

TERMS AND CONDITIONS OF HIRE - UPG NZ LIMITED

NOTE TO CUSTOMER

We/UPG recommend you read these terms and conditions of hire, including that:

- (a) you may be liable for any loss or damage to any Equipment hired by them;
- (b) you indemnify UPG against any loss or damage caused by the hire; and
- (c) these Terms and conditions may be amended from time to time and notice is deemed given to the Customer on provision to the customer (including by email), publication on UPG's website, and display of these terms and conditions on UPG's premises.

1. INTERPRETATION AND DEFINITIONS

Cancellation Fee means 20% of the Hire Charge in respect of cancelled forward bookings.

Customer means the person, business, organisation or entity hiring the Equipment from UPG, and their employees and approved representatives.

Equipment means any item of equipment, machinery, vehicles, tools or other items whatsoever hired by the Customer from UPG.

Hire Charge means the amounts shown on the invoice provided to the Customer to hire the Equipment, as amended from time to time, and any additional charges or costs, including:

- (a) Delivery, collection, loading, unloading and carriage costs.
- (b) Cleaning, repair and maintenance costs.
- (c) Replacement cost for any Equipment that is lost, stolen or damaged beyond economic repair as reasonably determined by UPG.
- (d) Deposit, if required.
- (e) GST which shall be paid by the Customer on all invoices. All Hire estimates are exclusive of GST.

Hire Period means the period commencing on the day the Equipment leaves UPG and continues until the day it is returned to UPG, inclusive of both days, with minimum Hire Period of one day.

Penalty Interest means 10% per annum on any Hire Charge or a part of outstanding.

Terms and Conditions mean these terms and conditions of hire contained herein.

UPG means UPG NZ Limited trading as UPG Pipe Systems.

2. UPG OBLIGATIONS

2.1. UPG shall:

- (a) Let or hire the Equipment to the Customer subject to UPG's hire price list as issued from time to time and whether the Customer has or has not received a copy.
- (b) Provide the Customer with the Equipment in good working order and clean condition.
- (c) If requested by the Customer and, where reasonably possible, collect the Equipment within 24 hours' of receipt of a written request to do so.

3. CUSTOMER OBLIGATIONS

3.1. The Customer shall:

- (a) Hire the Equipment subject to these Terms and Conditions.
- (b) Satisfy itself that the Equipment is suitable for the Customer's intended use.
- (c) Sign all documentation if required by UPG.
- (d) Ensure that any person collecting the Equipment is authorised to do so by the Customer.
- (e) Ensure the Equipment remains and is returned in a safe, serviceable and clean condition.

- (f) Ensure that the Equipment is used in the manner that it was designed. If the Equipment is used in a location or for a purpose outside its ordinary scope, the Customer must notify UPG and obtain UPG's prior written consent.
- (g) Use, transport and operate the Equipment in accordance with all relevant laws, bylaws and regulations applicable, including the Health and Safety at Work Act 2015
- (h) Ensure all persons operating the Equipment are sufficiently competent and qualified.
- (i) Use the Equipment with plugs and or sockets as fitted where the Equipment comprises electrical equipment.
- (j) Ensure the work surface is appropriate for the safe operation of the Equipment.
- (k) Insure against all risks and if requested provide a copy of the insurance policy to UPG.
- (l) Immediately notify UPG in writing of any loss, damage or breakdown to the Equipment .
- (m) Make good to UPG all loss of or damage to the Equipment.
- (n) Repair any punctures of pneumatic tyres at their own cost.
- (o) Return the Equipment at the conclusion of the Hire Period or notify UPG that the Equipment is available for collection with 24 hours' notice.
- (p) Comply with its indemnification obligations in accordance with these Terms and Conditions.
- (q) Pay the Cancellation Fee for any forward cancelled bookings cancelled within 7 days of the booking date.

3.2. The Customer shall not:

- (a) Modify, damage, lose or relinquish control of the Equipment.
- (b) Attempt to repair the Equipment without UPG's prior written approval.
- (c) Remove, deface or cover-up UPG's name plate or mark on the Equipment which indicates that it is UPG's property.
- (d) Use electrical equipment without it being correctly earthed unless it is of double insulated construction.
- (e) Operate the Equipment in any way that exceeds its recommended capacities or capabilities.
- (f) use or be under the influence of any illegal or dangerous substances while operating or handling the Equipment.

