

Terms and Conditions of Hire

The following terms and conditions shall apply in respect of all goods and services supplied by Hireworks Limited, except to the extent otherwise agreed with you in writing.

1. Definitions

- 1.1. **Bond** shall mean a refundable amount, as set out in the Hire Form, payable to the Owner as security for hire of the Equipment.
- 1.2. **Deposit** shall mean a non-refundable or refundable deposit, as set out in the Hire Form, required to secure the hire of the Equipment.
- 1.3. **"Charges"** shall mean the cost payable (plus any GST) for the hire of the Equipment.
- 1.4. **"Contract"** shall mean the Hire Form and these Terms and Conditions.
- 1.5. **"Credit Account Customer"** means a customer who holds an active (and not suspended) credit account with us.
- 1.6. **"Equipment"** shall mean marquees, tables, chairs, lighting, linen, crockery, tableware and all associated catering equipment, any machines, pumps, generators, entertainment equipment, ladders and scaffolding, scissor lift, bobcats, trailers, lawnmowers, hand tools, port-a-loos or any other equipment supplied for hire from the Owner to the Hirer.
- 1.7. **"Good Working Order"** means, in respect to the Equipment, that:
 - (a) the Equipment is in good condition and good appearance throughout; and
 - (b) the Equipment has been properly maintained and serviced in accordance with the original manufacturer's recommendations and requirements.
- 1.8. **"Hire Form"** means the form setting out the Equipment and/or Services.
- 1.9. **"Hire Period"** and **"Maximum Usage Times"** are:
 - (a) **"Half Day"** means 4 hours or overnight provided the Equipment is picked up after 4.00pm and returned by 7.30am the following day (maximum usage time 4 hours);
 - (b) **"Daily"** means 24 hours (maximum usage time 8 hours);
 - (c) **"Weekly"** means 7 days (maximum usage time 56 hours);
 - (d) **"Monthly"** means a calendar month (maximum usage time 180 hours); or
 - (e) such other period agreed to by us in writing on the Hire Form.
- 1.10. **"Minimum Hire Period"** shall mean the Minimum Hire Period as described on the Hire Application invoices, quotation, authority to hire, or any other forms as provided by the Owner to the Hirer.
- 1.11. **"Services"** means any erection, dismantling and transport of any Equipment including any parts, accessories and/or consumables supplied by the Owner to the Hirer either separately or deposited incidentally by the Owner in the course of it conducting or supplying the Equipment to the Hirer.
- 1.12. **"us", "our" or "we"** means Hireworks Limited.
- 1.13. **"you", "your"** means the person or entity (and includes any person acting on behalf of and with the authority of said person or entity) hiring Equipment and/or Services from us.

2. Hire of Equipment and Services

- 2.1. We will:
 - (a) provide the Equipment in Good Working Order; and
 - (b) allow the Hirer exclusive use of the Equipment during the chosen Hire Period.
 - (c) Provide the Services
- 2.2. Equipment may be hired for one of the following Hire Period:
 - (a) Half Day;
 - (b) Daily;
 - (c) Weekly;
 - (d) Monthly.
- 2.3. The Hire Period begins from the time the Equipment leaves our premises and ends when
 - (a) the Equipment is returned to our premises,
 - (b) the Minimum Hire Period expires,
 - (c) the Equipment is removed by us pursuant to clause 4, or
 - (d) the Contract is terminated pursuant to clause 5.
- 2.4. You agree that we may charge you extra on a pro-rata basis for any Equipment used in excess of the Hire Period, the otherwise agreed period of or the Maximum Usage Times.
- 2.5. Certain Equipment may carry a minimum hiring period or maximum or minimum usage times, which will be notified to you and itemised in the Hire Form.

