

Terms & Conditions (Terms)

1. General

- 1.1 The following Terms govern the hire of all Equipment from the Owner to the Hirer and the provision of any Services by the Owner to the Hirer.
- 1.2 Any order or request for the hire of Equipment accepted by the Owner brings into effect a Hire Contract governed by these Terms.
- 1.3 These Terms supersede all other terms, conditions and agreements between the Owner and Hirer and no variation of these Terms will apply unless accepted in writing by the Owner. No other terms and conditions contained in any document provided by the Hirer shall apply unless agreed in writing by the Owner.
- 1.4 The Owner may amend these Terms from time to time. These changes shall be deemed to take effect from the date on which the Hirer receives notice of such changes, or at such time as the Owner provides further Equipment or Services to the Hirer.

2. Definitions and Interpretation

2.1 In these Terms:

- 2.1.1 **Business Day** means a day other than Saturday, Sunday or public or anniversary holiday in the Owner's location from which the Equipment is hired;
- 2.1.2 **CGA** means the Consumer Guarantees Act 1993;
- 2.1.3 **Credit Account Application** means an application for a credit account with the Owner;
- 2.1.4 **Damage Waiver Fee** means the fee payable to provide cover against accidental damage, loss, and theft to the Equipment;
- 2.1.5 **Default Interest Rate** means 5% per annum greater than the Owner's business overdraft interest rate;
- 2.1.6 **Equipment** means all equipment, machinery, accessories or any other goods hired by the Hirer from the Owner (but not including any Equipment that is exclusively governed by other terms);
- 2.1.7 **Event of Default** has the meaning given in clause 22.1;
- 2.1.8 **FTA** means the Fair Trading Act 1986;
- 2.1.9 **GST** means goods and services tax payable under the Goods and Services Tax Act 1985;
- 2.1.10 **Hire Charges** means the charges for the hire of the Equipment and/or the provision of the Services as agreed between the Owner and the Hirer;
- 2.1.11 **Hire Contract** means any contract for the hire of Equipment made between the Owner and the Hirer and governed by these Terms;
- 2.1.12 **Hire Form** means the order form or other document agreed between the Owner and the Hirer or other communication between the Owner and the Hirer, setting out the key terms relating to the hire of the Equipment and/or the provision of Services;
- 2.1.13 **Hire Period** means the period of the hire of the Equipment, as more particularly described in clause 10;
- 2.1.14 **Hirer** means the person hiring the Equipment (or acquiring the Services) including the Hirer's successors;

- 2.1.15 **HSWA** means the Health and Safety at Work Act 2015;
- 2.1.16 **Owner (exTERRA t/a Quiply Hire)** means the person hiring the Equipment to the Hirer;
- 2.1.17 **PPSA** means the Personal Property Securities Act 1999;
- 2.1.18 **Services** means any services the Owner provides to the Hirer in connection with the hire of the Equipment including but not limited to haulage, cartage and operating services;
- 2.1.19 **Site** means any site to which the Equipment is to be delivered or used, including any vessel, vehicle or mobile apparatus upon which the Equipment is to be used.

2.2 In these Terms

- 2.2.1 Headings are for convenience only and will not affect the interpretation of these Terms;
- 2.2.2 References to clauses are to clauses of these Terms;
- 2.2.3 All references to legislation are references to New Zealand legislation in force and include any subordinate legislation, by-law, regulation, order, statutory instrument or determination made under it, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation;
- 2.2.4 The term "includes" or "including" (or similar terms) is deemed to be followed by the words "without limitation";
- 2.2.5 References to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity; and
- 2.2.6 Where more than one person is the Hirer, each of those people shall be jointly and severally liable for all payments for the hire of Equipment and provision of Services and all other obligations under these Terms.

3. Hire of Equipment

- 3.1 The Equipment and Services are as described in the Hire Form or as otherwise agreed by the Owner.
- 3.2 The Owner is not obliged to accept any order or request for the hire of Equipment or provision of Services.
- 3.3 The Owner may require the Hirer to pay a bond as a condition of the hire of the Equipment, which shall be refundable in accordance with and subject to clause 5.4.
- 3.4 The Owner may require a guarantee to be provided by the Hirer's directors and/or shareholders as a condition of the hire of the Equipment.
- 3.5 If the Owner cannot provide the Equipment or Services to the Hirer, then by written notice to the Hirer the Owner may cancel any order for the Equipment or Services (even if it has been accepted) and refund any prior payments to the Hirer but otherwise the Owner will have no further liability to the Hirer.

