

KIWI FLUSH TERMS OF TRADE

1 PRELIMINARY

- 1.1 The contractual relationship between Kiwi Flush Limited (“Owner”) and the hirer of Goods from the Owner (“Hirer”) are those set out in these Terms and Conditions as amended from time to time and those, if any, which are implied and which cannot be excluded by law (“Terms”).
- 1.2 Any other contractual terms which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counteroffer. By receiving delivery of Goods supplied by the Owner under these Terms the Hirer is deemed to have accepted these Terms and to have agreed they apply to the exclusion of all others.
- 1.3 “Goods” means any plant, equipment and consumable items including portable toilets supplied by the Owner to the Hirer.
- 1.4 “Contract for Hire” means a contract for hire of Goods and includes these Terms and Conditions.

2 TERMS OF HIRE, DELIVERY & SERVICING

- 2.1 Goods may be hired daily, weekly or monthly.
- 2.2 For the purposes of clause 2.1 “daily hire” means a period of 24 hours; “weekly hire” means a period of 7 days and “monthly hire” means a period of 4 weeks commencing from the time the Goods leave the Owner’s premises and expires when the Goods are received by the Owner at the place of despatch or are recovered by the Owner.
- 2.3 Delivery and removal charges are payable by the Hirer in addition to any other costs and are available for viewing on the Owner’s website.
- 2.4 Additional charges may be incurred where in the sole discretion of the Owner Goods require additional cleaning, are defaced or suffer damage including but not limited to vandalism, over-spray of paint or concrete or any other extraordinary cause.

3 CHARGES & PAYMENT

- 3.1 Charges for hire of the Goods are available from the Owner on request or by visiting the Owner’s website.
- 3.2 Unless the Owner has agreed in writing to extend credit, the Hirer must pay the first 4 weeks hire plus delivery charge as a deposit for long term hire (4 weeks or more) or in full prior to delivery where the term of the hire is less than 4 weeks.
- 3.3 Where the Owner has agreed in writing to extend credit to the Hirer and unless otherwise advised to the Hirer in writing signed by the Owner, the Hirer must pay in full, without deduction or setoff, within 7 days of the date of invoice unless otherwise agreed in writing. Payment is made only when cleared funds have been received into the Owner’s bank account.
- 3.4 If the Hirer has not paid in full by the due date the Owner may charge interest compounding monthly on the unpaid overdue balance at the rate of 5% per annum above the current overdraft rate charged by the Owner’s bankers and the Owner may charge costs (including collection costs and legal costs on a solicitor/client basis), suspend delivery of further Goods, discontinue servicing the Goods or remove all Goods currently on hire.
- 3.5 The Owner may apply payments received in the manner the Owner determines in its sole discretion.
- 3.6 The Owner may suspend credit on overdue accounts.
- 3.7 The Hirer’s obligations to pay charges and any other moneys owing to the Owner shall continue despite the loss of or damage caused to the Goods by any means.

4 OBLIGATIONS OF HIRER

- 4.1 The Hirer must:

- make full and frank disclosure to the Owner of the circumstances of the proposed location and use of the Goods at the time of hiring;
 - take proper and reasonable care of the Goods and return the Goods to the Owner in the same order and condition as at the commencement of the hire (fair wear and tear excepted);
 - satisfy itself that the Goods are suitable for the Hirer's intended purpose;
 - Use the Goods in a lawful manner and in accordance with all health and safety laws and regulations relevant to the use of the Goods;
 - promptly notify the Owner of any damage to or fault occurring in the Goods;
 - be liable for any loss, theft or damage to the Goods while in the Hirer's possession;
 - bear the full cost of all repairs to restore the Goods to the condition they were in at the time of hire;
 - bear the cost of any loss of the Goods whether by theft or otherwise;
 - be liable for and indemnify the Owner for any loss of revenue suffered by the Owner due to the unavailability of the Goods for hire due to loss, theft or damage while the Goods are in the possession of the Hirer;
 - Not interfere with, deface or remove any identification marks or ownership or registration marks on the Goods.
- 4.2 The person signing a contract for hire indemnifies the Owner against all losses and costs incurred by the Owner as a result of the person signing the contract of hire failing to have authority to do so on behalf of the Hirer.
- 4.3 The Hirer will allow the Owner at all reasonable times to inspect and test the Goods and to take possession or remove the Goods and to enter any premises where the Goods or any part of the Goods may be kept.

