



## Pronto Hire – Terms & Conditions of Hire

<p>(j) comply with all occupational health and safety laws relating to the Equipment and its operation;</p> <p>(k) keep the Equipment in their own possession and control;</p> <p>(l) employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;</p> <p>(m) not:</p> <p>(i) alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;</p> <p>(ii) exceed the recommended or legal load and capacity limits of the Equipment;</p> <p>(iii) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;</p> <p>(iv) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;</p> <p>(v) arrange or undertake any repairs, service or salvage without the authorisation of Pronto Hire to do so;</p> <p>(vi) operate the Equipment in any race, speed test, rally, performance or contest, or on any closed road or non-public roadway;</p> <p>(vii) permit the Equipment to be operated without their authority and then only by an authorised driver named on first page of this Contract;</p> <p>(viii) carry any animals in any vehicle without the written permission of Pronto Hire;</p> <p>(ix) allow the Equipment to:</p> <p>(A) be operated by any person under the influence of alcohol or any drug or intoxicating substance that affects their ability to operate the Equipment;</p> <p>(B) convey, propel or tow any other Equipment or object other than those supplied by Pronto Hire, or agreed to in writing by Pronto Hire;</p> <p>(C) carry more passengers or a greater load (weight) than the legal capacity of the Equipment;</p> <p>(D) carry passengers for hire or reward of any kind;</p> <p>(E) be used when it is damaged or unsafe;</p> <p>(F) be used in such a manner as would permit an insurer to decline any claim;</p> <p>(G) towed on a road which is not properly formed and constructed as a sealed road.</p> <p>(n) be liable for:</p> <p>(i) parking or traffic infringement and will supply relevant details as required by the Police and/or Pronto Hire relating to any such parking or traffic infringement and offences, impoundment, towage and storage; and</p> <p>(ii) unauthorised repairs to the Equipment.</p> <p>(o) on termination of the hire, deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to Pronto Hire.</p> <p>(p) If the Customer is hiring a truck of size class 2 and larger they will provide and display their own TSL (Transport Service Licence) number on the windscreen.</p>	<p>18.2 In the event of Wet Hire, the operator of the Equipment remains an employee of Pronto Hire and operates the equipment in accordance with the Customer's instructions. Pronto Hire shall not be liable for any actions of the operator in following the Customer's instructions.</p> <p><b>19. Underground Locations</b></p> <p>19.1 Prior to Pronto Hire commencing any work the Customer must advise Pronto Hire of the precise location of all underground services on the Site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that are not on Site.</p> <p>19.2 Whilst Pronto Hire will take all care to avoid damage to any underground services the Customer agrees to indemnify Pronto Hire in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 19.1.</p> <p><b>20. Defects</b></p> <p>20.1 The Customer shall inspect the Equipment on delivery and shall within forty eight (48) hours notify Pronto Hire of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Pronto Hire an opportunity to inspect the Equipment within a reasonable time following delivery if the Customer believes the Equipment is defective in any way. If the Customer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which Pronto Hire has agreed in writing that the Customer is entitled to reject, Pronto Hire's liability is limited to replacing the Equipment.</p> <p><b>21. Consumer Guarantees Act 1993</b></p> <p>21.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).</p> <p><b>22. Default and Consequences of Default</b></p> <p>22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Pronto Hire's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>22.2 If the Customer owes Pronto Hire any money the Customer shall indemnify Pronto Hire from and against all costs and disbursements incurred by Pronto Hire in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Pronto Hire's collection agency costs, and bank dishonour fees).</p> <p>22.3 Further to any other rights or remedies Pronto Hire may have under this contract, if the Customer has made payment to Pronto Hire, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Pronto Hire under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.</p> <p>22.4 Without prejudice to any other remedies Pronto Hire may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Pronto Hire may suspend or terminate the supply of Equipment to the Customer. Pronto Hire will not be liable to the Customer for any loss or damage the Customer suffers because Pronto Hire has exercised its rights under this clause.</p> <p>22.5 Without prejudice to Pronto Hire's other remedies at law Pronto Hire shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Pronto Hire shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to Pronto Hire becomes overdue, or in Pronto Hire's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer has exceeded any applicable credit limit allowed by Pronto Hire;</p> <p>(c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p><b>23. Cancellation</b></p> <p>23.1 Without prejudice to any other rights or remedies Pronto Hire may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Customer of such notice(s)) then Pronto Hire may suspend the Services immediately. Pronto Hire will not be liable to the Customer for any loss or damage the Customer suffers because Pronto Hire has exercised its rights under this clause.</p> <p>23.2 Pronto Hire reserves the absolute right to:</p> <p>(a) cancel, terminate, or determine this Contract;</p> <p>(b) immediately repossess the Equipment;</p> <p>at any time before or during the hire period, without reason, without prior notice, without payment of compensation and without prejudice to any other rights which Pronto Hire may have against the Customer. Pronto Hire or its agents may enter any property or premises as per clause 23.1 where the Equipment may be kept, for this purpose.</p> <p>23.3 In addition to clause 23.2 in these terms and conditions, Pronto Hire shall be entitled to cancel the Contract if:</p> <p>(a) Pronto Hire reasonably believes that a third party may attempt to take possession of the Equipment; or</p> <p>(b) the Equipment is at risk.</p> <p>23.4 In the event that the Customer cancels this Contract the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Pronto Hire (including, but not limited to, any loss of profits) up to the time of, or as a direct result of the cancellation, notwithstanding that at Pronto Hire's sole discretion where appropriate notice is not received the Customer shall:</p> <p>(a) forfeit any bond paid; and</p> <p>(b) be liable for all monies due and payable up to the date of cancellation.</p> <p><b>24. Dispute</b></p> <p>24.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).