- 2.6. Where agreed by the Owner in writing prior to the commencement of the hire period, adjustment to the hire charges may be made in respect of any stand down period. Any discount provided by the Owner in respect of stand down period will be at the sole discretion of the Owner.
- 2.7. If the Weekly charge rate is less than the accumulated Daily charge rate over the same hire period, the Weekly charge rate will apply.
- 2.8. You shall pay for all charges set out in the Hire Form or otherwise as notified to you by us, including:
- (a) Charges for the Hire Period;
 - (b) The Bond;
 - (c) damage waiver charges (unless we have 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).
 - (i) Fuel and consumables (if applicable)
- 2.9. Delivery/removal charges are quoted on the basis that:
- (a) Delivery/removal of the Equipment is a full load. Small or part loads will incur additional charges.
 - (b) We allow for a maximum time of 90 minutes loading or unloading time per visit to your nominated address during normal business hours.
 - (c) Delivery/removal outside of normal business hours will incur additional charges.
- 2.10. Cleaning fees will be assessed and charged if you return Equipment that we deem (in our sole discretion but acting reasonably) to be excessively dirty. If we determine on this basis that the Equipment will require additional cleaning, we will advise you at the time the Equipment is returned and subsequently notify you of the relevant cleaning fees at the time you return the Equipment or, if assessment of the cost of cleaning cannot be determined at that time, as soon as reasonably practicable after you have returned the Equipment.
3. **Payment And Default Interest**
- 3.1. All Charges will specify whether they are inclusive or exclusive of GST and the Hire Form will set out the charges and applicable GST payable by you.
- 3.2. To hire the Equipment, you are required to:
- (a) Pay the Deposit to secure the hire of the Equipment;
 - (b) Pay the Bond (if required by us); and
 - (c) (on return of the Equipment in Good Order and Condition) pay the actual total charge for the hire of the Equipment as calculated by us. You will either pay the balance outstanding, or be refunded with the difference between the Deposit and Bond paid by you and the actual total charges. Any amounts to be refunded will be provided within 28 days of the return of the Equipment.
- 3.3. If you are a Credit Account Customer,
- (a) the provisions of Clause 3.2 are not applicable and your credit account shall be charged with the applicable Charges.
 - (b) We will send you an invoice each month for Charges incurred. Any queries or issues with an invoice must be raised with us no later than one month of the date of the invoice so that any such queries or issues can be promptly reviewed and resolved.
 - (c) You must pay the invoice by the 20th of the month following the date of invoice.
 - (d) We reserve the right to reverse any previously agreed discount if your account is not paid in full by the due date.
 - (e) No credit shall be extended on overdue accounts.
 - (f) We reserve the right to apply payments received in any manner we determine.
- 3.4. Unless we agree otherwise,
- (a) you must pay, or
 - (b) a Credit Account Customer's credit account
- will be charged with, the cost of the damage waiver for hired equipment, the amount of which is specified in the Hire Form (see clause 9 for further details on the damage waiver).
- 3.5. *Payment:* All charges are payable
- (a) At the conclusion of the agreed hire period (for cash customers); or
 - (b) by the 20th of the month following the date of the invoice (for Credit Account customers), unless alternative arrangements have been made with us.

- 3.6. *No Set Off:* The Hirer must make all payments due under the Contract (time being of the essence) without set-off or deduction of any kind.
- 3.7. *Unpaid invoices:* If payment of our invoice by you is overdue,
(a) A penalty fee of \$50.00 will immediately be added to your invoice; and
(b) We may charge interest on any amount overdue at a rate of five per cent (5%) per month (compounding) until payment is made in full.
- 3.8. Any collection or legal costs (on a solicitor and own client basis) incurred in recovering an outstanding debt will be added to the amount outstanding.
- 3.9. *Personal Guarantee:* Where you are a company or trust, the director(s) of the company or trustee(s) of the trust, undertake to personally pay us the unpaid overdue balance and any interest accrued pursuant to these terms immediately on our written request.

