**Terms & Conditions (Terms)**

# General

## The following Terms govern the hire of all Equipment from the Owner to the Hirer and the provision of any Services by the Owner to the Hirer.

## Any order or request for the hire of Equipment accepted by the Owner brings into effect a Hire Contract governed by these Terms.

## These Terms supersede all other terms, conditions and agreements between the Owner and Hirer and no variation of these Terms will apply unless acknowledged and agreed in writing by the Owner.

## The Owner reserves the right to change these Terms and Conditions without notice. Amended Terms and Conditions will be placed on the Marquee Hire City website (wwwmarqueehirecity.co.nz) and shall apply at such time as the Owner provides further Equipment and Services to the Hirer with effect from the date that such amended Terms and Conditions are placed on the website.

# Definitions and Interpretation

## In these Terms:

### **Business Day** means a day other than Saturday, Sunday or public or anniversary holiday in the Owner’s location from which the Equipment is hired;

### **CGA** means the Consumer Guarantees Act 1993;

### **The Owner** means Trabajador Limited as trustee of the Trabajador Trust trading as Marquee Hire City and the person hiring the Equipment to the Hirer;

### **Compliance or resource consent** means compliance with any Council or Regional Authority bylaws and requirements to assemble a temporary structure and obtaining the required recourse consents or permissions;

### **Credit Account Application** means an application for a credit account with the Owner;

### **Damage Waiver Fee** means the fee payable to provide cover against accidental damage, loss, and theft to the Equipment;

### **Default Interest Rate** means 12% per annum;

### **Equipment** means all equipment, electrical equipment, decorations, furniture, accessories or any other goods hired by the Hirer from the Owner (but not including any Equipment that is exclusively governed by other terms);

### **Event of Default** has the meaning given in clause 24.1;

### **Extreme Weather Event** means any weather event determined to cause damage to temporary structures or declaration of Civil Defence warning or control;

### **FTA** means the Fair Trading Act 1986;

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

### **Hire Fees** means the Fees for the hire of the Equipment and/or the provision of the Services as agreed between the Owner and the Hirer;

### **Hire Contract** means any contract for the hire of Equipment as agreed between the Owner and the Hirer or other communication between the Owner and the Hirer, setting out the key terms relating to the hire of the Equipment and/or the provision of Services;

### **Hire Quote** means the quote request submitted through the website or quote provided by email communication relating to equipment hire or services between the Owner and the Hirer as agreed and pursuant to the key terms;

### **Hire Term** means the term of the hire of the Equipment, as more particularly described in clause 12;

### **Hirer** means the person or owner hiring the Equipment (or acquiring the Services);

### **HSWA** means the Health and Safety at Work Act 2015;

### **PA** means the Privacy Act 2020;

### **Parties** means the Hirer and the Owner;

### **PPSA** means the Personal Property Securities Act 1999;

### **Services** means any services the Owner provides to the Hirer in connection with the hire of the Equipment including but not limited to haulage, cartage, delivery, assembly and operating services not included in the hire fee by mutual agreement by the parties;

### **Site** means any site to which the Equipment is to be delivered too, assembled or used on, including any vessel, vehicle or mobile apparatus upon which the Equipment is to be used.

### **Terms** means these Terms and Conditions which are applicable to the hire of equipment or services under a Hire Contract

## **In these Terms**

### References to clauses are to clauses of these Terms;

### All references to legislation are references to New Zealand legislation in force and include any subordinate legislation, by-law, regulation, order, statutory instrument or determination made under it, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation;

### The term “includes” or “including” (or similar terms) is deemed to be followed by the words “without limitation”; and

### Where more than one person is the Hirer, each of those people shall be jointly and severally liable for all payments for the hire of Equipment and provision of Services and all other obligations under these Terms.

# Equipment Hire

## The Equipment and Services are as described in the Hire Contract or as otherwise agreed by the Owner.

## The Owner is not obliged to accept any order or request for the hire of Equipment or provision of Services.

## If the Owner cannot provide the Equipment or Services to the Hirer, then by written notice to the Hirer the Owner may cancel any order for the Equipment or Services (even if it has been accepted) and refund any prior payments to the Hirer but otherwise the Owner will have no further liability to the Hirer.

# Hire Obligations

## The Hirer agrees to:

### take proper care of all equipment provided by the Owner;

### satisfy themselves that the equipment ordered and provide is suitable for the work intended;

### obtain the necessary resource consent from local or regional council to comply with planning rules for the erection of temporary structures on private, public or council owned property;

### ensure all persons who use the equipment are competent and qualified to use the equipment, use the equipment in a manner it was designed to be used, and follow any directions from the Owner, local authorities or codes of practice or from the manufacturer of the equipment relating to use and safety of the equipment.

