

# No. 8 Hire Ltd Terms and Conditions of Trade

These Hire Contract Conditions apply to the exclusion of any other conditions proposed by the Customer, unless otherwise agreed by No. 8 Hire and the Customer in writing. No. 8 Hire agrees to hire Equipment to the Customer on terms set out in this document.

## 1. Definitions;

**Commencement** – The date when the Customer takes possession of the Equipment.

**Equipment** – means all Equipment (including any accessories) supplied on hire by No. 8 Hire 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 authorisation forms as provided by No. 8 Hire to the Customer.

**Customer** – means the Customer or any person acting on behalf of and with the authority of the Customer, as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.

**Hire Charge** – means the cost of the hire of the Equipment as agreed between No. 8 Hire and the Customer subject to clause 6 of this Agreement.

**Hire Period** – Means from Commencement until the end of the period shown on the Hire Schedule. The Hire Period may only be extended for one or more definite periods and in each case this can only be done if the Customer requests it and if No. 8 Hire agrees. No. 8 Hire may issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period. For the avoidance of doubt, no Hire Period (including any extension) is to extend longer than 12 months from the original Commencement date.

**Hire Schedule** – Means a document which No. 8 Hire may require the Customer to sign (or accept in a way No. 8 Hire requires) including particulars of the Equipment and the Hire Period and such other information as No. 8 Hire may decide to require.

**No. 8 Hire** – means No. 8 Hire Ltd, its successors and assigns or any person acting on behalf of and with the authority of No. 8 Hire Ltd.

**Kilometre Charge** – The amount payable for the kilometres that a Motor Vehicle has, in the reasonable opinion of No. 8 Hire, travelled during the Hire Period.

**Motor Vehicle** – A truck or utility but not any other equipment such as a scissor lift, trailer or bobcat.

**Remote Area** – Any location which is more the 50 kilometres from the No. 8 Hire branch from where the Equipment is hired.

## 2. Acceptance

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by this Agreement if the Customer places an order for the Equipment, or accepts Delivery.

2.2 No. 8 Hire agrees to hire the Equipment to the Customer based on this Agreement (to the exclusion of anything to the contrary in the terms of the Customer's order), which may only be amended with No. 8 Hire's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and No. 8 Hire.

2.3 A waiver of the Customer's obligations hereunder is ineffective unless it is in writing and is verified and signed by a duly appointed office of No. 8 Hire.

a) The Customer acknowledges that entering into this Agreement: (a) they have relied solely on their own skill and judgement, and not relied in any way on any representations, statements or warranties made by No. 8 Hire;

b) (b) to the maximum extent permitted by law, no warranty is provided by No. 8 Hire in respect of the condition of the Equipment or its fitness for any particular purpose. The Customer shall indemnify and hold harmless No. 8 Hire in respect of all claims arising out of the use of the Equipment, including any liability for loss, damage, injury or death arising out of the delivery, installation, ownership, hiring, use or operation of the Equipment of whatsoever nature or kind;

c) (c) 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).

## 3. Obligations of No. 8 Hire

No. 8 Hire will:

3.1 Allow the Customer to take and use the Equipment for the Hire Period;

3.2 Provide the Equipment to the Customer clean and in good working order;

3.3 Collect the Equipment within 5 days of being requested to do so by the Customer. **NOTE TO CUSTOMER: You must return the Equipment at your expense when due back unless agreed in writing by No. 8 Hire. Collection charges do apply.**

4 **Obligations of the Customer**  
The Customer must:

4.1 Deliver the Equipment to No. 8 Hire when it is due back;

4.2 Return the Equipment to No. 8 Hire clean and in good repair;

4.3 Satisfy itself at Commencement that the Equipment is suitable for its purposes;

4.4 Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by No. 8 Hire or posted on the Equipment;

4.5 **Indemnify** No. 8 Hire for all injury and/or damage to the extent caused or contributed to by the Customer to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment;

4.6 Ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorized;

4.7 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.

