

### **Hire Contract Terms and Conditions**

I/We hereby apply for credit, knowing such credit may be withdrawn by Accessman at any time in its sole and unfettered discretion. I/We have read and accept that the terms and conditions as detailed on the reverse of this form shall apply to all equipment hired by us from Accessman and further acknowledge that such terms and conditions may be amended by Accessman at its sole discretion from time to time. Any amended terms and conditions will be placed on Accessman's web site ([www.accessman.co.nz](http://www.accessman.co.nz)) and shall apply with effect from the date that such amended terms and conditions are placed on the website unless the amended terms and conditions specify a later date on which they are to apply. In the event of any inconsistency between the terms and conditions as detailed on the reverse of this form (as may be amended from time to time) and the terms and conditions set out on the reverse of any hire or sale contract entered into at the time of hire or sale, the terms and conditions as detailed on the reverse of the hire or sale and conditions set out on the reverse of any hire or sale contract entered into at the time of hire or sale, the terms and conditions as detailed on the reverse of the hire or sale contract entered into at the time of hire of sale shall prevail.

### **Privacy Act 1993**

Where you are an individual, the information included in this credit application is required in order to determine whether Accessman will accept this application for credit and whether to continue to provide credit. I/We understand that if full information is not provided, my/our application for credit may be declined. I/We consent to Accessman collecting, using and holding general credit information about me/us and to Accessman disclosing that information to any third party in connection with credit management and control purposes. I/We understand that Accessman may credit check me/us and I/We agree that Accessman may collect information from any person who can provide Accessman with information relevant to these purposes. I/We acknowledge we can access and request correction of any of the personal information Accessman holds about us by writing to Accessman.

## GENERAL TERMS AND CONDITIONS OF HIRE

### 1. DEFINITIONS

In these terms and conditions:

- (a) "Agreement" means these terms and conditions and the Application For Credit.
- (b) "Equipment" means the Equipment hired by the Owner to the Hirer (whether the original equipment or any substitute) and includes all accessories and other equipment of the Owner attached to the equipment or to be used in connection with it. For the purposes of this Agreement the Equipment shall be deemed to be the property of the Owner whether such is the fact or not.
- (c) "Hirer" means you and includes your successors or personal representatives.
- (d) "Owner" means any one of the Accessman companies and franchises and includes its successors and assigns.
- (e) "Site" means the place or area where the Equipment is to be used or operated for the purposes of this Agreement (if appropriate).

### 2. CONDITIONS

The terms set out in this Agreement shall apply and are incorporated into any contract for hire between the Owner and the Hirer. The Owner reserves the right to change this Agreement without notice. Any amended terms will be placed on the Owner's web site and shall apply with effect from the date that such amended agreement is placed on the web site unless the amended Agreement specifies a later date from which it is to apply.

### 3. HIRE

- (a) The hire period begins from the time the Equipment leaves the Owner's premises and runs until the Equipment is returned to the Owner at the place of hire or this Agreement is terminated pursuant to Clause 11.
- (b) Delivery and removal charges payable by the Hirer are an addition to the hire costs.
- (c) The Hirer authorises the Owner to bring the Owner's vehicle onto the place where the Equipment is to be used or is located to deliver, erect and/or remove the Equipment, either on the expiry of the hire period or on the breach by the Hirer of any terms of this Agreement. The Hirer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner's actions under this Clause. For the avoidance of doubt, the Owner cannot be held liable for any damage to roofs, guttering, windows, cladding, paving, tiling, plants or any other property whether caused by vehicles, Equipment or by any other means.

### 4. HIRER'S OBLIGATION

- (a) The Hirer is responsible for any loss or damage to the Equipment from the time the Hirer takes possession of the Equipment until it is returned to the Owner's possession. The Hirer shall notify the Owner in writing immediately if the Equipment is lost or damaged and shall follow all reasonable instructions of the Owner.
- (b) In the case of damage to the Equipment, however caused, the Hirer shall be responsible for and shall indemnify the Owner for the full cost of all repairs to restore the Equipment to the condition it was in at the time of hire.
- (c) In the case of loss of or irreparable damage to the Equipment, however caused, the Hirer shall be responsible for and shall indemnify the Owner for the full cost to the Owner of replacing the Equipment.
- (d) In addition to the costs set out in Clauses (a)-(c) above the Hirer shall be responsible for and shall indemnify the Owner for any loss of revenue suffered by the Owner due to the unavailability of the Equipment for hire due to loss or damage. The costs for loss of revenue shall not exceed the equivalent prevailing rate for 120 days hire of the Equipment.
- (e) The Hirer shall:
  - (i) Take proper and reasonable care of the Equipment and return it to the place of hire in good order and condition; and
  - (ii) Satisfy themselves that the Equipment is suitable

