



## ICS EQUIPMENT HIRE GENERAL TERMS & CONDITIONS

These ICS Equipment Hire General Terms & Conditions apply to the exclusion of any other conditions proposed by the Customer, unless otherwise agreed by ICS Ltd and the Customer in writing.

ICS Ltd agrees to hire Equipment to the Customer on terms set out in this document, and any additional terms as set out in a specific hire agreement.

If the Customer wishes to hire Equipment the Customer must complete and sign (or otherwise accept in the manner required by ICS Ltd) a Hire Schedule and such other documents as ICS Ltd may require.

Each Hire Schedule is not a separate contract but forms a part of this hire agreement between ICS Ltd and the Customer, together with any credit application, guarantee and indemnity or other contractual documents.

The customer agrees to receive hire schedules and all associated documentation by electronic means.

ICS Ltd may in its absolute discretion decline to hire Equipment to the Customer at any time if it has reasonable cause to do so.

**Amendment:** These ICS Equipment Hire General Terms & Conditions may be changed by ICS Ltd from time to time by ICS Ltd giving notice of the amendment to the Customer.

Notice is deemed given when ICS Ltd does any of the following:

- (a) sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer;
- (b) publishes the amended terms on its website [www.theconsultants.co.nz](http://www.theconsultants.co.nz); or
- (c) displays the amended terms at premises from which ICS Ltd conducts hire operations.

Changes to these Hire Contract Conditions will only apply to Hire Schedules entered into after the change occurs.

### 1. Interpretation of Words in this Contract;

**Commencement** – The date when the Customer takes possession of the Equipment.

**Day rate** – starts from the time the equipment is uplifted or delivered to site, and is from 7.30am to 5pm on the same day.

Where the equipment is picked up (if available to do so) the day/night before, no additional charge shall be incurred.

Where the equipment is needed for another hire the following day, it shall be returned or available for collection before the end of the working day (i.e. 5pm) – however if the equipment is not needed for another hire the following day, the equipment can be delivered back to ICS Ltd depot or made available for pick up the following morning before 10am without additional charges.

**Equipment** – Means any kind of equipment, vehicles or tools including but not limited to the following kinds of goods or goods suitable for the following kinds of uses: cleaning; cooling and/or heating; entertainment; waste management; landscaping and gardening; plumbing; fencing and covering; lifting; access; air and air compression; pumping and fluid management; welding; compaction; concrete & masonry; flooring; earthmoving; floor care and cleaning; generation and power distribution; ground equipment and shoring; ladders and scaffolding; propping; lighting; materials handling; offshore pumps; safety equipment; storage; site accommodation including portable buildings and portable toilets; traffic management including road barriers; signage; vehicles including trucks, vans and trailers, and includes tools and parts and accessories for any of the foregoing.

**Hire Charge** – The amounts shown on the Hire Schedule payable by the Customer to hire the Equipment.

**Hire Period** – Means from Commencement until the end of the period shown on the Hire Schedule (see also Day Charge above).

The Hire Period may only be extended for one or more definite periods and in each case this can only be done if the Customer requests it and if ICS Ltd agrees.

ICS Ltd may issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period.

**Hire Schedule** – Means a document which ICS Ltd may require the Customer to sign (or accept in a way ICS Ltd requires) including particulars of the Equipment and the Hire Period and such other information as ICS Ltd may decide to require.

**ICS Ltd** – The company or companies listed on the Hire Schedule.

**Kilometre Charge** – The amount payable for the kilometres that a Motor Vehicle has, in the reasonable opinion of ICS Ltd, travelled during the Hire Period.

**Motor Vehicle** – A truck or utility but not any other equipment such as a scissor lift, trailer or bobcat.

**Remote Area** – Any location which is more the 50 kilometres from the ICS Ltd branch from where the Equipment is hired.

