

## Terms and Conditions of Hire

### 1. Interpretation

In these terms:

- 1.1 "Agreement" means these Terms together with the Hire Agreement;
- 1.2 "Equipment" means all articles of equipment hired from the Owner by the Hirer including all fittings, accessories, parts and packaging supplied to the Hirer by the Owner pursuant to this Agreement (and includes any incidental supply of services);
- 1.3 "Hire Agreement" means the invoice on the face of this document for the hire of Equipment between the Owner and Hirer;
- 1.4 "Hire Charges" means the moneys charged by the Owner for the hire of the Equipment during the Hire Period;
- 1.5 "Hire Period" means the period as defined in clause 5 of these Terms;
- 1.6 "Hirer" means that person or persons entering into this Agreement and where that person or persons enters into this Agreement for or on behalf of another entity, includes such entity. This expression also extends to those claiming under or authorised by the Hirer.
- 1.7 "Minimum Hire Period" means a period of one day commencing at the time the Equipment is collected or leaves the Owners Premises;
- 1.8 "Owner" means Ez-E-Up Hire Limited or Kwik-N-Ezy Canopy NZ Limited
- 1.9 "Owners Premises" means 35 Dacre Street, Eden Terrace, Auckland;
- 1.10 "Terms" means these Terms and Conditions of Hire;
- 1.11 "Trade Customer" means those whom the Owner has agreed are entitled to trade credit terms.

### 2. Acceptance

- 2.1 These Terms apply to all Equipment hired by the Hirer from the Owner.
- 2.2 The Hirer shall be deemed to have accepted these Terms once they have signed the Hire Agreement.
- 2.3 The Hirer acknowledges and agrees that:
  - (a) no employee or agent of the Owner may make any representation, warranty or promise in relation to the Equipment other than as contained in this Agreement; and
  - (b) they have determined the Equipment fit for the purpose for which it is required;
  - (c) they have not relied on the skill and judgment of the Owner in selecting the Equipment; and
  - (d) they have checked the Equipment for suitability, functionality and completeness.
3. Authority of Signatory
  - 3.1 The person signing this Agreement for and on behalf of the Hirer (if not personally the Hirer) warrants that they have the authority of the Hirer to make this contract on the Hirer's behalf and that they are empowered by the Hirer to bind the Hirer to this Agreement. The person so signing hereby indemnifies the Owner against all losses and costs that may be incurred by the Owner arising out of the person signing the Agreement failing to have such power of authority.

### 4. Terms of Payment and Price

- 4.1 Payment must be made in full, without deduction other than as stated in this Agreement;
- 4.2 The Hire Charges for the Equipment shall be as listed in the Hire Agreement and unless expressly agreed otherwise shall be on a daily rate. A Minimum Hire Period applies.
- 4.3 Where the Hirer is a "non-trade customer" payment shall be made on commencement of the Hire Period; or
- 4.4 Where the Hirer is a Trade Customer, time for payment of the Hire Charges and any other charges shall be of the essence and shall be the 20<sup>th</sup> day of the month following the date of the Hire Agreement;
- 4.5 All extra charges including but not limited to delivery are not included in the hire rate and shall incur additional charges.
- 4.6 Total Hire Charges as set out in the Hire Agreement may not necessarily be final. The Hirer agrees to pay any shortfall in charges to the Owner and shall receive a refund for any overcharges acknowledged by the Owner;
- 4.7 Interest is payable on all overdue accounts calculated on a daily basis at the rate of interest equivalent to the Owners bank indicator rate as at the final date for payment plus 4% until full payment is received by the Owner;
- 4.8 If the Hirer defaults in payment of any invoice when due, the Hirer indemnifies the Owner from all legal costs and disbursements calculated on a solicitor client basis and any and all costs of collection.

### 5. Equipment Hire

- 5.1 Hire Charges are payable for the Equipment by the Hirer from the commencement of the Hire Period as calculated in accordance with clause 5.2 to the end of the Hire Period calculated in accordance with clause 5.3.
- 5.2 The Hire Period commences at:
  - (a) The agreed date of collection or delivery of the Equipment; or
  - (b) The time the Equipments leaves the Owners Premises whether by collection or delivery, whichever is the earlier.
- 5.3 The Hire Period ends at: (a) the agreed date of return or collection of the Equipment; or (b) if the Equipment has been returned in the same condition as at the commencement of the Hire Period, the date on which the Equipment has actually been returned to the Owner; or (c) if the Equipment is lost, subject to clause 5.4, the time the Equipment is recovered and returned to the Owner or replaced by an equivalent or comparable item of Equipment and is available for hire by the Owner; or (d) if the Equipment is damaged, subject to clause 5.4, the time the Equipment is repaired and is available for re-hire; or (e) if the Equipment is destroyed, subject to clause 5.4, the time the Equipment is replaced by an equivalent or comparable item of Equipment and is available for hire, whichever is the later.
- 5.4 If the Equipment is lost, damaged or destroyed, the Hire Period shall end no later than two (2) weeks after the agreed date for the return of the Equipment;
- 5.5 If delivery and collection by the Owner has been agreed, the Hirer shall ensure free access to the delivery site by the Owner. In the event of any delays due to free access being unavailable the Hirer shall reimburse the Owner for all associated lost hire fees. The Hirer shall also be responsible for any other expenses and costs incurred by the Owner related to delays in access to the delivery site. The risk of security remains with the Hirer until the Equipment is actually collected by the Owner.

