

# Hirepool Hire & Sales Consumer Contract Terms and Conditions (“Consumer Conditions”)

## 1. CONSUMER CONDITIONS

- 1.1 The Consumer Conditions set out below shall apply to and are incorporated into any contract for the hire and/or sale of goods (“equipment”) as detailed in the contract details page (“Contract Details”) between Hirepool Limited (the “Owner”) and the consumer hiring or buying the equipment (“Hirer”) (together, the “Contract”).
- 1.2 For the purposes of this Contract, “consumer” means a Hirer who is a “consumer” for the purposes of the Consumer Guarantees Act 1993 and/or the Fair Trading Act 1986.
- 1.3 Nothing in this Contract affects, or attempts to exclude in any way, the Hirer’s rights under the Consumer Guarantees Act 1993.
- 1.4 If the Hirer is in trade (within the meaning of the Consumer Guarantees Act 1993) and the equipment is supplied to the Hirer and acquired by the Hirer in trade, the Owner and the Hirer confirm, acknowledge and agree that:
  - (a) these Consumer Conditions will be substituted with the Hirepool Hire & Sales Trade Contract Terms and Conditions (“Trade Conditions”); and
  - (b) the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993 do not apply.
- 1.5 It is not intended that any Contract will be either a consumer credit contract or a consumer lease for the purposes of the Credit Contracts and Consumer Finance Act 2003.

## 2. AMENDMENTS

- 2.1 The Owner may amend any terms of the Consumer Conditions at any time, in its sole discretion, by posting updated Consumer Conditions on its website ([www.hirepool.co.nz](http://www.hirepool.co.nz)).
- 2.2 Notwithstanding clause 2.1, the Hirer will continue to be subject to the Consumer Conditions attached to, and in effect at the time the Hirer entered into, the Contract. Any amended Consumer Conditions shall only apply to a new contract for the hire and/or sale of goods entered into between the Owner and the Hirer.

## 3. HIRE CHARGES

- 3.1 Equipment may be hired for: a) Half Day; b) Daily; c) Weekly; d) Monthly; or e) as otherwise agreed to in writing. The Hirer agrees that the Owner may charge extra on a pro-rata basis for any equipment usage in excess of the agreed hire periods or the maximum usage times (in the case of metered equipment) as set out in clause 3.2 or otherwise agreed to in writing. Certain equipment may carry minimum hiring periods and maximum usage times and these will be notified to the Hirer and itemised in the Contract Details at the time the relevant equipment is hired.
- 3.2 The “hire periods” and “maximum usage times” are:

“Half Day” means 4 hours or overnight provided the equipment is picked up after 4.00pm and returned by 8.30am the following day (maximum usage time 4 hours);

“Daily” means 24 hours (maximum usage time 8 hours);

“Weekly” means 7 days (maximum usage time 40 hours); and

“Monthly” means 28 days (e.g. if pick up occurs on the 1st of a month, return is to be by 4.00pm on the 28th of the month (maximum usage time 160 hours)).
- 3.3 The hire period begins from the time the equipment leaves the Owner’s premises and runs until the equipment is either returned to the Owner at the place of hire, removed by the Owner pursuant to clause 5, or the Contract is terminated pursuant to clause 6.
- 3.4 The Hirer shall pay as invoiced for the following charges itemised in the Contract Details or otherwise notified to the Hirer:
  - (a) the hire charges for the hire period of all equipment used;
  - (b) a bond of 150% of the estimated total charges if applicable (see clause 4.2 below);
  - (c) the damage waiver charges (unless the Owner has agreed otherwise in writing);
  - (d) delivery/removal charges (if applicable);
  - (e) excess use charges (if applicable);
  - (f) any damage to or loss of the equipment not covered by the damage waiver (if applicable);
  - (g) cleaning fees (if applicable); and
  - (h) default interest for late payment (if applicable).
- 3.5 If the Weekly charge rate is less than the accumulated Daily charge rate over the same hire period, the Weekly charge rate will apply.
- 3.6 Cleaning fees will be assessed and charged if the Hirer returns equipment that the Owner deems (in its sole discretion but acting reasonably) to be excessively dirty. If the Owner determines on this basis that the equipment will require additional cleaning, the Owner will advise the Hirer at the time the equipment is returned and notify the Hirer of the relevant cleaning fees either:
  - (a) at the time the Hirer returns the equipment; or
  - (b) as soon as reasonably practicable after the Hirer returns the equipment if assessment of the cost of cleaning cannot be determined at the time the Hirer returns the equipment.