for the intended use; and

- (iii) Take all necessary steps to prevent injury to any person and all property as a result of the condition of the Equipment; and
  - (iv) Where the Owner is to erect the Equipment, ensure the Site is prepared and that the foundations upon which the Equipment is to be erected are suitable to safely carry the Equipment and the load to be put on it without subsidence. The Hirer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner due to the Hirer's failure to comply with this Clause; and
  - (v) Display, maintain and draw attention to safety signs and instructions (as required by law) and ensure that instructions are observed; and
  - (vi) Conduct a site hazard assessment prior to using the Equipment at the Site; and
  - (vii) Use the Equipment in a skilful and lawful manner with due regard to all laws and regulations pertaining to the use of such Equipment; and
  - (viii) Immediately notify the Owner by telephone if the Equipment breaks down or becomes unsafe or if any warning light is activated; and
  - (ix) Except as permitted by the Consumer Guarantees Act 1993 not to bring or threaten to bring any claim against the Owner for loss or damage incurred or threatened against the Hirer or arising directly or indirectly from the Hirer's use of the Equipment; and
  - (x) Ensure that the Equipment is stored safely and securely and is protected from theft and is fully covered by the Hirer's policies of insurance. This Clause applies even if the Equipment has been dismantled and/or de-hired as long as it is located at the Hirer's site.
- (f) The Hirer warrants that all persons who use the Equipment shall be competent and qualified to use the Equipment (and where required holds a current licence or certificate of competency), shall use the Equipment in the manner it was designed to be used, and follow any directions from the Owner, local authorities, code of practice (including the Best Practice Guideline for Scaffolding in New Zealand) or from the manufacturer of the Equipment relating to the use and safety of the Equipment and shall comply with all obligations in relation to the use and control of the Equipment under the Health and Safety In Employment Act 1992 and all other relevant legislation.
- (g) If the Hirer is not an individual, the person who signs this Agreement 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 on the Hirer. The persons so signing hereby indemnifies the Owner against all losses and costs that may be incurred by the Owner arising out of the person so signing this Agreement failing to have such power or authority.
- (h) The Hirer shall not do, permit or suffer to be done anything in connection with the Equipment or its use whereby any policy or policies of insurance effected in connection with the Equipment or its use may become void or voidable or whereby the premiums thereon may be increased.
- (i) If the Equipment is involved in any accident resulting in injury to any person or damage to any property, the Hirer must give immediate notice to the Owner by telephone and confirmed by letter or facsimile to the Owner's principal office.

### 5. WARRANTY AND ACCEPTANCE

- (a) The Hirer acknowledges that the Owner has entered into this Agreement on the basis of information supplied to the Owner by the Hirer and warrants that that information is accurate.
- (b) Acceptance by the Hirer of the Equipment shall be deemed to be acceptance of the terms of the Agreement, and these Terms and Conditions of Hire and the Addendum to Hire (if any).

## 6. USE AND HANDLING OF EQUIPMENT

- (a) The Hirer shall not:
- (i) require, permit or suffer the Equipment to be used for anything contrary to any Act, regulation, by-law, requirement, code of practice or recognised convention (including the Best Practice Guideline for Scaffolding in New Zealand);
  - (ii) allow any other person other than those named in the Agreement to operate or use the Equipment without first obtaining the written consent of the Owner;
  - (iii) affix any of the Equipment to any land or buildings in such a manner as to make it legally a fixture forming part of the freehold;
  - (iv) allow any signs affixed to the Equipment (whether in position at the time of commencement of the hire or subsequently affixed by the Owner) to be damaged, defaced or covered up;
  - (v) repair or attempt to repair the Equipment without the Owner's consent;
  - (vi) permit or suffer the operation, use or direction of the Equipment by any person who by reason of intake of drink or drugs has his or her faculties impaired.
- (b) The Equipment shall be at the sole risk of the Hirer throughout the period of hire.

## 7. NO EXTENSION

If the Hirer wishes to extend the period of hire a new Agreement to Hire must be entered into with the Owner.

## 8. RESPONSIBILITY FOR LOSS

Under no circumstances shall the Owner be liable for any direct, indirect or consequential loss or damage arising out of any breakdown or stoppage of the Equipment or otherwise arising out of or in connection with the hire of the Equipment to the Hirer.

