

SYDNEY MACHINERY HIRE HAVE THE RIGHT TO WITHDRAW CREDIT OR VARY THE CUSTOMER'S CREDIT LIMIT AT ANY TIME AND WITHOUT REASON.

INTERESTS AND COSTS

Accounts are due and payable within twenty (20) days of the end of the month of invoice. Credit may be cancelled/suspended without notice if accounts are not paid by the due date. A late payment fee of 3% per month calculated daily may be charged for overdue accounts. The Customer will pay to Sydney Machinery Hire any commissions, legal costs or expenses paid by Sydney Machinery Hire to its Mercantile or Collection Agents and/or Lawyers in relation to the collection of any moneys owed to Sydney Machinery Hire that are not paid within the terms of credit provided.

THE HIRE CONTRACT

1. Sydney Machinery Hire agrees to hire Equipment to the Customer on terms set out in this document including the attached Hire Contract Conditions. If the Customer wishes to hire Equipment the Customer must complete and sign (or otherwise accept in the manner required by Sydney Machinery Hire) a Hire Schedule and such other documents as Sydney Machinery Hire may require, in each case in the form required by Sydney Machinery Hire . Each Hire Schedule is not a separate contract but forms a part of the hire agreement between Sydney Machinery Hire and the Customer. Sydney Machinery Hire may terminate this agreement or decline to hire Equipment to the Customer at any time.
2. The Customer and any Guarantor(s) agree and acknowledge that Sydney Machinery Hire has the right to amend this agreement including the Hire Contract Conditions from time to time. The agreement may be by Sydney Machinery Hire in the manner specified in the Hire Contract Conditions.
3. By signing this document the Customer and Guarantor(s) warrant that all information given to Sydney Machinery Hire in connection with it is true.

AUTHORISATION

In accordance with the Privacy Act 1993, the Customer and each of its Directors and Guarantors authorise Sydney Machinery Hire and any related company of Sydney Machinery Hire (as defined in the Companies Act 1993), to exchange with credit providers, credit reporting agencies and credit providers named in reports obtained through those agencies, any information about their personal credit, commercial activities or commercial credit-worthiness in the course of our business activities.

JOINT AND SEVERAL

The Customer and Guarantor(s) agree with Sydney Machinery Hire that an agreement, representation or warranty on the part of two or more persons in this document binds them jointly and severally and that an agreement, representation or warranty for the benefit of two or more persons is for the benefit of them jointly and severally.

SIGNED BY THE CUSTOMER (OR IF THE CUSTOMER IS A COMPANY THE DIRECTOR(S) OF THE CUSTOMER ON ITS BEHALF)

Dated this: _____ of _____ 20 ____

Names and signature(s) of all Director(s) or Proprietor(s):

1. Name: _____

Signature: _____

2. Name: _____

Signature: _____

3. Name: _____

Signature: _____

Witness Name: _____

Witness Signature: _____

GUARANTEE AND INDEMNITY

IF YOUR COMPANY IS NOT PUBLICLY LISTED OR A GOVERNMENT OWNED ENTITY YOUR DIRECTORS MUST SIGN THE GUARANTEE AND INDEMNITY. THE ONLY EXCEPTION IS IF YOU CHOOSE TO PAY BY DIRECT PAYMENT OPTION VIA YOUR BANK ACCOUNT OR CREDIT CARD.

- i. I/We being the Guarantor(s) of the Customer request Sydney Machinery Hire to hire Equipment to the Customer from time to time. In consideration of Sydney Machinery Hire doing so the Guarantor(s) hereby guarantee to Sydney Machinery Hire the due payment and satisfaction by the Customer of all money and obligations that the Customer owes or may owe to Sydney Machinery Hire now or in the future. The Guarantor(s) shall be treated as principal debtor(s) to Sydney Machinery Hire.
- ii. As a separate obligation the Guarantor(s) also indemnify Sydney Machinery Hire for all loss it may suffer due to failure for any reason by the Customer to satisfy its obligations or liabilities to Sydney Machinery Hire from time to time.
- iii. The Guarantor(s) agree that this guarantee and indemnity shall not in any way be affected by Sydney Machinery Hire granting time or any indulgence to the Customer, or by any variation or substitution of the Customer's obligations to Sydney Machinery Hire, or by any insolvency of the Customer or by any other thing that would otherwise discharge or prejudice our liability as guarantor(s) and indemnifiers. The Guarantor(s) also agree not to prove in any insolvency of the Customer without Sydney Machinery Hire consent.

