



TERMS OF TRADE

1. DEFINITIONS

- 1.1. The "Owner" is Awatuna Enterprises trading as Tui-Lu's Portable Toilet & Shower Hire and includes their successors, assigns or personal representatives.
- 1.2. The "Hirer" is the company, firm, person, Corporation or public authority taking the Owner's Goods on hire and includes their successors or personal representatives.
- 1.3. "Goods" means any plant, equipment, trailer and consumable items including portable toilets and showers supplied by the Owner to the Hirer.
- 1.4. "Servicing" refers to the emptying, cleaning and maintenance of Goods as set out in Terms.
- 1.5. "Contract for Hire" means a contract for hire of Goods and includes these Terms and Conditions.
- 1.6. By receiving delivery/collection 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.

2. TERMS OF HIRE, DELIVERY & SERVICING

- 2.1. Goods may be hired daily, weekly or monthly. "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. Upon agreement with the Owner, the Hirer may extend the term of hire. All terms and conditions, along with any modifications, shall apply during the extended period of hire. Hire rates can be found on our website or requested from Owner.
- 2.2. Servicing of Goods for Monthly contracts occurs fortnightly unless otherwise agreed. Servicing includes waste tank extraction (if required) cleaning and disinfecting of exposed surfaces, chemical dosing, water top up and restocking of consumables.
- 2.3. Daily or Weekly hire will be serviced pre-delivery and on pickup unless otherwise agreed. Goods hired for multi-day events are serviced daily unless otherwise agreed.

3. CHARGES & PAYMENT

- 3.1 Charges for the hire of Goods are available on the Owner's website www.tuilus.co.nz or from the Owner on request.
- 3.2 Monthly Hirers will be invoiced monthly with payment made by the 20th of the month following.
- 3.3 Daily or Weekly hire payment is due in full prior to or on date of delivery. For event/multiple Goods hire, the Owner may request a 50% deposit to secure the Goods payable 1 month prior to delivery of Goods with the balance payable on the day the Goods are installed.
- 3.4 Servicing charges are payable by the Hirer in addition to any other costs. Servicing rates can be found on our website or requested by Owner.
- 3.5 Delivery and removal charges are payable by the Hirer in addition to any other costs, either at a set price or kilometre rate. Delivery/km rates can be found on Owner's website or requested by Owner.
- 3.6 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.
- 3.7 If the Hirer has not paid in full by the due date 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.
- 3.8 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 to satisfy itself that the Goods are suitable for the Hirer's intended purpose;
- 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);
- 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;
- Ensure Goods are accessible for Servicing on site at all times;
- promptly notify the Owner of any damage to or fault occurring in the Goods;
- not sell or offer the Goods for sale, pledge or hire or disposal to any other person or part with possession of 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 (fair wear and tear excepted);
- 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 safety instructions, identification marks or ownership or registration marks on the Goods.

4.2 The person accepting this Contract for hire indemnifies the Owner against all losses and costs incurred by the Owner as a result of the person accepting 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. RISK AND INSURANCE

5.1 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.

5.2 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. LIMITATION OF LIABILITY

6.1 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 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.

6.2 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.

6.3 The Hirer will ensure prior to the installation of the Goods that they have obtained all necessary approvals and permits for its use and that it complies with the provisions of all applicable statutes and rules and regulations in force.

6.4 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.

7. NOTICES

- 7.1 Notices shall be in writing and may be emailed, sent by post or delivered personally 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.
- 7.2 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.

8. PRIVACY ACT 1993

- 8.1 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 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. RIGHT TO TERMINATE

- 9.1 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, an accident, national emergency, prohibitive governmental regulations or for any other cause beyond the reasonable control of the Owner which renders the performance of this agreement impossible 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.
- 9.2 Irrespective of the Owner's right to terminate referred to in clause 9.1 the Owner may terminate the hire at any time without reason by giving the Hirer not less than 24 hours' notice.
- 9.3 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.
- 9.4 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 on 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. GENERAL

- 10.1 The Owner reserves the right to make changes to the Terms of Trade from time to time without prior notice.
- 10.2 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.
- 10.3 The Hirer may not assign or subcontract any of the Hirer's rights or obligations under these Terms of Trade.
- 10.4 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.
- 10.5 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.