4. Hire Charges

- 4.1 The Hire Charges are (except in the case of manifest error or fraud):
 - 4.1.1 As set out in the Hire Form;

- 4.1.2 Where no price is stated in the Hire Form or where there is no Hire Form, the price according to the Owner's current price list; or
- 4.1.3 As otherwise agreed between the parties.
- 4.2 The Hire Charges are exclusive of GST, which shall also be payable by the Hirer (except where otherwise agreed).
- 4.3 Hire Charges are based on the length of hire, typically half-daily, daily or monthly.
5. **Payment**
- 5.1 The Hirer shall pay the Hire Charges as specified in the Hire Form or as otherwise agreed between the parties:
- 5.1.1 In full without deduction or set-off of any kind; and
- 5.1.2 To the bank account nominated by the Owner in writing from time to time or by such other method approved by the Owner.
- 5.2 Where the Hirer is a credit account customer the Hire Charges are payable by the 20th of the month following the month of invoice (except where otherwise agreed).
- 5.3 Where the Hirer is not a credit account customer the Hire Charges are payable prior to commencement of hire or on such other date or dates set out on the Hire Form or agreed between the parties.
- 5.4 Any bond paid by the Hirer will be refunded if the Equipment is returned in accordance with these Terms after deducting such amounts that are owing by the Hirer to the Owner under all Hire Contracts between the Owner and the Hirer.
6. **Additional Payments by Hirer**
- 6.1 In addition to the Hire Charges the Hirer shall on demand pay:
- 6.1.1 The cost of delivering or collecting the Equipment;
- 6.1.2 The cost of repairing the Equipment where the Equipment is damaged or breaks down (except where this is the Owner's responsibility under clause 13.2 or where such damage is covered by the damage waiver under clause 12);
- 6.1.3 The cost of replacing the Equipment where the Equipment is lost, stolen or irreparably damaged, or where the Equipment irreparably breaks down (except where this is the Owner's responsibility under clause 13.2 or where such damage, loss, or theft is covered by the damage waiver under clause 12);
- 6.1.4 The cost of remedying any failure of the Hirer to return the Equipment in compliance with these Terms;
- 6.1.5 The cost of recovering possession of the Equipment;
- 6.1.6 The cost of any fuel used by the Hirer in the operation of the Equipment and not replaced on return of the Equipment;
- 6.1.7 The cost of any other consumables used by the Hirer in the course of operating the Equipment;
- 6.1.8 The cost of repair and/or replacement of any of the parts of the Equipment required due to the Hirer's use of the Equipment;
- 6.1.9 Any costs incurred in enforcing any of these Terms including any legal fees incurred by the Owner;
- 6.1.10 Any costs incurred by the Owner in registering or protecting its interest in the Equipment under clause 17.
- 6.2 If any amount owing by the Hirer is not paid on its due date (whether in respect of the Hire Charges or otherwise), without limiting any of the Owner's rights or remedies interest will accrue on the outstanding amounts at the Default Interest Rate.
7. **Hirer Warranties**
- 7.1 The Hirer warrants that all information provided to the Owner, including any information contained in any Credit Account Application, is true and accurate in all material respects.
8. **Hirer Acknowledgements**
- 8.1 Any advice, recommendation, information or assistance provided by the Owner is given in good faith and is based on the Owner's own knowledge and experience. However the Hirer acknowledges that it is its responsibility to ensure that:
- 8.1.1 The Equipment is suitable for its purposes;
- 8.1.2 The Site is suitable for the Equipment;
- 8.1.3 The use or installation of any Equipment at the Site will not be in breach of any restriction or covenant affecting the Site or any other legal or regulatory requirement.
9. **Delivery and Return of Equipment**
- 9.1 Where the Owner is responsible for arranging the delivery and/or pickup of the Equipment the Owner will use its reasonable endeavours to make delivery of the Equipment at any time that has been agreed but time will not be of the essence and the Owner will not be responsible for any loss or damage sustained by reason of any delay in delivery.
- 9.2 Delivery will be deemed complete when the Equipment is transported to the Site.
- 9.3 The Owner may deliver the Equipment in instalments.
- 9.4 The Owner shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) in respect of the delivery of the Equipment except where this is caused by the negligence of the Owner.
- 9.5 The Hirer shall make all arrangements necessary to take delivery of the Equipment whenever and wherever it is tendered for delivery. The Owner shall be entitled to assume that any person accepting delivery of the Goods is authorised to do so on the Hirer's behalf.
- 9.6 The Hirer shall inspect the Equipment on delivery and notify the Owner of any alleged damage to the Equipment or any other alleged defect, shortage in quantity, damage or failure to comply with the description.
- 9.7 Unless agreed otherwise the Hirer is responsible for loading and unloading any of the Equipment at the Site.
10. **Hire Period**
- 10.1 Where the Owner is responsible for delivering the Equipment the Hire Period will commence on delivery (or attempted delivery) of the Equipment to the Site in accordance with clause 9.
- 10.2 Where the Hirer is responsible for collecting the Equipment the Hire Period will commence on the date the Hirer collects the Equipment or the agreed date for commencement of the Hire Period, for example as specified on the Hire Form, (whichever occurs first).

