



# Flexhire Terms and Conditions

## Terms & Conditions

### 1. DEFINITIONS

- 1.1. "Customer" means the Customer, any person acting on behalf of and with the actual or apparent authority of the Customer, or any person purchasing Hire Equipment and services from FLEXHIRE.
- 1.2. "Contract" and "this Agreement" means this agreement including the front page and all variations to this agreement agreed to in writing by the parties including all requests by the Customer that FLEXHIRE agrees to in writing notwithstanding the Customer does not sign a formal variation.
- 1.3. "Costs" includes but is not limited to all fees, charges, interest, commission and any other costs involved in settlement and/or recovery of any amount owing to FLEXHIRE. This includes any debt collection charges and legal fees along with expert opinions and mediation fees.
- 1.4. "Equipment Hire Term" means the length of the Equipment hire as specified on the front of this agreement and including any extension of time granted by FLEXHIRE.
- 1.5. " FLEXHIRE" shall mean Flexhire Limited (7123113), its successors and assigns or any person acting on behalf of and with the authority of Flexhire Limited (7123113).
- 1.6. "Hire Equipment" shall mean:
  - 1.6.1. All Hire Equipment of the general description specified on the front of this agreement and supplied by FLEXHIRE to the Customer; and
  - 1.6.2. All Hire Equipment actually supplied by FLEXHIRE to the Customer notwithstanding they may not properly be described; and
  - 1.6.3. All insurance, repair, services and other Hire Equipment and Services supplied in the course of the Equipment Hire Term; noting that
  - 1.6.4. The above descriptions may overlap but each is independent of and does not limit the others.
- 1.7. "Order" means that part of the Contract that relates to a particular supply of Hire Equipment by the Customer on Terms and Conditions as set out in the Contract and in any additional Front Page or equivalent Order including the details as per the Front Page agreed by telephone or email.
- 1.8. "Price" shall mean the cost of the Hire Equipment and all related costs and services as agreed between FLEXHIRE and the Customer and includes all disbursements e.g. charges FLEXHIRE pay to others on the Customer's behalf subject to clause 4 of this contract.

### 2. ACCEPTANCE

- 2.1. Any instructions received by FLEXHIRE from the Customer for the supply of Hire Equipment and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.
- 2.2. The Hire Equipment must be used only in the intended manner and in a safe work site by appropriately licenced and experienced persons. Any damage to the Hire Equipment must be repaired

### 3. COLLECTION AND USE OF INFORMATION

- 3.1. The Customer authorises FLEXHIRE to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Hire Equipment and Services provided by FLEXHIRE to any other party.
- 3.2. The Customer authorises FLEXHIRE to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3. Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

### 4. PRICE ESTIMATES

- 4.1. Where no price is stated in writing or agreed to orally the Hire Equipment and Services shall be deemed to be supplied at the current amounts as such Hire Equipment and Services are supplied by FLEXHIRE at the time of the contract. The parties agree to record the Price in writing at the earliest opportunity in this instance and on each occasion of additional Hire Equipment being requested.
- 4.2. Provision of a Price Estimate is not a promise to provide the Hire Equipment.
- 4.3. The price may be increased by the amount of any reasonable increase in the cost of supply of the Hire Equipment and Services that is beyond the control of FLEXHIRE between the date of the contract and delivery of The Hire Equipment and Services.
- 4.4. Unless expressly included in any quotation or Order, Hire Equipment and Services and Services Tax and other taxes and duties assessed or levies in connection with the supply of the Hire Equipment and Services and Services to the Customer are not included in the price and will be the responsibility of the Customer or, where the payment of such taxes or duties is the responsibility of FLEXHIRE at law, the price will be increased by the amount of such taxes or duties.