## 9. ASSIGNMENT AND SUBLETTING

- (a) This Agreement is personal to the Hirer and is not capable of assignment whether in whole or in part by the Hirer.
- (b) The Hirer shall not sublet or otherwise part with possession of the Equipment or any part thereof to any Third Party without first obtaining the written consent of the Owner. The Hirer at the Hirer's own expense shall protect and defend the Owner from all claims, liens and legal processes of creditors of the Hirer and shall keep the Equipment and any part thereof free and clear of any such claims.

## 10. PAYMENT

- (a) The Hirer shall pay as invoiced for the hire period the hire charges together with charges for all materials used, damage to or loss of the Equipment, cleaning costs (if any), delivery/removal costs (if any), default interest for late payment, and any other costs payable under the terms of this Agreement. All invoices and statements are sent electronically to the address notified in the Application for Credit unless the Hirer formally requests otherwise.
- (b) Payment shall be due not later than the 20<sup>th</sup> of the month following the date of invoice. If payment is not made by that date, interest will accrue from the date of the invoice in any amount outstanding at the rate of 2.5% per month. Any amount becoming due and payable in terms of this paragraph shall be liquidated debt and the Owner shall be entitled at any time to commence proceedings against the Hirer for payment of the debt including legal and collection costs incurred by the Owner.

## 11. TERMINATION OF AGREEMENT

- (a) The Owner may immediately and without notice terminate the hire and retake possession of the Equipment if:
- (i) the Hirer makes default in the observance or performance of any of the Terms and Conditions of Hire and the Agreement;
  - (ii) the Owner believes on reasonable grounds that the Hirer is about to breach the terms of the Agreement or these Terms and Conditions of Hire and that such breach might endanger any person

or property; or

- (iii) the Equipment for any reason is damaged so as to be inoperable or unsafe for use; or
  - (iv) the Hirer commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Hirer or if a receiver is appointed for all or any assets of the Hirer.
- (b) Any determination to terminate the hire and retake possession of the Equipment shall be without prejudice to the rights of the Owner in respect of any breach of this Agreement.
- (c) The Hirer grants the Owner, or will procure that the Owner is granted an irrevocable right and authority to enter at any time onto any place where the Equipment is situated or thought to be situated to remove the Equipment in the event this Agreement is terminated.
- (d) The Hirer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner exercising its rights under this Clause or otherwise acting to recover any Equipment hired or monies payable by the Hirer pursuant to this Agreement.
- (e) The Owner will not be liable to the Hirer or any other person for any loss suffered or liability incurred arising from termination of this Agreement or repossession of the Equipment.

## 12. INDEMNITY

The Hirer shall indemnify and keep indemnified the Owner from and against all damage or loss:

- (a) suffered or incurred in consequence of:
- (i) any breach of the terms of this Agreement by the Hirer; or
  - (ii) any negligent Act or omission on the part of the Hirer; or
- (b) otherwise caused by the Hirer or the Hirer's servants, agents, contractors or subcontractors during the term of this Agreement.

## 13. LIMITATION OF LIABILITY

- (a) In entering into this Agreement, the Hirer acknowledges that the Owner has no liability to the Hirer for any indirect or consequential loss or damage or for any loss of profit (or any other form of economic loss) arising in connection with this Agreement (whether in contract or in tort) including that resulting from the negligence of the Owner or arising by operation of law.
- (b) Subject to the exclusion of liability in Clause 13(a) above, the maximum aggregate liability of the Owner for all claims made by the Hirer, whether as a result of any breach of this Agreement or on any other ground or terms whatsoever (including, but not limited to, liability as a result of tort, including negligence) will not exceed the lesser of the hire charges paid by the Hirer to the Owner pursuant to this Agreement and three months hire charge is paid by the Hirer to the Owner pursuant to this Agreement.
- (c) The Hirer will indemnify the Owner against any liability, losses, damages or expenses incurred or suffered by the Owner as a result of any claim made by a third person against the Owner in respect of any loss or liability arising from this Agreement or arising out of the use of the Equipment hired by the Hirer.
- (d) If the Hirer is acquiring the Equipment for the purposes of a business as defined in the Consumer Guarantees Act 1993, Clauses 13(a) and (c) are subject to any liability which arises under the Act. If the Hirer is hiring the Equipment for the purposes of a business, the provisions of that Act do not apply.

## 14. ORAL AGREEMENTS AND STIPULATIONS

No oral agreement, promise, collateral stipulations, representation, condition or warranty given or entered into by the Owner or by any agent or employee of the Owner and not in conformity with this Agreement shall be binding upon the Owner unless confirmed in writing

by the Owner.