4.8 Conduct a thorough hazard and risk assessment before using the Equipment and comply with all Occupational Health and Safety laws relating to the Equipment and its operation;

4.9 Safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify No. 8 Hire in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Customer;

4.10 Operate the Equipment with an adequate motor vehicle and/or power source.

4.11 Comply with any maintenance or care instructions provided by No. 8 Hire.

4.12 Notify No. 8 Hire immediately of any breakdown or accident relating to the Equipment. The Customer is not absolved from the requirements to safeguard the Equipment by giving notification.

**The Customer must NOT;**

4.13 Tamper with, damage or repair the Equipment;

4.14 Lose or part with possession of the Equipment;

4.15 Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;

4.16 Allow any person to drive a Motor Vehicle if the person:  
a) does not hold a suitable licence to drive that class of Motor Vehicle; or

b) is affected by drugs and/or alcohol.

4.17 Exceed the recommended or legal load and capacity limits of the Equipment;

4.18 Use or carry any illegal, prohibited or dangerous substance in or on the Equipment.

4.19 Exceed the recommended or legal speed limit for the Equipment.

## 5. No Assignment by Customer

5.1 This Agreement is personal to the Customer and is not capable of assignment by the Customer, but this shall not prevent employees of the Customer using the Equipment in accordance with the terms of this agreement.

5.2 No. 8 Hire may assign its rights under this agreement without the consent of the Customer or any guarantor.

## 6. Payments by the Customer to No. 8 Hire

6.1 On or before Commencement (or as otherwise specifically agreed in writing with No. 8 Hire), the Customer will pay the Hire Charge, which may include a deposit.

6.2 Immediately on request by No. 8 Hire, the Customer will pay:

a) the new list price of any Equipment which is for whatever reason not returned to No. 8 Hire.

**(NOTE TO CUSTOMER: Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the Equipment)**

b) all costs incurred in cleaning the Equipment;

c) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer, unless expressly agreed otherwise in this Contract;

d) stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the Customer's use of the Equipment;

e) all costs incurred by No. 8 Hire in delivering and recovering possession of the Equipment;

f) In the event the Customer is unable to accept Delivery and/or Recovery as arranged, or there are any delays due to free and clear access to the Site not being available, the No. 8 Hire shall be entitled to charge all additional costs involved with the redelivery and/or storage, or subsequent attempts at Recovery, as applicable, and all Charges lost as a direct result of the Equipment being unavailable

g) a late payment fee calculated daily at 3.5% per month on all amounts owing by the Customer not paid on time;

h) the Kilometre Charge and any additional Hire Charges;

i) the cost of fuels and consumables provided by No. 8 Hire and not returned by the Customer;

j) any expenses and legal costs (including commission payable to a commercial agent) incurred by No. 8 Hire in enforcing this contract due to the Customer's default;

k) all costs of repairing or replacing tyres, including road service; and

l) if any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract;

m) loading costs when equipment hired with an hour meter is used in excess of 8 hours per day.

6.3 Without limiting the ability of No. 8 Hire to recover all amounts owing to it, the Customer authorises No. 8 Hire to charge any amounts owing by the Customer to any credit card or account details of which are provided to No. 8 Hire.

6.4 No. 8 Hire reserves the right to change the Charges at any time in the event of a variation to No. 8 Hire's quotation. No. 8 Hire shall advise the Customer in writing of any change to the Charges and the effective date of the change.

6.5 Any quotation given by No. 8 Hire will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

6.6 Unless otherwise stated charges do not include GST.

## 7. Ownership / Retention of Title

7.1 All equipment supplied by No. 8 Hire to the Customer under this agreement shall remain the property of No. 8 Hire

## 8. Risk

8.1 The Customer accepts full responsibility for the safekeeping of the Equipment and shall keep No. 8 Hire indemnified against all liability in respect of all actions, proceedings, claims, demands, notices, losses, damages, costs and expenses to which No. 8 Hire shall or may become liable in respect of (including without limitation):