</p> <p><b>25. Privacy Policy</b></p> <p>25.1 All emails, documents, images or other recorded information held or used by Pronto Hire is Personal Information as defined and referred to in clause 25.3 and therefore considered confidential. Pronto Hire acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area ("EEA") then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Pronto Hire acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Pronto Hire that may result in serious harm to the Customer, Pronto Hire will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.</p> <p>25.2 Notwithstanding clause 25.1, privacy limitations will extend to Pronto Hire in respect of Cookies where transactions for purchases/orders transpire directly from Pronto Hire's website. Pronto Hire agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to Pronto Hire when Pronto Hire sends an email to the Customer, so Pronto Hire may collect and review that information ("collectively Personal Information")</p> <p>In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Pronto Hire's website.</p> <p>25.3 The Customer authorises Pronto Hire or Pronto Hire's agent to:</p> <p>(a) access, collect, retain and use any information about the Customer:</p> <p>(i) including name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or</p> <p>(ii) for the purpose of marketing products and services to the Customer;</p> <p>(b) disclose information about the Customer, whether collected by Pronto Hire from the Customer directly or obtained by Pronto Hire from any other source, to any other credit</p>	<p>provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.</p> <p>25.4 Where the Customer is an individual the authorities under clause 25.3 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>25.5 The Customer shall have the right to request Pronto Hire for a copy of the Personal Information about the Customer retained by Pronto Hire and the right to request Pronto Hire to correct any incorrect Personal Information about the Customer held by Pronto Hire.</p> <p>25.6 The Customer shall have the right to request (by e-mail) from Pronto Hire, a copy of the Personal Information about the Customer retained by Pronto Hire and the right to request that Pronto Hire correct any incorrect Personal Information.</p> <p>25.7 Pronto Hire will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.</p> <p>25.8 The Customer can make a privacy complaint by contacting Pronto Hire via e-mail. Pronto Hire will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at <a href="http://www.privacy.org.nz/comply/comptop.html">http://www.privacy.org.nz/comply/comptop.html</a>.</p> <p><b>26. Suspension of Services</b></p> <p>26.1 Where the Contract is subject to section 244 of the Construction Contracts Amendment Act 2015, the Customer hereby expressly acknowledges that:</p> <p>(a) Pronto Hire has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:</p> <p>(i) the payment is not paid in full by the due date for payment in accordance with clause 6.6 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer; or</p> <p>(ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or</p> <p>(iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Pronto Hire by a particular date; and</p> <p>(iv) Pronto Hire has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.</p> <p>(b) if Pronto Hire suspends work, it:</p> <p>(i) is not in breach of Contract; and</p> <p>(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and</p> <p>(iii) is entitled to an extension of time to complete the Contract; and</p> <p>(iv) keeps its rights under the Contract (including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.</p> <p>(c) if Pronto Hire exercises the right to suspend work, the exercise of that right does not:</p> <p>(i) affect any rights that would otherwise have been available to Pronto Hire under the Contract and Commercial Law Act 2017; or</p> <p>(ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of Pronto Hire suspending work under this provision;</p> <p>(d) due to any act or omission by the Customer, the Customer effectively precludes Pronto Hire from continuing the Services or performing or complying with Pronto Hire's obligations under this Contract, then without prejudice to Pronto Hire's other rights and remedies, Pronto Hire may suspend the Services immediately after serving on the Customer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by Pronto Hire as a result of such suspension and commencement shall be payable by the Customer as if they were a variation.</p> <p>26.2 If pursuant to any right conferred by this Contract, Pronto Hire suspends the Services and the default that led to that suspension continues unremedied subject to clause 23.1 for at least ten (10) working days, Pronto Hire shall be entitled to terminate the Contract, in accordance with clause 23.</p> <p><b>27. Service of Notices</b></p> <p>27.1 Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>27.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p><b>28. Trusts</b></p> <p>28.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Pronto Hire may have notice of the Trust, the Customer consents with Pronto Hire as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;</p> <p>(c) the Customer will not without consent in writing of Pronto Hire (Pronto Hire will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Customer as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the Trust property.</p> <p><b>29. General</b></p> <p>29.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>29.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland District Court of New Zealand.</p> <p>29.3 Pronto Hire shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Pronto Hire of these terms and conditions (alternatively Pronto Hire's liability shall be limited to damages which under no circumstances shall exceed the Charges).</p> <p>29.4 Pronto Hire may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.</p> <p>29.5 The Customer cannot assign or licence without the written approval of Pronto Hire.</p> <p>29.6 Pronto Hire may elect to subcontract out any part of the provision Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give an instruction to any of Pronto Hire's sub-contractors without the authority of Pronto Hire.</p> <p>29.7 Pronto Hire reserves the right to change any of their general terms and conditions displayed on their website (including their Privacy Policy) at any time by notifying the Customer through the website and/or by disclosing such to the Customer in writing for any subsequent future contracts. The Customer's continued use of the Pronto Hire website, or otherwise at such time as the Customer makes a further request for Pronto Hire to provide Goods/Equipment or Services to the Customer, shall be deemed acceptance of the terms and conditions which takes effect from that date. Pronto Hire's current terms and conditions can be viewed on <a href="http://www.prontohire.co.nz/">http://www.prontohire.co.nz/</a>.</p> <p>29.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party.</p> <p>29.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.</p>
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**Customer Initial** \_\_\_\_\_