2. ICS Ltd Obligations ICS Ltd will:

- 2.1 Allow the Customer to take and use the Equipment for the Hire Period;
- 2.2 Provide the Equipment to the Customer clean and in good working order;
- 2.3 Collect the Equipment within 2 days of being requested to do so by the Customer and issuing to the Customer a Customer Pick Up authorisation. **NOTE TO CUSTOMER: You must return the Equipment at your expense when due back unless you obtain authorisation in written form from ICS Ltd.**

### 3. Obligations of the Customer

**The Customer must:**

- 3.1 Deliver the Equipment to ICS Ltd when it is due back;
- 3.2 Return the Equipment to ICS Ltd clean and in good repair;
- 3.3 Satisfy itself at Commencement that the Equipment is suitable for its purposes;
- 3.4 Notify any damage or defect that occurred or was uncovered when returning the equipment, or while using it when it is possible to cause further damage to the equipment or for safety reasons.
- 3.5 Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by ICS Ltd or posted on the Equipment;
- 3.6 **Indemnify** ICS Ltd for all injury and/or damage to the extent caused or contributed to by the Customer to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment;

3.7 Ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorized;

3.8 Ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed;

3.9 Conduct a thorough hazard and risk assessment before using the Equipment and comply with all Occupational Health and Safety laws relating to the Equipment and its operation;

3.10 Safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify ICS Ltd in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Customer;

3.11 Operate the Equipment with an adequate motor vehicle and/or power source;

3.12 Return any equipment that operates with fuels (e.g. petrol, diesel, etc.) so all tanks are full.

3.13 Report and provide full details to ICS Ltd of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.

**The Customer must NOT;**

3.14 Tamper with, damage or repair the Equipment;

3.15 Lose or part with possession of the Equipment;

3.16 Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;

3.17 Allow any person to drive a Motor Vehicle if the person:

- (a) does not hold a suitable licence to drive that class of Motor Vehicle; or
- (b) is affected by drugs and/or alcohol.

3.18 Exceed the recommended or legal load and capacity limits of the Equipment and/or tow vehicle;

3.19 Use or carry any illegal, prohibited or dangerous substance in or on the Equipment.

3.20 Exceed the recommended or legal speed limit for the Equipment.

### 4. Payments by the Customer to ICS Ltd

4.1 On or before Commencement (or as otherwise specifically agreed with ICS Ltd), the Customer will pay the Hire Charge.

4.2 Immediately on request by ICS Ltd, the Customer will pay:

- (a) the new list price of any Equipment which is for whatever reason not returned to ICS Ltd.

**(NOTE TO CUSTOMER: Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the Equipment)**

- (b) all costs incurred in cleaning the Equipment;

(c) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer, unless expressly agreed otherwise in this Contract;

(d) GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the Customer's use of the Equipment;

(e) all costs incurred by ICS Ltd in delivering and recovering possession of the Equipment;

(f) Interest for late payment of amounts owing by the customer, at the pre-judgement interest rate set by the Local Court of NZ from time to time;

(g) the Kilometre Charge and any additional Hire Charges;

(h) the cost of fuels and consumables provided by ICS Ltd and not returned by the Customer;

(i) any expenses and legal costs (including commission payable to a commercial agent) incurred by ICS Ltd in enforcing this Contract due to the Customer's default;

(j) all costs of repairing or replacing tyres, including road service; and

(k) if any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.

4.3 Without limiting the ability of ICS Ltd to recover all amounts owing to it, the Customer authorises ICS Ltd to charge any amounts owing by the Customer to any credit card or account details of which are provided to ICS Ltd.

4.4 ICS Ltd may tokenize the Customer's Credit Card or Account details to facilitate credit card or online payments.

### 5. Personal Property Securities Act 1999 ("PPSA")

5.1 The Hirer acknowledges that title to hired equipment remains with ICS Ltd at all times. Equipment purchased from ICS Ltd remains property of ICS Ltd until paid for in full.