### 6. Charges on Cancellation

- 6.1 Where the Hirer cancels whether in part or in whole any part of the Equipment order;
  - (a) more than 24 hours before delivery or collection the deposit paid pursuant to clause 7.0 of these Terms shall be forfeited unless an equivalent booking for hire of equipment on an alternative commencement date is made contemporaneously in which case the deposit shall be applied to that booking;
  - (b) less than 24 hours before delivery or collection, a fee of 30% of the Hire Charges shall be paid by the Hirer on the cancelled order; or
  - (c) after the Equipment has been delivered or collected 50% of the Hire Charges shall be paid plus any costs of delivery.
- 6.2 For the avoidance of doubt, the Owner shall not be required to make any allowance or concession to the Hirer for any period during the Hire Period where the Equipment is not in use.
7. Authority in relation to Credit Card Details Form and Deposit
  - 7.1 Prior to the commencement of hire the Hirer shall provide to the Owner:
    - (a) a deposit of 50% of hire total at time of booking to secure the Equipment booking, \$100.00 non refundable. This amount shall be offset against the total Hire Charges; and
    - (b) photo identification in a form acceptable to the Owner; and
    - (c) an open and signed credit card details form for security purposes.
  - 7.2 In relation to the credit card details, the Hirer expressly agrees that:
    - (a) if pursuant to this Agreement there are:
      - (i) any unpaid Hire Charges;
      - (ii) any amounts due and outstanding by the Hirer; and/or
      - (iii) the Equipment or any part of it is lost or damaged; and/or
      - (iv) any other additional charge are due from the Hirer which were not known at the time of the Equipment return;

- the Owner is entitled to process the credit card imprint and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Hirer pursuant to the terms of this Agreement; and
- (b) they shall not dispute liability to the Owner for any amount due under this Agreement;
- (c) they shall indemnify and keep indemnified the Owner against any loss incurred (including legal costs) by reason of the Hirer notifying their credit card issuer of such dispute.

### 8. Delivery

8.1 Subject to the express terms of this Agreement, where delivery and/or collection of the Equipment has been arranged;

- (a) Minimum delivery charges apply, which shall be shown on the Hire Agreement. The Owner reserves the right to increase delivery charges due without limitation to increased driver waiting time and/or access difficulties.
- (b) the costs of delivery shall be paid by the Hirer (without any set-off) and shall be due on the date for payment of the Hire Charges;
- (c) the Owner shall not be liable for any loss or damage howsoever caused due to failure by the Owner to deliver the Equipment (or part of it) promptly or at all;
- (d) The Owner may deliver the Equipment in separate deliveries;

### 9. Inspection

- 9.1 The Owner reserves the right to inspect the Equipment during the Hire Period at any time.
- 9.2 The Hirer shall inspect the Equipment on collection or delivery and shall notify the Owner by calling the telephone number provided in the Hire Agreement as soon as reasonably possible of any alleged defect or failure. Unless the Hirer complies with this, the Equipment shall be deemed to have been accepted in good order and condition and compliant with those specifications and descriptions.

9.3 No claims for any credits shall be accepted by the Owner after seven (7) days of the commencement of the Hire Period.

### 10. Equipment Damage

10.1 The Hirer shall be held liable in the event of theft, loss and or damage to the Equipment during the Hire Period.

#### 10.2 Care of Equipment and Breakdowns

- (a) The Hirer shall take proper care of the Equipment and shall only use it in suitable weather conditions for the purpose for which it has been designed and shall not attempt to alter, repair, modify or clean the Equipment. The Hirer is expressly prohibited from cooking directly under any marquee or canopy which may be included in the Equipment
- (b) In the event of any damage to the Equipment, the Hirer shall:
  - (i) Immediately notify the Owner by telephone at the number provided in the Hire Agreement;
  - (ii) return the Equipment or make arrangements with the Owner to have the Equipment collected;
  - (iii) not attempt to repair the damage and expressly agrees not to use pins, staples or glue or any other similar repair item on the Equipment;
  - (iv) be liable to the Owner for the sum equivalent to the cost of making good the damage whether by repair or replacement.
- (c) In the event of loss of the Equipment the Hirer shall pay to the Owner the sum equivalent to the cost of replacing the lost equipment.
- (d) In the event of breakdown of the Equipment;
  - (i) the Hirer must immediately notify the Owner by telephone at the number provided in the Hire Agreement;
  - (ii) the Owner shall not be liable for any loss suffered by the Hirer or liability incurred by the Hirer as a result of the breakdown howsoever caused.
  - (iii) Notwithstanding the foregoing any liability which may attach to the Owner under this Agreement shall be limited to the amount equivalent to the Hire Charges due under this Agreement.