4. **Delivery And Return**

- 4.1. Delivery and removal charges itemised in the Hire Form are payable by you and are in addition to the Charges.
- 4.2. If Equipment is to be removed and returned by you, the Equipment must be packed up and ready for loading at the pre-arranged time and place and assistance rendered for loading.
- 4.3. You grant us, or will procure that we are granted, an irrevocable right and authority to enter, and for us 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.
- 4.4. We shall not be liable for any loss or damage to the property (including but not limited to damage to pathways, concreted, paved or grassed areas) unless due to our negligence.
- 4.5. Unless otherwise detailed in the Contract, we shall provide transport of the Equipment to and from your nominated address.
- 4.6. You acknowledge that:
(a) delivery may be made in separate instalments.
(b) Time for delivery is an estimate only and we are not liable for any loss or damage incurred by you as a result of late delivery.
(c) In the event of late delivery due to you action or inaction, we are entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date.
- 4.7. We are not liable for any delay or non-completion of delivery resulting from any act beyond our reasonable control including, but not limited to, industrial action, strikes, lockout, epidemics, pandemics, fire, war, government actions, commotion, riots, floods or inclement weather.
- 4.8. Delivery is deemed to occur at the time we (or our nominated carrier) delivers the Equipment to your nominated address or, where Equipment is to be installed, the issue of a hand-over certificate.
- 4.9. In the event of a wet hire, the operator responsible for the Equipment remains an employee of us and shall erect the Equipment in accordance with your instructions. We shall not be liable for any actions of the operator in following your instructions.
- 4.10. Return of the Equipment is deemed to occur when it has been accepted by us following inspection and approval by us.
- 4.11. Any requests for removal of hired Equipment must be arranged in writing no later than three working days prior to completion of the hire. The relevant removal cost will be notified to you and itemised in the Hire Form.
- 4.12. We must provide you with either an off-hire 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 you must retain such document or number as evidence that the equipment has been returned.

5. **Right To Terminate**

- 5.1. You may terminate the Contract by notice with immediate effect if we fail to comply with any term of the Contract, in which case you will be entitled to receive a refund of charges paid to us which may be pro-rated to reflect the reduced Hire Period.
- 5.2. We may terminate the Contract by notice with immediate effect if:
(a) You fail to comply with any material term of the Contract;
(b) We believe on reasonable grounds that Equipment may be at risk for any reason whatsoever, including the manner of its use by you, adverse weather or work conditions, or you are unable to, or might be unable to, pay any charge fee in connection with the hire of the Equipment;
(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 your obligations under the Contract; or
(d) any step is taken to appoint a receiver, manager, trustee in administration, liquidator, provisional liquidator,
(e) statutory manager, administrator or other like person over the whole or any part of your assets or business.

- 5.3. Where we terminate the Contract pursuant to clause 5.2, you indemnify us against, and shall pay to us upon demand, any cost (including legal costs), claim, damage, expense or liability suffered or incurred by us whether arising directly or indirectly from us acting to recover any Equipment or monies payable by you pursuant to the Contract.
- 5.4. Upon termination of this Contract you shall forthwith deliver up any Equipment to us and shall pay us:
- (a) all hire charges and other moneys due 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 we in our sole discretion allows, provided that we has terminated the Contract;
 - (c) due to your negligent or reckless acts or omissions or your breach of the Contract; and
 - (d) such acts, omissions or breach resulted in us not being able to hire the Equipment out to other customers.
- 5.5. Termination of the Contract by us is without prejudice to any rights that we may have under this Contract.

6. Assignment

- 6.1. You shall not assign any of your rights or interests under the Contract to any person or entity, and shall not assign, sublet, charge or part with possession of Equipment or any part of it.
- 6.2. We 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 or entity.