### 5. PAYMENT

- 5.1. Unless otherwise specified, payment for Hire Equipment and Services shall be made in full no later than:
  - 5.1.1. on supply for Customers without an Account;
  - 5.1.2. the 20th day of the month following supply for Customers with an Account. ("the due date").
- 5.2. Interest may be charged on any amount owing after the due date at the rate of 5% per month and will be calculated on a daily basis on the outstanding balance until payment is received in full by FLEXHIRE.
- 5.3. All costs of or incurred by FLEXHIRE as a result of a default by the Customer including, but not limited to, administration charges, debt collection costs and legal costs as between solicitor and client are payable by the Customer.
- 5.4. FLEXHIRE may choose to accept or not accept any payment method.
- 5.5. A deposit or bond may be required as set out on the Front Page.
- 5.6. Where a bond or deposit is held all amounts owing can be deducted from the bond or deposit by FLEXHIRE at its sole discretion.



- 5.7. If the Customer defaults in any payment or 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 Customer or if a receiver is appointed for all or any assets of the Customer, FLEXHIRE may cancel any Order without prejudice to any other rights it may have and payment for all completed Orders will immediately become due.
- 6. QUOTATION**
- 6.1.** Where a quotation is given by FLEXHIRE for Hire Equipment and Services:
- 6.1.1.** Unless otherwise agreed the price stated on the quotation shall be valid for thirty (30) days from the date of issue and is subject to the availability of the Hire Equipment; and
- 6.1.2.** The quotation shall be exclusive of Hire Equipment and Services and services tax unless specifically stated to the contrary;
- 6.1.3.** FLEXHIRE reserves the right to alter or withdraw the quotation at any time before acceptance. Withdrawal or alteration of the quotation need not be in writing.
- 6.1.4.** Your acceptance of our quotation/offer must be confirmed in writing prior to the supply of the Hire Equipment. If there is no written acceptance but the Customer has received the quotation/offer and then instructs FLEXHIRE to provide the Hire Equipment then such instruction to supply shall be deemed to be acceptance of the quotation/offer.
- 6.1.5.** Once our quotation/offer has been accepted, no variation to the price or to these terms and conditions shall be valid unless agreed in writing by FLEXHIRE.
- 6.2.** Where Hire Equipment and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Hire Equipment and Services.
- 6.3.** Time will NOT be of the essence in respect of the delivery of Hire Equipment.
- 7. HIRE TERM**
- 7.1.** The hire term is as agreed on the front page and any late return or extension will be for an additional period. This means if the Hire Equipment is returned late FLEXHIRE can charge an additional hire period as indicated on the Front Page.
- 8. USE**
- 8.1.** All Hire Equipment must be used safely and in a manner which will not cause damage to the Hire Equipment.
- 8.2.** The Customer must inform FLEXHIRE in advance of the location of the use of the Hire Equipment or where that is impossible, keep FLEXHIRE informed at the earliest opportunity of the location of its Hire Equipment.