8.2 any loss, theft or damage to the Equipment or any property, or any death or injury to persons or otherwise arising from the use of the Equipment during the Term and whether or not arising from any negligence, failure or omission of the Customer or any other persons;

8.3 any underground or overhead services, footpaths, roads, driveways, grounds, lawns, fences or any other like property, whether public or private, however

- sustained, caused or contributed to by the use of the Equipment.
- 9 PPSA**
- 9.1 If a 'security interest' for the purposes of the Personal Property Securities Act 1999 ("PPSA") arises in relation to the Equipment provided to the Customer under this agreement whether created or provided for by a lease for a term of more than 1 year or otherwise ("security interest") then the terms of this clause 7 shall apply.
- 9.2 The Customer must do anything (such as obtaining consents and signing documents) which No. 8 Hire requires for the purposes of:
- 9.3 ensuring that No. 8 Hire's security interest is enforceable, perfected and otherwise effective under the PPSA;
- 9.4 enabling No. 8 Hire to gain first priority for its security interest; and
- 9.5 enabling No. 8 Hire to exercise rights in connection with the security interest.
- 9.6 The Customer agrees that nothing in sections 114(1)(a), 133 or 134 of the PPSA applies to this agreement, and waives its rights under sections 121, 125, 129, 131 and 132 of the PPSA.
- 9.7 Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else or grant or create any security interest in the Equipment unless No. 8 Hire (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to No. 8 Hire and must be expressed to be subject to the rights of No. 8 Hire under this agreement. Customer may not vary a sub-hire without the prior written consent of No. 8 Hire (which may be withheld in its absolute discretion).
- 9.8 Customer must ensure that No. 8 Hire is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
- 10 Exclusion of Warranties and Liabilities.**
- 10.1 Where the Consumer Guarantees Act 1993 ("CGA") applies, the Customer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.
- 10.2 Where the CGA applies and the Equipment is hired for business purposes the CGA is excluded to the fullest extent permitted by law.
- 10.3 To the extent that the CGA (or any other law which cannot be excluded) does not apply. No. 8 Hire makes no representations and gives no warranties other than those set out in these Hire Contract Conditions, and will not be liable to the Customer for any damages, costs or other liabilities whatsoever (including for consequential loss) in relation to the hiring of the Equipment by the Customer.
- 10.4 No. 8 Hire shall have no liability to the Customer, the guarantor or any other person whether in contract, tort or otherwise for any consequential of indirect damages or losses except to the extent otherwise mandatorily required by law.
- 11 Remote Hire**
- 11.1 Where the Equipment is at any time hired by the Customer to be located in the Remote Area, the following clauses will also apply, in addition to the obligations of the Customer under Clause 3 and elsewhere in these Hire Contract Conditions;
- 11.2 The Customer will pay an additional charge for any delivery, servicing and repair of the Equipment, and for any other attendance at the Remote Area by No. 8 Hire ('Remote Area Charges'). The Remote Area Charges will be calculated on a per kilometre rate travelled by No. 8 Hire staff to and from the Remote Area, plus labour costs per staff member per hour (including travelling times) at scheduled rates, plus direct travelling cost including all airfares and accommodation charges incurred by No. 8 Hire and its staff in connection with travel to and from the Remote Area;
- 11.3 Multiple items of Equipment hire by a Customer on the one site will only be charged for one call out fee;
- 11.4 The Customer is responsible at its cost for daily maintenance and care of all Equipment in its possession, including daily checking of all fluids (fuel, oil, water, battery levels etc) and general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.
- 12 Cancellation/Termination**
- 12.1 No. 8 Hire may terminate this Agreement, or cancel Delivery, at any time before the Equipment is delivered by giving written notice to the Customer. On giving such notice No. 8 Hire shall repay to the Customer any sums paid in respect of the Charges. No. 8 Hire shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Customer terminates this Agreement, or otherwise cancels Delivery, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by No. 8 Hire as a direct result of the cancellation (including, but not limited to, any loss of profits). In the event the cancellation is made after twelve (12) noon on the day prior to the Term, the Customer shall be liable to pay a cancellation fee (equal to the amount due under the Minimum Hire Period) or such other fee as determined by No. 8 Hire from time to time.
