

Hire Contract Conditions

FLOODMASTER LIMITED – CN: 8179765



NOTE TO CUSTOMER

You should read these Hire Contract Conditions very carefully. They contain terms and conditions which may impact you, including that;

- (a) the liability of Floodmaster to its Customers is excluded in some circumstances; and
- (b) Customers may be liable for damage to goods that are hired by them, and for damage to goods or property owned by a third party; and
- (c) Floodmaster' Privacy Policy permits Floodmaster in some circumstances and subject to compliance with New Zealand Privacy Principles to use data about a Customer, or data provided by a Customer, to a third party in a form that may enable the third party to identify the Customer.

These Hire Contract Conditions apply to the exclusion of any other conditions proposed by the Customer, unless otherwise agreed by Floodmaster and the Customer in writing. Floodmaster agrees to hire Equipment to the Customer on terms set out in this document. If the Customer wishes to hire Equipment, Floodmaster will issue to the Customer a Hire Schedule, setting out the terms of the hire of that Equipment. Each Hire Schedule is not a separate contract but forms a part of this Hire Contract between Floodmaster and the Customer, together with any credit application, guarantee and indemnity or other contractual documents. The Customer agrees to receive hire schedules and all associated documentation by electronic means, or by printed or other form where electronic means are not available. The Customer must check the Hire Schedule on receipt and unless the Customer notifies Floodmaster before collection of the Equipment that it disagrees with anything in the Hire Schedule, the terms of the Hire Schedule are accepted by the Customer. Floodmaster may in its absolute discretion decline to hire Equipment to the Customer at any time if it has reasonable cause to do so.

Amendment: These Hire Contract Conditions may be changed by Floodmaster from time to time by Floodmaster giving notice of the amendment to the Customer. Notice is deemed given when Floodmaster does any of the following:

- (a) sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer;
- (b) publishes the amended terms on its website or
- (c) displays the amended terms at premises from which Floodmaster conducts hire operations. Changes to these Hire Contract Conditions will only apply to Hire Schedules entered into after the change has been notified to the Customer by one of the methods mentioned above.

1. INTERPRETATION OF WORDS IN THIS CONTRACT;

COMMENCEMENT – The date and time when the Customer takes possession of the Equipment.

EQUIPMENT – Means any kind of Equipment, vehicles or tools including but not limited to the following kinds of goods or goods suitable for the following kinds of uses: cleaning; cooling and/or heating; floor care and cleaning, and includes tools and parts and accessories for any of the foregoing.

CUSTOMER – refers to the person, firm, organisation, partnership, corporation or other entity (including a trust) hiring the Equipment from Floodmaster as identified in the Credit Application or Hire Schedule

HIRE CHARGE – The amounts shown on the Hire Schedule payable by the Customer to hire the Equipment.

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 Floodmaster agrees. Floodmaster may issue an amended Hire Schedule for any extension of the Hire Period.

HIRE SCHEDULE – Means a document in such form as Floodmaster shall require, setting out the terms of the hire of Equipment, including

the particulars of the Equipment and the Hire Period and such other information as Floodmaster may decide to include. Floodmaster – The company or companies listed on the Hire Schedule.

REMOTE AREA – Any location which is more than 50 kilometres from the Floodmaster branch from where the Equipment is hired.

2. Floodmaster OBLIGATIONS

Floodmaster will:

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

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

2.3 Collect the Equipment within five days of being requested to do so by the Customer and issuing to the Customer a Customer Pick Up Number.

NOTE TO CUSTOMER: You must return the Equipment at your expense when due back unless you obtain a Customer Pick Up Number from Floodmaster.