### comply with all obligations in relation to the use and control of the equipment as prescribed by the HSWA and all other relevant legislation;

### if any items are lost or damaged the Hirer agrees to reimburse the Owner the cost of replacement of the item, as advised by the Owner.

# Hire Fees

## The Hire Fees are (except in the case of manifest error or fraud):

### As set out in the Hire Contract;

### Where no price is stated in the Hire Contract or where there is no Hire Contract, the price according to the Owner’s current price list; or

### As otherwise agreed between the parties.

## The Hire Fees are exclusive of GST, unless otherwise indicated and the Hirer shall pay the hire fees plus GST as indicated on the quote, invoice or hire contract. All published rates are subject to change without notice.

## Hire Fees are based on the length of hire of a specific product to service being hired, based on the typical hire rate of daily, three (3) days, weekly or by negotiated agreement.

# Deposit and Payment

## The Hirer shall pay the Hire Fees as specified in the Hire Contract or as otherwise agreed between the parties:

### The deposit is only refundable on terms as described in clause 8.2.

### A deposit of 10 % is payable to the Owner as detailed on the confirmed quote when the details of the invoice raised confirming the Hire Contract to secure the products or services hired.

### In paying the deposit, the Hirer accepts the terms.

### The balance of the Hire Fees are payable 7 days prior to delivery or collection.

### In full without deduction or set-off of any kind; and

### To the bank account nominated by the Owner in writing as contained in the Invoice or Hire Contract or by such other legally approved method provided by the Owner.

### If the balance of the Hire Fees is not received 5 days prior to delivery, or on terms agreed with the Owner otherwise the Owner reserves the right to cancel the booking.

## Where the Hirer is a credit account customer the Hire Fees are payable within 14 days of the hire or as determined by the tax invoice (except where otherwise agreed).

## Where the Hirer is not a credit account customer the Hire Fees are payable prior to commencement of hire or on such other date or dates set out on the Hire Contract or agreed between the parties.

# Additional Payments by Hirer

## In addition to the Hire Fees the Hirer shall on demand pay:

### The cost of delivering or collecting the Equipment if the cost is not included in the quote, invoice or hire contract;

### The cost of repairing the Equipment where the Equipment is damaged or breaks down (except where this is the Owner’s responsibility under clause 14;

### The cost of remedying any failure of the Hirer to return the Equipment in compliance with these Terms;

### The cost of recovering possession of the Equipment;

### The cost of repair and/or replacement of any of the parts of the Equipment required due to the Hirer’s use of the Equipment;

### Any costs incurred in enforcing any of these Terms including any reasonable legal fees incurred by the Owner;

# Cancellation of Hire Contract

## The Owner may terminate the Hire Contract by notice with immediate effect if the Owner believes the equipment to be at risk for any reason whatsoever including, but not limited to:

### the manner of its use by the Hirer or the Site is unsuitable;

### or adverse weather event the will compromise the integrity of the hire equipment; or

### work conditions on the Site; or

### the Hirer being unable to, or potentially unable to, pay any hire fee under the Hire contract. The Owner may terminate the Hire Contract by notice with immediate effect if any step is taken to appoint a receiver, manager, trustee in bankruptcy, liquidator, provisional liquidator, administrator or other like person of the whole or any part of the Hirer's assets or business.

### 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 the Hire Contract is terminated.

### 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 the Hire Contract.

### the Owner is not liable to the Hirer or any other person for any loss suffered or liability incurred arising from termination of the Hire Contract or repossession of the equipment. Cancellation of the Hire Contract by the Owner is without prejudice to any rights that the Owner may have under this Hire Contract.

## In entering into the Contract, the Hirer is bound by the following cancellation policy:

### Cancellation by Hirer within the 48 hours that the hire is due to commence, provided the equipment has not been delivered and assembled, the Hirer will forfeit the 10 percent deposit; or

### Cancellation due to unforeseen circumstances, the Owner will assess the eligibility of refund of any deposit or monies paid on a case by case basis. Proof of circumstances may be required to be eligible for refund of deposit or monies paid.

# Hirer Warranties

## The Hirer warrants that all information provided to the Owner, including any information contained in any Credit Account Application, is true and accurate in all material respects.

# Hirer Acknowledgements

## Any advice, recommendation, information or assistance provided by the Owner is given in good faith and is based on the Owner’s own knowledge and experience. However, the Hirer acknowledges that it is its responsibility to ensure that:

### The Equipment is suitable for its purposes;

### The Site is suitable for the Equipment;

### The use or installation of any Equipment at the Site will not be in breach of any restriction or covenant affecting the Site or any other legal or regulatory requirement.