- 12.3 Except so far as clause 14.1 applies, on termination No. 8 Hire shall be entitled to:
- retain all monies paid to it under this Agreement; and
  - recover from the Customer any other monies due and owing under this Agreement as at the date of termination.
- 12.4 On termination, the Customer must deliver up to No. 8 Hire the Equipment (together with all parts and accessories) in clean and good order as delivered (with allowance for fair wear and tear). If the Customer fails to return the Equipment to No. 8 Hire, as is required under this Agreement or when requested to do so, then No. 8 Hire, or No. 8 Hire's agent, may (as the invitee of the Customer) enter upon and into any 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. Any costs incurred by No. 8 Hire as a result of No. 8 Hire so recovering the Equipment shall be charged to the Customer.
- 13 Disputes**
- 13.1 The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to No. 8 Hire in writing within 30 days of the Hire Contract date. In the event that no communication is received from the Customer within that 30 day period, the Hire Charges are deemed to be accepted by the Customer.
- 13.2 If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to No. 8 Hire), the parties agree to take reasonable steps within a period of 10 days of the dispute arising to negotiate to settle the dispute with the assistance of Hire Industry Association of New Zealand Inc. before litigation.
- 14 Equipment data**
- 14.1 No. 8 Hire' Equipment may contain on-board devices (each a GPS Device) which enable the Equipment to be connected to the internet and to send commands to and receive certain information from the Equipment, including geolocation data from a global positioning system and other data including but not limited to speed, battery voltage and ignition status of such Equipment.
- By hiring any Equipment from No. 8 Hire, the Customer expressly consents to No. 8 Hire' use of the GPS Device on such Equipment during the Hire Period and to No. 8 Hire collecting, using and retaining information from the GPS Device.
- 15 Privacy Act 1993**
- 15.1 The Customer authorises No. 8 Hire (or their agent) to:
- access, collect, retain and use any information about the Customer; (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or for the purpose of marketing products and services to the Customer.
  - disclose information about the Customer, whether collected by No. 8 Hire from the Customer directly or obtained by No. 8 Hire 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.
- 15.2 Where the Customer is an individual the authorities under clause 14.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 15.3 The Customer shall have the right to request No. 8 Hire for a copy of the information about the Customer retained by No. 8 Hire and the right to request No. 8 Hire to correct any incorrect information about the Customer held by No. 8 Hire.
- 16 General**
- 16.1 The failure by No. 8 Hire to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect No. 8 Hire's right to subsequently enforce that provision. If any provision of these terms and conditions shall be prohibited, invalid, void, illegal or unenforceable in any jurisdiction, that provision will, as to that jurisdiction be ineffective to the extent of the prohibition, invalidity or unenforceability without affecting, prejudicing or impairing the validity, existence, legality and enforceability of the remaining provisions of these terms and conditions, or that provision is any other jurisdiction.
- 16.2 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.
- 16.3 No. 8 Hire shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit or any rectification costs), or any third party claims, suffered by the Customer in connection with the use of the Equipment and/or the provision of services by No. 8 Hire, or arising out of a breach by No. 8 Hire of these terms and conditions. Alternatively, No. 8 Hire's liability shall be limited to damages which under no circumstances shall exceed the Charges.
- 16.4 The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Customer by No. 8 Hire nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.5 No. 8 Hire may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.6 The Customer agrees that No. 8 Hire may amend these terms and conditions at any time. If No. 8 Hire makes a change to these terms and conditions, then that change will take effect from the date on which No. 8 Hire notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for No. 8 Hire to provide any Equipment to the Customer.
- 16.7 Neither party shall be liable for any default due to any act of God, war, terrorism, civil disturbance, riot, Government intervention or regulations, Council conditions or specifications, strike, lock-out, industrial action/dispute, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.8 The Customer warrants that it has the power to enter into this Agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this Agreement creates binding and valid legal obligations on it.