7. Your Obligations

- 7.1. You shall:
- (a) Satisfy yourself on delivery that the Equipment is suitable for your purposes and for your intended use;
 - (b) take proper and reasonable care of the Equipment when in use (including keeping the Equipment locked and secured when not in use) and return it to us at the end of the Hire Period (to our premises, unless otherwise specified in the Hire Form) 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);
 - (c) carry out all necessary maintenance of the Equipment as directed by us, (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 your own expense;
 - (d) use the Equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such Equipment and in accordance with any manufacturer's instruction, whether supplied by us or detailed on the Equipment;
 - (e) ensure that all persons who use the 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 us, 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.
 - (f) Not exceed the recommended or legal load and capacity limits of the Equipment.
 - (g) Not fix the Equipment (or any part thereof) in such a manner as to make them legal fixtures forming part of any freehold.
 - (h) Keep the Equipment in their own possession and control and shall not assign the benefit of this Contract nor be entitled to take a charge over the Equipment. This does not prevent your employees using the Equipment.
 - (i) No alter or make any additions to the Equipment (including, without limitation, removing, defacing or obscuring any marks of identification or ownership or registration on the Equipment) or in any other manner interfere with the Equipment, as doing so may undermine the structure and safety of the Equipment. We may photograph in detail the Equipment once erected as proof of this.
 - (j) Employ the Equipment solely in their own work and not permit the Equipment (or any part thereof) to be used by any other party for any other work.
 - (k) immediately cease operating the Equipment and notify us by telephone if the Equipment is faulty, breaks down, or if any warning light 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 expires during the Hire Period;
 - (l) notify us immediately if the Equipment is lost, stolen or damaged and follow all of our reasonable instructions;
 - (m) unless such loss is covered by the damage waiver pursuant to clause 9, be responsible, and indemnify us, for any loss, theft or damage to the Equipment that occurs as a result of your negligent or reckless acts or your omissions from the time you take possession of the Equipment until it is returned to us 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 start of the Hire Period; and
 - (ii) in the case of loss, theft or irreparable damage to the Equipment, the market value of the Equipment
- (n) unless such loss is covered by the damage waiver pursuant to clause 9, in addition to the costs set out in clause 7.1(o) be responsible for and indemnify us for any loss of revenue suffered by us due to the unavailability of the Equipment for hire due to loss, theft or damage caused as a result of your negligent or reckless acts or your omissions;
- (o) comply with any special conditions or exclusions (which may apply to specific equipment or the nature or location of your intended use of such Equipment) notified to you prior to the Equipment leaving our premises and detailed in the Hire Form;

7.2. You shall, on reasonable notice by us, advise us of the whereabouts of Equipment and allow us reasonable time to inspect and test the Equipment and for such purposes you give irrevocable leave and license to us 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 you (to be determined by us acting reasonably). Where the Hire Period is disrupted, and replacement Equipment cannot be provided by us, the charges payable by you will be amended to reflect the reduced Hire Period and where you have paid in advance for the Equipment, you will be entitled to a pro-rated refund.

8. Personal Property Securities Act 1999 (PPSA)

- 8.1. You acknowledge that title to the Equipment remains with us at all times.
- 8.2. You agree that the hire of the Equipment may, create a security interest in the Equipment to secure the full payment of all moneys payable to us and the performance by you of all of your other obligations to us. If the Contract constitutes a security interest, this document constitutes a security agreement for the purposes of the PPSA and the provisions of clauses 8.3 to 8.5 apply. Unless otherwise defined in the Contract, all terms in this clause 8 have the meaning given to them in the PPSA and section references are sections to sections of the PPSA.
- 8.3. On our request, you shall promptly execute any documents, provide all necessary information and do anything else required by us to ensure that the security interest created under the Contract constitutes a perfected security interest in the Equipment and their proceeds which will have priority over all other security interests in the Equipment.
- 8.4. We may allocate all amounts received by you in any manner it determines including any manner required to preserve any purchase money security interests in the Equipment.
- 8.5. You will pay to us all fees and expenses incurred by us in relation to the filing and maintenance of a financing statement in connection with the Contract.
- 8.6. You waive your rights under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 148 of the PPSA.

