
Levin Party Hire Ltd – Terms & Conditions of Hire

1. Definitions

- 1.1 "Owner" shall mean Levin Party Hire Ltd, its successors and assigns or any person acting on behalf of and with the authority of Levin Party Hire Ltd.
- 1.2 "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Equipment" shall mean all Equipment (including any accessories) supplied on hire by the Owner to the Customer (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Owner to the Customer.
- 1.5 "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Owner to the Customer.
- 1.6 "Price" shall mean the cost of the hire of the Equipment as agreed between the Owner and the Customer subject to clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Owner from the Customer for the hiring of Equipment and/or the Customer's acceptance of Equipment supplied on hire by the Owner shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Owner.
- 2.4 The Customer shall give the Owner not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Owner as a result of the Customer's failure to comply with this clause.
- 2.5 Equipment is supplied by the Owner based only on the terms and conditions of hire herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of hire.
- 2.6 For security against damage, theft, loss or late payment fees incurred by the Customer in relation to the Equipment the Customer agrees to accurately complete and sign the Credit Card Authorisation Form, the contents of which shall form part of this agreement. Further, the Customer agrees to provide photo ID containing proof of the Customer's current address prior to the Customer taking possession of the Equipment.

3. Price And Payment

- 3.1 At the Owner's sole discretion the Price shall be either;
 - (a) as indicated on invoices provided by the Owner to the Customer in respect of Equipment supplied; or
 - (b) the Owner's quoted Price (subject to clause 3.2) which shall be binding upon the Owner provided that the Customer shall accept the Owner's quotation in writing within thirty (30) days.
- 3.2 The Owner reserves the right to change the Price in the event of a variation to the Owner's quotation.
- 3.3 At the Owner's sole discretion a deposit may be required.
- 3.4 At the Owner's sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to the Owner.
- 3.5 At the Owner's sole discretion;
 - (a) payment shall be due before delivery of the Equipment, or
 - (b) payment for approved Customer's shall be due seven (7) days following the date of the invoice.
- 3.6 Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Owner.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Hire Period

- 4.1 Where the Equipment does not have a timing device installed hire Charges shall commence from the time the Equipment is collected by the Customer from the Owner's premises and will continue until the return of the Equipment to the Owner's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 4.2 If the Owner agrees with the Customer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Owner's premises and continue until the Customer notifies the Owner that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 4.3 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Owner confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies the Owner immediately, 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 Customer.

Levin Party Hire Ltd – Terms & Conditions of Hire

5. Delivery Of Equipment

- 5.1 At the Owner's sole discretion delivery of the Equipment shall take place when the Customer takes possession of the Equipment at the Owner's address.
- 5.2 The failure of the Owner to deliver shall not entitle either party to treat this contract as repudiated.
- 5.3 The Owner shall not be liable for any loss or damage whatever due to failure by the Owner to deliver the Equipment (or any of part of the Equipment) promptly or at all.

6. Risk

- 6.1 The Owner retains property in the Equipment nonetheless; all risk for the Equipment passes to the Customer on delivery.
- 6.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Owner 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 Customer.
- 6.3 The Customer will insure, or self insure, the Owner's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 6.4 The Customer accepts full responsibility for and shall keep the Owner indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses 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 and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

7. Title

- 7.1 The Equipment is and will at all time remain the absolute property of the Owner.
- 7.2 If the Customer fails to return the Equipment to the Owner then the Owner or the Owner's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 7.3 The Customer is not authorised to pledge the Owner's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

8. Defects

- 8.1 The Customer shall inspect the Equipment on delivery and shall within forty eight (48) hours notify the Owner of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Owner an opportunity to inspect the Equipment within a reasonable time following delivery if the Customer believes the Equipment is defective in any way. If the Customer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Owner has agreed in writing that the Customer is entitled to reject, the Owner's liability is limited to replacing the Equipment.