SIGNED BY THE GUARANTOR(S)

Dated this: _____ of _____ 20 ____

Names and signature(s) of all Director(s) or Proprietor(s):

1. Name: _____

Signature: _____

2. Name: _____

Signature: _____

3. Name: _____

Signature: _____

Witness Name: _____

Witness Signature: _____

VEHICLE COVER PLUS

We are pleased to advise you of our latest product, which is designed to reduce your liability in the unfortunate instance of damage to our vehicle whilst on hire. As you can see from the details below, by taking advantage of this optional cover, savings of up to \$3500 can be made.

Two very important features of this optional cover are:

1. Damage to the pan above the cab height on our vans/pantechs is included in the Cover, and
2. Theft of a Sydney Machinery Hire Hire vehicle is included in the Cover.

Without taking up the option of Vehicle Cover Plus, these two items are the hirer's full responsibility.

OPTION DETAILS	DRIVERS OVER 25 YEARS	DRIVER UNDER 25 YEARS
Vehicle Cover Plus Daily Charge	\$35.00	\$45.00
Excess Liability - Car Licence Vehicles	\$650.00	\$1850.00
Excess Liability - Truck Licence Vehicles	\$1550.00	\$1850.00
Without Vehicle Cover Plus excess liability is	\$4200.00	\$5000.00

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As part of our aim to "make your job easy", we intend to keep our invoicing of vehicles hired as simple as possible. After considering the above details, please tick one of the boxes below to advise as to whether you accept or decline this damage or theft waiver offer. Declining the offer will result in the option being unavailable on all vehicles hired on your account.

ACCEPT DECLINE

Should the Vehicle Cover Plus option be declined, I confirm that this optional cover will therefore not be available, nor charged, on any vehicle hire invoices on my account.

Dated this: _____ of _____ 20 _____ Position: _____

Name: _____ Signature: _____

HIRE CONTRACT CONDITIONS

Sydney Machinery Hire agrees to hire Equipment to the Customer on terms set out in this document. If the Customer wishes to hire Equipment the Customer must complete and sign (or otherwise accept in the Manner required by Sydney Machinery Hire) a Hire Schedule and such other documents as Sydney Machinery Hire may require. Each Hire Schedule is not a separate contract but forms a part of this hire agreement between Sydney Machinery Hire and the Customer, together with any credit application, guarantee and indemnity or other contractual documents. Sydney Machinery Hire may in its absolute discretion decline to hire Equipment to the Customer at any time.

Amendment: These Hire Contract Conditions may be changed by Sydney Machinery Hire from time to time by Sydney Machinery Hire giving notice of the amendment to the Customer. Notice is deemed given (whether or not actually received) when Sydney Machinery Hire 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 www.SydneyMachineryHire.com.au; or (c) displays the amended terms at premises from which Sydney Machinery Hire conducts hire operations.

1. Interpretation of Words in this Contract;

Commencement – means the date 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; entertainment; waste management; landscaping and gardening; plumbing; fencing and covering; lifting; access; air and air compression; pumping and fluid management; welding; compaction; concrete & masonry; flooring; earthmoving; floor care and cleaning, generation and power distribution; ground equipment and shoring; ladders and scaffolding; propping; lighting; materials handling; offshore pumps; safety equipment; storage; site accommodation including portable buildings and portable toilets; traffic management including road barriers; signage; vehicles including trucks, vans and trailers, and includes tools and parts and accessories for any of the foregoing.

Hire Charge – means 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 Sydney Machinery Hire agrees. Sydney Machinery Hire may issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period.

Hire Schedule – means a document which Sydney Machinery Hire may require the Customer to sign (or accept in a way Sydney Machinery Hire requires) including particulars of the Equipment and the Hire Period and such other information as Sydney Machinery Hire may decide to require.

Sydney Machinery Hire – means the company or companies listed on the Hire Schedule.

Kilometre Charge – means the amount payable for the kilometres that a Motor Vehicle has, in the reasonable opinion of Sydney Machinery Hire, travelled during the Hire Period.

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

2. Sydney Machinery Hire Obligations

Sydney Machinery Hire 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 5 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 Sydney Machinery Hire .

3. Obligations of the Customer

The Customer must:

- 3.1 Deliver the Equipment to Sydney Machinery Hire when it is due back;
- 3.2 Return the Equipment to Sydney Machinery Hire 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 Sydney Machinery Hire or posted on the Equipment;
- 3.5 **Indemnify** Sydney Machinery Hire for all injury and/or damage caused 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 any relevant current certificate of competency and/or are fully licensed to operate or erect such Equipment;
- 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 Sydney Machinery 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;
- 3.10 Operate the Equipment with an adequate motor vehicle and/or power source;
- 3.11 Report and provide full details in writing to Sydney Machinery Hire of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.