9. Insurance And Hire Damage Waiver

- 9.1. You hire the Equipment at your own risk and indemnify us against any and all loss in respect of damage to the Equipment, including any consequential loss, unless you elect to pay a Damage Waiver.
- 9.2. You are not entering into a contract of insurance with us by paying for the damage waiver.
- 9.3. Excess: In the event of any loss, theft or damage to the Equipment, which is covered by the damage waiver, you 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 Hire Form.
- 9.4. Subject to the exclusions set out in clause 9.5, you shall not be liable to us for any loss of or damage to the Equipment during the Hire Period PROVIDED THAT you:
- (a) have at all times acted reasonably and with reasonable care;
 - (b) have delivered to us (within 12 hours of the time when you first become 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) have complied with its obligations under clause 7.1; and
 - (d) has assisted us (on our reasonable request) for the purposes of enabling us to recover such loss or damage.
- 9.5. 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 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 Equipment where such loss or damage is due to any incident or accident involving (in any way) water;
 - (g) loss or damage to the Equipment or items on which the damage waiver is not charged;
 - (h) loss or damage of the Equipment arising from your breach of the conditions of the Contract;
 - (i) loss or damage due to your breach of any special conditions or exclusions notified to you in accordance with clause 7.1(n); or
 - (j) loss or damage from the use of the Equipment in violation of any statute, regulation or by-law.
 - (k) The parties agree that section 11 of the Insurance Law Reform Act 1977 will apply with respect to the exclusions in this clause as if this clause 9 constituted a contract of insurance (notwithstanding that this clause 9 is not a contract of insurance).
- 9.6. If the damage waiver does not cover or does not apply to you under clauses 9.3 or 9.4, without limiting any other rights or remedies that may be available to us at law or under the Contract, you shall pay to us:
- (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 start of the Hire Period.
- 9.7. If we have agreed in writing to allow you not to purchase the damage waiver:
- (a) You hire the Equipment at your own risk; and
 - (b) Indemnify us 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 our negligence or where we have wilfully, negligently or recklessly supplied defective Equipment to you).
10. **Limitation Of Liability, Injury Or Damage To Hirer, Third Person Or Property**
- 10.1. As a consumer, you are 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, your rights under the Consumer Guarantees Act 1993.
- 10.2. Other than for claims made under the Consumer Guarantees Act 1993, our maximum aggregate liability for all claims made by you will not exceed the lesser of
- (a) the hire charges paid by you to us pursuant to the Contract and
 - (b) three months' hire charges paid by you to us pursuant to the Contract,
- except where such liability arises as a result of our negligence or where we have wilfully, negligently or recklessly supplied defective Equipment to you.
- 10.3. Unless such loss is covered by the damage waiver under clause 9, you will indemnify us against any liability, losses, damages or expenses incurred or suffered by us as a result of any claim made by a third person against us in respect of any loss or liability arising from the Contract or arising out of the use of the Equipment, except where the loss or liability has arisen due to our negligence or where we have wilfully, negligently or recklessly supplied defective equipment to you.
- 10.4. Subject to clause 9, the maximum aggregate liability of you under will not exceed:
- (a) in the case of damage to Equipment, the full cost of all repairs to restore the Equipment to the condition it was in at the start of the Hire Period; and
 - (b) in the case of loss, theft or irreparable damage to the Equipment, the market value of the Equipment.
11. **Notices**
- 11.1. Notices shall be properly served on a person if
- (a) Emailed to the email address specified on the Hire Form; or
 - (b) 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 you specified on the Hire Form.
- 11.2. Service by
- (a) Email shall be deemed to be received when the email leaves the communications system of the sender, provided that the sender does not receive any error message relating to the sending of the email.
 - (b) Post shall be deemed to be received on the second day after the day on which the notice was posted.
12. **General**
- 12.1. 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

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 us includes its servants, agents, successors and assigns. The word "including" does not imply limitation.

- 12.2. 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.
- 12.3. Nothing expressed or implied in this Contract will constitute either party as the partner, agent, employee or officer of, or joint venture with, the other party.
- 12.4. 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.

13. **Privacy Act 1993**

- 13.1. We require personal information and will collect and hold personal information about you, principally for the purpose of evaluating your hire of Equipment. Your application to hire Equipment may be declined or the hire terminated if you fails to provide requested personal information. You can access and seek correction of any personal information by contacting us. You agree that your personal information may be used by us to advise you of our other goods and services. You authorise the disclosure of personal information held by any other party regarding any previous hire contracts entered into by you.
- 13.2. You authorise us:
- (a) to collect, retain and use information about you or such other signatory from any person for the purpose of assessing you or such other signatory's creditworthiness;
 - (b) to disclose information about you or such other signatory:
 - (c) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us; and/or
 - (d) to such persons as may be necessary or desirable to enable us to exercise any rights under the Contract.