

# TERMS OF RENTAL

## 1. GENERAL

### 1.1 In these Terms & Conditions:

- 1.1.1 "Hirer" means any person, firm or corporation to whom or which any Equipment is rented by the Owner and includes the Hirer's successors, executors or administrators;
- 1.1.2 "Owner" means Gough, Gough & Hamer Limited and each of its subsidiaries and related entities (together with their respective successors and assigns);
- 1.1.3 "Equipment" means any vehicle, equipment or other goods rented out to the Hirer, together with accessories and any other equipment attached to, or used in connection with, it and includes any replacement vehicle, equipment or goods supplied by the Owner.
- 1.2 These terms and conditions apply to any rental of Equipment by the Owner to the Hirer and are incorporated into all Equipment rental agreements between the Owner and the Hirer, unless and to the extent otherwise agreed in writing by the Owner.
- 1.3 The Owner may alter or replace these terms and conditions at any time. Any such amendments will be effective when notified to the Hirer or published by the Owner on its website (or on such other date as may be specified by the Owner). By requesting Equipment for rental after the effective date, the Hirer accepts and agrees to be bound by such amendments.

## 2. RENTAL OF EQUIPMENT

- 2.1 The period of rental shall commence from the time the Equipment is delivered to or made available for collection by the Hirer and will continue until the Equipment is returned in accordance with clause 8.2. For avoidance of doubt, the period of rental includes any period extending beyond the end of the agreed hire period until such time that; a new end date is agreed, a new rental agreement is entered or the Equipment is returned to the Hirer.
- 2.2 The Hirer will pay:
  - 2.2.1 The ordinary rental charge for the period of rental (as defined under clause 2.1) or, if longer, the agreed hire period (irrespective of the extent of use of the Equipment) at the applicable rate specified in the rental agreement for the Equipment or otherwise notified by the Owner;
  - 2.2.2 If the Equipment is used for more than the standard hours specified in the rental agreement for the Equipment (or otherwise notified by the Owner), as determined by the Equipment's hour meter, the excess hourly charge for each extra hour or part hour of use at the applicable rate specified in the rental agreement for the Equipment or otherwise notified by the Owner; and
  - 2.2.3 All transport costs relating to the delivery and repossession or return of the Equipment, fuel costs, cleaning costs, all fines and penalties relating to traffic offences involving the Equipment during the period of rental, the cost of repair or replacement of any lost or damaged Equipment (less any insurance proceeds received by the Owner) and, where applicable, an insurance premium charge.
- 2.3 The Hirer will pay GST in addition to all payments due under this agreement.
- 2.4 The ordinary rental charge plus GST will be paid in advance (or otherwise as directed by the Owner) and all other charges will be paid upon demand by the Owner. The Hirer is not entitled to any refund or reduced charge for returning the Equipment prior to the end of the agreed hire period.
- 2.5 All payments will be made by the Hirer in full, free of any deductions and set-off (and despite any unavailability of the Equipment for any period, whether due to mechanical defect, breakdown, accident, damage or otherwise). The Owner shall have a full right of set-off between amounts owed by the Hirer under this agreement and any amounts owing to the Hirer by any person falling within the definition of "Owner", howsoever arising.
- 2.6 If any payment due to the Owner is not made on due date then, without prejudice to any other rights or remedies available to the Owner, the Hirer will pay interest, at the rate of five percent above the Owner's prevailing overdraft interest rate, on all overdue amounts calculated on a daily basis from the date on which payment was due until payment is made in full (including before and after judgment).

## 3. PROPERTY RIGHTS

- 3.1 All Equipment remains the absolute property of the Owner at all times and this agreement does not confer on the Hirer any proprietary right or interest in or to any Equipment.
- 3.2 The rental of Equipment to the Hirer may create a security interest in the Equipment in terms of the Personal Property Securities Act 1999 ("PPSA"). If so, the Hirer will promptly sign any further documents, provide any further information and do such other things as the Owner may request in order to ensure that the Owner has a perfected security interest in the Equipment (and its proceeds) with priority over all other relevant security interests.
- 3.3 To the maximum extent permitted by law, the Hirer:
  - 3.3.1 waives its right to receive a verification statement relating to any security interest over the Equipment and waives its rights and, with the Owner's agreement, contracts out of the Hirer's rights under the sections referred to in sections 107(2)(c) to (e) and (g) to (i) of the PPSA; and
  - 3.3.2 agrees that nothing in sections 114(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions and, with the Owner's agreement, contracts out of those sections.
- 3.4 The Hirer must give the Owner at least 14 days prior written notice of any proposed change to the Hirer's name and/or other details (including changes in address, facsimile number or trading name).