10.3 On termination of the hire, the Hirer shall ensure that the Equipment is complete and in good order as delivered or collected, fair wear and tear accepted. The Hirer shall not pledge the Owners credit for repairs or create a lien over the Equipment in respect of any repairs. In the event the Equipment is returned dirty cleaning charges shall apply.

### 11. Default

- 11.1 (a) If the Hire Charges are not paid for in accordance with this Agreement; or
  - (b) The Owner reasonably believes that a third party may attempt to take possession of the Equipment; or
  - (c) Any other event occurs which is likely to adversely affect the Hirers ability to pay the Hire Charges (including but not limited to the appointment of a receiver, administrator, liquidator or similar person to the Hirers undertaking);
- then the Owner may at any time thereafter, without notice to the Hirer and without prejudice to any other rights which it may have against the Hirer, terminate the Agreement.

### 12 Right to Enter Premises

In the event of any of the circumstances referred to in the clause 11, the Hirer:

- 12.1 Authorises the Owner, its agents or representatives at all times without notice to enter onto and at all necessary time(s), to remain in and on any premises where the Equipment is located in order to collect the Equipment without being liable in anyway for trespass; and assigns to the Owner all the Hirers rights to enter onto and remain in and on such premises until the Equipment has been collected.

### 13. Owners Liability and Warranties

- 13.1 Except where the Owner is in breach of a guarantee in terms of the Consumer Guarantees Act 1993, the Hirer in entering into this Agreement acknowledges that in all circumstances whatsoever, the Owner shall not be liable for direct or consequential damage, loss or expense whatsoever and howsoever arising (whether in contract or tort) including that resulting from the negligence of the Owner or arising by operation of law and whether suffered by the Hirer and/or a third party for any amount that exceeds the amount actually paid by the Hirer to the Owner pursuant to this Agreement;
- 13.2 If the Hirer is hiring the Equipment for the purposes of a business as defined in the Consumer Guarantees Act 1993, the provisions of that Act do not apply;

### 14 Title and Risk

The Hirer acknowledges and accepts that for the duration of the Hire Period:

- (a) the Owner retains title to the Equipment;
- (b) the Equipment is possessed by the Hirer merely as bailee;
- (c) the Hirer has no right to agree, attempt, offer or support to sell, assign, sublet, pledge, mortgage, let on hire or otherwise part, assign, part with the personal possession of or otherwise deal with the Equipment;
- (d) all responsibility lies with the Hirer for safekeeping of the Equipment for the Hire Period and the Owner is therefore indemnified against all loss, theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft or damage is attributable to any negligence, failure or omission by the Hirer;
- (e) the Owner accepts no liability for any claims in respect of any injury to persons or damage to property arising out of use of the Equipment however caused;
- (f) the Hirer shall be responsible for any permits that may be required to operate the Equipment and hereby indemnifies the Owner from any penalties or other obligation incurred due to the Hirers failure to obtain or comply with any such permit;
- (g) the Hirer shall be liable for any costs or penalties due to the Equipment creating an obstruction including without limitation any local authority fines, towage costs, seizure or impoundment costs during the Hire Period.

### 15 Privacy Act 1993

15.1 In the case of a person entering into this contract in a private capacity as Hirer, the Hirer by entering into this Agreement hereby authorises the disclosure of personal information regarding their creditworthiness by any other party to the Owner and that this personal information may be used by the Owner to advise the Hirer of the Owner's other goods and services. The Hirer has rights of access to and correction of personal information contained in this contract subject to the provisions of the Privacy Act 1993.

### 16. Additional Clauses:

- 16.1 Failure by the Owner to insist on strict performance of any term(s) of this Agreement shall not constitute a waiver of any of the Owners rights or remedies and is not a waiver of any subsequent breach or default by the Hirer
- 16.2 The Agreement is personal to the Hirer and neither the Agreement nor any rights arising under it may be assigned by the Hirer.
- 16.3 If any provision in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity of the remaining provisions shall not be affected.
- 16.4 All Equipment and services supplied by the Owner are subject to the laws of New Zealand and the Owner takes no responsibility for changes in the law which affect the Equipment or the services supplied.
- 16.5 The Owner shall not be responsible for any breach of this Agreement due to any matter or thing beyond its control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, industrial action, war, riot or civil commotion, intervention of public authority or accident).