4. DEPOSIT

- 4.1. UPG may, at its discretion, require a deposit before any Equipment is provided to the Customer and, on return of the Equipment, UPG shall apply the deposit to the Hire Charge and or any other charges incurred by the Customer.

5. PAYMENT

- 5.1. Hire Charges may at UPG's sole discretion be charged on a daily, weekly or monthly basis during the Hire Period.
- 5.2. UPG may request payment of the Hire Charge in advance and before the Equipment is delivered.
- 5.3. All invoices provided by UPG are payable based on Customer's normal payment terms with UPG.
- 5.4. UPG may cancel any hire for nonpayment of any amounts due to UPG on written notice to the Customer, and all Equipment on hire to the Customer shall be returned to UPG at the Customer's expense.
- 5.5. Any remittance for part of the full amount due to UPG or offered to UPG in full and final settlement of such amount due may be accepted by UPG as a part payment on account of the amount UPG is claiming. In accepting the payment on this basis, UPG shall not surrender any of its rights and shall not be considered to have converted the cheque or the monies offered.

6. DEFAULT

- 6.1. UPG is entitled to charge Penalty Interest (both before and after any judgment) on any unpaid amounts, as it may be from time to time, until payment in full is received without prejudice to any other right or remedy available to UPG.

7. UPG'S OWNERSHIP AND NO ASSIGNMENT

- 7.1. The Equipment will always remain the property of UPG and the Customer shall not sell or hire out, charge or lend or otherwise part with the Equipment without UPG's prior written approval.

- 7.2. Any approval provided by UPG in respect of clause 7.1, shall be on the basis that the Customer accepts full responsibility for the Equipment and shall indemnify and keep indemnified UPG against all and any claims, loss, damages, liability and costs however arising from the subsequent hire.
- 7.3. UPG retains all rights of access to any location where the Equipment may be, for the purpose of repossessing any Equipment should the Customer breach any of its obligations under these Terms and Conditions. The Customer shall pay any charges incurred by UPG for repossession of the Equipment.
- 7.4. Any missing Equipment or part thereof, upon their return to UPG within 60 days of the end of the Hire Period, shall be credited to the Customer.

8. DELIVERY AND RETURNS

- 8.1. Delivery and or collection dates are estimates only and are not of the essence to these Terms and Conditions, unless specifically agreed by the parties in writing.
- 8.2. If UPG delivers the Equipment to the Customer, the Customer shall:
 - (a) Ensure there is adequate provision of labour for unloading the Equipment ;
 - (b) Indemnify UPG against any and all claims, loss or damage whatsoever arising from unloading the Equipment.
- 8.3. If the Customer or their authorised representative is not present when the Equipment is delivered, UPG shall notify the Customer in writing that the Equipment has been delivered, and such notice shall be deemed to be conclusive proof of delivery.
- 8.4. If the Customer requires UPG to collect the Equipment, they must give no less than 24 hours' notice to UPG. Following collection, UPG shall advise the Customer in writing that the Equipment has been collected, and this shall be conclusive proof only as to the collection, but not of its condition at the time of collection.
- 8.5. If the Customer returns the Equipment to UPG, UPG shall within 7 days of the return date provide a notice in writing of such return, and this shall be conclusive proof as to the Equipment returned but not of its condition at the time of return.

9. LOSS OR DAMAGE AND NO HIRE DAMAGE WAIVER

- 9.1. During the Hire Period, the Customer is solely responsible for all loss of or damage to the Equipment whatsoever caused (excepting fair wear and tear) and shall indemnify UPG against any such loss or damage including but not limited to the replacement cost.
- 9.2. Where the Equipment is not returned to UPG or where UPG is advised that the Equipment, or any part thereof has been lost or stolen or where after reasonable notice from UPG the Customer does not return the Equipment or any part thereof, the Customer shall be liable for the replacement cost and any other charges incurred by UPG.
- 9.3. All Equipment returned shall be checked by UPG and all cleaning or repair costs incurred by UPG shall be invoiced to the Customer.

