

PRECISE BUILDERS LIMITED (TRADING AS EASY TOW HIRE)

Terms & Conditions for Digger and Trailer Hire

1. General

- 1.1 The following Terms set out the terms and conditions upon which the Hirer may hire a Vehicle (being a digger or trailer) from the Owner.
- 1.2 These Terms supersede all prior agreements between the Owner and Hirer and no variation of these Terms shall apply unless accepted in writing by the Owner.
- 1.3 These Terms do not attempt to exclude the Hirer's rights under the CGA.
- 1.4 If the Hirer is in trade, the Hirer acknowledges and agrees that the statutory guarantees and implied terms, covenants and conditions contained in the CGA do not apply and contracts out of the CGA in accordance with section 43 of the CGA.
- 1.5 Where the Hirer acquires the Vehicle in trade, the Owner and the Hirer agree to contract out of the following sections of the FTA in accordance with section 5D of the FTA:
 - a. Section 9: Misleading and deceptive conduct generally;
 - b. Section 12A: Unsubstantiated Representations;
 - c. Section 13: False or misleading representations.
- 1.6 For the avoidance of any doubt, these Terms are not intended to be a consumer credit contract or consumer lease for the purposes of the Credit Contracts and Consumer Finance Act 2003.
- 1.7 The Owner may at any time and at its sole discretion, amend these Terms on the basis that the amended terms shall only apply to Hire Contracts created following such amendment.

2. Definitions & Interpretation

- 2.1 For the purposes of these Terms and all transactions, the following definitions shall apply:

"Bond" means a bond of \$500 payable to the Owner as set out in the Booking Form or otherwise agreed between the parties.

"Booking Form" means the online booking form or other document agreed between the Owner and the Hirer setting out the key terms relating to the hire of the Vehicle;

"CGA" means the Consumer Guarantees Act 1993;

"Default Interest Rate" means 5% per annum greater than the business overdraft interest rate at the Owner's trading bank;

"Delivery Charges" means the charge for the delivery of the Vehicle as set out in the Booking Form or as otherwise agreed between the parties.

"FTA" means the Fair Trading Act 1986;

"GST" means goods and services tax payable under the Goods and Services Tax Act 1985;

"Hire Charges" means the charges for the hire of the Vehicle as agreed between the Owner and the Hirer;

"Hire Contract" means any contract for the hire of a Vehicle made between the Owner and the Hirer and governed by these Terms;

"Hire Period(s)" means the period of the hire of the Vehicle, as more particularly described in clause 4;

"Hirer" means the person hiring the Vehicle including the Hirer's successors and personal representatives;

"HSWA" means the Health and Safety at Work Act 2015;

"Owner" means Precise Builders Limited trading as Easy Tow Hirer;

"PPSA" means the Personal Property Securities Act 1999;

"Vehicle" means the trailer or digger hired by the Hirer from the Owner as described in the Booking Form.

- 2.2 For the purpose of these Terms:

- a. Headings are included for convenience of reference only and do not affect the interpretation of these Terms;
- b. References to clauses are to clauses of these Terms;
- c. These Terms and the Hire Contract are governed by the laws of New Zealand. Any reference to New Zealand legislation shall include any regulations, re-enactment of, or amendment to that legislation and all legislation passed in substitution for that legislation;
- d. Any reference to a person includes an individual, company, corporation, partnership, firm, joint venture, association or trust.

3. Booking Form

- 3.1 The Owner is not obliged to accept and approve an online booking for the hire of a Vehicle.
- 3.2 In the event that the Owner is unable to provide the Vehicle to the Hirer, the Hirer may cancel the booking by giving written notice to the Hirer and refund any payments made by the Hire and the Hirer acknowledges that it will have no further claims against the Owner.