# Delivery, Set up and Collection Equipment

## The Owner is responsible for arranging the delivery, loading, unloading, assembly, disassembly and pickup of any of the Equipment at the Site.

## The Owner will use its reasonable endeavours to make delivery of the Equipment at any time that has been agreed but time will not be of the essence and the Owner will not be responsible for any loss or damage sustained by reason of any delay in delivery.

## The Owner shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) in respect of the delivery of the Equipment except where this is caused by the negligence of the Owner.

## The Hirer shall make all arrangements necessary to prepare the Site for access and delivery of the Equipment whenever and wherever it is tendered for delivery.

## The Owner shall be entitled to assume that any person accepting delivery of the Goods is authorised to do so on the Hirer’s behalf.

## The Hirer shall inspect the Equipment on delivery and notify the Owner of any alleged damage to the Equipment or any other alleged defect, shortage in quantity, damage or failure to comply with the description.

## The Owner reserved the right to decline delivery if the Site is deemed unsuitable or dangerous and in breach of the Owner’s requirements to comply with the HWSA and any relevant legislation.

# Hire Term

## Where the Owner is responsible for delivering the Equipment the Hire Term will commence on delivery or assembly (or attempted delivery) of the Equipment to the Site in accordance with clause 11.

## Where the Hirer is responsible for collecting the Equipment the Hire Term will commence on the date the Hirer collects the Equipment or the agreed date for commencement of the Hire Term, (whichever occurs first).

## If the Hirer fails to return or make the Equipment available for return at the end of the Hire Term without the Owner’s consent, then without limiting any of the Owner’s rights, until such time as the Equipment is returned or made available for collection the Hirer will pay to the Owner to the Hire Fees until the Equipment is returned or collected.

## The Hirer will return or make the Equipment available for collection at the end of the Hire Term in such condition and repair required by these Terms.

# Use and Operation of the Equipment

## The Hirer shall:

### Maintain the Equipment in the same order, condition and repair as it was at commencement of the Hire Term;

### Except where clause 14.2 applies repair and/or replace any parts of the Equipment which require repair or replacement, unless the Owner in its absolute discretion notifies the Hirer otherwise;

### Keep the Equipment secure and safe and take all reasonable steps to protect the Equipment against vandalism, damage, theft or unauthorised distress or seizure including but not limited to ensuring that the Equipment is stored in secured premises;

### Use the Equipment only at the Site;

### Use the Equipment only for its intended use;

### Use the Equipment in accordance with any relevant laws, regulations and requirements;

### Operate the Equipment in accordance with the Owner’s and manufacturer’s recommendations and requirements;

### Obtain at its own expense all certificates, licences and approvals that may be required for the hire of the Equipment.

## The Hirer shall not:

### Use the Equipment if it is defective, damaged or in dangerous condition;

### Use the Equipment under the influence of drugs or alcohol;

### Use or carry any illegal, prohibited or dangerous substance in or on the Equipment; or

### Modify or alter the Equipment allow anything to be added to it without the express permission of the Owner.

## The Hirer shall on the Owner’s request provide the Owner with such information that the Owner requires in relation to the Equipment, including details of the Site(s) at which the Equipment is to assembly, placed or used.

# Damage – Inherent Defects

## The Hirer shall notify the Owner immediately on the occurrence of:

### Damage to the Equipment;

### The Equipment breaking down; or

### Destruction, loss or theft of the Equipment.

## If the Equipment is damaged, breaks down or fails to operate due to any defects arising from normal wear and tear or an inherent fault or any other fault not detectable at the beginning of the Hire Term the Owner may repair or replace the Equipment at its expense (and suspend the Hire Fees).

## Notwithstanding clause 14.2, if repair or replacement is too expensive, impractical or impossible (in each case as determined in the Owner’s absolute discretion) then the Owner can terminate the hire of the Equipment. On termination the Owner will collect the Equipment. Any refund will be determined on a case by case basis.

# Access

## The Hirer grants the Owner, and its employees, representatives and agents access to the Site and the Equipment (whether or not during business hours) to deliver, collect, inspect, test, adjust, maintain, repair or replace the Equipment, or to exercise any of its rights, remedies or obligations under these Terms.

# Assignment

## The Hirer shall keep the Equipment in its own possession and control. The Hirer may not assign any of its rights under any Hire Contract or these Terms, or sublet, sell, cross-hire or charge the Equipment.

# Health and Safety at Work Act

## To the extent permitted by law the Owner is not responsible for any obligations imposed on the Hirer from time to time pursuant to the HSWA.

# Ownership of the Equipment

## Each Hire Contract is a contract for the right to use Equipment and Services only and the Owner at all times retains ownership of the Equipment.

