

# TERMS AND CONDITIONS OF HIRE

Stevens Products Ltd. trading as Stevens Group (formerly Commercial Outdoor Machinery) ("Owner") hires equipment, including all accessories and attachments for the equipment, as described in the Rental Agreement or in any invoice, packing slip or other document ("Equipment") to you ("hirer") subject to these term and conditions ("Conditions").

## 1. Term

1.1 The term of hire shall commence from delivery (or uplifting) of the Equipment to the Hirer and shall continue until delivery of the Equipment to the premises of the Owner by the Hirer ("Term").

1.2 The Hirer will return the Equipment to the Owner at the rental branch from where the Equipment was delivered or uplifted from during normal working hours or before the expiry of the Rental Period noted in the Rental Agreement.

1.3 Notwithstanding clause 1.1 the owner may terminate this agreement at any time by notice in writing to the Hirer with no recourse or claim for loss being made by Hirer against the Owner.

1.4 These Conditions are paramount and, in the event there is any conflict between any provision of these Conditions and any other document that describes the supply of Equipment these Conditions will prevail.

## 2. Location and Use of Equipment

2.1 All Equipment shall at all times during the Term remain in the possession and control of the Hirer.

2.2 If delivery or collection of the Equipment to or from the Hirer is requested by the Hirer, the Hirer agrees to pay all expenses of the Owner in delivering or collecting the Equipment.

2.3 The Hirer shall comply with, and ensure every operator of the Equipment complies with all statutes and regulations and has current applicable licences, permits, and training relating to the operation and use of the Equipment. The Hirer shall ensure the Equipment is used solely for the purposes intended by its manufacturer and in accordance with the manufacturer's instructions and its rated capacity and consistently with the operating and running hours from time to time specified by the Owner.

2.4 The Hirer shall restrict the use and operation of the Equipment to trained, safe, careful, and competent personnel selected, employed and controlled by the Hirer.

2.5 The Hirer agrees to notify the Owner immediately of any accident, disability or failure affecting the Equipment and will not use the Equipment if any fault is existing.

## 3. Rental and Excess Hour Charges

3.1 The Hirer shall pay the rental at the Rental Rates set out in the Rental Agreement or as notified pursuant of clause 3.3, in advance. If the Hirer in any calendar month uses the Equipment in excess of the monthly hours allowance (as advised in writing by the Owner from time to time), the Hirer shall pay the Owner a charge ("Excess" Hours Charge) calculated at the excess hours rate (as set out in the Rental Agreement or as notified pursuant to clause 3.3) for the number of hours which the Equipment is operated in excess of the monthly hours allowance. If the Hirer does not return the Equipment to the Owner's designated premises on or before the expiry of the Rental Period set out in the Rental Agreement or on termination of these Conditions then the Owner may charge Excess Hours Charge in addition to the Rental Rate until such time as the Equipment has been returned to the Owner. The Excess Hours Charge will be payable on demand.

3.2 All payments owed to the Owner shall be paid without deduction, counter-claim or set off (including for or on account of tax).

3.3 The Rental Rate and Excess Hour Charge are subject to change on the three days' written notice to the Hirer.

3.4 Unless stated otherwise, the Rental Rate and Excess Hour Charge are exclusive of goods and services tax and any other taxes payable on the Equipment. The Hirer agrees to pay all these taxes and charges.

3.5 The Owner may charge interest at the rate of 18% per annum (calculated daily) in respect of any overdue account up to and including the date of payment together with all associated costs incurred in recovering payment.

#### **4. Ownership and Risk**

4.1 Risk in the Equipment passes to the Hirer on delivery (or uplifting) of the Equipment to the Hirer or anyone acting on its behalf notwithstanding the Owner retains full legal and beneficial ownership in the Equipment (or any goods which the Equipment has been mixed with).

4.2 Nothing in these Conditions conveys to the Hirer any rights, title or interest in or to the Equipment except as bailee.

4.3 The Hirer cannot sell, dispose, assign, charge, grant a security interest over, sublet, pledge, mortgage, part with possession of the Equipment or any part of it, alter or in any way deal with the Equipment.

#### **5. Operation and Care of the Equipment**

5.1 The Hirer agrees to take proper care of the Equipment including keeping the Equipment clean and in a covered area when not in use, and will return the Equipment to the Owner in the same condition as delivered, subject to reasonable wear and tear.