4. Hire Charges & Hire Period

- 4.1 The Hire Charges are inclusive of GST and are based on the Hire Period as set out in the Booking Form or as otherwise agreed between the parties.
- 4.2 The Hire Period will continue for the period that has been agreed between the Owner and Hirer as set out in the Booking Form or as otherwise agreed between the parties.
- 4.3 The Hire Periods are as follows:
 - a. Full Day (7:30am-5:00pm)
 - b. Half Day (1:30am – 12:00pm or 12:30pm – 5:00pm)
 - c. Weekend Hire (Up to 16 hours: 5:00pm Friday pickup – 5:00pm Sunday return)
 - d. By the hour in the case of digger and operator hire.

4.4 The Hirer will return the Vehicle to the designated bay at 374 Youngson Road, Whakamarama, at the end of the Hire Period in clean and tidy condition. In the case of a trailer, the Hirer must lock the trailer and place the keys in the lockbox as instructed by the Owner.

4.5 Until such time as the Vehicle is returned to the Owner, the Hirer will pay to the Owner overdue time charges at a rate of \$25 inc. GST per hour until the Vehicle is returned.

4.6 The Delivery Charges are in addition to Hire Charges. The Delivery Charges are inclusive of GST as set out in the Booking Form or as otherwise agreed between the parties.

5. Payment

5.1 The Hirer shall pay the Hire Charges and Delivery Charges (if applicable) in full and by credit card upon submitting the Booking Form prior to commencement of the Hire Period.

5.2 The Hirer authorises the Owner to place a hold on the Hirer's nominated credit card for the amount equivalent to the Bond for a period of 7 days from the date upon which the Hirer submits the online Booking Form.

5.3 The hold at clause 5.2 will be removed if the Vehicle is returned in accordance with these Terms after paying (by way deduction) any amounts that are owing to the Owner under all Hire Contracts between the Owner and the Hirer.

6. Additional Payments

6.1 In addition to the Hire Charges, Bond and Delivery Charges (if applicable), the Hirer shall on demand pay:

- a. Any overdue time charges as set out in clause 4.5;
- b. The cost of the cleaning the Vehicle if the Hirer has failed to return the Vehicle to the Owner in the condition required by these Terms;
- c. The cost of recovering possession of the Vehicle;
- d. The cost of any fuel used by the Hirer in the operation of the Vehicle and not replaced on return of the Vehicle;
- e. The cost of repair and/or replacement of any of the parts of the Vehicle required due to the Hirer's use of the Vehicle;
- f. Any costs incurred in enforcing any of these Terms including any legal fees incurred by the Owner;
- g. Any insurance excess payable under clause 10.2;
- h. A late fee of \$200 inclusive of GST in the event that the Hirer takes the incorrect trailer.

6.2 If any amount owing by the Hirer is not paid on its due date, without limiting the Owner's rights or remedies, interest will accrue on the outstanding amounts at the Default Interest Rate.

7. Hirer Warranties

7.1 The Hirer warrants that:

- a. All information provided to the Owner is true and correct in all respects;
- b. The operator of the Vehicle holds a current New Zealand driver licence;
- c. The Hirer's towing vehicle is road-worthy and insured under a current comprehensive insurance policy;
- d. In the event of an accident involving the vehicle, the Hirer will immediately notify the Owner and disclose all relevant information upon request by the Owner;

- e. It will take all reasonable steps to ensure that the Vehicle will be protected from theft and vandalism and while it is not in use, secured by the wheel lock and tow ball lock provided by the Owner;
- f. All persons who use the Vehicle shall be competent and qualified to use the Vehicle, and shall follow any directions of the Owner, local authorities and manufacturer of the Vehicle relating to the use and safety of the equipment and shall comply with the obligations in relation to the use and control of the Vehicle and the persons using the Vehicle in accordance with the HSWA.

8. Hirer Acknowledgements

8.1 The Hirer acknowledges and agrees that:

- a. The Hirer has received, read and understood any specifications of the Vehicle.
- b. The Hirer has received, read and understood any health & safety guidance supplied by the Owner in respect to the Vehicle (in the case where the Vehicle is a digger hired without an operator arranged by the Owner).
- c. It is its responsibility to ensure that:
 - i. The Vehicle is suitable for its purposes;
 - ii. The use of the Vehicle will not be in breach of any restriction or covenant or any other legal or regulatory requirement.
- c. The Hirer is responsible for all fines and penalties relating to traffic offences, tolls, and parking relating to the use and towing of the Vehicle.