## 4. PAYMENT AND DEFAULT INTEREST

- 4.1 All charges will specify whether they are inclusive or exclusive of GST and the Contract Details will set out the charges and applicable GST payable by the Hirer.
- 4.2 For hire of equipment, unless the Hirer has a credit account with the Owner:
  - (a) the Hirer will be required to pay a bond of 150% of the estimated total charges; and
  - (b) on return of the equipment 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.
- 4.3 Unless otherwise agreed in writing by the Owner, the Hirer must pay, or the Hirer’s account will be charged with, the cost of the damage waiver for hired equipment, the amount of which is specified in the Contract Details (see clause 10 for further details on the damage waiver).
- 4.4 For purchase of equipment, the Hirer will pay the Owner the agreed price. Risk in this equipment passes to the Hirer on delivery of the equipment and title will pass on payment in full to the Owner.
- 4.5 For credit account customers, the Owner will send the Hirer an invoice for charges incurred. The Hirer must pay the invoice by the 20th of the month following the date of invoice. The Owner reserves the right to reverse any previously agreed discount for credit account customers if the account is not paid in full by the due date.
- 4.6 All Hirer queries or issues with invoiced amounts must be raised with the Owner within one month of the date on the relevant invoice so that any such queries or issues can be promptly reviewed and resolved.
- 4.7 The Owner reserves the right to apply payments received in any manner the Owner determines.
- 4.8 Without prejudice to the Owner’s other remedies under these Consumer Conditions, at law or otherwise, the Hirer will pay default interest at the rate of 2% above the Owner’s overdraft rate 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 credit account customers), until all monies have been paid in full.
- 4.9 The Hirer must make all payments due under the Contract (time being of the essence) without set-off or deduction of any kind.
- 4.10 No credit shall be extended on overdue accounts.
- 4.11 The Hirer must immediately notify the Owner of any occurrence of mechanical defect, break down, theft, accident or damage to the equipment. Subject to clause 4.12, provided that:
  - (a) the Owner can replace the equipment; and
  - (b) the hire period is not affected,the Hirer’s obligations to pay charges and any other sums to the Owner shall continue despite any mechanical defect, break down, theft of, or accident or damage caused to the equipment. Where replacement equipment cannot be supplied by the Owner and/or the hire period is affected, the charges payable by the Hirer will be adjusted to reflect the reduced hire period.
- 4.12 Notwithstanding anything else in the Contract, where any occurrence of mechanical defect, break down, theft, accident or damage to the equipment is a result of the negligent or reckless acts or omissions of the Hirer, the Owner will be under no obligation to replace the equipment and the Hirer’s obligations to pay charges and any other sums to the Owner shall continue.

## 5. DELIVERY AND REMOVAL

- 5.1 Delivery and removal charges itemised in the Contract Details are payable by the Hirer and are in addition to the hire/purchase charges.
- 5.2 If hired equipment is to be removed by the Owner, hired equipment must be packed up and ready for loading at the pre-arranged time and place and assistance rendered for loading.
- 5.3 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 vehicles at any time onto, the place where the equipment is to be used or is located to deliver and/or remove hired equipment either on the expiry of the hire period or on termination of the Contract.
- 5.4 Any requests for removal of hired equipment must be arranged with the relevant branch prior to completion of the hire either by telephone or email. The relevant removal cost will be notified to the Hirer and itemised in the Contract Details.
- 5.5 The Owner must provide the Hirer with either an offhire number, pick up ticket number or return slip when hired equipment has either been finished with and is awaiting pickup or has been returned to the place of hire, and the Hirer must retain such document or number as evidence that the equipment has been returned.