5.2 The Hirer will, at its own cost and expense, make routine checks/adjustments of each piece of Equipment at the beginning of each shift, supply all necessary fuel (petrol, electric or LPG, oil, water and air if applicable) and check/correct the air pressures of the pneumatic tyres weekly.

5.3 If the Equipment is returned in a condition which has breached this clause 5, the Hirer shall be liable to pay the cost and expenses, (whether or not the work is carried out on the Equipment) of restoring the Equipment to the condition it was in immediately prior to the Term, subject to reasonable wear and tear, and shall be liable for any loss in hireage resulting from such a breach.

5.4 The Owner may repossess the Equipment in the event of the Hirer defaulting in payment of any rental or Excess Hours Charge payable under these Conditions or any other contract with the Owner or breaching any of its obligations and the Hirer irrevocably gives the Owner, its agents and servants, leave and licence without the necessity of giving any notice to enter on and into any premises occupied by the Hirer to inspect, search for or remove any of the Equipment without in anyway being liable to the Hirer or any person claiming through the Hirer.

5.5 Upon the expiry or earlier termination of these Conditions, the Hirer must make available the Equipment of delivery to the Owner. The Hirer irrevocably authorises the Owner to enter its premises, or any other property of the Hirer to recover the Equipment, without the Owner being liable for any damage.

#### **6. Liability**

6.1 The Hirer is liable for all loss or damage to the Equipment or any part of the components thereof and assumes sole risk, responsibility and liability for the Equipment, including that arising from any overloading, abuse, improper usage, negligence or failure to take proper care of the Equipment. The Hirer shall indemnify the Owner against all losses, damages (direct, indirect or consequential), claims, penalties, liabilities and expenses arising in connection with the Equipment, its use, operation, repair, storage or reinstatement except to the extent caused by any negligence established on the part of the Owner.

6.2 In no circumstances shall the Owner be liable for special or consequential damage or loss of any nature suffered by the Hirer whatsoever or howsoever caused arising out of these Conditions or a breach thereof.

Two liability options are extended to the Hirer:

Option 1/ (Default) The hirer accepts all liability as per terms & conditions in the hire agreement.

The hirer accepts all liability including liability in the case of the hired equipment being stolen or lost.

Note: the hirer may have their own insurance which may or may not cover them for this liability. It is the hirer's responsibility to check on their own insurance policy cover for this.

By opting for this liability option, the hirer avoids paying an extra 10% limited damage waiver over and above the hire rates as quoted.

Name: \_\_\_\_\_ Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Option 2/ The hirer accepts all liability for damage done to hired equipment as per terms and conditions in the hire agreement limited to \$10,000.00 +GST. This limitation does not apply in the case of the hired equipment being stolen or lost in which case the hirer accepts all liability.

Note: the hirer may have their own insurance which may or may not cover them for this liability. It is the hirer's responsibility to check on their own insurance policy cover for this.

By opting for this liability option, the hirer agrees to pay an extra 10% limited damage waiver over and above the hire rates as quoted.

Name: \_\_\_\_\_ Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Note: if none of the above two options are selected then the default of Option 1/ above applies as per the original terms and conditions of hire

**7. Warranties**

7.1 The Hirer agrees and declares that it is hiring the Equipment for business purposes and that the Consumer Guarantees Act 1993 does not apply to the supply of the Equipment.

7.2 With the exception of any express warranty given by the Owner, no warranty or condition will be implied against the Owner by any statute, at common law or otherwise.

7.3 The Customer warrants to the Owner that:

- (a) It is authorised to enter into the Rental Agreement and that its entry into and performance of its obligations under it do not and will not breach any law or any material agreement to which it is a party;
- (b) In deciding to lease the Equipment it has relied entirely on its own skill and judgement and not on any advice, information, representations or warranties from the Owner or from any person acting, or purporting to act on behalf of the Owner;
- (c) It has not made known to the Owner any specific requirements or purpose for which the Equipment will be used, and it has not received and/or does not rely upon any representation, condition, warranty or undertaking as to the condition, suitability of the Equipment, its quality, fitness for purpose or safety made by or from the Owner, or from any person acting; or purporting to act, on behalf of the Owner; and (d) Its shall not, and shall not permit any person to, copy or breach any intellectual property rights relating to the Equipment including but not limited to copyrights, patents and trademarks in the Equipment.

## **8. Repair**

8.1 If the Equipment requires repairs, the Hirer shall immediately notify the Owner

8.2 The Hirer permits the Owner and its authorised agents to inspect the Equipment at all reasonable times and will make the Equipment available for maintenance and repairs and provide a suitable area for such maintenance and repairs to take place.