5 PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 5.1 The Hirer acknowledges that the Owner remains the owner of the Goods at all times and any Goods purchased from the Owner by the Hirer remain the property of the Owner until paid for in full.
- 5.2 The Hirer shall promptly execute any documents, provide all necessary information and do any thing required by the Owner to ensure that a perfected security interest is created over the Hirer to secure the Hirer's obligations to the Owner under the Contract of Hire.
- 5.3 For better securing performance of the Hirer's obligations the Hirer nominates, constitutes and appoints the Owner the Hirer's attorney to do all things necessary or expedient in performance of the obligations of the Hirer referred to in clause 5.2 of these Terms of Trade and the Hirer agrees to ratify and confirm the actions of the Owner as attorney of the Hirer when required to do so by the Owner.
- 5.4 The Hirer waives all rights to receive a copy of any Verification Statement of a Financing Statement under the PPSA.

6 RISK AND INSURANCE

- 6.1 Risk in the Goods passes to the Hirer when the Goods leave the Owner's premises and expires when the Goods are received by the Owner at the place of despatch or are recovered by the Owner.
- 6.2 The Hirer hires the Goods at the Owner's risk and indemnifies the Owner against any loss of or damage to the Goods including any consequential loss.
- 6.3 The Owner may (but without creating any obligation to do so), offer the Hirer a Contract of Insurance for the Goods during the term of hire.
- 6.4 The Hirer will incur an additional charge for any insurance cover for the Goods offered by the Owner.

7 LIMITATION OF LIABILITY

- 7.1 The Hirer acknowledges that the Owner shall not be liable to the Hirer for any direct or consequential loss or damage or for any loss of profit arising in connection with the Contract for Hire (whether in contract or in tort) including that resulting from the negligence of the Owner, the use by the Hirer of the equipment, or arising by operation of law. Without limiting the foregoing the Owner is not liable for any direct or consequential loss or damage including any loss of profit or other loss suffered by the Hirer or liability incurred by the Hirer as a result of the breakdown of the Goods, however caused.
- 7.2 Subject to the exclusion of liability in clause 7.1 the maximum liability of the Owner for all claims by the Hirer whether as a result of any breach of a Contract for Hire of Goods or any other ground or terms whatsoever (including liability as a result of tort or negligence) will not exceed the lesser of the hire charges paid by the Hirer to the Owner pursuant to a Contract for Hire plus 1 months hire charges paid by the Hirer to the Owner.
- 7.3 The Hirer indemnifies the Owner against any liability, losses, damages or expenses incurred or suffered by the Owner as a result of any claim made by a third person against the Owner in respect of any loss or liability arising from the Contract for Hire and use of the Goods by the Hirer.
- 7.4 Nothing in the Contract for Hire affects the Hirer's rights under the Consumer Guarantees Act 1993. If the Hirer is hiring the Goods for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 do not apply.
- 7.5 The Owner makes no warranty or representation as to the state, quality or fitness of the Goods for any purpose and no such warranty shall be implied. For the avoidance of doubt no warranty shall implied by the description of the equipment or by provision of information relating to the proper operation and maintenance of the Goods. Any Goods sold are second-hand and are sold in "as is, where is" condition.

8 NOTICES

- 8.1 Notices shall be in writing and may be delivered personally, sent by post to either the job address or any other address of the Hirer specified on the face of the Contract for Hire or sent by email to the address notified from time to time by the receiving party. Any notice given will be deemed to be validly served:
 - (a) in the case of delivery, when received;
 - (b) in the case of posting on the second day following the date of posting; or
 - (c) if emailed, one hour after the email is sent unless a return email is received by the sender within that one hour period stating that the addressee's email address is incorrect or that the message cannot be delivered.
- 8.2 Any notice received after 5pm on a business day or on a day that is not a business day will be deemed to have been received on the next business day.