## The parties acknowledge that the hire of the Equipment may create a security interest in the Equipment in favour of the Owner under the PPSA.

# Warranties and Guarantees

## The Owner warrants as follows (subject to the other provisions of this clause 19 and clause 20):

### It has the right to hire the Equipment to the Hirer;

### The Equipment matches the description;

### The Equipment complies with any agreed specifications.

## Where the Hirer is a consumer (as defined in the CGA) certain guarantees may also apply in respect of the hire of the Equipment and the provision of the Services pursuant to the CGA. These guarantees may only be limited by clause 20.4.

# Exclusion of Terms

## Apart from the warranties or guarantees described in clause 19 or any express warranties provided by the Owner, the Owner makes no representations and give no assurances, warranties or guarantees to the Hirer in relation to the hire of the Equipment or the Services. To the maximum extent permitted by law, any representation, assurance, warranty or guarantee implied by law, custom or practice is excluded.

## To the maximum extent permitted by law none of the Owner’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by any of the Owner’s directors in writing.

## Where the Hirer acquires the Equipment and/or acquires the Services 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:

### Section 9: Misleading and deceptive conduct generally;

### Section 12A: Unsubstantiated Representations;

### Section 13: False or misleading representations.

## Notwithstanding clause 19.2, where the Hirer hires the Equipment or acquires the Services in trade, the Owner and Hirer agree to contract out of the CGA in accordance with section 43 of the CGA.

## The Parties agree that it is fair and reasonable to be bound by clauses 20.3 and 20.4.

# Liability

## 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.

## The Owner’s aggregate liability in respect of a Hire Contract shall be limited to the Hire Fees in respect of that Hire Contract.

# Indemnities

## The Hirer indemnifies the Owner against any loss, damage, liabilities, costs or expenses in respect of:

### Any injury or damage caused to the Owner or its property or any third party or third party’s property arising from the use of the Equipment by the Hirer; and

### Any breach of these Terms by the Hirer.

# Default

## The Hirer commits an Event of Default if:

### The Hirer fails to make payment in accordance with these Terms;

### The Hirer breaches any of these Terms and such breach is irremediable or if it is remediable it is not remedied within 5 Business Days of the Owner giving notice to the Hirer requiring it to be remedied;

### In the Owner’s opinion the Hirer will be unable to pay its debts as they fall due;

### The Hirer commits an act of bankruptcy or is declared bankrupt;

### The Hirer becomes insolvent, convenes a meeting with its creditors or propose or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or;

### A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any of the Hirer’s assets.

## Where the Hirer acquires the Equipment and/or Services for the purposes of a business the Hirer also commits an Event of Default if it ceases or threatens to cease to carry on business.

## If an Event of Default occurs, without prejudice to any other rights or remedies available to the Owner under these Terms or otherwise, the Owner may:

### Terminate any Hire Contract by giving notice to the Hirer; and

### Recover the Equipment.

## 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 Fees 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.

# Use of Third Parties

## The Owner may subcontract with any other person, firm or owner to provide the Equipment or the Services.

# Collection, Use and Disclosure of Information

## The Hirer agrees that the Owner may collect personal information from the Hirer that the Owner reasonably requires to:

### Provide the Equipment and the Services;

### Assess the Hirer’s creditworthiness;

### Administer and enforce any Hire Contract;

### Maintain credit records held by the Owner, any related owner and external agencies;

### Conduct market research, data processing and statistical analysis; and

### Market the Owner’s goods and services.

## The Hirer may in accordance with the Privacy Act 2020 request access to or correction of the personal information that the Owner holds by contacting the Owner.

# Notices

## Without limiting any other means of service, any notice given to the Hirer under these Terms may be given by email (effective upon transmission) or post (effective 2 Business Days after sending) to the addresses specified on the Hire Contract or Credit Account Application or such other email address or address by which the Hirer has communicated with the Owner.

# General

## The Owner shall not be liable for any delay or failure to comply with its obligations under these Terms which are caused by any act of God, terrorism, war, strike, lock out, industrial action, flood, storm, epidemic, pandemic, or other event beyond the Owner’s reasonable control.

## The Owner does not waive a right, power or remedy if it fails to exercise or delay in exercising the right, power or remedy.

## The rights powers and remedies provided in these Terms are cumulative and not exclusive of any rights powers or remedies provided by law.

## If any of these Terms is or becomes invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining Terms will not be affected, prejudiced or impaired.

# Governing Law

## These Terms and all Hire Contracts are governed by the laws of New Zealand.

## The Hirer submits to the non-exclusive jurisdiction of the courts of New Zealand.