

# **HAWKES BAY CRANE & PLATFORM HIRE'S TERMS AND CONDITIONS OF TRADE – MEWPS & EQUIPMENT**

## **1. DEFINITIONS**

In these terms and conditions:

- 1.1 "Contract" means the contract between the Hirer and the Owner and incorporates these terms and conditions of hire.
- 1.2 "Daily" means 24 hours (maximum usage time 8 hours).
- 1.3 "Equipment" means any equipment described in the Equipment Reservation and/or the Check-out Agreement that is to be hired by the Owner to the Hirer.
- 1.4 "Half Day" means 4 hours or overnight provided the MEWP and/or Equipment is picked up after 4.00pm and returned by 8.30am the following day (maximum usage time 4 hours).
- 1.5 "Hirer" means any party described on the Equipment Reservation and/or Check-out Agreement and includes the Hirer's employees, agents, subcontractors and invitees.
- 1.6 "MEWPs" means the Mobile Elevated Work Platform described in the Equipment Reservation and/or Check-out Agreement that is hired by the Owner to the Hirer (whether the original MEWP or any substitute) and includes all accessories attached to the MEWP or to be used in connection with it.
- 1.7 "Monthly" means a calendar month of 30 days (maximum usage time 210 hours).
- 1.8 "Owner" means Hawkes Bay Crane Hire 2015 Ltd trading as Hawkes Bay Crane and Platform.
- 1.9 "Site" means the place or area where the MEWP and/or Equipment are to be operated for the purposes of the Equipment Reservation and/or Check-out Agreement.
- 1.10 "Weekly" means 7 days (maximum usage time 48 hours).

## **2. CONDITIONS**

- 2.1 The terms and conditions set out below shall apply and are incorporated into any Equipment Reservation and/or Check-out Agreement for the hire of MEWPs and/or Equipment between the Owner and the Hirer. These are the entire terms and conditions of hire of all MEWPs and/or Equipment supplied by the Owner and, except as expressly agreed in writing, shall apply notwithstanding any provisions to the contrary which may appear on any form or other document issued by any party.
- 2.2 The Owner reserves the right to change these terms and conditions without notice. Any amended terms and conditions will be placed on the Owner's website ([www.hawkesbaycranehire.co.nz](http://www.hawkesbaycranehire.co.nz)) and shall apply with effect from the date they are placed on the website unless the amended terms and conditions specify a later date from which they are to apply.
- 2.3 All applications to hire are subject to these terms and conditions. A binding Contract between the Owner and the Hirer containing these terms and conditions shall arise when the Owner delivers the MEWP and/or Equipment to the Hirer.

## **3. CHARGES**

- 3.1 MEWP and/or Equipment may be hired for a: Half Day, Day, Week or Month or as agreed to in writing and the relevant hire period is set out in the Equipment Reservation. The hire periods and maximum usage times are as defined in clause 1 above.
- 3.2 The Hirer agrees that the Owner may charge extra on a pro rata basis for any MEWP and/or Equipment usage in excess of the hire periods or the maximum usage times as set out in clause 1 above.
- 3.3 The Hirer shall not be entitled to a refund or reduced hire charge if the Hirer chooses to return the MEWP and/or Equipment to the Owner before the end of the agreed hire period. Where MEWPs and/or Equipment is de-hired after 8.00am on any day, the Hirer will be charged that half day's hire at the Owner's current rates.
- 3.4 The hire period begins from the time stated on the Check-out Agreement that the MEWP and/or Equipment is to be delivered on site by and runs until the Hirer advises the Owner that the MEWP and/or Equipment is ready to be uplifted by the Owner, or when the Check-out Agreement is terminated pursuant to clause 6 below.
- 3.5 The Hirer shall pay as invoiced for the following charges:
  - (a) The hire charges for the hire period of all MEWP and/or Equipment used;
  - (b) Delivery/removal charges;
  - (c) Excess use charges (if applicable);
  - (d) Any damage to or loss of the MEWP and/or Equipment;
  - (e) Cleaning fees (if applicable)
  - (f) Loss and insurance charges (if applicable); and
  - (g) Any default interest for late payment.
- 3.6 No allowance whatever can be made for time during which the MEWP and/or Equipment is not in use, for any reason, unless specific arrangements are made beforehand and confirmed in writing by the Owner.
- 3.7 A cleaning fee will be charged if the Hirer returns any MEWP and/or Equipment that the Owner deems (in its sole discretion) to be excessively dirty.