## 4. COVENANTS BY HIRER

- 4.1 The Hirer shall throughout the period of rental:
  - 4.1.1 UNDER NO CIRCUMSTANCES interfere with the hour meter or otherwise alter or modify the Equipment;
  - 4.1.2 Keep the Equipment in its possession and under its control;
  - 4.1.3 Keep the Equipment in a safe and secure location and in an environment which is appropriate for the nature of the Equipment;
  - 4.1.4 Ensure that the Equipment is operated only by properly qualified and licensed personnel and in a careful and prudent manner;
  - 4.1.5 Notify the Owner immediately if the Equipment is stolen, damaged or involved in an accident and, if requested, shall return the Equipment to the Owner;
  - 4.1.6 Allow the Owner the right to inspect, maintain and repair the Equipment at any time;
  - 4.1.7 Ensure that the Equipment is used solely for the purpose and in the manner for which it was designed and in accordance with its capabilities and limitations, any operating or other instructions or manual provided by the Owner (or the supplier or manufacturer) and in a manner that does not prejudice any applicable manufacturer or supplier warranties or any insurance cover;
  - 4.1.8 Comply with all the laws, rules, regulations or by-laws of New Zealand and/or any local authority relating to the Equipment and its use;
  - 4.1.9 Preserve all marks of identification or ownership of the Equipment;
  - 4.1.10 Be responsible for, and indemnify the Owner against, any loss or damage to the Equipment which cannot be attributed to fair wear and tear;
  - 4.1.11 Allow the Owner and any representative of the Owner to enter any premises where the Equipment is kept (using reasonable force if necessary) in order to inspect, maintain and repair the Equipment and, upon expiry or termination of this agreement for any reason, repossess the Equipment;
  - 4.1.12 Comply with any special conditions in the rental agreement for the Equipment or specified by the Owner in writing.
- 4.2 The Hirer shall not:
  - 4.2.1 Sell, assign, sublet, pledge, charge or part with possession of the Equipment or any part of it;
  - 4.2.2 Allow the Equipment to be used, stored or otherwise located at any time outside an area of 50km from the primary location of use (as advised by the Hirer or as stated in the rental agreement for the Equipment) without the Owner's prior written consent;
  - 4.2.3 Allow the Equipment to be used on the road unless:
    - (a) The Equipment has a current registration and warrant of fitness;
    - (b) The Hirer has paid to the Owner any additional charge set by the Owner; and
    - (c) The Equipment is operated by an employee of the Hirer with the necessary driver's licence;
  - 4.2.4 Allow the Equipment to be used for the carriage of passengers for hire or reward without the Owner's prior written consent.

## 5. INSURANCE

- 5.1 The Hirer shall insure the Equipment against fire, accident, theft, consequential loss or costs including third party liability, and such other risks as the Owner shall require under a comprehensive insurance policy in the names of the Owner and the Hirer for their respective rights and interests with an insurer approved by the Owner and for the full insurable value of the Equipment.
- 5.2 If requested by the Owner, the Hirer shall deliver the cover note and policy to the Owner before the period of rental commences and ensure that any amount payable under the insurance policy will be paid directly to the Owner, to be applied at the Owner's discretion in accordance with the terms of this agreement.
- 5.3 The Hirer shall punctually pay the premiums and other sums required to keep the insurance effective and shall, if the Owner requires, deliver the premium receipts to the Owner.
- 5.4 The Hirer irrevocably appoints the Owner its attorney and/or agent to recover and/or compromise in their respective names any claim under the insurance policy and the Owner may in its absolute discretion conduct any negotiation and effect any settlement with the insurer.
- 5.5 Where the Hirer is unable to provide proof of satisfactory insurance cover at the time of hire or where the transaction is on a cash account, the Owner's insurance will apply to the Equipment and the Hirer shall pay the insurance premium charge at the Owner's published rates.
- 5.6 The Hirer shall be responsible for the applicable excess payment on any insurance claim. Where the Owner's insurance applies, the excess payment is \$5,000 unless otherwise expressly stated at time of hire.