## 6. RIGHT TO TERMINATE

- 6.1 The Hirer may terminate the Contract by notice with immediate effect if the Owner fails to comply with any term of the Contract, in which case the Hirer will be entitled to receive a refund of charges paid to the Owner which may be pro-rated to reflect the reduced hire period.
  - 6.2 The Owner may terminate the Contract by notice with immediate effect if:
    - (a) the Hirer fails to comply with any material term of the Contract;
    - (b) the Owner believes on reasonable grounds that hired equipment may be at risk for any reason whatsoever, including the manner of its use by the Hirer, adverse weather or work conditions, or the Hirer is unable to, or might be unable to, pay any charge, cost, purchase price or fee in connection with the equipment under these Consumer Conditions;
    - (c) it becomes apparent that for any reason (including through the resignation of a Guarantor) there will be no personal guarantees given in respect of the Hirer’s obligations under the Contract; or
    - (d) any step is taken to appoint a receiver, manager, trustee in administration, liquidator, provisional liquidator, statutory manager, administrator or other like person over the whole or any part of the Hirer’s assets or business.
  - 6.3 Where the Owner terminates the Contract pursuant to clause 6.2, 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 equipment hired or monies payable by the Hirer pursuant to the Contract.
  - 6.4 Upon termination of this Contract the Hirer shall forthwith deliver up any hired equipment to the Owner and shall pay to the Owner:
    - (a) all hire charges and other moneys due to the Owner at the date of termination; and
    - (b) the balance of all hire charges 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, provided that the Owner has terminated the Contract:
      - (i) due to the negligent or reckless acts or omissions of the Hirer or breach by the Hirer of the Contract; and
      - (ii) such acts, omissions or breach resulted in the Owner not being able to hire the equipment out to other customers.
  - 6.5 Termination of the Contract by the Owner is without prejudice to any rights that the Owner may have under this Contract.
- ## 7. ASSIGNMENT
- 7.1 The Hirer shall not assign any of the Hirer’s rights or interests under the Contract to any person, and shall not assign, sublet, charge or part with possession of hired equipment or any part of it.
  - 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 under the Contract, to any person.
- ## 8. HIRER’S OBLIGATIONS
- 8.1 The Hirer shall:
    - (a) if hired equipment 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 equipment;
    - (b) comply with any special conditions or exclusions (which may apply to specific equipment or the nature or location of the Hirer’s intended use of such equipment) notified to the Hirer prior to the equipment leaving the Owner’s premises and detailed in the Contract Details;
    - (c) take proper and reasonable care of hired equipment (including keeping the equipment locked and secured when not in use) and return it to the Owner at the end of the hire period (to the place of hire, unless otherwise specified in the Contract Details) in the same order and condition as at the commencement of the hire (fair wear and tear excepted) and in a reasonably clean state (taking into account the cleanliness of the equipment at the outset of the hire period);
    - (d) carry out all necessary daily servicing of hired equipment, (including the inspection and/or the supply of all necessary tyre pressures, water, oils, grease and fuel as may reasonably be required as part of the daily operation of the hired equipment) at the HIRER’S OWN EXPENSE;
    - (e) subject to clause 8.1(a) and any discussions between the Owner and Hirer regarding the Hirer’s intended use, satisfy itself that the hired equipment is suitable for the Hirer’s intended use;
    - (f) use hired equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such equipment;
    - (g) if the equipment is hired, immediately cease operating the equipment and notify the Owner by telephone if the equipment is faulty, breaks down or if any warning light