## **4. PAYMENT AND DEFAULT INTEREST**

- 4.1 All charges are exclusive of GST unless otherwise indicated and the Hirer shall pay the charges plus GST where indicated.
- 4.2 The Owner will send the Hirer an invoice for charges incurred. The Hirer must pay the invoice by the due date as stated on the invoice. The Owner reserves the right to reverse any previously agreed discount if the account is not paid by the due date.

- 4.3 The Owner will not accept any claim for credit received more than one month after the date of invoice.
- 4.4 The Owner reserves the right to apply payments received in any manner the Owner determines.
- 4.5 Without prejudice to the Owner's other remedies under these terms and conditions, at law or otherwise, the Hirer will pay default interest at the rate of 2.5% above the Owner's Bank's applicable overdraft rate on all outstanding amounts from the 20<sup>th</sup> of the month following date of invoice until all monies have been paid in full.
- 4.6 The Hirer must make all payments due under the Check-out Agreement (time being of the essence) without set-off or deduction of any kind.
- 4.7 No credit shall be extended on overdue accounts.
- 4.8 The Hirer's obligations to pay charges and any other sums to the Owner shall continue despite any mechanical defect in or breakdown of, theft of, or accident or damage caused to the MEWP and/or Equipment.

## **5. DELIVERY AND REMOVAL**

- 5.1 A delivery charge and a collection charge will be payable by the Hirer and are in addition to the hire charge(s).
- 5.2 Delivery and collection by the Owner shall be to and from the Hirer's Site or a safely accessible adjacent area. By requesting that the Owner dispatch a vehicle onto the Hirer's Site for delivery or collection of any MEWP and/or Equipment, the Hirer is asserting conditions are safe for delivery and collection including, but not limited to: acceptable clearances from low hanging wires or tree branches, overhead bridges and constructions, buildings and driveways and that there is sufficient weight capacity and access for the vehicle on roads and driveways to perform such operation. The Owner shall not be responsible for cracks, ruts or holes caused by our delivery vehicles, MEWPs and/or Equipment. The Hirer assumes all liability for any damage or disruption to services caused by damage that the delivery vehicles, MEWPs and/or Equipment may cause to water, sewage, electrical or electronic systems and to any overhead or underground utilities and agree to indemnify the Owner against all such claims.
- 5.3 The Hirer grants to the Owner, or will procure that the Owner is granted, an irrevocable right and authority to enter, and for the Owner to bring the Owner's vehicle at any time onto, the Site to deliver and/or remove the MEWP and/or Equipment either on the expiry of the hire period or on termination of the Check-out Agreement pursuant to clause 6.1 below.
- 5.4 If hired MEWPs and/or Equipment are to be removed by the Owner, hired MEWPs and/or Equipment must be packed up and ready for loading at the pre-arranged time and place and assistance rendered for loading.
- 5.5 Any requests for removal of hired MEWPs and/or Equipment must be arranged with the Owner's office prior to completion of the hire either by telephone or email.

## **6. RIGHT TO TERMINATE**

- 6.1 The Owner may terminate the Check-out Agreement by notice with immediate effect if:
  - 6.1.1 The Hirer fails to comply with any term of the Check-out Agreement or any other agreement with the Owner;
  - 6.1.2 The Owner believes the MEWP and/or Equipment may be at risk for any reason whatsoever, including the manner of its use by the Hirer, adverse weather or work conditions, the Hirer is unable to, or might be unable to, pay any charge, cost, or fee in connection with the MEWP and/or Equipment; or
  - 6.1.3 Any step is taken to appoint a receiver, manager, trustee in administration, liquidator, provisional liquidator, statutory manager, administrator or other like person of the whole or any part of the Hirer's assets or business;
  - 6.1.4 Any false statement is made in relation to the Check-out Agreement, or
  - 6.1.5 The Hirer commits an act of bankruptcy.
- 6.2 The Hirer indemnifies the Owner against, and shall pay to the Owner upon demand, any cost (including legal costs), claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner acting to recover any MEWP and/or Equipment hired or monies payable by the Hirer pursuant to the Check-out Agreement, or otherwise in connection with the exercise or attempted exercise of any of its rights or remedies under the terms and conditions.
- 6.3 Upon termination of the Check-out Agreement pursuant to Clause 6.1, the Owner shall forthwith pick up the MEWP and/or Equipment and the Hirer shall pay to the Owner:
  - 6.3.1 All hire charges and other moneys due to the Owner at the date of termination; and
  - 6.3.2 The balance of all hire charges yet to accrue from the date of termination to the expiry of the term of the Check-out Agreement discounted for early payment in such amount as the Owner at its sole discretion allows.
- 6.4 Termination of the Check-out Agreement by the Owner is without prejudice to any rights that the Owner may have under these terms and conditions.
- 6.5 The parties acknowledge that, notwithstanding the provisions of the Contractual Remedies Act 1979, the Hirer shall not be entitled to cancel or otherwise terminate the Contract.