9 PRIVACY ACT 1993

- 9.1 Where the Hirer is an individual the Owner may at the Owner's discretion require personal information and will collect and hold personal information about the Hirer principally for the purpose of evaluating the hire of Goods by the Hirer. The Hirer's application to hire Goods may be declined or the hire terminated if the Hirer fails to provide requested personal information. The Hirer agrees that the Hirer's personal information may be used by the Owner to advise the Hirer of the Owner's other goods and services. The Hirer authorises the disclosure of personal information held by any other party regarding any previous hire contracts entered into by the Hirer. The Hirer agrees to the Owner releasing to other parties information regarding the Contract for Hire if the Hirer does not comply with the Hirer's obligations to the Owner.
- 9.2 The Hirer and each person who signs and application for credit from the Owner authorises the Owner to:

- collect, retain and use information about the Hirer or such other signatory from any person for the purpose of assessing the Hirer's or other signatories creditworthiness;
- disclose information about the Hirer or such other signatory to any party who provides insurance or who provides any other credit support in relation to the Hirer's obligations to the Owner as the Owner considers necessary or desirable in the Owner's sole discretion to make disclosure to enable the Owner to exercise any of the Owner's rights under the Contract for Hire.

10 OWNER'S RIGHT TO TERMINATE

- 10.1 The Owner may terminate the Contract for Hire by notice with immediate effect if:
- if the Hirer fails to comply with any term of the Contract for Hire or any other agreement with the Owner;
 - the Owner believes the Goods may be at risk for any reason whatsoever, including but not limited to the manner of their use by the Hirer, adverse weather or work conditions or, the Hirer is unable to or may be unable to pay any charge, cost or fee in connection with the Goods; or
 - any step is taken to appoint a receiver, a manager, administrator, liquidator, provisional liquidator, statutory manager or other like person of the whole or any part of the Hirer's assets or business.
- 10.2 Irrespective of the Owner's right to terminate referred to in clause 10.1 the Owner may terminate the hire at any time without reason by giving the Hirer not less than 24 hours' notice.
- 10.3 The Hirer indemnifies the Owner against and shall pay to the Owner upon demand any cost (including legal costs on a solicitor/client basis) claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner acting to recover any Goods hired or moneys payable by the Hirer pursuant to the Contract for Hire or otherwise in connection with the exercise or attempted exercise of any of its rights or remedies under the Contract for Hire.
- 10.4 Upon termination of the Contract for Hire the Hirer shall immediately deliver up the Goods to the Owner and shall pay to the Owner:
- all rental and other moneys due to the Owner at the date of termination; and
 - the balance of all rental yet to accrue from the date of termination to the expiry of the term of the Contract for Hire.
- 10.5 Termination of Contract for Hire by the Owner is without prejudice to any rights that the Owner may have under the Contract for Hire.
- 10.6 The Hirer acknowledges that irrespective of the provisions of the Contractual Remedies Act 1979, the Hirer shall not be entitled to cancel or otherwise terminate the Hirer's Contract for Hire.

11 GENERAL

- 11.1 The Owner may change the Terms of Trade from time to time by Notice to the Hirer in writing, which may be by email.
- 11.2 If the Owner fails to enforce any terms or to exercise any right under the Contract for Hire at any time, the Owner shall not have waived that right.
- 11.3 The Hirer may not assign or subcontract any of the Hirer's rights or obligations under these Terms of Trade.
- 11.4 If any provision of these Terms of Trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these Terms of Trade.
- 11.5 Any agreement between the Owner and the Hirer is governed by the laws of New Zealand. Any dispute is subject to the non-exclusive jurisdiction to the New Zealand Courts.