10.3 The Hire Period will continue for the period that has been agreed between the Owner and Hirer, for example as specified on the Hire Form.

10.4 If the Hirer fails to return or make the Equipment available for return at the end of the Hire Period without the Owner's consent, then without limiting any of the Owner's rights, until such time as the Equipment is returned or made available for return the Hirer will pay to the Owner to the Hire Charges until the Equipment is returned.

10.5 The Hirer will return or make the Equipment available for collection at the end of the Hire Period in such condition and repair required by these Terms.

11. Use and Operation of the Equipment

11.1 The Hirer shall:

- 11.1.1 Maintain the Equipment in the same order, condition and repair than at commencement of the Hire Period;
- 11.1.2 Except where clause 13.2 applies repair and/or replace any parts of the Equipment which require repair or replacement, unless the Owner in its absolute discretion notifies the Hirer otherwise;
- 11.1.3 Keep the Equipment secure and safe and take all reasonable steps to protect the Equipment against vandalism, damage, theft or unauthorised distress or seizure including but not limited to ensuring that the Equipment is stored in secured premises;
- 11.1.4 Pay for all fuel used in the operation of the Equipment;
- 11.1.5 Use the Equipment only at the Site;
- 11.1.6 Use the Equipment only for its intended use;
- 11.1.7 Use the Equipment in accordance with any relevant laws, regulations and requirements;
- 11.1.8 Operate the Equipment in accordance with the Owner's and manufacturer's recommendations and requirements;
- 11.1.9 Obtain at its own expense all certificates, licences and approvals that may be required for the hire of the Equipment.
- 11.1.10 Not operate the Equipment outside its agreed purposes or rated capacity or in a manner likely to cause undue wear and tear.
- 11.1.11 Inspect the Equipment regularly; and
- 11.1.12 Carry out any necessary servicing to the Equipment.

11.2 The Hirer shall only permit safe operation of the Equipment by persons suitably skilled, competent, qualified and/or licensed to do so.

11.3 The Hirer shall not:

- 11.3.1 Operate the Equipment whilst it is in a defective, damaged or dangerous condition;
- 11.3.2 Exceed the recommended or legal load and capacity limits of the Equipment;
- 11.3.3 Use the Equipment under the influence of drugs or alcohol;
- 11.3.4 Use or carry any illegal, prohibited or dangerous substance in or on the Equipment; or
- 11.3.5 Modify or alter the Equipment or allow anything to be added to it.

11.4 The Hirer shall on the Owner's request provide the Owner with such information that the Owner requires in relation to the Equipment, including details of the Site(s) at which the Equipment is used.

12. Damage Waiver and Insurance

12.1 Clause 12.2 to 12.5 apply where the Owner provides a damage waiver scheme in relation to the rental of Equipment involving payment of a Damage Waiver Fee.

12.2 As a condition of the hire of the Equipment the Owner may require the Hirer to pay the Damage Waiver Fee or the Hirer may choose to pay the Damage Waiver Fee.

12.3 If the Hirer pays the Damage Waiver Fee, in the event of accidental damage, loss, or theft to the Equipment the Hirer will only be liable for the damage waiver excess applicable to the Equipment and not the costs of repair or replacement under clause 6.1.2 and 6.1.3. The Hirer will pay the damage waiver excess on demand.

12.4 The damage waiver does not cover any damage to, or loss or theft of, the Equipment caused by the Hirer failing to comply with these terms, including the Hirer failing to use or operate the Equipment in compliance with these Terms (and clause 12.3 shall in those circumstances be of no effect).

12.5 The damage waiver does not cover damage to tyres or any other matter that the Owner informs the Hirer is excluded before commencement of the hire.

12.6 The Hirer is responsible at its own expense for effecting insurance in respect of damage to the Hirer's property and third parties against all risks arising from the Equipment being in the Hirer's care, custody or control, regardless of whether any Damage Waiver Fee is paid.

12.7 Where no Damage Waiver Fee is paid the Hirer is responsible at its own expense for effecting insurance for the Equipment's full replacement value against all risks arising from the Equipment being in the Hirer's care, custody or control.