9. Use and Operation of the Vehicle

9.1 The Hirer shall:

- a. Pay for all fuel used in the operation of the Vehicle (except in the case where the Hirer has hired a digger and operator);
- b. Use the Vehicle only for its intended use;
- c. Use the Vehicle in accordance with any relevant laws, regulations and requirements;
- d. Operate the Vehicle in accordance with the Owner's and manufacturer's recommendations;
- e. Operate the vehicle carefully and competently at all times;
- f. Obtain at its own expense all certificates, licences and approvals that may be required for the hire of the Vehicle;
- g. Ensure that the water, oil and fuel are maintained at the correct level;
- h. Use the correct fuel for the Vehicle;
- i. Maintain the tyres of the Vehicle at the recommended pressure.

9.2 The Hirer shall not:

- a. Operate the Vehicle outside its agreed purposes or rated capacity or in a manner likely to cause undue wear and tear;
- b. Use or allow the Vehicle to it to be operated, in breach of the Land Transport Act 1988 or any other Act, regulations, rules or bylaws relating to road traffic;

- c. Allow the Vehicle to be driven by any person who is not named in the Hire Form or authorised in writing by the Owner;
- d. Allow the Vehicle to be driven by any person who does not have a full valid driver licence for the Vehicle or who is not properly skilled, competent, qualified or licensed to use it;
- e. Allow the Vehicle to be driven on any surface likely to damage the Vehicle;
- f. Allow the Vehicle to be used in connection with any illegal activity;
- g. Operate the Vehicle whilst it is in a defective, damaged or dangerous condition;
- h. Exceed the recommended or legal load and capacity limits of the Vehicle;
- i. Use the Vehicle under the influence of drugs or alcohol;
- j. Modify or alter the Vehicle.

10. Insurance

- 10.1 The Owner shall arrange insurance in respect of loss, theft or damage to the Vehicle.
- 10.2 The Hirer shall pay any insurance excess payable following a claim for loss, theft or damage to the Vehicle but shall not otherwise be liable (subject to clauses 11 and 12).

11. Insurance Exclusions

- 11.1 The insurance cover at clause 10.1 does not apply to any damage or loss or theft of the Vehicle caused by:
 - a. The Hirer failing to comply with these Terms, including the Hirer failing to use or operate the Vehicle in compliance with these Terms;
 - b. The Hirer using or allowing the Vehicle to be used when a mechanical or electrical failure or breakdown has occurred where the Hirer should have been aware of that;
 - c. The Hirer wilfully or recklessly damaging the Vehicle (or allowing it to be damaged);
 - d. The Hirer (or other person authorised to operate the Vehicle) committing a traffic offence while driving the Vehicle;
 - e. The Vehicle being loaded in excess of the manufacturer's specifications.

12. Indemnity

- 12.1 Where the insurance cover does not apply pursuant to clause 11.1, the Hirer indemnifies the Owner against any loss, damage, liabilities, costs or expenses in respect of the loss or theft of the Vehicle, any damage caused to the Vehicle or to the Owner or any third party or third party's property arising from the hire or use of the Vehicle by the Hirer.
- 12.2 The insurance cover effected by the Owner does not cover, and the Hirer shall be liable in respect of, any of the following:
 - a. Any overhead damage caused to the Vehicle;
 - b. Any puncture, cut or bursting of any tyre, or damage to any tyre by application of brakes; or
 - c. Any wear and tear to the vehicle (other than reasonable wear and tear).

13. Access

- 13.1 The Hirer grants the Owner and its employees, representatives and agents access to any of its premises at which the Vehicle is located and the Vehicle (whether or not during business hours) to deliver, collect, inspect, test, adjust, maintain, repair or replace the Vehicle, or to exercise any of its rights, remedies or obligations under these Terms (including but not limited to collecting the Vehicle when it has not been returned by the end of the agreed Hire Period).