- 8.3.** The Hire Equipment provided pursuant to these Terms is provided for use in New Zealand only and not to be exported or transported elsewhere, directly or indirectly.
- 8.4.** If the Customer has a particular intended use that may cause damage the Customer must pay a bond and specifically obtain FLEXHIRE's prior written consent to the specific use of the Hire Equipment.
- 8.5.** The Customer is responsible for ensuring that the Hire Equipment is not damaged.
- 8.6.** Any damage must be reported to FLEXHIRE and we will arrange repair of the Hire Equipment at your cost. If the Customer requires replacement Hire Equipment we will supply this at our discretion.
- 9. AGENCY**
- 9.1.** The Customer authorises FLEXHIRE to contract either as principal or agent for the provision of Hire Equipment and Services that are the matter of this contract.
- 9.2.** There is no guarantee that the Hire Equipment will be of a specific brand or model unless you specify a particular brand or model on the front page as "essential".
- 9.3.** Where FLEXHIRE enters into a contract of the type referred to in clause 7.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under the Contract.
- 10. ASSIGNMENT**
- 10.1.** The Customer will not assign all or any of its rights or obligations or any debt (or part thereof) under these Terms without the written consent of FLEXHIRE.
- 10.2.** FLEXHIRE may assign or sub-contract any part of the provision of the Hire Equipment and Services which are to be performed under the Contract.
- 10.3.** In respect of any assignment by FLEXHIRE pursuant to this clause, the Assignee will be entitled to the full rights of FLEXHIRE.
- 11. RISK**
- 11.1.** From the time of collection by the Customer or delivery to the Customer by FLEXHIRE, risk in all Hire Equipment supplied will pass to the Customer and any loss, damage or deterioration to the Hire Equipment and Services will be borne by the Customer.
- 11.2.** The Customer will notwithstanding any loss, damage or deterioration to the Hire Equipment and Services remain liable to pay for the Hire Equipment and Services.
- 11.3.** Unless specified in writing, FLEXHIRE gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the Hire Equipment and Services.
- 11.4.** Where applicable, manufacturer's warranties will attach to the Hire Equipment.
- 11.5.** Where Hire Equipment and Services supplied are defective in terms of any condition warranty or guarantee or otherwise do not conform to the Order description (other than as to quantum), FLEXHIRE will at its discretion replace or repair any faulty Hire Equipment and Services. If the Customer fails to inform FLEXHIRE of defective Hire Equipment or Services immediately the defect is discovered, FLEXHIRE has no liability.
- 11.6.** In no circumstances does FLEXHIRE have liability for consequential damages. If the Customer is working with any sensitive, expensive or high-risk materials or there is any sensitivity to defects the Customer should not utilise Hire Equipment.
- 11.7.** The Customer will be solely responsible for obtaining any necessary permits under and in compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the operation, transportation and supply of the Hire Equipment and Services.
- 12. INDEMNITY**



