

Hire Contract Terms & Conditions – “Trade Conditions”

1. DEFINITIONS

- a) **Contract** means these Trade Conditions together with any Credit Account Application, Hire Rates Sheet and Hire Contract Details Sheet.
- b) **Owner** means Roadings Solutions (2011) Limited (NZBN: 9429031163392) or any agents or employees thereof.
- c) **Hirer** means the person hiring the Plant or requesting the Service.
- d) **Plant** means any type of equipment including mechanical, non-mechanical, electrical, goods, tools, machinery, accommodation, toilets, vehicles and accessories.
- e) **Service** means but is not limited to, the provision by the Owner of hiab, cartage or consignment services.
- f) **Site** means the place or location of the Hirer where the Plant is to be located or the Services are to be carried out.
- g) **The Hire Period** begins from the time the Plant leaves the Owner’s premises or previous hire premises and continues until the Plant is either received back at the Owner’s premises, removed by the Owner or the Contract is terminated.

2. TRADE CONDITIONS

- a) For the purposes of the Consumer Guarantees Act 1993 (CGA) and Fair Trading Act 1986 (FTA) the Hirer agrees that any covenants and warranties deemed to apply under any the CGA, FTA or any other applicable legislation shall be excluded to the maximum extent permissible at law.
- b) The Hirer confirms and agrees that it is entering into the Contract for Services and/or Plant solely for commercial purposes and the goods and services are not intended to be used for person or domestic household purposes.
- c) These Trade Conditions shall be incorporated into any contract for the hire of Plant or provision of Services between the Owner and the Hirer.
- d) It is not intended that any part of the Contract, including without limitation the Credit Account Application, will be a consumer credit contract or a consumer lease for the purposes of the Credit Contracts and Consumer Finance Act 2003.
- e) The Owner reserves the right to change these Trade Conditions without notice by way of placing amended terms on the Owners website (www.roadingsolutions.co.nz). The amended terms shall apply from the date they are placed on the website unless specified otherwise.

3. HIRE CHARGES

- a) The hire rate and other charges are as shown on the Hire Rates Sheet and set out below at clause 4(b).
- b) All prices shown exclude GST. The Hire Rates Sheet and Contract Details Sheet set out the charges and applicable GST payable by the Hirer.
- c) All quoted hire rates and charges are valid for 30 days from the date of the quote. The quoted rates may change without notice thereafter.
- d) The Owner shall be entitled to revise or increase the hire rate for any item of Plant or other charges by giving seven days written notice to the Hirer’s email address and this supersedes all previous rates.
- e) In the event that any item of Plant, is not made available for collection to the Owner in accordance with the Contract or subsequent correspondence with the Hirer, the Hire Period shall be deemed to continue to run until the Plant has been collected by the Owner or returned to the Owner’s premises.
- f) Cleaning fees will be assessed and charged if the Hirer returns Plant that the Owner (in its sole discretion) deems to be unclean taking into account the cleanliness of the Plant at the outset of the Hire Period.
- g) Where Plant is returned unclean, the Hire Period shall be deemed to continue and hire rates payable in accordance with the Hire Rates Sheet until the Plant has been returned to good order and condition by the Owner.

Where a fixed Hire Period has been agreed to by the Owner and Plant is returned earlier than the agreed date in the Hire Contract Details Sheet, the Hirer shall be entitled to a refund of any Hire Charges paid in full for the period from the date the Plant is returned to the Owner to the end of the fixed Hire.

4. PAYMENT AND DEFAULT INTEREST

- a) Unless a credit account has been granted by the Owner, all hire charges and a bond payment of 20% of the estimated total charges (**Bond**) are payable in advance.

- b) On return of the Plant in good order and condition, the actual total charges will be calculated and the Hirer will either be refunded the Bond, or required to pay the balance outstanding including any of the following charges (if incurred):

- i) Excess use charges;
- ii) Fuel charges to completely re-fuel the Plant (charged at the Owner’s prevailing rate per litre);
- iii) Cleaning fees;
- iv) Delivery/collection/removal charges;
- v) Credit Card surcharge fee of 2.5%; and
- vi) Charges for loss of, or damage to, Plant.

- c) Credit account customers will be invoiced for charges incurred, payment of which is due on the twentieth day of the following month.

- d) No credit shall be extended on overdue accounts. The Hirer 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.