14. Assignment

- 14.1 The Hirer shall not assign any of the Hirer's rights or interests under the Hire Contract to any person, and shall not assign, sublet, charge or part with possession of the Vehicle or any part of it.
- 14.2 The Owner may at any time assign its rights or interests under the Hire Contract, or any part thereof, (whether absolutely, or by way of security) or transfer its obligations or any part thereof under the Hire Contract, to any person.

15. Title and Security Interest

- 15.1 The Hirer acknowledges that each Hire Contract is a contract for the right to use the Vehicle only and the Owner at all times retains ownership of the Vehicle.
- 15.2 The parties acknowledge that the hire of the Vehicle may create a security interest in the Vehicle in favour of the Owner under the PPSA (in particular where the Vehicle is hired for a period of more than 1 year) and that in those circumstances the Hire Contract creates a security agreement for the purposes of the PPSA. The Owner may register a financing statement in respect of its security interest in the Vehicle.
- 15.3 The Hirer shall do everything that the Owner reasonably requires to ensure that the Owner has a perfected security interest in the Vehicle (including providing and updating any debtor information). The Hirer agrees that it will not register a financing change statement or a change demand in respect of the Vehicle.
- 15.4 The following sections of the PPSA shall not apply to any Hire Contract or any security interest and the Hirer waives its rights under the following sections of the PPSA: 114(1)(a), 116, 120(2), 121, 122, 125, 129, 131, 133, and 148.

16. Indemnities

- 16.1 The Owner shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Owner of these Terms.
- 16.2 The Hirer indemnifies the Owner against any loss, damage, liabilities, costs or expenses in respect of any breach of these Terms by the Hirer.

17. Right to Terminate

- 17.1 The Owner shall have the right to terminate the Hire Contract by notice with immediate effect if the Owner fails to comply with any of these Terms.

- 17.2 The Owner may terminate the Hire Contract by notice with immediate effect if:
- a. The Hirer breaches any of these Terms;
 - b. The Owner believes on reasonable grounds that the Vehicle may be at risk for any reason whatsoever, including the manner of its use by the Hirer, adverse weather or work conditions.
 - c. The Hirer commits an act of bankruptcy or is declared bankrupt;
 - d. The Hirer becomes insolvent;
 - e. The Hirer is subject to the appointment of a receiver, manager, liquidator in respect of the Hirer or any of the Hirer's assets.
- 17.3 Where the Owner terminates the Hire Contract pursuant to clause 17.2, the Hirer indemnifies the Owner against and shall pay to the Owner upon demand, any cost (including legal costs), claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner acting to recover the Vehicle or monies payable by the Hirer pursuant to these Terms.
- 17.4 Termination will not affect any rights that have accrued to the date of termination and in particular the Owner's right to recover any unpaid Hire Charges and any other loss, damage, costs and expenses provided for in these Terms or any of these Terms which expressly or by implication survives termination.
- 17.5 The Owner does not waive a right, power or remedy if it fails to exercise or delay in exercising the right, power or remedy.
- 17.6 The rights powers and remedies provided in these Terms are cumulative and not exclusive of any rights powers or remedies provided by law.
- 17.7 If any provision of the Hire Contract is or becomes invalid, void, illegal or unenforceable, that will not affect or impair the legality, validity or enforceability of any other provision of the Hire Contract.

Notices

- 18.1 Notice shall be deemed served on the Hirer under these Terms by email (effective upon transmission) or post (effective 2 Working Days after sending) to the addresses specified on the Booking Form.

19. Privacy Act 1993

- 19.1 The Owner requires personal information and will collect and store personal information for the purpose of evaluating the hire of the Vehicle by the Hirer.
- 19.2 The Hirer can access and seek correction of any personal information by contacting the Owner.
- 19.3 The Hirer agrees that its personal information may be used by the Owner to advise the Hirer's other goods and services.
- 19.4 The Hirer authorises the Owner:
- a. To collect, retain and use information about the Hirer or such other signatory from any person for the purpose of assessing the Hirer's or such other signatory's creditworthiness;