization of labour, then additional fees may also be incurred by the customer.

7. ASSIGNMENT

7.1. The Hirer shall not assign, sublet, charge or part with possession of the Goods or any part of it but this shall not prevent employees of the Hirer using the Goods in conformity with these Conditions.

7.2. The Owner may at any time assign its rights or interests, or any part thereof, (whether absolutely, or by way of security) or transfer its obligations or any part thereof, to any person.

8. HIRER'S OBLIGATIONS

8.1. The Hirer shall:

8.1.1. if the Goods is intended to be used in a location or manner which is outside its usual or ordinary use, advise the Owner of the intended location and/or nature of use at the time of hiring the Goods;

8.1.2. take proper and reasonable care of the hired Goods and return it to the Owner at the end of the hire period (to the place of hire, unless otherwise specified in the Contract) in the same order and condition as at the commencement of the hire (fair wear and tear excepted);

8.1.3. satisfy itself that the Goods is suitable for the Hirer's intended use;

8.1.4. use the Goods in a lawful manner with due regard to all laws and regulations pertaining to the use of such Goods;

8.1.5. immediately notify the Owner by telephone if the Goods are faulty or breaks down;

8.1.6. except as permitted by the Consumer Guarantees Act 1993, not bring or threaten to bring any 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 Goods;

8.1.7. notify the Owner immediately if the hired Goods is lost, stolen or damaged and shall follow all reasonable instructions of the Owner;

8.1.8. subject to clause 10, be responsible, and indemnify the Owner, for any loss, theft or damage to the Goods that occurs from the time the Hirer takes possession of the Goods until it is returned to the Owner's possession including:

8.1.8.1. in the case of damage, the full cost of all repairs to restore the Goods to the condition it was in at the time of hire;

8.1.8.2. in the case of loss, theft or irreparable damage to the Goods however caused, the full cost to the Owner of replacing the Goods; and

8.1.9. in addition to the costs set out in clause 7.1.8, be responsible for and indemnify the Owner for any loss of revenue suffered by the Owner due to the unavailability of the Goods for hire due to loss, theft or damage; and

8.1.10. not remove, deface or obscure any marks of identification or ownership on the Goods.

8.2. The Hirer warrants that all persons who use the Goods shall be **COMPETENT** and **QUALIFIED** to use the Goods, shall use the Goods in the manner it was designed to be used, and follow any directions from the Owner, local authorities, codes of practice and/or the manufacturer of the Goods relating to the use and safety of the Goods and shall comply with all obligations in relation to the use and control of the Goods and person using said Goods in accordance with the New Zealand Governments latest Health and Safety in Employment Act and all other relevant legislation.

8.3. If the Hirer is not an individual, the person who signs the 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 on the Hirer. The person signing hereby indemnifies the Owner against all losses and costs that may be incurred by the Owner arising out of the person signing the Contract failing to have such power or authority.

8.4. The Hirer shall, upon request by the Owner, advise the Owner of the whereabouts of the Goods and allow the Owner reasonable time to inspect and test the Goods and for such purposes the Hirer gives irrevocable leave and licence to the Owner to take possession of and/or remove the Goods, and to enter any premises where the Goods or any part of the Goods may be.

9. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

9.1. The Hirer acknowledges that title to hired Goods remains with the Owner at all times.

9.2. Hire of the Goods may create a security interest in the Goods. If so, this document constitutes a security agreement for the purposes of the PPSA and 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.

9.3. 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 the Contract (including these Conditions) constitutes a perfected security interest in the Goods and their proceeds which will have priority over all other security interests in the Goods.

9.4. 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 the Contract.

9.5. The Hirer waives its rights under sections 114(1) (a), 116, 120(2), 121, 125, 126, 127, 129, 131, 132, 133, and 148 of the PPSA.

10. INSURANCE

10.1. The Hirer is responsible for the insurance of Goods for the period of hire including where the Hirer transports to and from the premises of the Owner. The Hirer shall indemnify the Owner against any damage or loss or from theft which may occur whilst the Goods is in the care of the Hirer.

11. LIMITATION OF LIABILITY, INJURY OR DAMAGE TO HIRER, THIRD PERSON OR PROPERTY

11.1. In entering into the Contract, the Hirer acknowledges that the Owner has no liability to the Hirer for any direct or indirect or consequential loss or damage or for any loss of profit (or any other form of economic loss) arising in connection with the Contract (whether in contract or in tort) including that resulting from the negligence of the Owner, the use by the Hirer of the Goods, or arising by operation of law. Without limiting the foregoing, the Owner is not liable for any indirect or consequential loss or damage including any loss of profit or other loss suffered by the Hirer, or liability incurred by the Hirer, as a result of the breakdown of any hired Goods, however caused.