- e) Where payment is not made by the due date, and without prejudice to the Owner’s other remedies under the Contract or at law, the Hirer will pay default interest at the rate of 5% above the Owner’s overdraft rate per calendar month on all outstanding amounts until all monies have been paid in full.

- f) All payments must be made by the Hirer without set off or deduction of any kind, time being of the essence.

5. LIABILITY AND RISK

Where the Owner has agreed to provide transport for the Plant to or from the Hirer’s premises:

- a) The Hirer shall ensure that access to and over the Hirer’s site is suitable for the vehicle used for transporting the Plant.
- b) If the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel, or be transported over without timbers or equivalents, the Hirer shall supply and lay suitable timbers or equivalents in a suitable position for the Plant to travel over, work on, or be transported over.
- c) Where the hire is for lifting work, any sound timber or other material supplied by the Owner for use with outriggers/stabilisers is provided solely to assist the Hirer and expressly not to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the lifting Plant under the imposed loading, the responsibility for which remains solely with the Hirer.
- d) The Hirer shall load or unload the Plant at the Hirer’s site with reasonable diligence and shall not suffer or permit the transport vehicle to be unduly delayed on site. The Owner will charge for any delays on site.
- e) The Hirer shall indemnify the Owner against any claims for injury to persons or loss of or damage to property (including land) and underground services, during loading or unloading of the Plant or carrying out work using hiab.
- f) The Owners shall not be liable for the consequences of any delay in the delivery or collection at the Hirer’s site howsoever arising.
- g) Not less than 24 hours notice must be given to the Owner if the Hirer wishes the Plant to be collected. When Plant out on hire is to be collected from its location by the Owner on the instructions of the Hirer, the Hirer remains responsible for the safekeeping of the Plant until collection is effected being not more than four working days after the date the Plant is placed off hire.
- h) Plant must be stacked up, ready for loading and assistance rendered to load at the pre-arranged time and place. Heavy plates if stacked should have dunnage placed in-between for ease of lifting. Barriers and fencing should be collected and stacked neatly on dunnage for hiab to lift.
 - (i) 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 Plant is to be used or is located to deliver and/or remove hired Plant either on the expiry of the Hire Period or on termination of the contract.
 - (j) The Hirer acknowledges that the intent of this Contract is that all risks in this contract shall lie with the Hirer, including unforeseen events such as force majeure or government announced lockdowns.
 - (k) The Hirer acknowledges that the Owner shall not be responsible for any loss or damage caused whether direct, indirect or consequential for any loading or unloading of Plant on Site.

6. OBLIGATIONS – HIRER

- a) The Hirer shall:
 - (i) satisfy itself that the Plant is suitable for the Hirer’s intended use declared in the Hire Contract Details Sheet;
 - (ii) maintain suitable insurance in accordance with the requirements of clause 14;

- (ii) be responsible for the unobstructed access for unloading and loading of the Plant and hiab use at the Hirer's job site;
- (iii) take reasonable and proper care of the Plant including ensuring the Plant is adequately secured and locked when not in use;
- (iv) be responsible for all necessary daily servicing including greasing, oiling, tyre pressure, puncture repairs, water and fuel as may reasonably be required as a result of the daily operation of the Plant including checking the calibration of Plant (where applicable) prior to use;
- (v) ensure the correct grade of fuel, oil and grease is used in the Plant;
- (vi) not, other than the servicing set out at (iv) above, undertake any repairs on the Plant without prior written consent of the Owner;
- (vii) promptly inform the Owner of the need for the Plant to be serviced where the Plant has been in possession of the Hirer for a period in excess of the recommended service interval;
- (viii) at all times allow the Owner and/or his agents and/or insurers access to the Plant to inspect, test, adjust, repair or replace the same;
- (ix) ensure all proper safeguards and precautions are taken to avoid accidents in connection with the use of the Plant;
- (x) ensure the Plant is used/operated skilfully and properly by authorised persons only and in a manner that is lawful with due regard to all laws and regulations relating to the use of such equipment;
- (xi) where a driver/operator is supplied by the Owner, not allow any other person to operate the Plant without the Owner's prior written consent;
- (xii) where any timber mats, plating or portable roadway is supplied, ensure that ground conditions are suitable for their proper use, and any levelling, propping, stabilisation works or grading works required are properly carried out prior to use;
- (xiii) where replacing plugs or sockets temporarily, ensure the work is carried out by a qualified electrician who must also reinstate the Plant to its original condition;
- (xiv) ensure any electrical Plant is correctly earthed unless it is of double insulated construction. Such electrical Plant must be connected by a qualified electrician to an adequate electrical supply of the correct voltage;
- (xv) only use the Plant for the purpose for which it is designed within its ordinary or usual use including within any specified manufacturer's rated capacity;
- (xvi) comply with all and any special conditions or exclusions relating to the use of the Plant specified by the Owner to the Hirer prior to the Hire Period;
- (xvii) ensure all plant is returned in the same order and condition as it was at the commencement of the Hire Period (fair wear and tear excepted) and in a clean state;
- (xviii) not move Plant from the site to which it was delivered or consigned without prior written notice to, and approval from, the Owner
- (xix) not remove, deface or obscure any identifying marks, registration numbers or ownership details on the Plant;
- (xx) immediately notify the Owner if Plant is lost, stolen or damaged and comply with all subsequent instructions of the Owner; and
- (xxi) provide immediate notice to the Owner where the Plant is involved in any accident resulting in injury to persons or damage to property.