9. Customer's Responsibilities

- 9.1 The Customer shall:
 - (a) notify the Owner immediately by telephone of the full circumstances of any mechanical breakdown or accident in connection with the Equipment. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification.
 - (b) satisfy itself prior to taking delivery of the Equipment that the Equipment is suitable for its purposes;
 - (c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by the Owner or posted on the Equipment;
 - (d) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use, and where necessary, hold a current certificate of competency and/or are fully licensed;
 - (e) comply with all occupational health and safety laws relating to the Equipment and its operation;
 - (f) keep the Equipment in their own possession and control;
 - (g) 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;
 - (h) employ the Equipment solely in its own work and not permit the Equipment or any part thereof to be used by any other party for any other work;
 - (i) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (j) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - (k) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
 - (l) on termination of the hire, deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to the Owner.
- 9.2 Immediately on request by the Owner the Customer will pay:
 - (a) the new list price of any Equipment that is for whatever reason destroyed, written off, or not returned to Owner;
 - (b) all costs incurred in cleaning the Equipment;

Levin Party Hire Ltd – Terms & Conditions of Hire

- (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
- (d) the cost of repairing any damage to the Equipment caused by the negligence of the Customer or the Customer's agent;
- (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Owner's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer;
- (f) the cost of fuels and consumables provided by the Owner and used by the Customer.

10. Warranty

- 10.1 No warranty is given by the Owner as to the quality or suitability of the Equipment for any purpose and any implied warranty is expressly excluded. The Customer shall indemnify and hold harmless the Owner in respect of all claims arising out of the use of the Equipment.

11. Consumer Guarantees Act 1993

- 11.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).

12. Default & Consequences Of Default

- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Owner's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Owner.
- 12.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in pursuing the debt including legal costs on a solicitor and own client basis and the Owner's collection agency costs.
- 12.4 Without prejudice to any other remedies the Owner may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Owner may repossess the Equipment as per clause 7.2, or suspend or terminate the supply of Equipment to the Customer and any of its other obligations under the terms and conditions. The Owner will not be liable to the Customer for any loss or damage the Customer suffers because the Owner has exercised its rights under this clause.
- 12.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.6 Without prejudice to the Owner's other remedies at law the Owner shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Owner becomes overdue, or in the Owner's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer 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 Customer or any asset of the Customer.

13. Security And Charge

- 13.1 Despite anything to the contrary contained herein or any other rights which the Owner may have howsoever:
 - (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Owner or the Owner's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Owner (or the Owner's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Owner elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Owner from and against all the Owner's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Owner or the Owner's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

14. Cancellation

- 14.1 The Owner may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice the Owner shall repay to the Customer any sums paid in respect of the Price. The Owner shall not be liable for any loss or damage whatever arising from such cancellation.

Levin Party Hire Ltd – Terms & Conditions of Hire

- 14.2 In the event that the Customer wishes to cancel this agreement then the Customer shall be liable for any loss incurred by the Owner (including, but not limited to, any loss of profits) up to the time of cancellation or a direct result of the cancellation.
- 15. Privacy Act 1993**
- 15.1 The Customer and the Guarantor/s (if separate to the Customer) authorise the Owner to:
- (a) collect, retain and use any information about the Customer and/or the Guarantor/s, for the purpose of assessing the Customer's and/or the Guarantor/s creditworthiness or marketing products and services to the Customer and/or the Guarantor/s; and
 - (b) to disclose information about the Customer and/or the Guarantor/s, whether collected by the Owner from the Customer and/or the Guarantor/s directly or obtained by the Owner from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or the Guarantor/s.
- 15.2 Where the Customer and/or the Guarantor/s are an individual the authorities under (clause 15.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 15.3 The Customer and/or the Guarantor/s shall have the right to request the Owner for a copy of the information about the Customer and/or the Guarantor/s retained by the Owner and the right to request the Owner to correct any incorrect information about the Customer and/or the Guarantor/s held by the Owner.
- 16. Wet Hire**
- 16.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of the Owner.
- 16.2 In the event of Wet Hire of the Equipment the operator of the Equipment remains an employee of the Owner and operates the equipment in accordance with the Customer's instructions. The Owner shall not be liable for any actions of the operator in following the Customer's instructions.
- 17. Personal Property Securities Act 1999 ("PPSA")**
- 17.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Equipment previously supplied by the Owner to the Customer (if any) and all Equipment that will be supplied in the future by the Owner to the Customer.
- 17.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Owner may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Owner for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Equipment charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Owner.
- 17.3 The Owner and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 17.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 17.5 Unless otherwise agreed to in writing by the Owner, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 17.6 The Customer shall unconditionally ratify any actions taken by the Owner under clauses 17.1 to 17.5.
- 18. General**
- 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 18.3 The Owner shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Owner of these terms and conditions.
- 18.4 In the event of any breach of this contract by the Owner the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Owner exceed the Price of the Equipment.
- 18.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Owner.
- 18.6 The Owner may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 18.7 The Owner reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Owner notifies the Customer of such change.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 18.9 The failure by the Owner to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Owner's right to subsequently enforce that provision.