- 12.1. The Customer indemnifies FLEXHIRE and agrees to keep FLEXHIRE indemnified against all claims and loss of any kind whatsoever however caused or arising in connection with the Hire Equipment and Services.
- 13. SUITABILITY**
- 13.1. The Customer must satisfy itself that the Hire Equipment and Services as ordered are fit and suitable for the purpose for which they are required.
- 13.2. FLEXHIRE makes no Warranties or representation and expressly negates any implied or expressed condition that the Hire Equipment will be suitable for a particular purpose or use for which the Customer may use them.
- 13.3. The Customer accepts all risk and responsibility for consequences arising from the use of the Hire Equipment or provision of Services whether singularly or in combination with other Hire Equipment and Services.
- 14. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)**
- 14.1. Title in any Hire Equipment supplied by FLEXHIRE is retained by FLEXHIRE. Until all sums due to FLEXHIRE by the Customer have been paid in full, and the Hire Equipment has been returned in the same condition as it was provided to the Customer, or has been restored to that condition and the repair costs paid by the Customer, FLEXHIRE has a security interest in all Hire Equipment and Services.
- 14.2. FLEXHIRE may pursue the value of the Hire Equipment and all costs at its sole election.
- 14.3. The parties acknowledge that the Customer will return the Hire Equipment or will be liable for the full replacement value of the Hire Equipment as stated on the Front Page and in any variation to this Contract.
- 14.4. The Customer hereby gives FLEXHIRE a security interest in all of the Customer's present and after-acquired property that FLEXHIRE has performed services on or to or in which Hire Equipment and Services or materials supplied or financed by FLEXHIRE have been attached or incorporated.
- 14.5. The Customer is obliged to cooperate with registration and actioning of the security interest. The Customer is obliged not to do anything to prevent registration or perfection of the security interest or enforcement and collection action in accordance with this contract.
- 14.6. The Customer undertakes:
- 14.6.1. to sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which FLEXHIRE may reasonably require to enable registration of financing statements or financing change statements on the Personal Property Securities Register ("PPSR");
- 14.6.2. not to register a financing change statement as defined in section 135 of the PPSA or make a demand to alter a financing statement pursuant to section 162 of the PPSA in respect of the Hire Equipment and Services without the prior written consent of FLEXHIRE;
- 14.6.3. to give FLEXHIRE not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details including but not limited to changes in the Customer's address, facsimile number, email address; trading name or business practice);
- 14.6.4. to pay all costs incurred by FLEXHIRE in registering and maintaining any financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce any security interest created by these Terms including executing subordination agreements;
- 14.6.5. to be responsible for the full costs incurred by FLEXHIRE (including actual legal fees and disbursements on a solicitor/client basis) in obtaining an order pursuant to section 167 of the PPSA; and
- 14.6.6. to waive any rights it may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.6.7. Pursuant to section 148 of the PPSA, unless otherwise agreed to in writing by FLEXHIRE, the Customer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
- 14.6.8. To the maximum extent permitted by law, the Customer waives its rights and, with FLEXHIRE's agreement, contracts out of its rights under sections referred to in sections 107(2), 8(e) and (g) to (l) of the PPSA.
- 14.6.9. The Customer agrees that nothing in section 113, 114(1)(a), 117(1)(c), 133 and 134 of the PPSA will apply to these Terms, and, with FLEXHIRE's agreement, contracts out of such sections.
- 14.6.10. The Customer and FLEXHIRE agree that section 109(1) of the PPSA is contracted out of in respect of particular Hire Equipment and Services if and only for as long as FLEXHIRE is not the secured party with priority over all other secured parties in respect of those Hire Equipment and Services and Services.
- 14.6.11. The Customer agrees that immediately on request by FLEXHIRE the Customer will procure from any third parties such agreement and waivers as FLEXHIRE may at any time require to protect FLEXHIRE's security position.
- 15. DEFAULT**
- 15.1. The following shall constitute defaults by the Customer:
- 15.1.1. Non-payment of any sum by the due date.
- 15.1.2. The Customer intimates that it will not pay any sum by the due date.
- 15.1.3. Any Hire Equipment is seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Hire Equipment and Service.
- 15.1.4. Any Hire Equipment in the possession of the Customer are materially damaged while any sum due from the Customer to FLEXHIRE remains unpaid.
- 15.1.5. The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or landlord distains against any of the Customer's assets.
- 15.1.6. A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 15.1.7. Any material adverse change in the financial position of the Customer.
- 16. DISPUTES**
- 16.1. No claim relating to Hire Equipment or Services and costs will be considered unless made within seven (7) days of the Term Expiry Date.