8.3 If the Owner does not repair any Equipment within a reasonable time, then if necessary, to meet the Hirer's operating requirements, the Owner may in its absolute discretion substitute similar equipment for the Equipment hired to the Hirer until the disabled Equipment is repaired. However, the Owner has no obligation to provide specialised attachment or accessories with the substituted equipment.

8.4 The Hirer must not allow anyone to make any repairs, adjustments, alterations or additions to the Equipment unless previously authorised in writing by the Owner and with an approved repairer.

## **9. Force Majeure**

9.1 The Owner will not be in breach of these Conditions and will not incur any liability whatsoever because of any failure by the Owner to perform its obligations due to causes beyond the Owners reasonable control.

## **10. Personal Property Securities Act 1999 ("PPSA")**

10.1 The Hirer grants a security interest in the Equipment and all proceeds of the Equipment in favour of the Owner for the purposes of the PPSA and as security for the payment for the Equipment and any amount owing by the Hirer to the Owner from time to time.

10.2 Following a request by the Owner the Hirer will promptly (and at its own cost) execute any documents and do anything else required by the Owner to ensure that the security interest created under these Conditions constitutes and remains a perfected security interest over the Equipment including providing any information the Owner may reasonably require to complete a financing statement or a financing change statement.

10.3 The Hirer shall immediately notify the Owner in writing of any change in its name at least 14 days prior to the date on which the change of name becomes effective.

10.4 The Hirer agrees its rights as a debtor in sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA shall not apply to these Conditions.

10.5 The Hirer waives any right to receive a copy of a verification statement under the PPSA.

10.6 The Hirer agrees that nothing in sections 114 (1)(a), 117 (a)(c), 133 and 134 of the PPSA shall apply to these Conditions

10.7 The Hirer will be deemed to be in breach of these Conditions if any item of Equipment is at risk.

10.8 Upon, or at any time after the Hirer breaches a term of these Conditions the Owner may (in addition to and whether it has exercised any of its other rights power or remedies) appoint any person or persons to be receiver or all or any of the Equipment. A Receiver has (in addition to the powers conferred by the Receiverships Act 1193, at law or otherwise and except to the extent expressly excluded by his or her terms of appointment) all the powers in relation to the Equipment to do anything the Hirer (or a person with absolute ownership of the Equipment and carrying on the business for its own benefit) could do and to exercise such power on such terms and conditions as the receiver thinks fit.

10.9 In these Conditions, unless contrary intention appears, the terms "at risk", "financing statement", "financing change statement", "proceeds", "security interest" and "verification statement" each have the meaning given to them in the PPSA.

## **11. Information**

11.1 The Hirer authorises the Owner to collect from any person, hold and release to any person, personal information concerning the Hire/ for the purposes of determining credit worthiness, for communicating promotional activities and product information, debt collection and reporting to any credit agency any breach by the Hirer of any obligations owed to the Owner.

11.2 The Hirer authorises any person from whom the Owner requests information concerning it to release that information to the Owner.

## **12. General**

12.1 No waiver by the Owner of any of these Conditions will constitute a waiver of any other term.

12.2 The Owner may vary these Conditions at any time by notice in writing to the Hirer. The Hirer may not vary these Conditions unless the Owner agrees in writing.

12.3 The Hirer may not assign any of its rights or obligations under these Conditions without the Owners written consent.

12.4 References in these Conditions to Owner include its successors and assigns and references to Hirer include the Hirers executor's administrators, successors and permitted assigns.

12.5 The expiry or earlier termination of these Conditions shall not affect the operation of such of the provisions of these Conditions which are intended to survive expiry or earlier termination (including clause 6.1).

12.6 The Hirer will pay all costs and expenses (including costs on solicitor/client basis and debt collectors costs) the Owner incurs in enforcing or attempting to enforce its rights under the Rental Agreement.

12.7 The Owner may transfer, assign or sub-contract any of its rights or obligations under the Rental Agreement to any person.

12.8 This Agreement is the entire agreement between the parties in relation to the rental of the Equipment and replaces all earlier negotiations, representations, understanding and agreement, whether oral or written, between the parties.

12.9 Nothing in the Rental Agreement creates any relationship of agency or partnership between the parties.

12.10 The Rental Agreement will be governed by and will be construed according to the laws from time to time in force in New Zealand.