12.8 Where no Damage Waiver Fee is paid or where the damage waiver does not cover the damage, loss or theft pursuant to clause 12.4 or 12.5, the Hirer is fully liable in respect of any damage, loss or theft to the Equipment pursuant to clause 6.1.2 and 6.1.3.

12.9 The hire of the Equipment may be conditional on the Hirer putting in place the insurance policies referred to in clause 12.6 and 12.7 satisfactory to the Owner in the Owner's absolute discretion and providing evidence of such policies to the Owner on request. Without limitation, the Owner may require that the Owner is added as an interested party to the Hirer's insurance policy or policies.

13. Damage – Inherent Defects

13.1 The Hirer shall notify the Owner immediately on the occurrence of:

- 13.1.1 Damage to the Equipment;
- 13.1.2 The Equipment breaking down; or
- 13.1.3 Destruction, loss or theft of the Equipment.

13.2 If the Equipment is damaged, breaks down or fails to operate due to any defects arising from normal wear and tear or an inherent fault or any other fault not detectable at the beginning of the Hire Period the Owner may repair or replace the Equipment at its expense (and suspend the Hire Charges).

13.3 Notwithstanding clause 13.2, if repair or replacement is too expensive, impractical or impossible (in each case as determined in the Owner's absolute discretion) then the Owner can terminate the hire of the Equipment. On termination the Owner will collect the Equipment.

14. Access

- 14.1 The Hirer grants the Owner and its employees, representatives and agents access to the Site and the Equipment (whether or not during business hours) to deliver, collect, inspect, test, adjust, maintain, repair or replace the Equipment, or to exercise any of its rights, remedies or obligations under these Terms.

15. Assignment and no dealing

- 15.1 The Hirer may not assign any of its rights under any Hire Contract or these Terms, or sublet, sell, cross-hire or charge the Equipment.
- 15.2 The Hirer shall keep the Equipment in its own possession and control and shall not allow any person other than its properly qualified or licensed employees or contractors to use it.
- 15.3 The Owner may assign, sub-contract or license all or any part of its rights and/or obligations under any Hire Contract without the Hirer's consent.

16. Health and Safety at Work Act

- 16.1 To the extent permitted by law the Owner is not responsible for any obligations imposed on the Hirer from time to time pursuant to the HSWA.

17. Title and Security Interest

- 17.1 Each Hire Contract is a contract for the right to use Equipment and Services only and the Owner at all times retains ownership of the Equipment.
- 17.2 The parties acknowledge that the hire of the Equipment may create a security interest in the Equipment in favour of the Owner under the PPSA (in particular where the Equipment is hired for a period of more than 1 year) and that in those circumstances the Hire Contract creates a security agreement for the purposes of the PPSA. The Owner may register a financing statement in respect of its security interest in the Equipment.
- 17.3 The Hirer shall do everything that the Owner reasonably requires to ensure that the Owner has a perfected security interest in the Equipment (including providing and updating any debtor information). The Hirer agrees that it will not register a financing change statement or a change demand in respect of the Equipment.
- 17.4 The following sections of the PPSA shall not apply to any Hire Contract or any security interest and the Hirer waives its rights under the following sections of the PPSA: 114(1)(a), 116, 120(2), 121, 122, 125, 129, 131, 132, 133, and 134. The Hirer waives its right to a verification statement upon registration of the Owner's security interest.

18. Warranties and Guarantees

- 18.1 The Owner warrants as follows (subject to the other provisions of this clause 18 and clause 19):
- 18.1.1 It has the right to hire the Equipment to the Hirer;
- 18.1.2 The Equipment matches the description;
- 18.1.3 The Equipment complies with any agreed specifications.
- 18.2 Where the Hirer is a consumer (as defined in the CGA) certain guarantees may also apply in respect of the hire of the Equipment and the provision of the Services pursuant to the CGA. These guarantees may only be limited by clause 19.4.

19. Exclusion of Terms

- 19.1 Apart from the warranties or guarantees described in clause 18 or any express warranties provided by the Owner, the Owner makes no representations and give no assurances, warranties or guarantees to the Hirer in relation to the hire of the Equipment or the Services. To the maximum extent permitted by law, any representation, assurance, warranty or guarantee implied by law, custom or practice is excluded.
- 19.2 To the maximum extent permitted by law none of the Owner's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by any of the Owner's directors in writing.
- 19.3 Where the Hirer acquires the Equipment and/or acquires the Services in trade, the Owner and the Hirer agree to contract out of the following sections of the FTA in accordance with section 5D of the FTA:
- 19.3.1 Section 9: Misleading and deceptive conduct generally;
- 19.3.2 Section 12A: Unsubstantiated Representations;
- 19.3.3 Section 13: False or misleading representations.
- 19.4 Notwithstanding clause 18.2, where the Hirer hires the Equipment or acquires the Services in trade, the Owner and Hirer agree to contract out of the CGA in accordance with section 43 of the CGA.
- 19.5 The parties agree that it is fair and reasonable to be bound by clauses 19.3 and 19.4.

