

# Keri Party Hire-General Terms & Conditions of Contract

## 1. Definitions

- 1.1 "Seller" shall mean Keri Party Hire Ltd.
- 1.2 "Hirer" means that person (or persons) entering into this contract and, where that person (or persons) enters into this contract for or on behalf of another entity, includes such entity. This expression also extends to those claiming under or authorised by the Hirer.
- 1.3 "Guarantor" means that person (or persons) who agrees herein to be liable for the debts of the Hirer if a Limited Liability Seller on a principal debtor basis.
- 1.4 Equipment is all chattels plant including all fittings accessories and parts supplied to the Hirer by the Seller pursuant to this hire contract (and includes any incidental supply of services).
- 1.5 "Minimum Hire Periods" is a period of one day commencing at the time the Equipment is collected or leaves the Seller's premises (except where otherwise agreed by the Seller in writing).
- 1.6 "Trade Customers" are only those Hirers whom the Seller has agreed are currently entitled to trade credit terms.
- 1.7 "Price of Equipment" shall mean the cost of hire of the equipment as agreed between the seller and the Buyer.

## 2. Acceptance

- 2.1 The Hirer shall be deemed to have accepted these Terms and Conditions of Trade once they have signed and accepted the Hire agreement or any other hire commencement forms or documentation.
- 2.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

## 3. Equipment/Services

- 3.1 The Equipment are as described on the invoices, quotation, hire contract, hire agreement, or any other hire commencement forms as provided by the Seller to the Hirer.
- 3.2 The Seller does not undertake as to the quality or fitness for any particular purposes of Equipment supplied under this agreement except as follows:
  - a) In the event that the Hirer requires quality or fitness for a particular purpose according to the usage of trade then the Hirer shall set forth the Hirer's requirements as to such quality or fitness for such particular purpose hereunder.
  - b) Subsequent exchange of Equipment shall entail additional charges. The equipment does not purport to be new stock or equal to new but all Equipment is understood to be in good order for normal full load working at the stated capacity under ordinary conditions.

## 4. Sale

- 4.1 The Equipment shall be supplied in accordance with the description contained in the Seller's specification, quotation, tender documents, work authorisation, or any other work commencement forms.
  - a) The Seller may from time to time make changes in the specification of the Equipment which are required to comply with safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Equipment.

## 5. Price and Payment

- 5.1 The hire price for the Equipment shall be as indicated on invoices provided by the Seller to the Hirer in respect of the Equipment supplied; or
- 5.2 The hire price for the Equipment shall be the price of the Seller's current price at the date of supply of the equipment as stipulated in the Seller's current rate schedule. The Seller's current rate schedule is available for viewing at the Seller's premises during normal business hours, or upon request by the Hirer; or
- 5.3 The price of the Equipment shall be the seller's quoted price which shall be binding upon the Seller provided that the Hirer shall accept in writing the Seller's quotation within twenty-eight (28) days.
- 5.4 Time for payment for the Equipment and/or Service shall be of the essence and will be stated on the invoice, quotation, tender documents, work authorisation form or any other work commencement forms.
- 5.5 Time for payment of hire and other charges by "Trade Customers" shall be made on the 20th day of each month following the date of the invoice; or
- 5.6 With respect to "Non Trade Customers" time for full payment shall be made 10 days prior to the date when the Equipment leaves the Seller's premises.
- 5.7 The method of payment will be made by cash, or by cheque, or by Bank Cheque, or any other method as agreed to between the Hirer and the Seller.
- 5.8 All extra charges including, but not limited to cartage, fuel and all saleable and consumable items are not included in the hire rate. These items will incur an extra charge.
- 5.9 Unless otherwise stated on any hire commencement forms or contracts all hire rates shall be GST exclusive.
- 5.10 At the seller's discretion a bond and/or a deposit may be required at the commencement of the hire period. If a bond and/or deposit is required then it shall be stated in any hire commencement forms or contracts. A bond and/or a deposit may be required at the time of booking to confirm a future hire.
- 5.11 Keri Party Hire Cancellation fees:

The following charges will apply if confirmed hire bookings are cancelled close to the event date. Deposits of 10% will not be refunded within 2 months of the event date if the hire is cancelled. Cancellation of hire within 30 days of the event will incur a 30% charge of the total hire booked. Cancellation of hire within 2 weeks of the event date will incur a 50% charge of the total hire booked. However, if we replace your booking with another hire in that period you may be refunded for the items that have been rehired.
- 5.12 Equipment and packing boxes will be supplied clean and ready for use. To avoid any extra charges both equipment and packaging must be returned in the same condition.
- 5.13 Lost or damaged packaging boxes shall be charged to the seller.
- 5.14 Late orders and special deliveries may attract additional charges.
- 5.15 Replacement costs are entirely at the Seller's discretion.
- 5.16 Keri Party Hire Booking and Payment Conditions:
  - \* 10% Booking Fee required at time of ordering hire.
  - \* 40% of hire charge required 3 months prior to confirm & secure your booking.
  - \* Remaining balance to be paid in full 10 days prior to hirers event.