5.2 The Hirer undertakes to:

(a) sign any further documents and or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ICS Ltd may reasonably require to register a financing statement or financing change statement on the Personal Properties Security Register;

(b) indemnify, and upon demand reimburse, ICS Ltd for all expenses incurred in registering a financing statement or financing change statement on the Personal Properties Securities Register.

(c) ensuring that ICS Ltd's security interest is enforceable, perfected and otherwise effective under the PPSA;

(d) enabling ICS Ltd to gain first priority (or any other priority agreed to by ICS Ltd in writing) for its security interest; and

(e) enabling ICS Ltd to exercise rights in connection with the security interest

5.3 The Hirer waives its rights as a debtor under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 148 of the PPSA;

5.4 The rights of ICS Ltd under this document are in addition to and not in substitution for ICS Ltd's rights under other law (including the PPSA) and ICS Ltd may choose whether to exercise rights under this document, and/or under such other law, as it sees fit.

5.5 Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPSA) in the Equipment other than with the express written consent of ICS Ltd.

5.6 Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless ICS Ltd (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to ICS Ltd and must be expressed to be subject to

the rights of ICS Ltd under this agreement. Customer may not vary a sub-hire without the prior written consent of ICS Ltd (which may be withheld in its absolute discretion).

5.7 Customer must ensure that ICS Ltd is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.

5.8 Customer must take all steps including registration under PPSA as may be required to:

- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPSA;
- (b) enabling the Customer to gain (subject always to the rights of ICS Ltd) first priority (or any other priority agreed to by ICS Ltd in writing) for the security interest; and
- (c) enabling ICS Ltd and the Customer to exercise their respective rights in connection with the security interest.

5.9 To assure performance of its obligations under this agreement, the Customer hereby gives ICS Ltd an irrevocable power of attorney to do anything ICS Ltd considers the Customer should do under this agreement. ICS Ltd may recover from Customer the cost of doing anything under this clause 5, including registration fees.

#### 6. Damage Waiver

6.1 Damage Waiver is not insurance, but is an agreement by ICS Ltd that the Customer's liability for damage to the Equipment can be limited in some circumstances only, to an amount called the Damage Waiver Excess.

6.2 Damage Waiver applies to all hires, subject to the conditions below, for no additional fee. The Damage Waiver Excess is the actual recovery and repair cost of the Equipment, or 20% of the current replacement cost of the Equipment as reasonably determined by ICS Ltd using suppliers list prices, whichever is the lesser amount.

**6.7 Insurance:** the Hirer must pay the value of the insurance excess applicable to each claim and each item (to be verified by Hirer insurance policy/broker) and hire charges calculated at 8 hours per week day until the equipment is repaired/replaced and ready for hire in the event of damage or loss with insurance claim, and where no insurance claim is activated the costs of repair/replacement and hire costs for the time to make repairs shall be charged at cost plus 10%.

**INSURANCE DOES NOT NECESSARILY APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY in the following circumstances;**

- (a) where the Equipment is lost or stolen where the Customer has failed to keep the Equipment in a securely locked Compound, or in the case of a Motor Vehicle, has failed to properly secure or lock the Motor Vehicle; or
- (b) where the Customer has failed to submit to ICS Ltd a Police Report on the theft within 7 days of the theft allegedly occurring;
- (c) where the operator is not suitably licensed;
- (d) where the operator is affected by drugs and/or alcohol;
- (e) where the equipment has been wilfully damaged by the Customer or its employees or agents;
- (f) where the damage is caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object whatsoever due to insufficient clearance;
- (g) where the damage is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road; or
- (h) where the damage is caused in any way by overloading.

#### 7. Exclusion of Warranties and Liabilities.

7.1 Where the New Zealand Consumer Law applies, the Customer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.

7.2 Where the New Zealand Consumer Law applies and the goods are not of a kind ordinarily acquired for personal domestic or household use or consumption, ICS Ltd liability in respect of any guarantee is limited to the replacement or repair of the goods, or the cost of having the goods repaired or replaced.