10. LIMITATION OF LIABILITY

- 10.1. The Customer indemnifies UPG against all claims by any person whatsoever including but not limited to consequential and or indirect loss and for injury to persons and or damage to property caused by or in connection with or arising out of the use and or unloading of the Equipment and in respect of all costs and charges in connection therewith.
- 10.2. Although every effort is made to supply all the Equipment at the time requested, no liability or responsibility shall be accepted in respect of any late or non-delivery, mechanical breakdown or other circumstances beyond UPG's control.

11. EXCLUSION OF WARRANTIES AND LIABILITIES

- 11.1. The Customer is entitled to certain rights and remedies under the Consumer Guarantees Act 1993.
- 11.2. For the avoidance of doubt, where the Equipment is hired for business purposes, the Consumer Guarantees Act 1993 does not apply.
- 11.3. To the extent that the Consumer Guarantees Act 1993 does apply, UPG makes no representation and gives no warranties other than those set out in these Terms and Conditions.

12. PERSONAL PROPERTIES SECURITIES ACT 1999 (PPSA)

- 12.1. If a security interest for the purposes of the PPSA arises in relation to the Equipment, the following shall apply:
 - (a) The Customer acknowledges that the hire may create, and the acquisition does create a security interest in the Equipment to secure full payment of all monies owing to UPG and the performance of the Customer of all its obligations to UPG.
 - (b) UPG may register its security interest.

- (c) The Customer must do anything that UPG requires for the purposes of ensuring UPG's security interest is enforceable and perfected under the PPSA, enabling UPG to gain first priority for its security interest and enabling UPG to exercise its rights in connection with the security interest.

12.2. Nothing in sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, and 132 of the PPSA apply.

12.3. The Customer must not grant a security interest in the Equipment to anyone else.

13. RIGHT TO TERMINATE

13.1. The Customer reserves the right to terminate hire on written notice to UPG if UPG fails to comply with any term of the Terms and Conditions and does not remedy any breach within a reasonable period. The Customer in this case is entitled to receive a refund of charges paid pro-rated to reflect the given period of breach.

13.2. UPG reserves the right to immediately terminate the hire on written notice to the Customer if:

- (a) the Customer breaches a material term of these Terms and Conditions and does not remedy the breach within a reasonable period;
- (b) the Customer fails to make payment when due;
- (c) UPG, acting reasonably, believes the Customer has engaged in conduct that compromises the safety, integrity, or lawful use of the Equipment;
- (d) UPG, acting reasonably, believes there is risk associated with the Equipment due to adverse weather or work conditions; and
- (e) Any step is taken to appoint a receiver, liquidator, manager, trustee in administration, provisional liquidator or the like in respect of the Customer.

13.3. Upon termination, the Customer must:

- (a) cease use of the Equipment and return it to UPG; and
- (b) pay all Hire Charges and any other monies due to UPG at the date of termination.

14. DISPUTES

14.1. The parties agree to take all reasonable steps to negotiate in good faith and resolve any disputes arising from the hire and use of the Equipment.

14.2. If the parties are unable to resolve a dispute independently, they agree to seek assistance from the Hire Industry Association of New Zealand Incorporated, before pursuing any other form of dispute resolution.

14.3. For the avoidance of doubt, disputes in relation to Hire Charges must be raised in writing to UPG within 7 days of any invoice being issued to the Customer. If no communication is received within this period, the Hire Charges are deemed to be accepted by the Customer.

15. PRIVACY ACT 2020

15.1. The Customer acknowledges that personal information may be collected for the purposes of administering the hire, including credit checks.

15.2. In accordance with the Privacy Act 2020, the Customer has the right to request and access any personal information held by UPG in relation to the hire.

16. GOVERNING LAW

16.1. These Terms and Conditions are governed by the law of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

Company Name: _____

I/We, the Customer, declare that I/we have read and accept the terms and conditions of the hire agreement as set out in attached terms and conditions of hire:

SIGNED by the Customer: _____

Full name _____ Date _____