The Customer must NOT;

- 3.12 Tamper with, damage or repair the Equipment;
- 3.13 Lose or part with possession of the Equipment;
- 3.14 Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;
- 3.15 Allow any person to drive a Motor Vehicle if the person:
 - (a) Only holds a learners or restricted driver's licence, or does not hold a full driver licence to drive that class of Motor Vehicle; or
 - (b) Is affected by drugs and/or alcohol;
- 3.16 Exceed the recommended or legal load and capacity limits of the Equipment;
- 3.17 Use or carry any illegal, prohibited or dangerous substance in or on 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. Sydney Machinery Hire may assign its rights under this agreement without the consent of the Customer or any guarantor.

5. Payments by the Customer to Sydney Machinery Hire

- 5.1 On or about Commencement (or as otherwise specifically agreed with Sydney Machinery Hire), the Customer will pay the Hire Charge.
- 5.2 Immediately on request by Sydney Machinery Hire, the Customer will pay:
 - (a) The new list price of any Equipment which is for whatever reason not returned to Sydney Machinery 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, 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 Sydney Machinery Hire supply or the Customer's use of the Equipment;
 - (e) All costs incurred by Sydney Machinery Hire 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) The Kilometre Charge and any additional Hire Charges;
 - (h) The cost of fuels and consumables provided by Sydney Machinery Hire and not returned by the Customer;
 - (i) Any expenses and legal costs (including commission payable to a commercial agent) incurred by Sydney Machinery Hire in enforcing this Contract;
 - (j) All costs of repairing or replacing tyres, including road service; and
 - (k) If any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.
- 5.3 Without limiting the ability of Sydney Machinery Hire to recover all amounts owing to it, the Customer irrevocably authorises Sydney Machinery Hire to charge any amounts owing by the Customer to any credit card or account details of which are provided to Sydney Machinery Hire .

6. Ownership / Retention of Title

- 6.1 All Equipment supplied by Sydney Machinery Hire to the Customer under this agreement shall remain the property of Sydney Machinery Hire ;

7. PPSA Law

- 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 1 year or otherwise ("security interest") then the terms of this clause 7 shall apply.
- 7.2 The Customer must do anything (such as obtaining consents and signing documents) which Sydney Machinery Hire requires for the purposes of:
 - (a) Ensuring that Kennard's security interest is enforceable, perfected and otherwise effective under the PPSA;
 - (b) Enabling Sydney Machinery Hire to gain first priority for its security interest; and
 - (c) Enabling Sydney Machinery Hire to exercise rights in connection with the security interest.

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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.

- 7.3 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 Sydney Machinery Hire (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Sydney Machinery Hire and must be expressed to be subject to the rights of Sydney Machinery Hire under this agreement. Customer may not vary sub-hire without the prior written consent of Sydney Machinery Hire (which may be withheld in its absolute discretion).
- 7.4 Customer must ensure that Sydney Machinery 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.
- 7.5 7.6. To assure performance of its obligations under this agreement, the Customer hereby gives Sydney Machinery Hire an irrevocable power of attorney to do anything Sydney Machinery Hire considers the Customer should do under this agreement. Sydney Machinery Hire may recover from Customer the cost of doing anything under this clause 7, including registration fees.

8. Damage Waiver

- 8.1 Damage Waiver is not insurance, but is an agreement by Sydney Machinery Hire that the Customer's liability for damage to the Equipment can be limited in **some circumstances only**, to an amount called the Damage Waiver Excess
- 8.2 A Basic Damage Waiver Fee is included in the Hire Charge. For Motor Vehicles, the Damage Waiver Excess is shown on the Hire Schedule. For all other Equipment, the Damage Waiver Excess is the actual recovery and repair cost of the Equipment, or 10% of the replacement cost of the Equipment, whichever is the lesser amount.

BASIC DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY in the following circumstances:

- (a) Where the Equipment is lost or stolen;
 - (b) Where the Customer has breached any clause of this Contract;
 - (c) Where the damage is caused by the negligence of the Customer or the Customer's agent;
 - (d) Where the damage is caused by vandalism, or in Sydney Machinery Hire reasonable opinion in any way whatsoever other than by the ordinary use of the Equipment by the Customer;
 - (e) Where the damage is caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object whatsoever due to insufficient clearance;
 - (f) Where the damage is to or caused by a truck mounted loading device;
 - (g) Where the damage is to tyres;
 - (h) Where the damage is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road;
 - (i) Where the damage is caused in any way by overloading.
 - (j) Where the damage is to glass.
- 8.3 The Customer may pay an additional "Vehicle Cover Plus" Damage and Theft Waiver Fee in relation to the hire of a Motor Vehicle. The Damage Waiver Excess is shown on the Hire Schedule. The Theft Waiver Excess is the same amount.