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- or buzzer is activated, or if any certificates or licenses required by law or regulation (for example, registration, warrant of fitness or road user charges) are due to expire during the period of hire;
- (h) notify the Owner immediately if hired equipment is lost, stolen or damaged and follow all reasonable instructions of the Owner;
- (i) unless such loss is covered by the damage waiver pursuant to clause 10, be responsible, and indemnify the Owner, for any loss, theft or damage to hired equipment that occurs as a result of the negligent or reckless acts or omissions of the Hirer from the time the Hirer takes possession of the equipment until it is returned to the Owner's possession including:
- (i) 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; and
- (ii) in the case of loss, theft or irreparable damage to the equipment, the market value of the equipment;
- (j) unless such loss is covered by the damage waiver pursuant to clause 10, in addition to the costs set out in clause 8.1(i), be responsible for and indemnify the Owner for any loss of revenue suffered by the Owner due to the unavailability of the equipment for hire due to loss, theft or damage caused as a result of the negligent or reckless acts or omissions of the Hirer; and
- (k) not remove, deface or obscure any marks of identification or ownership or registration on hired equipment.
- 8.2 The Hirer warrants that all persons who use hired equipment shall be COMPETENT and QUALIFIED to use the equipment, shall only use the equipment 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 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 the persons using said equipment in accordance with the Health and Safety at Work Act 2015 (if applicable) and all other relevant legislation and applicable regulations.
- 8.3 The Hirer shall, on reasonable notice by the Owner, advise the Owner of the whereabouts of hired equipment and allow the Owner reasonable time to inspect and test the equipment and for such purposes the Hirer gives irrevocable leave and license to the Owner to enter any premises where the equipment or any part of the equipment may be and take possession of and/or remove the equipment where continued use of the equipment may pose a health and safety risk to the Hirer (to be determined by the Owner acting reasonably). Where the hire period is disrupted, and replacement equipment cannot be provided by the Owner, the charges payable by the Hirer will be amended to reflect the reduced hire period and where the Hirer has paid in advance for the hire of the equipment, the Hirer will be entitled to a pro-rated refund.
- 9. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**
- 9.1 The Hirer acknowledges that title to hired equipment remains with the Owner at all times. Equipment purchased from the Owner remains the property of the Owner until paid for in full.
- 9.2 The Hirer agrees that the hire of the equipment may, and that the acquisition of the equipment does, create a security interest in the equipment to secure the full payment of all moneys payable to the Owner and the performance by the Hirer of all of its other obligations to the Owner. If the Contract (including these Consumer Conditions) constitutes a security interest, this document constitutes a security agreement for the purposes of the PPSA and the provisions of clauses 9.3 to 9.5 apply. Unless otherwise defined in the Contract (including these Consumer Conditions), all terms in this clause 9 have the meaning given to them 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 Consumer Conditions) constitutes a perfected security interest in the equipment and their proceeds which will have priority over all other security interests in the equipment.
- 9.4 The Owner may allocate all amounts received by the Hirer in any manner it determines including any manner required to preserve any purchase money security interests in the equipment.
- 9.5 The Hirer will pay to the Owner all fees and expenses incurred by the Owner in relation to the filing and maintenance of a financing statement in connection with the Contract.
- 9.6 The Hirer waives its rights under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 148 of the PPSA.
- 9.7 Nothing in this clause 9 affects the Owner's rights as an unpaid seller in relation to equipment purchased from the Owner.
- 10. HIRE DAMAGE WAIVER**
- 10.1 The Hirer must pay for the damage waiver unless the Owner has agreed otherwise in writing (in which case clause 10.7 applies). The Hirer is not entering into a contract of insurance with the Owner by paying for the damage waiver.
- 10.2 Excess: In the event of any loss, theft or damage to the equipment which is covered by the damage waiver, the Hirer 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 in the Contract Details.
- 10.3 Subject to the exclusions set out in clause 10.4, the Hirer shall not be liable to the Owner for any loss of or damage to the hired equipment during the term of hire PROVIDED THAT the Hirer:
- (a) has at all times acted reasonably and with reasonable care;
- (b) has delivered to the Owner (within 12 hours of the time when the Hirer first becomes aware of the loss of or damage to the equipment) 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, an applicable police complaint acknowledgement form; and