## 7. ASSIGNMENT

- 7.1 The Hirer shall not assign, sublet, charge or part with possession of the MEWP and/or Equipment or any part of it but this shall not prevent employees of the Hirer using the MEWP and/or Equipment in conformity with these terms and conditions and the Check-out Agreement.
- 7.2 The Owner may at any time assign its rights or interests, or any part thereof, (whether absolutely, or by way of security) or transfer its obligations or any part thereof, to any person.

## 8. HIRER'S OBLIGATIONS

- 8.1 The Hirer shall:
- 8.1.1 If the MEWP and/or Equipment is intended to be used in a location or manner which is outside its usual or ordinary use, advise the Owner of the intended location and/or nature of use at the time of hiring the MEWP and/or Equipment;
- 8.1.2 Take proper and reasonable care of the MEWP and/or Equipment and it should be returned in the same order and condition as the commencement of the hire (fair wear and tear expected);
- 8.1.3 Carry out all necessary daily servicing (including the inspection and/or the supply of all necessary water, oils, grease fuel and electricity) at the HIRER'S OWN EXPENSE using only fuel and lubricating fluids approved by the Owner;
- 8.1.4 Satisfy itself that the MEWP and/or Equipment is suitable for the Hirer's intended use;
- 8.1.5 Use the MEWP and/or Equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such MEWP and/or Equipment;
- 8.1.6 Immediately cease operating the MEWP and/or Equipment and notify the Owner by telephone if the MEWP and/or Equipment is faulty, breaks down or if any warning light or buzzer is activated and the date of any such notification shall be the date from which the hire charges shall be suspended;
- 8.1.7 Except as permitted by the Consumer Guarantees Act 1993, not bring or threaten to bring any claim against the Owner for loss or damage incurred or threatened against the Hirer or arising directly or indirectly from the Hirer's use of the MEWP and/or Equipment;
- 8.1.8 Notify the Owner immediately if the hired MEWP and/or Equipment is lost, stolen or damaged and shall follow all reasonable instructions of the Owner;
- 8.1.9 Be responsible for, and indemnify the Owner of, any loss, theft or damage to the MEWP and/or Equipment that occurs from the time the Hirer takes possession of the MEWP and/or Equipment until it is returned to the Owner's possession including:
- 8.1.10 In the case of damage, the full cost of all repairs to restore the MEWP and/or Equipment to the condition it was in at the time of hire; The Hirer shall also be liable for all costs in relation to removal of substances such as paint, plaster, silicone, glues or concrete spilled or sprayed on the machine and also for replacement of wheels, hand rails and fittings damaged as a result of negligent or improper use of the MEWP and/or Equipment.
- 8.1.11 In the case of loss, theft or irreplaceable damage to the MEWP and/or Equipment however caused, the full cost to the Owner of replacing the MEWP and/or Equipment; and
- 8.1.12 In addition to the costs set out in clause 8.1.10, be responsible for and indemnify the Owner for any loss of revenue suffered by the Owner due to the unavailability of the MEWP and/or Equipment for hire due to loss, theft or damage; and
- 8.2 The Hirer will not remove, deface or obscure any marks of identification or ownership on the MEWP and/or Equipment.
- 8.3 The Hirer warrants that all persons who use the MEWP and/or Equipment shall be COMPETENT to use the MEWP and/or Equipment, shall use the MEWP and/or Equipment in the manner it was designed to be used, and follow any directions from the Owner, local authorities, Best Practices Guidelines and/or the manufacturer of the MEWP and/or Equipment relating to the use and safety of the MEWP and/or Equipment and shall comply with all obligations in relation to the use and control of the MEWP and/or Equipment and person using said MEWP and/or Equipment in accordance with the Health and Safety at Work Act 2015 and all other relevant legislation.
- 8.4 If the Hirer is not an individual, the person who signs the Check-out Agreement on behalf of the Hirer warrants that they have authority to bind the Hirer and will, in any event, be personally liable for the performance of the obligation of the Hirer. The person signing hereby indemnifies the Owner against all losses and costs that may be incurred by the Owner arising out of the person signing the Check-out Agreement failing to have such power or authority.
- 8.5 The Hirer shall, upon request by the Owner, advise the Owner of the whereabouts of the MEWP and/or Equipment and allow the Owner at all reasonable times to inspect and test the MEWP and/or Equipment and for such purposes the Hirer gives irrevocable leave and licence to the Owner to take possession of and/or remove the MEWP and/or Equipment, and to enter any premises where the MEWP and/or Equipment or any part of the MEWP and/or Equipment may be.