3. OBLIGATIONS OF THE CUSTOMER

The Customer must:

- 3.1** Deliver the Equipment to Floodmaster when it is due back;
- 3.2** Return the Equipment to Floodmaster clean and in good repair;
- 3.3** Satisfy itself at Commencement that the Equipment is suitable for its purposes;
- 3.4** 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 Floodmaster or posted on the Equipment;
- NOTE TO CUSTOMER:** You MUST advise Floodmaster if you require any further instruction on the operation and safe use of the Equipment
- 3.5** Indemnify Floodmaster 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;
- 3.6** 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 authorised;
- 3.7** 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;
- 3.8** 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;
- 3.9** Safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify Floodmaster 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;
- 3.10** Operate the Equipment with an adequate motor vehicle and/or power source;
- 3.11** Report and provide full details to Floodmaster of any accident or damage to the Equipment within two business days of the accident or damage occurring;
- 3.12** Sign any documentation requested by Floodmaster at such intervals as reasonably stipulated by Floodmaster, to confirm the Customer's acceptance of these Hire Contract Conditions.
- 3.13** Assist and co-operate fully and promptly with Floodmaster and/or its insurer in the investigation, settlement or defence of any claim or matter relating to a Hire Schedule on which the Customer is named;
- 3.14** Remain responsible for the care and safekeeping of the Equipment until collected by or delivered back to Floodmaster.

The Customer must NOT;

- 3.15** Tamper with, damage or repair the Equipment;
- 3.16** Lose or part with possession of the Equipment;
- 3.17** Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;
- 3.18** 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.

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

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

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

4. NO ASSIGNMENT BY CUSTOMER

4.1 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.

4.2 Floodmaster may assign its rights under this agreement without the consent of the Customer or any guarantor.

5 PAYMENTS BY THE CUSTOMER TO Floodmaster

5.1 On or before Commencement (or as otherwise specifically agreed in writing with Floodmaster), the Customer will pay the Hire Charge.

5.2 Immediately on request by Floodmaster, the Customer will pay:

(a) the new list price of any Equipment which is for whatever reason not returned to Floodmaster

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 Floodmaster in delivering and recovering possession of the Equipment;

(f) a late payment fee calculated daily at 3% per month on all amounts owing by the Customer not paid on time;

(g) any additional Hire Charges;

(h) the cost of fuels and consumables provided by Floodmaster and not returned by the Customer;

(i) any expenses and legal costs (including commission payable to a commercial agent) incurred by Floodmaster in enforcing this contract due to the Customer's default;

(j) all costs of repairing or replacing tyres, including road service;

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

(l) Loading costs when equipment hired with an hour meter is used in excess of eight hours per day.

(m) Hire fees for the period from the commencement of the hire until the Equipment is returned or a customer pick up number is obtained from Floodmaster.

5.3 Without limiting the ability of Floodmaster to recover all amounts owing to it, the Customer irrevocably authorises Floodmaster to charge any amounts owing by the Customer to any credit card or account details of which are provided to Floodmaster.

6 OWNERSHIP / RETENTION OF TITLE

All equipment supplied by Floodmaster to the Customer under this agreement shall remain the property of Floodmaster.

7 PPSA

7.1 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 one year or otherwise ("security interest") then the terms of this clause 7 shall apply.

7.2 Floodmaster may register its security interest. The Customer must do anything (such as obtaining consents and signing documents) which Floodmaster requires for the purposes of:

(a) ensuring that Floodmaster security interest is enforceable, perfected and otherwise effective under the PPSA;

(b) enabling Floodmaster to gain first priority for its security interest; and

(c) enabling Floodmaster to exercise rights in connection with the security interest.

7.3 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.

7.4 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 Floodmaster (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Floodmaster and must be expressed to be subject to the rights of Floodmaster under this agreement. Customer may not vary a sub-hire without the prior written consent of Floodmaster (which may be withheld in its absolute discretion).

7.5 Customer must ensure that Floodmaster 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.

8. EXCLUSION OF WARRANTIES AND LIABILITIES

8.1 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.

8.2 Where the CGA applies and the Equipment is hired for business purposes the CGA is excluded to the fullest extent permitted by law.

8.3 To the extent that the CGA (or any other law which cannot be excluded) does not apply. Floodmaster 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.

8.4 Floodmaster shall have no liability to the Customer, the guarantor or any other person whether in contract, tort or otherwise for any consequential or indirect damages or losses except to the extent otherwise mandatorily required by law.