- 16.2.** If the parties cannot agree on a solution the Customer agrees to attend a meeting with FLEXHIRE to negotiate a solution in good faith and if the parties cannot agree on a solution to attend mediation to resolve the dispute only if the Customer establishes (in a mediator's opinion) a reasonable basis for the dispute being investigated.
- 16.3.** Nothing in this clause prevents FLEXHIRE from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.
- 17. LIABILITY**
- 17.1.** The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon FLEXHIRE which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on FLEXHIRE, FLEXHIRE 's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 17.2.** Except as otherwise provided by clause 13.1 FLEXHIRE shall not be liable for
- 17.2.1.** Any loss or damage of any kind whatsoever, arising from the supply of Hire Equipment and Services by FLEXHIRE to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Hire Equipment and Services provided by FLEXHIRE to the Customer; and
- 17.2.2.** The Customer shall indemnify FLEXHIRE against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of FLEXHIRE or otherwise, brought by any person in connection with any matter, act, omission, or error by FLEXHIRE its agents or employees in connection with the Hire Equipment and Services.
- 17.3.** If, contrary to the disclaimer of liability contained in these terms and conditions of trade, FLEXHIRE is deemed to be liable to the Customer, following and arising from the supply of Hire Equipment by it to the Customer, then it is agreed between FLEXHIRE and the Customer that such liability is limited in its aggregate to \$500.00.
- 18. HEALTH AND SAFETY AT WORK ACT 2015**
- 18.1.** The Customer will be responsible for the actions of its employees in terms of section 36 of the Health and Safety at Work Act 2015 ("HSWA"). The Customer will be responsible for compliance with the HSWA in respect of the Customer's site and agrees to ensure the site is safe prior to commencement of any work that may involve any hazards.
- 18.2.** If the Customer identifies any issues or maintenance that is due on Hire Equipment the Customer agrees that they are obligated to inform FLEXHIRE management in writing.
- 18.3.** Any non-standard use of the Hire Equipment must similarly be disclosed to management so that appropriate maintenance repair and inspection of the Hire Equipment can be carried out.
- 19. CONSUMER GUARANTEES ACT**
- 19.1.** The guarantees contained in the Consumer Guarantees Act 1993 are excluded where The Customer acquires Hire Equipment and Services from FLEXHIRE for the purposes of a business in terms of section 2 and 43 of that Act.
- 20. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**
- 20.1.** If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for FLEXHIRE agreeing to supply Hire Equipment and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to FLEXHIRE the payment of any and all monies now or hereafter owed by the Customer to FLEXHIRE and indemnify FLEXHIRE against non-payment by the Customer.
- 20.2.** Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract.
- 20.3.** The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.
- 21. DELIVERY**
- 21.1.** Where the Front Page makes provision for delivery then delivery will take place at the place stated on the Front Page. If no place is indicated then delivery will be made at the physical address of the Customer set out on the front page or Application for Credit.
- 21.2.** If the Customer is not in a position to accept or take delivery of the Hire Equipment and Services as scheduled the Customer will be responsible for all additional charges caused thereby.
- 21.3.** Delivery of Hire Equipment and Services by FLEXHIRE to a carrier is deemed to be delivery to the Customer.
- 21.4.** The Customer must notify FLEXHIRE within two working days of delivery of any shortfall in Hire Equipment and Services supplied, time being of the essence.
- 21.5.** FLEXHIRE will not be responsible for any delay in the delivery of Hire Equipment and Services and the Customer will not be entitled to any compensation if delivery of Hire Equipment is not carried out on the dates specified. If dates are important to the project you need to arrange collection of Hire Equipment.
- 22. MISCELLANEOUS**
- 22.1.** FLEXHIRE shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 22.2.** Failure by FLEXHIRE to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations FLEXHIRE has under this contract.
- 22.3.** If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.4.** FLEXHIRE shall be entitled to rely on the accuracy of and shall not be obliged to check any information supplied by you.
- 22.5.** FLEXHIRE may at any time refuse an order by the Customer or decline to approve any application by the Customer for any reason whatsoever
- 22.6.** Clerical errors or omissions, whether in computation or otherwise in the quotation, acknowledgement or invoice will be subject to correction.



- 22.7.** These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Hire Equipment and Services.
- 22.8.** The existence of an account by the Customer with FLEXHIRE does not automatically entitle the Customer to credit in the future.
- 22.9.** FLEXHIRE may from time to time by written notice to the Customer amend, add to or revoke the terms and conditions covered by the Contract or may substitute any new terms and conditions and such amendment, addition or substitute terms and conditions will be binding on the Customer fourteen days after the date of delivery of the notice or the next Order that is supplied, whichever is earlier.
- 22.10.** Neither FLEXHIRE nor the Customer will be liable to the other for any breach of these Terms by any force majeure or insurable incident which is beyond the reasonable control of the party in question other than an obligation to obtain full insurance payment where applicable and to assist in minimising the damage to FLEXHIRE.
- 22.11.** These Terms constitute the entire agreement and supersede and extinguish all prior agreements and understandings between FLEXHIRE and the Customer.
- 22.12.** If there is inconsistency between these Terms and any order submitted by the Customer or any other arrangement between FLEXHIRE and Customer, these Terms prevail unless otherwise agreed in writing by the parties.