## 9. INDEMNITY

- 9.1 The Hirer hires the MEWP and/or Equipment at the Hirer's own risk and indemnifies the Owner against any and all loss in respect of any loss of or damage to the MEWP and/or Equipment including any consequential loss resulting from, or as a consequence of, any negligent act or omission on the part of the Hirer or the Hirer's servants, agents, contractors, or subcontractors during the period of hire.

- 9.2 Whilst the Owner insures the MEWP and/or Equipment being hired, the Hirer is responsible for any excess that may apply to such insurance. The Owner does not insure for damage to third party property whilst the MEWP and/or Equipment is in the Hirer's control and it is the responsibility of the Hirer to insure against such risks.

## 10. LIMITATION OF LIABILITY, INJURY OR DAMAGE TO HIRER, THIRD PERSON OR PROPERTY

- 10.1 In signing a Check-out Agreement, the Hirer acknowledges that the Owner has no liability to the Hirer for any direct or indirect or consequential loss or damage or for any loss of profit (or any other form of economic loss) arising in connection with the Check-out Agreement (whether in contract or in tort) including that resulting from the negligence of the Hirer, the use by the Hirer of the MEWP and/or Equipment, or arising by operation of law. Without limiting the foregoing, the Owner is not liable for any indirect 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 any hired MEWP and/or Equipment, however caused.
- 10.2 The Hirer will indemnify 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 Check-out Agreement or arising out of the use of the MEWP and/or Equipment hired by the Hirer.

## 11. WARRANTIES & EXCLUSIONS

- 11.1 The MEWP and/or Equipment provided by the Owner will be in good working order for normal full load working at the stated capacity under normal safe working conditions.
- 11.2 Nothing in these terms and conditions shall be construed or deemed to be an express warranty or condition by the Owner as to the quality, fitness or suitability of the MEWP and/or Equipment hired and all implied terms, conditions or warranties, statutory or otherwise, are hereby excluded to the extent permitted by law.
- 11.3 The Hirer will inspect the MEWP and/or Equipment at the time of delivery and ascertain that the MEWP and/or Equipment is fit for the use for which it is required by the Hirer and acceptance of delivery by the Hirer shall be deemed to be conclusive evidence of inspection and approval of the MEWP and/or Equipment.

## 12. NOTICES

- 12.1 The Hirer agrees that service of any notices or Court documents may be effected by forwarding the same by pre-paid post, facsimile or personal delivery to the last known address of the Hirer.

## 13. GENERAL

- 13.1 Headings are inserted for convenience and shall not affect the construction of the terms and conditions or the Check-out Agreement. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words implying one gender include the other. A reference to a clause or sub clause is a reference to a clause or sub clause hereof. A reference to Owner includes its servants, agents, successors and assigns. The word "including" does not imply limitation.
- 13.2 If at any time any provision of the Check-out Agreement or its terms and conditions becomes illegal, invalid or enforceable in any respect under the law of New Zealand that will not affect or impair the legality, validity or enforceability of any other provision of the Check-out Agreement and its terms and conditions.
- 13.3 These terms and conditions are governed by the laws of New Zealand. The parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.

## 14. PRIVACY ACT 1993

- 14.1 If the Hirer is an individual, this clause applies. The Owner requires personal information and will collect and hold personal information about the Hirer, principally for the purpose of evaluating the hire of MEWP and/or Equipment by the Hirer. The Hirer's application to hire MEWP and/or Equipment may be declined or the hire terminated if the Hirer fails to provide requested personal information. The Hirer can access and seek correction of any personal information by contacting the Owner. The Hirer agrees that its 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 Check-out Agreement if the Hirer does not comply with its obligations.
- 14.2 The Hirer and each person who signs the Owner's Check-out Agreement authorises the Owner:
- 14.2.1 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 such other signatory's creditworthiness;
- 14.2.2 To disclose information about the Hirer or such other signatory:
- 14.2.3 To any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Hirer's obligations to the Owner; and/or
- 14.2.4 To such persons as may be necessary or desirable to enable the Owner to exercise any rights under the Contract.