## 6. Hire period

- 6.1 Hiring charges shall commence from the time the Equipment is collected by the Hirer from the Seller's premises and continue until the return of the Equipment to the Seller's premises, and/or until the expiry of the Minimum Hiring Period, whichever last occurs.
- 6.2 If the Seller agrees with the Hirer to deliver and collect the Equipment, hire charges shall commence from the time the Equipment leaves the Seller's premises and continue until the Seller is notified by the Hirer that the Equipment is available for collection. At that time the Hirer may request an "Off Hire" number as verification of receipt of notification. Notification shall be given by the Hirer in time for the Equipment to be picked up and returned to the Seller's premises by the required time on the day the hire ceases. Notification is to be made by telephone when the Hirer has finished with the Equipment and not by prior arrangement. Required return times are strictly between 10-11am Monday unless prior arrangement has been made. If insufficient notification is given the Hirer shall be entitled to charge another full day's hire at current rates. Delivery and collection shall be to and from the front footpath.
- 6.3 If delivery and collection is offsite by prior arrangement, then the Hirer shall be responsible for free access to the site that the Equipment is located. If there are any delays due to free access not being available then the Hirer shall be responsible and shall reimburse the Seller for all lost hire fees associated with the equipment being unavailable. The Hirer shall also be responsible for all other expenses and costs incurred by the Seller due to delays in access to the Equipment.
  - 6.4 The responsibility of the Hirer for the security of the Equipment continues until the equipment is returned or collected.
    - a) Where the Hirer requests collection of the Equipment at or after the Seller's close of business sufficient notice must be given to the Seller.
    - b) Such notice will typically be two hours within the main Kerikeri business district, but may vary at the Seller's absolute discretion based upon distance, site complexity or the nature of the Equipment.
    - c) If sufficient notice is not given, the hirer will be responsible for the security of the Equipment, together with any additional towing or transportation costs.
- 6.5 No allowance whatever can be made for the time during which the equipment is not in use for any reason, unless prior special arrangements are confirmed in writing by the Seller. In the event of Equipment breakdown, provided the Hirer notifies the Seller immediately and obtains an "Off-Hire" number as verification, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Hirer.

## 7. Hirer's Responsibilities

- 7.1 The Hirer shall:
  - a) notify the Seller 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) use the Equipment properly and for the purpose for which it was designed acknowledging the Seller gives no warranty as to the "Equipments" capacity.
  - c) ensure only competent operators are given charge of the equipment while in the Hirer's possession and shall be responsible for all cleaning and operating adjustments and for any damage occurring due to mistakes or neglect in handling, operation etc during the hire period.
  - d) pay to the Seller the cost of reconditioning items damaged by use or otherwise rendered unfit for further service without repair, such as broken light bulbs, urn elements and the like.
  - e) at their own expense clean and keep the Equipment in clean and substantial repair and condition and proper working order and pay all costs for replacement or repair required due to fire theft accident loss or otherwise during the hire period, provided the Hirer shall not undertake any repair or servicing, and if any repair or servicing appears desirable shall notify the Seller immediately. On termination of the hire, the Hirer shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to the Seller. The Hirer is not authorised to pledge the Seller's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
  - f) 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 and the Hirer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Seller for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or

not such loss theft or damage is attributable to any negligence failure or omission of the Hirer.

- g) accept full responsibility for and indemnify the Seller against all claims in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising, whether from the negligence of the Hirer or any other persons including but without limitation where the Equipment is being operated for any reason by the Seller their servants or agents.
- 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 or any part thereof to be used by any other party for any other work.
- j) obtain any required "street operations" or other permit to operate the Seller's Equipment and shall indemnify the Seller from any penalties or obligations incurred due to failure to obtain or comply with such a permit.
- k) accept full responsibility associated with any costs or liability due to the Equipment obstructing any person/s. The Hirer shall also accept full responsibility associated with any costs or liability due to the Equipment being in a location that it shouldn't or if the Equipment or Seller incurs any fines, towage costs, or seizure costs or impoundment costs while the Equipment is in the custody of the Hirer.

## 8. Seller's Right to Terminate

- 8.1 Without prejudice to any other remedies available to the Seller and notwithstanding any period of hire specified, the Seller may terminate this hire contract without payment of compensation:
  - a) at any time by giving the Hirer two (2) hours ( or if the Seller deems it appropriate such lesser period) notices of their intention to terminate. Such notice need not be in writing and shall be deemed sufficiently given if made to:
    - i) the Hirer; or
    - ii) the operator for the time being of the Equipment; or
    - iii) the occupier for the time being of the premises at which the Equipment is locatedProvided that notice is deemed to be given if the Equipment is removed with no person in attendance.
  - b) without notice if the Hirer shall commit any breach of these contract terms and conditions or the Hirer commits any act of bankruptcy or being a company an application is made or a resolution is passed for its winding up or being a company a receiver of their assets or any of them is appointed or if any execution or distress shall be levied upon the Equipment or if any judgement against the Hirer shall remain unsatisfied for seven (7) days or more or if the Hirer makes an assignment or compromise for the benefit of their creditors or being a company is placed under statutory management or if it ceases to carry on business.

