

Terms

1. GENERAL

1.1 In these terms and conditions “Company” means Tuff Little Digga Limited (Registered address Te Teko) and “Customer” means a person who hires the Equipment.

1.2 Any goods (“Equipment”) hired by the Customer from the Company will be supplied/hired on these terms and conditions which together with any hire contract constitute the “Hire Contract”. Upon hire of Equipment, The Customer is deemed to have accepted these terms and conditions.

1.3 The Company may amend in their sole discretion these terms and conditions (including but not limited to Hire Charges) at any time without notice, by placing updated terms and conditions on their website www.xxxxxx.co.nz.

1.4 It is not intended that the Hire Contract will be a consumer credit contract or a consumer lease for the purposes of the Credit Contracts and Consumer Finance Act 2003.

2. HIRE CHARGES

2.1 The Customer will pay the Company for the hire charges listed in the Hire Contract or otherwise notified to the Customer which include:

2.1.1 The hire charges for the Equipment for the Hire Period at the following rates unless otherwise stated:

- half day (4 hours) - \$160 + GST
- full day (8 hours) - \$230 + GST
- three days at weekend (22 hours) - \$460 + GST, must include Saturday and Sunday.
- three days during week (22 hours) - \$560 + GST
- seven days (52 hours) - \$1150 + GST

2.1.2 bond of 150% of the estimated total Hire Charges

2.1.3 key loss - \$35

2.1.4 Late fee - \$220 if Equipment is returned within 24 hours of the expiry of the Hire Period or \$220 plus standard rates for every day or part thereof until the Equipment is returned to the Company.

2.1.5 Petrol - \$3 per litre to fill the tank if the Equipment is returned and tank is not full (the Equipment will be hired out with a full tank and must be returned with full tank);

2.1.6 Cleaning fee - \$60 payable if the Equipment is not returned in same condition of cleanliness that it was in at the commencement of the Hire Period (as deemed by the Company in its sole discretion but acting reasonably).

2.1.7 Delivery/Pick up fee - \$80 per delivery and per pick up plus an additional \$2 per kilometer if the delivery/pick up address is outside of the Company's TeTeko premises (unless otherwise stated).

2.1.8 Additional hours - \$50/hour.

2.1.9 Operator Fee - \$85 + GST per hour covers operator and digger hire (negotiable depending on length of hire period).

2.1.10 One hour lesson Fee - \$85

2.1.11 Breakage Fees (for items not covered by the Company's insurance):

- Plug Adaptor \$15
- Lever Coupling \$350
- Jockey Wheel and Arm \$180
- Tyres \$30 each
- Rim and Tyres \$120 each
- Socket handle used to manually change buckets \$30 if missing.

2.2 Note that there is no refund if the Equipment is returned prior to the expiry of the Hire Period.

2.3 The Customer acknowledges and agrees that they are responsible for any costs incurred (or that will be incurred) by the Company to restore the Equipment to the condition it was in at the commencement of the Hire Period, including where applicable the insurance excess.

3. PAYMENT AND DEFAULT INTEREST

3.1 All prices include GST.

3.2 Prior to commencement of the Hire Contract the Customer must pay a bond of 150% of the estimated total charges; and upon the Equipment being returned, the Company will calculate the actual total charges taking into consideration the order and condition of the Equipment. The Customer will either repay the balance outstanding, or be refunded with the difference between the bond paid by the Customer and the actual total charges.

3.3 In the event of the actual total charges exceeding the bond, the Company will invoice the Customer for charges incurred. The Customer must pay the invoice by the 20th of the month following the date of the invoice.

3.4 All customer queries or issues with invoiced amounts must be raised with the Company within one month of the date on the invoice.

3.5 The Customer shall be liable to pay default interest at the rate of 2% above the Company's overdraft rate per calendar month on all outstanding amounts until all monies have been paid in full. This is without prejudice to the Company's other remedies.