"VEHICLE COVER PLUS" DAMAGE AND THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY in the following circumstances:

- (a) Where, in the case of theft, the Customer has failed to properly secure or lock the Motor Vehicle;
 - (b) Where, in the case of theft, the Customer has failed to submit to Sydney Machinery Hire a Police Report on the theft within 7 days of the theft allegedly occurring;
 - (c) Where the Customer has breached any clause of this Contract;
 - (d) Where the theft is caused by the negligence of the Customer or the Customer's agent;
 - (e) Where the damage is caused by vandalism, or in Sydney Machinery Hire reasonable opinion in any way whatsoever other than by the ordinary use of the Motor Vehicle by the Customer; or
 - (f) Where the damage is:
 - To or caused by a truck mounted loading device;
 - To tyres;
 - To glass;
 - Caused while the Motor Vehicle is being driven on any road that is unsealed or not a public road; or
 - Caused by overloading.
- 8.4 The Customer may pay an additional Equipment Theft Waiver Fee, but only in relation to the hire of some types of Equipment (other than Motor Vehicles) as determined by Sydney Machinery Hire in its discretion from time to time. The Equipment Theft Waiver Excess will be shown on the Hire Schedule. (The Damage Waiver on such Equipment will still be the same Basic Damage Waiver under clause 8.2).

EQUIPMENT THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY FOR THEFT in the following circumstances:

- (a) Where the Customer has failed to keep the Equipment in a securely locked compound;
 - (b) Where the Customer has failed to submit to Sydney Machinery Hire a Police Report on the theft within 7 days of the theft allegedly occurring;
 - (c) Where the Customer has breached any clause of this Contract; or
 - (d) Where the theft is caused by the negligence of the Customer or the Customer's agent.
- 8.5 Where Sydney Machinery Hire determines that one or more of the circumstances in clauses 8.2, 8.3 Or 8.4 applies, the relevant Damage or Theft Waiver will NOT apply unless the Customer is able to establish otherwise to the reasonable satisfaction of Sydney Machinery Hire .

9. Customer not to Claim Damages

To the maximum extent permitted by law Sydney Machinery Hire shall not be liable to the Customer or any guarantor (or any agents or employees) whether in contract, tort or otherwise, and the Customer cannot recover from Sydney Machinery Hire compensation for any damages or loss (including for consequential loss), arising in respect of this Contract or the hiring or the use of the Equipment. NB This clause does not affect any rights the Customer may have under the Consumer Guarantees Act 1993 ("CGA"), if the Customer is a consumer as defined in the CGA.

10. Breach of Hire Contract by Customer

If the Customer breaches any clause whatsoever of this Contract, or the Customer or any guarantor becomes bankrupt, insolvent or ceases business then;

- 10.1 Sydney Machinery Hire 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 authorized to enter any premises where the Equipment is located to do so), and any Damage and/or Theft Waiver referred to in clause 6 is immediately invalidated.
- 10.2 The Customer indemnifies Sydney Machinery Hire in respect of any breach by the Customer of any provision of this Contract.

11. No Warranties

- 11.1 All warranties and conditions are excluded to the full extent permitted by law and Sydney Machinery Hire's only obligation resulting from a breach by it of any condition or warranty is limited to the supplying of the Equipment again or to the repair of the Equipment. **NB** This clause does not affect any rights the Customer may have under the CGA, if the Customer is a consumer as defined in the CGA.
- 11.2 If the Equipment is hired by the Customer for the purposes of a business, then the Customer agrees that Sydney Machinery Hire shall have no liability to the Customer under the Consumer Guarantees Act 1993 in connection with the Equipment.

12. Disputes

- 12.1 The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to Sydney Machinery 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.
- 12.2 If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to Sydney Machinery Hire), the parties agree to negotiate to settle the dispute with the assistance of Hire Industry Association of New Zealand Inc. before litigation.

13. Privacy Act 1993

The Customer and any guarantor consent to Sydney Machinery Hire obtaining such information and making such enquiries about either of them from any source, including credit reference and reporting agencies and companies related to Sydney Machinery Hire, in relation to this agreement and disclosing information about either of them to credit reference agencies, companies related to Sydney Machinery Hire, sureties, financiers of Sydney Machinery Hire, the trustee under any debenture trust deed granted by Sydney Machinery Hire 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 Sydney Machinery Hire and request correction of any errors in that information

14. Amendments

- 14.1 Sydney Machinery Hire may amend these terms and conditions by notice to the Customer, or by displaying the amended terms on its website. From the date of that notice or display, the amended terms will apply to the hire of all Equipment commencing after the date of that notice or display.

15. Payments

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

16. Governing Law

This Hire Contract is governed by the law of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

Effective - October 2012