## 9. Risk

- 9.1 Subject to the express terms of this agreement, if the seller agrees to send the Equipment to the Hirer at the expense of the Hirer then:
  - a) delivery of the equipment to a carrier, either named by the Hirer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Hirer, is deemed to be a delivery of the Equipment to the Hirer.
- 9.2 The costs of carriage and any insurance which the Hirer reasonably directs the Seller to incur shall be reimbursed by the Hirer (without any set-off or other withholding whatever) and shall be due on the date for payment of the price. The carrier shall be deemed to be the Hirer's agent.
- 9.3 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 9.4 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Equipment ( or any of them) promptly or at all.
- 9.5 The Seller may deliver the Equipment by separate installments (in accordance with the agreed delivery schedule).
- 9.6 The failure of the Seller to deliver shall not entitle either party to regard this contract as repudiated.
- 9.7 The Hirer shall take delivery of the equipment tendered notwithstanding that the specifications may differ from the specifications originally agreed to, provided that the Price shall be adjusted pro rata to the discrepancy.
- 9.8 Insurance. The hirer is responsible for the insurance of hired items including transport to and from Keri Party Hires premises. The Hirer shall indemnify Keri Party Hire against any loss, damage or theft which may occur whilst in the care of the hirer.

## 10. Defects

- 10.1 The Hirer shall inspect the equipment on delivery and shall notify the Seller as soon as practical of any alleged defect, shortage in quantity, damage or failure to comply with description of the Equipment. If the Hirer shall fail to comply with these provisions the Equipment shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of the Equipment and the Hirer shall be deemed to have accepted the Equipment for hire.
- 10.2 No claims for any credits will be accepted by the Seller after seven (7) days of the commencement of the hire period.

## 11. Seller's Liability

- 11.1 In the event of any breach of the contract by the Seller the remedies of the Hirer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the price of the Equipment.
- 11.2 The Seller shall be under no liability whatever to the Hirer for any indirect loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Seller of this contract.
- 11.3 All warranties and conditions whether implied by statute or otherwise are excluded from this contract provided that nothing in this contract shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller or affect the statutory rights of a Hirer dealing as consumer.
- 11.4 The Hirer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Hirer acknowledges that he buys the Equipment relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition or representation.

## 12. Default and Consequences of Default

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 10% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Hirer defaults in payment of any invoice when due, the Hirer shall indemnify the Seller from and against all the Seller's legal costs and disbursements calculated on a solicitor and own client basis and in addition all costs of collection.
- 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Hirer is in breach of any obligation ( including those relating to payment), the Seller may suspend or terminate the supply of Equipment to the Hirer and any of its other obligations under the Contract. The Seller will not be liable to the Hirer for any loss or damage the Hirer suffers because the Seller exercised its rights under this clause.
- 12.4 If any account remains unpaid at the end of the second month after supply of the Equipment or services the following shall apply: An immediate amount equivalent to 10% of the amount overdue levied for administration fees which sum shall become immediately due and payable.
- 12.5 In the event that:
  - a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Hirer will be unable to meet its payment as they fall due; or
  - 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, then:
    - i) the Seller shall be entitled to cancel all or any part of any order with the Hirer which remains unperformed in addition to and without prejudice to any other remedies; and
    - ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable; and
    - iii) the Seller shall be entitled to reclaim any Equipment in the Hirer's possession or control, which has been supplied by the Seller and shall be entitled to enter, directly or by its agents, upon any land or premises where the Seller believed the Equipment which it has supplied are stored without being liable to any person.

## 13. Equipment Damage

- 13.1 Notwithstanding the hire charge period, the Hirer is responsible for any theft, loss and/or damage to the Equipment whilst on hire. The Hirer will be liable for the costs of replacement or repairs to the Equipment. It is the Hirer's responsibility to notify the Seller immediately once a theft, loss and/or damage has occurred. At the Hirer's expense the Seller may elect for the Equipment to be returned forthwith.

## 14. Assignment

- 14.1 The Seller may license or sub-contract all or any parts of its rights and obligations under this contract without the Hirer's consent.

## 15. Contractual Remedies Act

- 15.1 The provisions of the Contractual Remedies Act 1979 shall apply to this Contract as if Section 15(d) of the Act which states that nothing in the Act shall affect the Sale of Equipment Act 1908, were omitted from the Contractual Remedies Act 1979.

## 16. Privacy Act

- 11.1 The Hire and the Guarantor/s (if separate to the Hirer) authorises the Seller to collect, retain and use any information about the Hirer, for the purposes of assessing the Hirer's creditworthiness or marketing any Equipment and services provided by the Seller to any other party.
- 11.2 The Hirer authorises the Seller to disclose any information obtained to any person for the purposes set out in clause (above clause).
- 11.3 Where the Hirer is a natural person the authorities under ( clause 16.1 and 16.2) are authorities or consents for the purposes of the Privacy Act 1993.

## 17. Miscellaneous

- 17.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 All Equipment or services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law which affect the Equipment or services supplied.
- 17.4 The Hirer shall not set off against the price amounts due from the Seller whether under the applicable contract of sale or otherwise.