3.6 The Customer shall be liable for any debt collection recovery costs and legal expenses on a solicitor/client basis incurred by the Company in attempts to recover monies due and owing pursuant to the Hire Contract.

3.7 All payments shall be upon demand. The charging of default interest shall in no way imply the granting or an extension of credit by the Company to the Customer.

4. DELIVERY AND REMOVAL

4.1 The Customer can elect to either pick up and return the Equipment to the Company's Onehunga premises, or pay the delivery fee at 2.1.7 for the Company to deliver and collect at the Customer's nominated address.

4.2 The Customer grants the Company an irrevocable right and authority to enter (including with vehicles) at any time onto the place where the Equipment is to be used or is located.

5. OBLIGATIONS OF THE CUSTOMER

The Customer must:

5.1 Be aged 18 years or over.

5.2 Produce a current valid New Zealand Driver's License prior to hire of the Equipment. The Customer agrees that the Company may copy and store all information provided to them by the Customer.

5.3 Prior to the commencement of the Hire period advise the location the Customer will be using the Equipment and the nature of the intended work.

5.4 Allow the Company reasonable time to inspect and test the Equipment and grant irrevocable access to the Company to enter any premises where the Equipment is located for this purpose and allow the removal of the Equipment if deemed necessary by the Company.

5.5 At all times act with reasonable care in a reasonable manner.

5.6 Provide a written report of the circumstances of any fault, breakdown, damage or loss to the Equipment, including a Police compliant acknowledgement form if requested.

5.7 Provide reasonable assistance to the Company to facilitate the Company to recover any loss or damage to the Equipment.

5.8 Ensure the Equipment is always reasonable locked and secured.

The Customer must not:

5.9 Allow any other person to tow or operate the Equipment.

5.10 Operate or tow the Equipment under the influence of alcohol or drugs.

5.11 Modify or tamper with the Equipment in any way nor remove any logos or stickers or any other item from the Equipment.

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The Customer Warrants and undertakes:

5.12 That they are competent and qualified to tow and operate the Equipment.

5.13 To use the Equipment in the manner it was designed and follow all directions from the Company, local authorities, codes of practice and/or the manufacturer relation got the use and safety of the Equipment and in accordance with the Health and Safety at Work Act 2015 (if applicable) and all other relevant legislation and regulations.

5.14 That the information supplied by them is true and correct.

6. HIRE PERIOD

6.1 The Hire Period commences when the Equipment leaves the Company's premises and ends when the Equipment is returned to the Company's premises or collected by the Company (including where the Hire Contract is cancelled by the Company pursuant to clause 9)

7. DAMAGE OR LOSS

7.1 The Customer acknowledges that the Equipment has maximum usage times in and these will be notified to the Hirer and recorded in the Hire Contract. The Customer acknowledges that use of the Equipment in excess of the maximum times may cause damage to the Equipment and the Customer will be liable for all such damage to the Equipment and resulting losses suffered by the Company.

7.2 In the event of the Equipment suffering any breakdown or fault during the Hire Period, the Customer must immediately cease using and/or towing the Equipment and report the breakdown or fault by phoning the Company and if requested, complete a written report of the circumstances of the fault (in accordance with clause 5.6). Provided the Customer complies with these obligations and the Company determines (in their sole discretion) that the breakdown of fault was not caused by any negligence or misuse of the Customer, then the Company will reimburse part of the Hire Charge (to be determined in the sole discretion of the Company). The Company will otherwise have no liability to the Hirer.

7.3 The Customer must immediately notify the Company in the event the Equipment is lost, stolen or damaged and follow all reasonable instructions of the Company.

7.4 The Customer is responsible for and indemnifies the Company for any loss, damage or theft to the Equipment that occurs as a result of the negligence or recklessness or omissions of the Customer including but not limited to

1. a) in the event of reparable damage, the full cost of repairs to restore the Equipment to the condition it was in at the time of hire and;
2. b) in the event of irreparable damage, loss or theft to, the market value of the Equipment.