7. INDEMNITIES – HIRER

- a) The Hirer indemnifies the Owner in respect of any direct, indirect or consequential loss (including loss of revenue of the Owner as a result of the Plant being unavailable for hire), damage, liability, cost, expense or claim (including any claim relating to damage to property or injury to person) incurred or suffered by the Owner as a result of:
 - (i) the loading, transportation and unloading of the Plant in or on the Hirer's vehicle (including any damage caused to the Hirer's vehicle as a result thereof);
 - (ii) use of the wrong grade of fuel, oil or grease on the Plant during the Hire Period;
 - (iii) the Hirer's use of any Plant or the Hirer's failure to operate

- the mechanical Plant in a safe and proper manner;
- (iv) the loss, theft or damage to the Plant;
- (v) operation of the Plant by an operator or driver supplied by the Owner who shall be deemed to be an agent or servant of the Hirer whilst operating the Plant;
- (vi) the breakdown due to the negligence, misdirection or misuse of the Plant;
- (vii) the Hirer failing to inform the Owner of the need for the Plant to be serviced including any continued operation of the Plant during the outstanding service period;
- (viii) rectifying the condition of Plant returned damaged or unclean;
- (ix) the storage, transit, transport, hiab, unloading, loading or use of the Plant; and
- (x) as a result of any claim made by a third person against the Owner in respect of any loss or liability arising out of the Contract or the use of the Plant hired or purchased from the Owner;
- (xi) any consequential or indirect loss incurred by the Owner as a result of any loss or damage to the Plant.

8. WARRANTIES – HIRER

- a) The Hirer warrants to the Owner that:
 - (i) all persons who use the Plant shall be qualified and competent to use the Plant;
 - (ii) if the Hirer is not an individual, that the person signing the Contract on behalf of the Hirer warrants that they have authority to bind the Hirer and will, in any event, be personally liable for the performance of the obligations of the Hirer and indemnifies the Owner against all losses and costs incurred arising out of the person signing the Contract failing to have such power or authority;
 - (iii) the Hirer will comply with relevant regulations issued by the Government or Local Authorities including, for the avoidance of doubt, the Health and Safety at Work Act 2015.

9. BREAKDOWN SERVICING AND REPAIRS

- a) When the Plant is hired without the Owner's driver or operator, the Hirer shall immediately inform the Owner of any breakdown or unsatisfactory working of the Plant.
- b) The Owner undertakes to deal with necessary repairs as quickly as is reasonably possible.
- c) The Hirer may request a refund in respect of the Hire Rates payable during any breakdown period where the Plant is in an inoperable condition (**Breakdown Allowance**) provided that:
 - i) A Breakdown Allowance shall only commence from the time that notice is received and approved by the Owner;
 - ii) A Breakdown Allowance shall not apply where the breakdown has been caused as a result, direct or indirect, of the negligent use of the Plant by the Hirer.
 - iii) Each item of Plant specified in the Contract is hired as a separate unit and the breakdown of one unit shall not entitle the Hirer to a Breakdown Allowance for the loss of working time by any other unit or units of Plant unless those units are expressly hired together as one unit and specified as such on the Hire Contract Details Sheet.