20. Liability

- 20.1 The Owner shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Owner of these Terms.
- 20.2 The Owner's aggregate liability in respect of a Hire Contract shall be limited to the Hire Charges in respect of that Hire Contract.

21. Indemnities

- 21.1 The Hirer indemnifies the Owner against any loss, damage, liabilities, costs or expenses in respect of:
- 21.1.1 Any injury or damage caused to the Owner or its property or any third party or third party's property arising from the use of the Equipment by the Hirer; and
- 21.1.2 Any breach of these Terms by the Hirer.

22. Default

- 22.1 The Hirer commits an Event of Default if:
- 22.1.1 The Hirer fails to make payment in accordance with these Terms;
- 22.1.2 The Hirer breaches any of these Terms and such breach is irremediable or if it is remediable it is not remedied within 5 Business Days of the Owner giving notice to the Hirer requiring it to be remedied;
- 22.1.3 In the Owner's opinion the Hirer will be unable to pay its debts as they fall due;
- 22.1.4 The Hirer commits an act of bankruptcy or is declared bankrupt;
- 22.1.5 The Hirer becomes insolvent, convenes a meeting with its creditors or propose or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or;

- 22.1.6 A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any of the Hirer's assets.
- 22.2 Where the Hirer acquires the Equipment and/or Services for the purposes of a business the Hirer also commits an Event of Default if it ceases or threatens to cease to carry on business.
- 22.3 If an Event of Default occurs, without prejudice to any other rights or remedies available to the Owner under these Terms or otherwise, the Owner may:
- 22.3.1 Terminate any Hire Contract by giving notice to the Hirer; and
- 22.3.2 Recover the Equipment.
- 22.4 Termination will not affect any rights that have accrued to the date of termination and in particular the Owner's right to recover any unpaid Hire Charges and any other loss, damage, costs and expenses provided for in these Terms or any of these Terms which expressly or by implication survives termination.
- 23. Use of Third Parties**
- 23.1 The Owner may subcontract with any other person, firm or company to provide the Equipment or the Services.
- 24. Collection, Use and Disclosure of Information**
- 24.1 The Hirer agrees that the Owner may collect personal information from the Hirer that the Owner reasonably requires to:
- 24.1.1 Provide the Equipment and the Services;
- 24.1.2 Assess the Hirer's creditworthiness;
- 24.1.3 Administer and enforce any Hire Contract;
- 24.1.4 Maintain credit records held by the Owner, any related company and external agencies;
- 24.1.5 Conduct market research, data processing and statistical analysis; and
- 24.1.6 Market the Owner's goods and services.
- 24.2 The Hirer may in accordance with the Privacy Act 2020 request access to or correction of the personal information that the Owner holds by contacting the Owner.
- 25. Notices**
- 25.1 Without limiting any other means of service, any notice given to the Hirer under these Terms may be given by email (effective upon transmission) or post (effective 2 Business Days after sending) to the addresses specified on the Hire Form or Credit Account Application or such other email address or address by which the Hirer has communicated with the Owner.
- 26. General**
- 26.1 The Owner shall not be liable for any delay or failure to comply with its obligations under these Terms which are caused by any act of God, terrorism, war, strike, lock out, industrial action, flood, storm, epidemic, pandemic, or other event beyond the Owner's reasonable control.
- 26.2 The Owner does not waive a right, power or remedy if it fails to exercise or delay in exercising the right, power or remedy.
- 26.3 The rights powers and remedies provided in these Terms are cumulative and not exclusive of any rights powers or remedies provided by law.
- 26.4 If any of these Terms is or becomes invalid, void, illegal or unenforceable, the validity, existence, legality and

enforceability of the remaining Terms will not be affected, prejudiced or impaired.

27. Governing Law

- 27.1 These Terms and all Hire Contracts are governed by the laws of New Zealand.
- 27.2 The Hirer submits to the non-exclusive jurisdiction of the courts of New Zealand.

exTERRA Limited t/a Quiply Hire

info@quiply.nz

https://quiply.nz

Invercargill New Zealand