#### **15. WAIVER**

All the rights, powers and remedies of the Owner shall remain in full force notwithstanding any neglect, forbearance or delay by the Owner in the enforcement of them.

#### **16. GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of New Zealand. The Hirer shall observe and comply with the provisions of all Acts, regulations, by-laws and codes of practice in force during the period of hire in relation to the Equipment and the work on which the Equipment is to be employed and the manner of performance of that work and in relation to the Site and with all orders and directions lawfully given by any competent authority.

#### **17. CONTRACTING OUT**

This Agreement contains the whole of the terms of the contract between the parties and all other terms, conditions and warranties which might otherwise have been implied or have any application are hereby to the extent permitted by law expressly excluded.

#### **18. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**

- (a) The Hirer acknowledges that title to the Equipment remains with the Owner at all times.
- (b) The Hirer of the Equipment may create a security interest in the Equipment. If so, the provisions of this Clause shall apply. All terms in this Clause have the meaning given in the PPSA.
- (c) On the request of the Owner, the Hirer shall promptly execute all documents, provide all necessary information and do anything else required by the Owner to ensure that the security interest created under this Agreement constitutes a perfected security interest in the Equipment which will have priority over all other security interests in the Equipment.
- (d) The Hirer will pay to the Owner all fees and expenses incurred by the Owner in relation to the filing of a Financing Statement in connection with this Agreement.
- (e) The Hirer waives its rights under Sections 114 (1) (a), 116, 117, 119, 120 (2), 121, 125, 126, 127, 129, 131-134 (inclusive) and 148 of the PPSA.

#### **19. PRIVACY ACT 1993**

- (a) If the Hirer is an individual, this Clause shall apply. The Owner will collect personal information about you. The information is principally collected to evaluate the hire of Equipment that you seek. The information is collected and held by the Owner. The failure to provide the information may result in your application to hire being declined or the Agreement subsequently being terminated by the Owner. The Hirer has rights of access to personal information contained in this Agreement, subject to the provisions of the Privacy Act 1993. The Hirer agrees that its personal information may be used by the Owner to advise the Hirer of the Owner's other goods and services. The Hirer authorises the disclosure of personal information held by any other party regarding any previous hire contracts entered into by the Hirer. The Hirer agrees to the Owner releasing to other parties information regarding the Agreement if the Hirer does not comply with its obligations.
- (b) The Hirer and each person who signs the Owner's application for credit authorises the Owner:
  - (i) To collect, retain and use information about the Hirer or such other signatory from any person for the purposes of assessing the Hirer's or such other signatories credit worthiness;
  - (ii) To disclose information about the Hirer or such other signatory to any person who guarantees, or who provides insurance, or who provides any credit support in relation to the Hirer's obligations to the Owner and to such persons as may be necessary or desirable to enable the Owner to exercise any power, enforcement or attempted enforcement of the Owner's rights, remedies and powers under this Agreement.

#### **20. DISPUTE RESOLUTION**

- (a) A party may notify the other party ("Dispute Notice") if

that party considers that a dispute exists between the parties in relation to the terms of this Agreement ("Dispute"). As soon as reasonably practicable after the Dispute Notice has been given, the parties shall co-operate and negotiate in good faith in an endeavour to resolve the Dispute. A party may refer the Dispute to mediation under this Agreement if the parties are unable to resolve the Dispute within 7 days after the date on which the Dispute Notice is delivered.

- (b) Mediation under this Agreement will be governed in all respects by the LEADR NZ standard mediation agreement. The mediation must be conducted by a mediator and for a fee determined by the parties or (failing agreement within 7 days after referral to mediation) the Chairperson for the time being of LEADR NZ. Subject to anything to the contrary in this Agreement, the parties must act in good faith in the mediation in an endeavour to resolve the Dispute expeditiously.
- (c) Nothing in this Clause 20 precludes a party seeking or obtaining any order or relief by way of injunction or declaration or other equitable or statutory remedy against the other party to the Dispute or any other person where the party believes the order or relief is necessary for the urgent protection of that party's rights or property.
- (d) For the avoidance of doubt, the existence of a Dispute shall not relieve a party from the requirement to perform its obligations under this Agreement generally and, notwithstanding the Dispute, each party must continue to perform its obligations under this Agreement to the maximum extent possible (having regard to the nature of the Dispute).
- (e) All steps under this Clause 20 to resolve a Dispute shall take place in Christchurch.