10. LIMITATION OF LIABILITY

- a) The Hirer and the Owner agree that the Owner has no liability for any direct, indirect or consequential loss of any nature arising in connection with the Contract including but not limited to:
 - (i) the use of the Plant by the Hirer or its servants or agents;
 - (ii) by operation of the law;
 - (iii) any loss of profit or other loss suffered by the Hirer or liability incurred by the Hirer howsoever caused.
- b) If contrary to the exclusions or limitations of liability contained in this Contract, the Owner is deemed liable to the Hirer then such liability is limited in its maximum aggregate to the hire cost.
- c) The parties agree that because the Hirer is in trade and the Plant is supplied to the Hirer and acquired by the Hirer in trade, the statutory guarantees and implied terms and covenants of the CGA do not apply.
- d) Where the Hirer is purchasing Plant, the Plant is sold second hand and is sold as is. No warranty or representations as to the state, quality or fitness of the Plant shall be implied. All guarantees, whether implied or express, are excluded.

11. ASSIGNMENT

- a) The Hirer shall not assign, sub-let, charge or part with possession of Plant unless prior written consent has been provided by the Owner, including without limitation, approval by the Owner of any insurance condition pursuant to clause 14.
- b) The Hirer must ensure that up-to-date information about the sub-hire, including the identity of the sub-hirer, location of the Plant and any insurance details are provided to the Owner immediately upon request.

12. INSURANCE

- a) The Hirer shall provide written confirmation of suitable insurance cover that is satisfactory to the Owner (in its sole discretion) in all respects prior to the Hirer taking possession of the Plant and at any point during the Hire Period upon request by the Owner.
- b) If the Owner is unsatisfied with the Hirer's insurance cover, the Owner may decline to hire the Plant or goods or terminate the Contract.
- c) The Hirer shall be responsible for insuring any of their goods that are being carted by the Owner to their full value at all times.

13. CARTAGE AND CARRIAGE OF GOODS

- a) All Services, including any cartage of Plant and/or goods by the Owner are undertaken "at Limited Carriers Risk" for the purposes of section 248(1)(d) of the Contract and Commercial Law Act 2017 (CCLA).
- b) The maximum liability of the Owner in respect of any one item carried by the Owner under "Limited Carriers Risk" is limited to the lesser of \$2000 or the current indemnity value of the consignment at the time of the loss.
- c) The Hirer acknowledges that the Owner does not warrant or represent that the goods will be delivered on the day specified on the face of the delivery docket and the Owner is at liberty to make deliveries within a reasonable period before or after the proposed date for delivery.
- d) Subject to the provisions of the CCLA, sections 284, 285, 286, 287, 288, 289, 290, 291 and 292 shall apply to this Contract only to the extent that they extend or enlarge the Owner's rights and powers in terms of this Contract.
- e) Sections 274, 275, 276, 277, 278, 279 and 280 of the CCLA are modified by 15 of this Contract and the relevant sections shall, in relation to any matter arising out of the provisions of those sections, have effect subject to the express terms contained hereunder.
- f) Subject to the provisions of the CCLA imposing liability in respect of the loss of or damage to the goods the Owner shall not be under any direct or indirect liability whatsoever (whether in contract, tort or otherwise) for any direct or indirect losses, penalties, damages, costs or expenses of any kind whatsoever (including indirect or consequential loss or damage) brought, claimed, suffered or incurred by the Hirer or any third party, in connection with, or resulting from, the Carriage of the goods and/or Plant or any matter or thing done, said or omitted by the Owner, in connection with goods or this Contract howsoever caused or arising and (without limiting the generality of the foregoing) whether caused intentionally or arising as the result of negligence of the Owner or otherwise.
- g) Immediate verbal notice followed by written notice of any claim, giving full particulars of any alleged damage or destruction, must be received by the Owner within seven (7) days after the delivery of the goods or, in the case of loss of the goods, within fourteen (14) days of the date of despatch.
- h) The goods and/or Plant shall be deemed to be delivered once they have been physically deposited at the Site.
- i) Goods and/or Plant are accepted for Carriage by the Owner at the time the Owner physically loads those goods or collects those goods onto the Owner's cartage vehicle for delivery. The Owner shall have no liability whatsoever in respect of those goods prior to that time.

14. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- a) The Hirer acknowledges that title to hired Plant remains with the Owner at all times. Plant purchased from the Owner remains the property of the Owner until paid for in full.
- b) The Hirer agrees that the hire of the Plant may, and that the acquisition of the Plant does, create a security interest in the Plant 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.
- c) Such security interest permits the Owner to register a security interest pursuant to the PPSR at any time pursuant to or during, the Hire Period.
- d) The security interest which the Owner is entitled to lodge is not limited to the Plant supplied to the Hirer. In order for the Owner to protect its interest in the Plant should they be unable to be recovered or retrieved from the Customer, it is also entitled to register a security interest pursuant to the PPSA over all assets and/or goods owned by or in the possession of the Hirer hiring or purchasing the Plant but only to the value of the Plant.