8. OWNERSHIP AND ASSIGNMENT

8.1 The Customer acknowledges that they have no title, interest or right in the Equipment (other than a contract of hire as set out herein) and that the Equipment remains the sole property of the Company. The Customer will not sell, transfer, mortgage, charge or allow any lien or security interest over the Equipment.

8.2 The Customer shall not assign nor sublet any of the Customer's rights or interests under the Hire Contract to any other party and shall not assign, sublet, charge or part with possession of the Equipment.

9. CANCELATION

9.1 The Company may cancel the Hire Contract and immediately repossess the Equipment at any time if:

- The Customer has provided any false information to the Company;
- The Company determines (in their sole discretion) that the Customer does not have sufficient skills to operate the Equipment or drive with the Trailer.
- The Customer has or is likely to damage or misuse the Equipment (in the Company's sole discretion).
- The Customer has failed to comply with any of the terms and conditions of the Hire Contract.

10. INSURANCE

10.1 Insurance cover is included in the Hire Charges except for the items included at clause 2.1.11. The Customer acknowledges that to comply with the Company's Insurance Policy, they must comply with the obligations of the hirer herein, and in particular numbers 5.5 to 5.8 inclusive.

10.2 The Customer shall be responsible for the excess on any claim made under the insurance (Standard \$500 excess, Under 21 years \$1,000 excess and liability excess ranging between \$500 to \$2,500 depending on the nature of the claim).

10.3 The Customer hires the Equipment at their own risk and indemnifies the Company against any loss of or damage to the Equipment including any consequential loss.

11. LIMITATION OF LIABILITY, INJURY OR DAMAGE TO CUSTOMER, THIRD PARTY OR PROPERTY

11.1 If the Customer is a consumer for the purposes of the Consumer Guarantees Act 1993 ("GGA") the Customer is entitled to the rights and remedies available under the GGA. Subject to such rights and remedies, the maximum aggregate liability of the Company to the Customer for all claims shall be limited to the Hire Charges paid by the Customer.

11.2 If the Customer is in trade (within the meaning of the CGA) and the Equipment and hired by the customer in trade the Customer acknowledges that the Company has no liability to the Customer for any direct, indirect or consequential loss or damage or for any loss of revenue or loss of actual or]

nticipated profit (or any other form of economic loss) arising in connection with the Hire Contract including that resulting from the use of the Customer of the Equipment (including breakdown thereof), or arising by operation of law. Subject to this, the maximum aggregate liability of the Company for all claims made shall be limited to the Hire Charges paid by the Customer.

11.3 The Customer indemnifies the Company against any liability, losses, damages or expenses incurred or suffered by the Company as a result of any claim made by a third person against the Company in respect of any loss or liability arising from the Hire Contract or use of the Equipment.

12. The Company does not make any representations and does not provide any warranty as to the fitness of the Equipment for any purpose no as to the quality or state of the Equipment. No such warranty is to be implied.

12. PRIVACY ACT 1993

12.1 The Customer acknowledges that the Company will collect and retain personal information about the Customer, principally for the purpose of evaluating the hire of equipment by the Customer. The Company reserves the right to decline hire if the personal information requested is not provided. The Customer has the right to access and correct their personal information. The Customer authorises the Company to disclose information about the Customer to any person who guarantees, or who provides insurance, or who provides any other credit support in relation to the Hirer's obligations to the Company and/or to such

persons as may be necessary or desirable to enable the Company to exercise any rights under the Hire Contract.

13. MISCELLANEOUS

13.1 If at any time the Company does not enforce any of these terms and conditions or grants the Customer time or other indulgence, the Company shall not be construed as having waived that term or condition or its rights to later enforce that or any other term or condition.

13.2 If the Customer is “in trade” for the purposes of the Consumer Guarantees Act 1993 and the equipment is supplied to and hired by the Customer in trade, the Company and the Customer agree that the statutory guarantees, implied terms, covenants and conditions in the Consumer Guarantees Act 1993 do not apply.