- (c) has complied with its obligations under clause 8.1; and
- (d) has assisted the Owner (on the Owner's reasonable request) for the purposes of enabling the Owner to recover such loss or damage.
- 10.4 Exclusions: The damage waiver does not cover:
- (a) theft of or criminal damage to equipment unless reasonably locked and secured;
- (b) damage or loss due to misuse, abuse or overloading of the equipment or failure to take reasonable care of it (including any overloading of any motors or other electrical appliances or devices);
- (c) damage caused to tyres and tubes by blowout, bruises, cuts, kerbing or other causes arising from the use of the equipment;
- (d) loss or damage to the hired equipment resulting from lack of lubrication or other normal servicing of the equipment;
- (e) loss or damage of tools, digger buckets, accessories, grease guns, hoses and similar, electrical cords, welding cable, oxygen and/or acetylene bottles, pneumatic tools, steels and other similar accessories;
- (f) loss or damage to the hired equipment where such loss or damage is due to any incident or accident involving (in any way) water;
- (g) loss or damage to any equipment or items on which the damage waiver is not charged;
- (h) loss or damage of the equipment arising from a breach by the Hirer of the conditions of the Contract;
- (i) loss or damage due to the Hirer's breach of any special conditions or exclusions notified to the Hirer in accordance with clause 8.1(b); or
- (j) loss or damage from the use of the equipment in violation of any statute, regulation or by-law.
- 10.5 The parties agree that section 11 of the Insurance Law Reform Act 1977 will apply with respect to the exclusions in clause 10.4 as if this clause 10 constituted a contract of insurance (notwithstanding that this clause 10 is not a contract of insurance).
- 10.6 If the damage waiver does not cover or does not apply to the Hirer under clauses 10.3 or 10.4, without limiting any other rights or remedies that may be available to the Owner at law or under the Contract, the Hirer shall pay to the Owner:
- (a) in the case of loss or irreparable damage, the market value of the equipment; and
- (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.
- 10.7 If the Owner has agreed in writing to allow the Hirer not to purchase the damage waiver:
- (a) the Hirer hires the equipment at the Hirer's own risk; and
- (b) indemnifies the Owner against any and all loss in respect of any loss of or damage to the equipment (except where the loss or liability has arisen due to the negligence of the Owner or where the Owner has willfully, negligently or recklessly supplied defective equipment to the Hirer).
- 11. LIMITATION OF LIABILITY, INJURY OR DAMAGE TO HIRER, THIRD PERSON OR PROPERTY**
- 11.1 As a consumer, the Hirer is entitled to certain rights and remedies under the Consumer Guarantees Act 1993. For the avoidance of doubt, nothing in this Contract affects, or attempts to exclude in any way, the Hirer's rights under the Consumer Guarantees Act 1993.
- 11.2 Other than for claims made under the Consumer Guarantees Act 1993, the maximum aggregate liability of the Owner for all claims made by the Hirer will not exceed:
- (a) in the case of any equipment purchased by the Hirer, an amount of \$2,500; and
- (b) in the case of any equipment 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, except where such liability arises as a result of the negligence of the Owner or where the owner has willfully, negligently or recklessly supplied defective equipment to the Hirer.
- 11.3 Unless such loss is covered by the damage waiver under clause 10, 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 equipment hired or purchased by the Hirer, except where the loss or liability has arisen due to the negligence of the Owner or where the Owner has willfully, negligently or recklessly supplied defective equipment to the Hirer.
- 11.4 Subject to clause 10, the maximum aggregate liability of the Hirer under these Consumer Conditions, will not exceed:
- (a) in the case of damage to hired equipment, the full cost of all repairs to restore the equipment to the condition it was in at the time of hire; and
- (b) in the case of loss, theft or irreparable damage to the equipment, the market value of the equipment.
- 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 Contract Details page. 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. Words with initial capitals have the meaning ascribed to them in context or as defined in clause 3.1. 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” does 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 Nothing expressed or implied in this Contract will constitute either party as the partner, agent, employee or officer of, or joint venturer with, the other party.
- 13.4 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 The Owner requires personal information and will collect and hold personal information about the Hirer, principally for the purpose of evaluating the hire of equipment by the Hirer. The Hirer's application to hire equipment 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.
- 14.2 The Hirer and each person who signs the Owner's Application for Credit authorises 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; and/or
- (ii) to such persons as may be necessary or desirable to enable the Owner to exercise any rights under the Contract.