7.3 To the extent that the New Zealand Consumer Law (or any other law which cannot be excluded) does not apply ICS Ltd makes no representations and gives no warranties other than those set out in these Hire Contract Conditions, and will not be liable to the Customer for any damages, costs or other liabilities whatsoever (including for consequential loss) in relation to the hiring of the Equipment by the Customer – however any hire agreement does not infer or authorise ownership of any equipment hired from ICS Ltd to the person or organization who is hiring the equipment.

#### 8. Remote Hire

Where the Equipment is at any time hired by the Customer to be located in the Remote Area, the following clauses will also apply, in addition to the obligations of the Customer under Clause 3 and elsewhere in these Hire Contract Conditions;

(a) The Customer will pay an additional charge for any delivery, servicing and repair of the Equipment, and for any other attendance at the Remote Area by ICS Ltd ('Remote Area Charges'). The Remote Area Charges will be calculated on a per kilometre rate travelled by ICS Ltd staff to and from the Remote Area, plus labour costs per staff member per hour (including travelling times) at scheduled rates, plus direct travelling cost including all airfares and accommodation charges incurred by ICS Ltd and its staff in connection with travel to and from the Remote Area;

(b) Multiple items of Equipment hire by a Customer on the one site will only be charged for one call out fee;

(c) The Customer is responsible at its cost for daily maintenance and care of all Equipment in its possession, including daily checking of all fluids (fuel, oil, water, battery levels etc) and general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.

#### 9. Breach of Hire Contract by Customer

If the Customer breaches any clause whatsoever of this Contract and does not remedy the breach within 7 days notice of the breach, or becomes bankrupt, insolvent or ceases business then;

9.1 ICS Ltd shall be entitled to:

- (a) terminate this Contract; and/or
- (b) sue for recovery of all monies owing by the Customer; and/or
- (c) repossess the Equipment (and is authorized to enter any premises where the Equipment is located to do so), and any Damage and/or Theft Waiver referred to in clause 6 is immediately invalidated.

9.2 The Customer indemnifies ICS Ltd in respect of any damages, costs or loss, to the extent caused or contributed to by the customer resulting from a breach by the Customer of any provision of this Contract.

10. Disputes

10.1 The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to ICS Ltd in writing within 30 days of the Hire Contract date. In the event that no communication is received from the Customer within that 30 day period, the Hire Charges are deemed to be accepted by the Customer.

10.2 If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to ICS Ltd), the parties agree to negotiate to settle the dispute with the assistance of the Hire and Rental Association of New Zealand before litigation.

#### 11. Privacy

ICS Ltd will comply with the New Zealand Privacy Act 1993 in all dealings with Customers.

A copy of the ICS Ltd Privacy Statement is available upon request or by visiting [www.theconsultants.co.nz](http://www.theconsultants.co.nz)

#### 12. Governing Law

12.1 This Hire Contract is a payment claim under the Building and Construction Industry Security of Payment Act 2004.

12.2 If at anytime any provision of the Contract is or becomes illegal, invalid or unenforceable in any respect under the law of New Zealand, that will not affect or impair the legality, validity or enforceability of any other provisions of this Contract.

12.2 Except where ICS Ltd in its discretion takes action against the Customer under any of the Building and Construction Industry legislation referred to in this clause, ICS Ltd and the Customer agree that this Contract is governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

Before any client can hire any equipment or vehicle from ICS, these ICS Equipment Hire General Terms & Conditions shall be signed as agreement by the person/organization hiring such equipment or vehicles to these terms & conditions.

I \_\_\_\_\_ am a  
lawful representative of

\_\_\_\_\_ (hirer)

and accept any current or future hire to be under these  
terms and conditions.

Signature of representative for the Hirer:

Date: \_\_\_\_ / \_\_\_\_ / 20\_\_\_\_

Office Use only:

Approved by: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / 20\_\_\_\_

Client Account reference: \_\_\_\_\_