9. REMOTE HIRE

Where the Equipment is at any time hired by the Customer to be located in a 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;

(a) 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 Floodmaster ('Remote Area Charges'). The Remote Area Charges will be calculated on a per kilometre rate travelled by Floodmaster 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 Floodmaster and its staff in connection with travel to and from the Remote Area;

(b) Multiple items of Equipment hire by a Customer on the one site will only be charged for one call out fee;

(c) 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.

10 BREACH OF HIRE CONTRACT BY CUSTOMER

If the Customer breaches any significant provision of this Contract and does not remedy the breach within a reasonable period of time (having regard to the breach), or becomes bankrupt, insolvent or ceases business then;

10.1 Floodmaster shall be entitled to:

(a) terminate this Contract; and/or

(b) sue for recovery of all monies owing by the Customer; and/or

(c) repossess the Equipment (and is authorised to enter any premises where the Equipment is located to do so), and any Damage and/or Theft Waiver referred to in clause 8 is immediately invalidated.

10.2 The Customer indemnifies Floodmaster in respect of any damages, costs or loss, to the extent caused or contributed to by the customer resulting from a breach by the Customer of any provision of this Contract.

11 DISPUTES

11.1 The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to Floodmaster 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.

11.2 If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to Floodmaster), the parties agree to take reasonable steps within a period of ten days of the dispute arising to negotiate to settle the dispute with the assistance of Hire Industry Association of New Zealand Inc. before litigation.

12 EQUIPMENT DATA

Floodmaster' 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 Floodmaster, the Customer expressly consents to Floodmaster' use of the GPS Device on such Equipment during the Hire Period and to Floodmaster collecting, using and retaining information from the GPS Device in accordance with our Privacy Policy, and that Floodmaster is the owner of that data subject to your rights as set out in our Privacy Policy.

(e) Before it enters the Branch, ensure that it has requested and obtained from Floodmaster any assistance it may require as to the operation and safe use of the Equipment;

(f) at all times keep confidential the PIN, and ensure that the PIN is only used by the person to whom it is issued and that no other persons are given access to the Branch at any time; and

(g) only take into their possession, Equipment detailed on an active Hire Schedule provided to the Customer by Floodmaster.

13 PRIVACY ACT 1993

The Customer and any guarantor consent to Floodmaster obtaining such information and making such enquiries about either of them from any source, including credit reference and reporting agencies and companies related to Floodmaster, in relation to this agreement and disclosing information about either of them to credit reference agencies, companies related to Floodmaster, sureties, financiers of Floodmaster, the trustee under any debenture trust deed granted by Floodmaster or assignees or anyone who is considering becoming a surety or assignee. A person has the right to access personal information (within the meaning of the Privacy Act 1993) held by Floodmaster and request correction of any errors in that information.

14 PAYMENTS

All payments under this Agreement by the Customer must be made without set-off, counterclaim or withholding.

15 GOVERNING LAW

The hire contract containing these Hire Contract Conditions is governed by the law of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

16 CONTACTLESS COLLECTION AND RETURN

16.1 Floodmaster may in its discretion, and subject to satisfactory identification of the Customer and its authorised representatives, issue a Personal Identification Number ("PIN") to an individual authorised representative of the Customer to allow self-collection and self-return of the Equipment by the Customer from and to a Floodmaster branch ("the Branch"). The PIN may be withdrawn by Floodmaster in its discretion at any time. The Customer must comply with all requirements stipulated from time to time by Floodmaster for entry to the Branch using the PIN, including that the Customer must;

(a) follow all directions given by Floodmaster as to the procedure for obtaining access to the Branch;

(b) enter the Branch at its own risk, and any injuries or death or damage to Equipment or property that may occur while loading or unloading equipment or in any other circumstances while the Customer is accessing the branch are the responsibility of the Customer;

(c) ensure that the main gate of the Branch is closed and locked when leaving the Branch, failing which the Customer will be liable for any theft or attempted theft of equipment from the Branch, or for any damage to equipment at the Branch, or damage to the Branch itself;

(d) consent to being filmed or photographed by CCTV while at and entering and leaving the Branch;