## 6. MAINTENANCE

- 6.1 The Hirer shall, at the Hirer's expense, keep the Equipment clean and keep the tyre pressures and levels of the crank case and transmission oils, clutch and brake cylinder fluids and radiator water at proper operating levels. The Hirer shall also be responsible, at the Hirer's expense, for the supply of all fuel and oil necessary to operate the Equipment.
  - 6.2 The Owner shall provide maintenance and service checks during normal working hours (7.00am to 5.00pm Monday to Friday) at such times as the Owner reasonably determines. Where maintenance or service calls are made outside normal working hours, the Hirer shall pay to the Owner the additional applicable overtime rate which the Owner is required to pay to any serviceman.
  - 6.3 All repairs and maintenance work is to be carried out by the Owner or designated repairer and the Hirer will not allow any other person to carry out any work to the Equipment.
  - 6.4 The Hirer shall inform the Owner when any repairs become necessary or maintenance checks become due.
  - 6.5 The Hirer shall pay to the Owner any costs incurred in the maintenance or repair of the Equipment where:
    - 6.5.1 The maintenance or repairs are required directly or indirectly as a result of the Hirer's failure to observe the terms of this agreement; or
    - 6.5.2 The maintenance or repairs become necessary to return the Equipment to good and serviceable order and condition (with the exception of fair wear and tear).
  - 6.6 Where the Equipment is incapable of operating for more than four (4) hours and the Equipment cannot be quickly repaired on site (as determined by the Owner) the Owner will endeavour to provide a replacement unit of similar specification either temporarily or permanently. The provision of a replacement will be without prejudice to any of the Owner's rights under this agreement and the replacement Equipment will continue to be rented by the Hirer from the Owner on the terms and conditions of this agreement. Where the Equipment's inability to operate is a result directly or indirectly of the Hirer's use, misuse or carelessness (or other breach of this agreement), the Hirer shall pay to the Owner all costs associated with removing the Equipment and delivering any replacement Equipment, including, without limitation, all transportation costs.
- ## 7. INDEMNITY
- 7.1 The Owner shall not in any circumstances be liable for, and the Hirer indemnifies and will keep indemnified the Owner from, any loss, liability, damage, cost, claim or expense arising from:
    - 7.1.1 The Hirer's possession, operation or use of the Equipment;
    - 7.1.2 The exercise or attempted exercise by the Owner of its rights under clause 4.1.11; or
    - 7.1.3 The occurrence of any event entitling the Owner to terminate this agreement.

## 8. TERMINATION

- 8.1 The Owner shall be entitled to terminate this agreement (without any liability to the Hirer whatsoever) if:
  - 8.1.1 The Hirer defaults in the payment of any amounts due (time being of the essence) or breaches any of the terms and conditions of this agreement or any other agreement with the Owner;
  - 8.1.2 The Hirer becomes bankrupt, insolvent, goes into liquidation, has a receiver, a manager, a receiver and manager, an administrator or statutory manager appointed over any of its assets, ceases (or threatens to cease) to carry on business or is unable to pay its debts as they fall due;
  - 8.1.3 The Hirer does or causes or omits to be done or permits any act or thing which, in the opinion of the Owner, prejudices or places in jeopardy the Equipment or the Owner's rights in the Equipment or under this agreement or the Owner considers the Equipment is "at risk" within the meaning of section 109 of the PPSA; or
  - 8.1.4 The Equipment is inoperable for the period referred to in clause 6.6 and a replacement unit is unavailable or the Equipment is stolen or destroyed or damaged to such an extent as to render it a total loss (in each case as determined by the Owner).
- 8.2 Upon termination of this agreement at the expiry of the agreed hire period or earlier under clause 8.1, the Hirer shall deliver the Equipment to the Owner in clean and good order, repair and condition (fair wear and tear excepted) and shall pay to the Owner:
  - 8.2.1 All rental and other moneys (including interest) due to the Owner which may be due and unpaid at the date of termination;
  - 8.2.2 The balance of all rentals which would otherwise have been payable from the date of termination to the expiry of the agreed hire period, discounted for early payment in such amount as the Owner in its discretion allows; and
  - 8.2.3 All costs and expenses incurred by the Owner in relation to the enforcement of its rights or powers contained in this agreement (including legal costs as between solicitor and client).
- 8.3 A certificate issued by the Owner following inspection as to the condition of the Equipment shall be conclusive evidence of the facts it records except in the case of manifest error. The Hirer shall pay to the Owner upon demand:
  - 8.3.1 all costs required to remedy any damage recorded in the Owner's certificate with the exception of damage attributable solely to fair wear and tear; and
  - 8.3.2 a rental charge, at 75% of the applicable ordinary rental rate, for the loss of revenue suffered by the Owner as a result of the unavailability of the Equipment for rental due to loss of or damage to the Equipment during the period of rental. This charge will apply from the date of expiry or termination of this agreement until the Equipment is repaired or replaced (up to a maximum of 120 days).