11.2. Subject to the exclusion of liability in clause 10.1 above, the maximum aggregate liability of the Owner for all claims made by the Hirer, whether as a result of any breach of the Contract or on any other ground or terms whatsoever (including liability as a result of tort, including negligence) will not exceed:

11.2. in the case of any Goods hired, the lesser of the hire charges paid by the Hirer to the Owner pursuant to the Contract and three months' hire charges paid by the Hirer to the Owner pursuant to the Contract.

11.3. The Hirer will indemnify the Owner against any liability, losses, damages or expenses incurred or suffered by the Owner as a result of any claim made by a third person against the Owner in respect of any loss or liability arising from the Contract or arising out of the use of the Goods hired or purchased by the Hirer.

11.4. Nothing in the Contract affects the Hirer's rights under the Consumer Guarantees Act 1993. If the Hirer is acquiring or hiring the Goods for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 do not apply.

11.5. The Owner makes no warranty or representations as to the state, quality or fitness of the Goods for any purpose and no such warranty shall be implied. For the avoidance of doubt, no warranty shall be implied by the description of the Goods on the face of this form or by the provision of information relating to the proper operation and maintenance of the Goods.

12. NOTICES

12.1. Notices shall be properly served on a person if delivered by hand or left at or posted in any prepaid letter addressed to that person at either the job address or any other address of the Hirer specified on the face of this Contract. Service by post shall be deemed to be effected on the second day after the day on which the notice was posted.

13. GENERAL

13.1. Headings are inserted for convenience and shall not affect the construction of the 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, agents, successors and assigns. The word “including” do not imply limitation.

13.2. If at any time any provision of the Contract 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 Contract.

13.3. This Contract is governed by the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

14. PRIVACY ACT 1993

14.1. If the Hirer is an individual, this clause 13.1 applies. The Owner requires personal information and will collect and hold personal information about the Hirer, principally for the purpose of evaluating the hire of Goods by the Hirer. The Hirer's application to hire Goods may be declined or the hire terminated if the Hirer fails to provide requested personal information. The Hirer can access and seek correction of any personal information by contacting the Owner. The Hirer agrees that its personal information may be used by the Owner to advise the Hirer of the Owner's other goods and services. The Hirer authorises the disclosure of personal information held by any other party regarding any previous hire contracts entered into by the Hirer. The Hirer agrees to the Owner releasing to other parties information regarding the Contract if the Hirer does not comply with its obligations.

14.2. The Hirer and each person who signs the Owner's Application for Credit authorises the Owner:

14.2.1. to collect, retain and use information about the Hirer or such other signatory from any person for the purpose of assessing the Hirer's or such other signatory's creditworthiness;

14.2.2. to disclose information about the Hirer or such other signatory:

14.2.2.1. to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Hirer's obligations to the Owner; and/or

14.2.2.2. to such persons as may be necessary or desirable to enable the Owner to exercise any rights under the Contract.

15.0 FORCE MAJEURE

Notwithstanding anything to the contrary contained in this Agreement, the Owner shall under no circumstances be liable to The Hirer for any delay, defective or non-performance under this Agreement as a result of Force Majeure. In the event of a Force Majeure event occurring, the Owner shall in its sole discretion determine whether it is possible and/or safe and/or advisable to install the Goods and/or carry out the Services at the Site and/or allow the Goods to remain installed at the Site. In the event that the Owner determines that it is not possible and/or safe and/or advisable for the Goods to be installed and/or the Services to be carried out at the Site and/or for the Goods to remain installed at the Site, the Contract shall be cancelled and The Hirer shall have no claim whatsoever against the Owner in respect of such cancellation, and the Owner shall be entitled to recover its reasonable costs incurred in attempting to install the Goods and/or carry out the Services in terms of the Contract, up to but not beyond the amount specified in the Charges. The Hirer shall be responsible for ensuring that it has arranged an alternative venue for the event for which it required the Goods and/or Services and/or has arranged sufficient event cancellation insurance in respect of the event and the Owner shall have no liability whatsoever in respect thereof.

16. ACCEPTANCE OF TERMS & CONDITIONS

16.1 If, for any reason, the Hirer has not acknowledged these terms and conditions by signing the face of the invoice, the Hirers payment of the deposit will have been deemed to have accepted the terms and conditions of hire.