

TERMS & CONDITIONS OF HIRE & SALES

1. CONDITIONS

The Conditions set out below shall apply to all contracts for the hire and/or sale of goods ("equipment") between R.J.Stewart Ltd trading as Heavy Trax Hire ("the Owner") and the entity 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) weekly or e) as agreed in writing. 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, and subject always to the Owner's rights in clause 5. Certain equipment may carry minimum hiring periods.
- 2.2 The hire period begins from the time the equipment leaves the Owner's premises and continues until the equipment is returned or this hire agreement is terminated pursuant to clause 5.
- 2.3 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), and default interest for late payment.

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 an amount not exceeding 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.
- 3.5 The Hirer must not make any claim for credit more than 14 days after the date of invoice.
- 3.6 Without prejudice to the Owner's other remedies under these conditions at law or otherwise, the Hirer will pay default interest at the rate of 2% per calendar month on all outstanding amounts from the end of the agreed hire period (for cash customers) or from the 20th of the month following date of invoice (for charge account customers) until all monies have been paid in full.
- 3.7 No credit shall be extended on overdue accounts.
- 3.8 The Hirer shall pay to the Owner all costs and expenses incurred by the Owner in recovering money or in connection with the exercise or attempted exercise of any of its rights or remedies under this contract, including commissions chargeable by credit agencies and legal costs of any recovery action on a solicitor and client basis.
- 3.9 The Hirer must make all payments due under this contract without set-off or deduction of any kind.

4. DELIVERY AND REMOVAL

- 4.1 Delivery and removal charges shall be payable by the Hirer in addition to the hire/purchase costs.
- 4.2 The Hirer authorizes 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 request 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 recover 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 Subject to clause 9 (Insurance Waiver on Hire), in the case of hired equipment, the Hirer is responsible for any loss or damage to the equipment from the time the Hirer takes possession of the equipment until it is returned to the Owner's possession. The Hirer shall notify the Owner in writing immediately if the equipment is lost or damaged and shall follow all reasonable instructions of the Owner.
- 7.2 In the case of damage to the equipment, however caused, the Hirer shall be responsible for and shall indemnify the Owner for the full cost of all repairs to restore the equipment to the condition it was in at the time of hire.
- 7.3 In the case of loss of the equipment however caused, the Hirer shall be responsible for and shall indemnify the Owner for the full costs to the Owner of replacing the equipment. The costs of replacement shall be no less than the current market value of the equipment.
- 7.4 In addition to the costs set out in clauses 7.2 and 7.3, the Hirer shall be responsible for and shall indemnify the Owner for any loss of revenue suffered by the Owner due to the unavailability of the equipment for hire due to loss or damage. The costs for lost revenue shall not exceed the equivalent rate for 120 days hire of the equipment.
- 7.5 The Hirer shall:
 - a) Take proper and reasonable care of the equipment, if the equipment is hired, return it in good order and condition; and
 - b) carry out all necessary servicing (including by way of example the supply of all necessary oils, grease and fuel) at the HIRER'S OWN EXPENSE; and
 - c) satisfy themselves that the equipment is suitable for the intended use; and
 - d) use the equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such equipment: and regulations pertaining to the use of such equipment; and
 - e) if the equipment is hired, immediately notify the Owner by telephone if the equipment breaks down; and
 - f) 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

- g) 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.
- 7.6 The Hirer warrants that all persons who use the equipment shall be COMPETENT and QUALIFIED to use the equipment, shall use the equipment in the manner it was designed to be used, and follow any directions from the Owner, local authorities, codes of practice or from the manufacturer of the equipment relating to the use and safety of the equipment and shall comply with all obligations in relation to the use and control of the equipment and person using said equipment to the Health and Safety in Employment Act 1992 and all other relevant legislation.
- 7.7 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 of 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 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 waives its rights under sections 114(1)(a), 116, 117, 119, 120(2), 121, 125, 129, 131, 132, 133, 134 and 148 of the PPSA.

9. INSURANCE WAIVER ON HIRE

- 9.1 If the Hirer has paid the Insurance 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 all 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 or panel damage ARE NOT COVERED by the insurance 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 insurance 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 \$5000 plus GST for all plant and 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 employees 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 or amended as required.
- 11.3 Equipment purchased from the Owner remains the property of the Owner until paid in full.

12. PRIVACY ACT 1993

- 12.1 If the Hirer is an individual, this clause 12.1 applies. This contract collects personal information about you. The information is principally collected to evaluate the hire of equipment that you seek. The information is collected and held by the Owner. The failure to provide the information on the front of this contract may result in your application to hire equipment being declined or this contract subsequently being terminated by the Owner. The Hirer has rights of access to personal information contained in this contract, subject to the provisions of the Privacy Act 1993. The Hirer agrees that its personal information may be used by the Owner to advise the Hirer of the Owner's other good and services. The Hirer authorizes the disclosure of personal information held by any other party regarding any previous hire agreements entered into by the Hirer. The Hirer agrees to the Owner releasing to other parties information regarding this hire contract if the Hirer does not comply with its obligations.
- 12.2 The Hirer and each person who signs the Owner's Application for Credit authorizes the Owner:
- a) 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;
 - b) To disclose information about the Hirer or such other signatory:
 - i) 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;
 - ii) To such persons as may be necessary or desirable to enable the Owner to exercise any power, enforcement or attempted enforcement of the Owner's rights, remedies and powers under these Conditions.