## 9. EXCLUSION OF LIABILITY

- 9.1 Except to the extent of any written warranties given by the Owner to the Hirer and to the maximum extent permitted by law, all warranties and representations in respect of the Equipment (whether express or implied and whether regarding quality, fitness or suitability for any particular purpose or otherwise) are excluded. Where any written warranty conflicts with the remainder of this clause 9, the provisions of this clause 9 shall prevail.
- 9.2 To the extent allowed by law, the Owner's liability (if any) shall be limited to, at the Owner's option, repair of defective Equipment, re-supplying replacement Equipment under clause 6.6 or, without limiting clause 8.1.4, at the Owner's option, paying the proper and reasonable costs of having the Equipment repaired or replaced.
- 9.3 Regardless of the legal basis of any claim made against the Owner, the Owner's maximum liability under any circumstances shall, to the extent allowed by law, not exceed the lesser of the ordinary rental paid by the Hirer to the Owner in respect of the Equipment which gives rise to the claim and 3 months' ordinary rental charges for that Equipment.
- 9.4 The Owner shall not, in any event, be liable for any liability, loss or damage arising from any breach of this agreement by, or any negligent act or omission of, the Hirer or its representatives, servants or agents, nor for any special, indirect, or consequential loss or damage. For the purposes of this agreement, consequential loss includes (without limitation) loss of use of goods or services, loss of income or profit, loss of opportunity and loss of reputation or goodwill, in each case whether direct or indirect.
- 9.5 None of the Owner's employees, agents or independent contractors shall in any circumstances be under any liability of any kind to the Hirer in connection with this agreement. Every exemption, limitation, condition and right expressed or implied in this agreement on the Owner's part or in favour of the Owner shall extend to protect all of the Owner's employees, agents and independent contractors.

## 10. WAIVER AND VARIATION

All of the provisions of this agreement and all rights or remedies which the Owner may have under them at law or in equity or otherwise will not be waived or varied unless the waiver or variation is in writing signed by an authorised person on the Owner's behalf. No waiver by the Owner of a breach by the Hirer shall be deemed to be a waiver of any other breach or any future breach.

## 11. PRIVACY ACT

- 11.1 The Hirer authorises the Owner to collect from any source, and hold, personal information concerning the Hirer for the purpose of:
  - 11.1.1 Allowing the Owner to do business with and communicate with the Hirer;
  - 11.1.2 Determining the credit-worthiness of the Hirer;
  - 11.1.3 Communicating products, services and promotional activities of the Owner; and/or
  - 11.1.4 Debt collection.
- 11.2 The Hirer authorises the Owner to disclose personal information held by it to any other person for the purposes set out in clause 11.1 or for the purposes of exercising the Owner's rights under this agreement.
- 11.3 The Hirer understands that it has the right to access, and request correction, of personal information held by the Owner in accordance with the Privacy Act 1993.
- 11.4 The Hirer consents to receiving electronic messages (including commercial electronic messages and promotional electronic messages) from the Owner from time to time.

## 12. SEVERABILITY

If any part of this agreement is found by any court to be invalid, void, illegal or unenforceable, the validity, existence, legality or enforceability of the remainder of this agreement shall not be affected, prejudiced or impaired.

## 13. APPLICABLE LAW

This agreement and the relationship between the Owner and the Hirer shall be governed by the laws of New Zealand.