- e) On the request of the Owner, that 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 contact constitutes an enforceable and perfected security interest in the Plant and its proceeds which will have priority over all other security interests in the Plant.
- f) 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 Plant.
- g) 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 contact.
- h) The Hirer waives its right to receive any verification statement (or notice of any verification statement) in respect of any financing statement or financing change statement relating to any security interest created under the contract.
- i) The Hirer also waives its rights under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 148 of the PPSA.
- j) Nothing in this clause effects the Owner's rights as an unpaid seller in relation to Plant purchased from the Owner.

15. HEALTH AND SAFETY AT WORK ACT 2015 (HSWA)

- a) For the purposes of the HSWA, any personnel supplied by the Owner in respect of the operation of the Plant shall be deemed to be under the direction and control of the Hirer and shall be an employee of the Hirer for the purposes of the HSWA.
- b) The Hirer shall comply with the requirements of the HSWA.
- c) The Hirer agrees to abide by any health and safety requirements set by the Owner (including for the avoidance of doubt the Owner's employees, agents and contractors) in relation to the correct use of the Owner's Plant.
- d) The Hirer is responsible for providing a safe work area.
- e) If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Owner by telephone and confirmed in writing to the Owner's office. In relation to any claim in respect of which the Hirer is not bound fully to indemnify the Owner, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's consent in writing.

16. GENERAL

- a) 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 effective on the second day after the day on which the notice was posted.
- b) In the event that any clause of the Contract is held to be illegal, unenforceable or invalid, this shall not affect or impair the legality, enforceability or validity of the remainder of such clause or the remainder of the other clauses in the Contract.
- c) The Contract records the entire agreement between the parties relating to the matters dealt with in this Contract and supersedes all previous arrangements, understandings or representations whether written, oral or both relating to these matters.
- d) 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.
- e) This Contract is governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.
- f) The Hirer authorises the Owner to set-off, withhold or deduct without prior notice or demand any amount due or payable to the Owner by the Hirer under this Contract or any other agreement from any payment made by the Hirer to the Owner in full or partial satisfaction of any amount owing to the Owner by the Hirer under this Contract or any other agreement. For the avoidance of doubt, this right of set-off applies to any amount due or payable under any agreement relating to the supply of goods and/or services between the Owner and Hirer.

17. PRIVACY ACT 2020

- a) The Hirer has had an opportunity to read the Privacy Statement on the Owners website www.roadingsolutions.co.nz
- b) The Hirer acknowledges that the Owner collects personal information in order to conduct its business and to provide and market its services, including for the purposes of seeking from and giving to any credit provider any details concerning or relating to the Hirers credit worthiness.
- c) The Hirer agrees and consents to the collection, holding, use and disclosure of personal information as set out in the Privacy Statement.

18. PERSONAL GUARANTEE

If the Hirer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for the Owner agreeing to supply Plant and/or grant credit to the Hirer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to the Owner the payment of any and all monies now or hereafter owed by the Hirer to the Owner and indemnify the Owner

against non-payment by the Hirer. Any personal liability of a signatory hereto shall not exclude the Hirer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Hirer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

ACKNOWLEDGMENT OF GUARANTEE

I/We have read and agree to be bound by the terms and conditions of trade as printed above. I/We warrant to the Owner that I/we am/are duly authorised to agree to the above terms and conditions of trade on behalf of the Hirer. I/we also acknowledge that pursuant to the personal guarantee contained in the terms and conditions of trade at Clause 18 that I/we am/are also signing this application form in my/our personal capacity and as guarantor(s).

If the customer is a company then this acknowledgement and guarantee must be signed by a director of the company. If the customer is a trust then this acknowledgement and guarantee must be signed by a trustee of the trust.

Signed Print Name (trustee/director)

Dated this day of 20.....

The above signature of the customer/person signing and guarantor must be witnessed by another person and details provided as below.

Witness (signature) Print Name Address

Dated this day of 20.....

PLEASE: Email completed form to: accounts@roadingsolutions.co.nz

OFFICE USE ONLY		
Authorised by:	Vendor No. Allocated:	Entered: