

**HIRE AGREEMENT****Part One - Schedule**

<b><u>THE HIRER</u></b>	Summit Plumbing Limited
<b><u>THE CUSTOMER</u></b>	
Full name	
Address	
Phone numbers	
Email address	
<b><u>GUARANTOR</u></b>	
Full name	
Address	
Phone numbers	
Email address	
<b><u>EQUIPMENT HIRED</u></b>	
<b><u>HIRE PERIOD</u></b>	Commencement date:
	Expiry date:
<b><u>HIRE CHARGE</u></b>	
<b><u>TOILET SERVICE CHARGE</u></b>	
<b><u>BOND</u></b>	
<b><u>DELIVERY</u></b>	Responsibility for delivery:
	Responsibility for cost of delivery:
<b><u>RETURN</u></b>	Responsibility for return:
	Responsibility for cost of return:
<b><u>PENALTY CHARGE</u></b>	

**Dated:****Signed by:**

The Hirer	Customer	Guarantor/s

## **Part Two - Further terms**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 **"Bond"** shall mean the sum stated in the Hire Agreement Schedule and as detailed in clause 5.
- 1.2 **"Customer"** shall mean any person or entity that hires Equipment from Summit Solutions as recorded in the Schedule and if there is more than one Customer then each person or entity is jointly and severally the Customer.
- 1.3 **"Customer's Site"** shall mean the site (or sites if applicable) owned, occupied or under the control of the Customer.
- 1.4 **"Equipment"** shall mean any portable bathroom and associated and/or ancillary gear, equipment and/or materials hired out by Summit Solutions as listed in the Hire Agreement Schedule and pursuant to the terms of the Hire Agreement.
- 1.5 **"Further terms"** shall mean the Further Terms in Part Two of the Hire Agreement.
- 1.6 **"Hire Agreement"** shall mean this agreement for the hire of Equipment from Summit Solutions to the Customer and includes the Schedule and the Further Terms.
- 1.7 **"Hire Charge"** shall mean the fee for the hire of the Equipment for the Hire Period as set out in the Hire Agreement Schedule
- 1.8 **"Hire Period"** shall mean the period commencing and ending on the dates and times specified in the Hire Agreement Schedule.
- 1.9 **"Penalty Charge"** shall mean the daily penalty charge stated in the Schedule which Summit Solutions shall be permitted to charge the Customer in accordance with the Hire Agreement.
- 1.10 **"Person"** includes a company, partnership, family trust, individual or any other entity.
- 1.11 **"Schedule"** shall mean the Schedule in Part One of the Hire Agreement which contains the key details of the hire arrangement between Summit Solutions and the Customer, including the parties, the Equipment, the Hire Charge and the Hire Period.
- 1.12 **"Summit Solutions"** is the trading name of Summit Plumbing Limited for the purpose of the Equipment hire and any reference to Summit Solutions shall mean Summit Plumbing Limited, its successors and assignors or any person acting on behalf of and with the authority of Summit Plumbing Limited
- 1.13 **"Sub-Hiree"** shall mean a third party who receives possession of the Equipment from the Customer pursuant to clause 4.3.
- 1.14 Unless the context requires otherwise:
  - 1.14.1 References to any statute, regulations or other statutory instrument or by-law shall be deemed to be references to a statute, regulations, instrument or by-law of New Zealand as from time to time amended and includes substitute provisions (whether in an amendment of existing legislation or in new legislation) that substantially correspond to those referred to;
  - 1.14.2 Where the context requires or admits, words importing the singular shall import the plural and vice versa; and
  - 1.14.3 References to any party includes the successors and any permitted assigns of that party and party means them collectively.

### **2. ACCEPTANCE OF TERMS AND CONDITIONS OF TRADE**

- 2.1 The Customer's entry into this **Hire Agreement** shall form part of a binding contract between Summit Solutions and the Customer.
- 2.2 The Customer warrants it has the power to enter into this Hire Agreement and has obtained all necessary authorisations to do so. The Customer further warrants it is not insolvent and accepts the Hire Agreement creates binding and valid legal obligations on it.

### **3. PERSONAL GUARANTEE**

- 3.1 Summit Solutions may require one or more of the representatives of the Customer to jointly and severally personally guarantee the Customer's obligations under the Hire Agreement.

### **4. HIRE**

- 4.1 In consideration of the Hire Charge, Summit Solutions shall hire the Equipment to the Customer for the Hire Period.

- 4.2 New items of Equipment may be added to or removed from the Equipment in the Hire Agreement from time to time by agreement between the parties in writing which will have the effect of varying the Schedule. Any new items added to the Schedule in this manner shall become Equipment for the purposes of the Hire Agreement from the date of the parties' agreement or as otherwise agreed between the parties and at the Hire Charge notified to the Customer in respect of such equipment. Any Equipment removed from this Hire Agreement shall be returned to Summit Solutions in accordance with the provisions of the Hire Agreement.
- 4.3 The Customer may sub-hire some or all of the Equipment to a Sub-Hiree provided it first obtains Summit Plumbing's prior written consent, which shall be given or withheld in Summit Plumbing's sole and absolute discretion.

## 5. BOND

- 5.1 If requested, the Customer shall pay a Bond to Summit Solutions prior to the supply of any Equipment to the Customer. If additional Equipment is added to the Hire Agreement pursuant to clause 4.2 then an additional Bond may be requested by Summit Plumbing.
- 5.2 At any time during the Hire Period or thereafter, Summit Plumbing, in its sole and absolute discretion, shall be permitted to apply all or any part of the Bond towards any sums owing to Summit Solutions by the Customer including, but without limitation, Hire Charges, costs and/or expenses owing under the Hire Agreement.
- 5.3 Where the Bond is utilised by Summit Solutions in accordance with clause 5.2, the Customer shall immediately reimburse Summit Solutions for the amount of the Bond so used to ensure that the Bond remains at the same amount as set out in the Hire Agreement Schedule, or any variation to it, for the duration of the Hire Period.
- 5.4 Any Bond remaining at the end of the Hire Period shall be reimbursed to the Customer by the 20<sup>th</sup> of the month following receipt by Summit Solutions of the Equipment to which the Bond relates.

## 6. CHARGES

- 6.1 Where a quotation ("**Quote**") is given by Summit Solutions for the hire of its Equipment then:
- 6.1.1 Unless otherwise agreed the Quote shall be valid for 30 days from the date of issue;
- 6.1.2 Unless expressed otherwise the Quote shall be exclusive of goods and services tax;
- 6.1.3 Where the Quote is based on information and days specified by the Customer, Summit Solutions reserves the right to alter the Quote if there is a variation to this information and/or the days;
- 6.1.4 The Customer agrees to pay for the cost of any additional Equipment it hires over and above the Equipment included in the Quote (as per clause 4.2).
- 6.2 Where a Quote is not provided by Summit Solutions then:
- 6.2.1 The Equipment shall be deemed to be hired at the Hire Charge specified by Summit Solutions in the Schedule; and
- 6.2.2 Summit Plumbing's pricing will be based on its standard hourly and day rates for the hireage of its Equipment. Part day possession of Equipment shall be charged to the Customer at a full day rate.
- 6.3 Summit Solutions will charge for delivery of the Equipment to the Customer's Site unless otherwise agreed between the parties. The party responsible for the cost of return of the Equipment shall be specified in the Schedule. Should the Customer be responsible for the delivery and/or return of the Equipment but fail to do so upon the reasonable request of Summit Solutions then Summit Solutions shall be permitted to deliver and/or collect the Equipment (as applicable) and may charge a fee to the Customer for this service.

## 7. PAYMENT

- 7.1 Unless otherwise specified in the Schedule, the Customer shall pay to Summit Solutions 50% of the Hire Charge ("**Deposit**") in full upon booking without deduction and set off. The Customer may cancel their booking however Summit Plumbing may, in its sole discretion, withhold the Deposit if the Customer cancels within 2 weeks of the date the Customer is due to take possession of the Equipment. The balance of the Hire Charge and the Bond are then to be paid without deduction and set off within 24 hours of the date the Customer is to take possession of the Equipment. Should the Customer require the Equipment for longer than the original Hire Period, then the parties shall vary the Hire Charge and further payment will be required up front.
- 7.2 Part payment of an account shall not amount to satisfaction of the whole account unless, prior to the act of making the part payment, Summit Solutions agrees in writing that part payment will be accepted in full satisfaction of the account.

## 8. CONDITION OF EQUIPMENT

- 8.1 Summit Solutions shall supply the Customer with the Equipment that is in a clean condition, good working order and free from damage or defects.

- 8.2 The Customer shall notify Summit Solutions in writing of any alleged damage or defect in Summit Plumbing's Equipment ("**the Notification**") within two (2) working days of delivery of the Equipment to the Customer. The Customer shall then provide Summit Solutions with an opportunity to inspect the Equipment at the Customer's Site within a reasonable time following Summit Plumbing's receipt of the Customer's Notification. If the Customer fails to comply with these provisions the Equipment shall be deemed to be accepted by the Customer as being free from damage or defect.
- 8.3 If the Customer's Notification was received within the time period in clause 8.2 and, following inspection, Summit Solutions accepts the Customer's Notification, Summit Solutions warrants that it will replace (if necessary) or make good any Equipment with the accepted damage or defect. If replacement or making good of the Equipment is unnecessary, Summit Solutions warrants that it will not hold the Customer liable for the accepted damage or defect. Summit Solutions shall not accept a claim under this warranty if the Equipment has been modified or incorrectly maintained or used.
- 8.4 Upon the expiry of this Hire Agreement, or upon Summit Plumbing's removal of any Equipment pursuant to the terms of the Hire Agreement, the Customer shall deliver up the applicable Equipment to Summit Solutions Plumbing in the same good working order and clean condition as when it was received (fair wear and tear excepted) The Customer agrees to ensure the toilet is used to working order (with the correct liners placed down) and failure to do so could result in the Customer being liable to replace the toilet, at its cost.
- 8.5 Where the Customer fails to return the Equipment in the same good working order and clean condition as set out in clause 8.4, it will be liable to pay the costs of cleaning, repairing and/or replacing the Equipment.

#### 9. MAINTENANCE AND SERVICING OF EQUIPMENT

- 9.1 During any period the Equipment is in the possession of the Customer, Summit Solutions will be responsible for servicing the toilet at the Customer's cost at the cost specified in the Schedule. This will be arranged by Summit Plumbing, as reasonably required, and after giving at least 48 hours' notice and the Customer will allow access to the Equipment for this purpose.
- 9.2 Notwithstanding clause 9.1, the Customer shall be solely responsible for the cost of any maintenance, servicing or repairs which are required as a result of the use of, or damage to, the Equipment by the Customer or any Sub-Hiree. The Customer shall also be responsible for all minor and/or day-to-day servicing and maintenance of the Equipment as determined by Summit Solutions in its sole and absolute discretion.
- 9.3 The Customer shall receive a credit from Summit Solutions at the same daily rate it has hired the Equipment for every day the Customer does not have use of the Equipment due to Summit Solutions' servicing under clause 9.1.

#### 10. USE AND PROTECTION OF EQUIPMENT

- 10.1 The Customer warrants to use the Equipment for its intended purpose at all times.
- 10.2 The Equipment will be fitted with a GPS tracker and the Customer is responsible to ensure that the GPS tracker onboard the Equipment is not tampered with or removed. In the event of any damage to, or removal of, the GPS tracker, Summit Solutions shall be entitled to charge the Penalty Charge for each day such damage or disruption continues unless the Customer can prove to Summit Plumbing's reasonable satisfaction that the Equipment was not damaged or disrupted.
- 10.3 If any of the Equipment in the possession of the Customer is stolen, lost, damaged or destroyed then any costs incurred in cleaning, maintaining, repairing or replacing the Equipment (as applicable) shall be at the Customer's expense. Any replacement of Equipment is to be undertaken on a like-for-like basis.

#### 11. ACCURACY OF INFORMATION FROM CUSTOMER

- 11.1 Summit Solutions shall be entitled to rely on any information provided by the Customer in relation to the Hire Agreement including, without limitation, timeframes and the location of the Customer's Site.
- 11.2 Summit Solutions shall not be liable for any loss, damages, costs and/or expenses incurred as a result of the provision of inaccurate information by the Customer.

#### 12. SITE ACCESS, RISK AND INSURANCE

- 12.1 The Customer shall ensure that Summit Solutions has clear and unimpeded access to the Customer's Site to carrying out any matters envisaged by the Hire Agreement.
- 12.2 Any matters undertaken by Summit Solutions at the Customer's Site in accordance with the Hire Agreement are performed solely at the Customer's risk and Summit Solutions shall not be liable for any loss or damage to property at the Customer's Site regardless of whether the property is owned by the Customer.
- 12.3 Summit Solutions shall maintain insurance over the Equipment for the duration of the Hire Agreement.
- 12.4 The Customer takes full responsibility for the Equipment for the duration of the Hire Agreement.

Summit Solutions

#### 13. TERMINATION AND DEFAULT

- 13.1 Summit Solutions has the right to terminate this Hire Agreement without notice and take immediate possession of the Equipment if:
- 13.1.1 The Customer fails to comply with the terms of the Hire Agreement within 10 working days of receiving written notice from Summit Solutions that it believes the Customer is breaching any terms of the Hire Agreement; or
  - 13.1.2 The Equipment is lost, damaged or destroyed at the fault of the Customer or any Sub-Hiree; or
  - 13.1.3 The Customer is placed into receivership, liquidation, declared bankrupt, or otherwise becomes insolvent; or
  - 13.1.4 The Customer is in default in making payment to Summit Solutions for longer than 20 days.
- 13.2 Any such termination shall be without prejudice to the rights of Summit Solutions to recover any unpaid Hire Charges or other sums payable under the Hire Agreement.
- 13.3 Summit Solutions may charge penalty interest at a rate of 15% per annum on any amount owing to it after the date payment was due. Penalty interest is payable from the date payment was due until the date payment is received by Summit Plumbing. This clause is without prejudice to any other rights and/or remedies of Summit Solutions in respect of the Customer's default.
- 13.4 Summit Solutions will not be liable to the Customer for any loss or damage the Customer suffers if Summit Solutions terminates this Hire Agreement and/or repossesses its Equipment.
- 13.5 Any costs and expenses incurred by Summit Solutions in enforcing its rights under the Hire Agreement, including debt collection agency fees, and legal fees as between solicitor and Customer, shall be recoverable from the Customer.
- 13.6 The Customer indemnifies Summit Solutions from and against all costs and expenses incurred by Summit Solutions in recovering any money owing to it.

#### 14. SET OFF

- 14.1 Summit Solutions may, in its sole discretion, allocate any payment received from the Customer towards any invoice that Summit Solutions determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated.

#### 15. RETENTION OF TITLE

- 15.1 Ownership and legal title in any of Summit Plumbing's Equipment in possession of the Customer shall remain the ownership of Summit Solutions regardless of whether any of that Equipment is attached, fixed, inseparable or indistinguishable from other equipment in the possession of the Customer.
- 15.2 If the Customer is in default under its Hire Agreement, Summit Solutions shall be entitled to repossess, from the Customer's possession, any Equipment it has supplied, and the Customer authorises Summit Solutions to enter upon the Customer's Site at any time to recover the Equipment pursuant to the terms of this Hire Agreement.

#### 16. PERSONAL PROPERTY SECURITIES ACT 1999

- 16.1 In entering the Hire Agreement the Customer acknowledges and agrees that the Hire Agreement creates a security agreement between Summit Solutions and the Customer for the purposes of the Personal Property Securities Act 1999.
- 16.2 The Customer acknowledges and agrees that Summit Solutions has a security interest in any Equipment which is hired for 12 months or longer by Summit Solutions to the Customer.
- 16.3 Summit Solutions may protect its interest in the Equipment, as referred to in clause 16.2, by registering and maintaining a financing statement(s) on the Personal Properties Securities Register. The Customer waives its right to receive a copy of any verification statement received by Summit Plumbing.
- 16.4 The Customer undertakes to sign any documents and/or provide further information, such information to be complete, accurate and up-to-date in all respects, which Summit Solutions may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register.

#### 17. LIMITATION OF LIABILITY

- 17.1 Subject to clause 17.2, in the event that Summit Solutions is found liable for loss caused by the Equipment provided under the Hire Agreement, Summit Solutions shall only be liable to the Customer for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. Summit Solutions shall not be liable to the Customer under the Hire Agreement for the Customer's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort, or otherwise.
- 17.2 The maximum aggregate amount payable by Summit Solutions under this Hire Agreement, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the fee (exclusive of GST and disbursements) with a maximum limit of \$50,000.

#### 18. NOT BOUND TO MANUFACTURER WARRANTIES

- 18.1 Summit Solutions shall not be bound by any term, condition, representation or warranty given by the manufacturer of any Equipment hired by Summit Plumbing.

#### 19. PRIVACY ACT 2020

- 19.1 The Customer authorises Summit Solutions to collect, retain and use any information about the Customer for the purpose of assessing the Customer's credit worthiness, enforcing any rights under the Hire Agreement and marketing.
- 19.2 The Customer authorises Summit Solutions to disclose any information obtained to any person for the purposes set out in clause 19.1.
- 19.3 Where the Customer is a natural person the authorities under clauses 19.1 and 19.2 are authorities or consents for the purposes of the Privacy Act 2020.
- 19.4 The Customer shall have the right to request a copy of the information held by Summit Solutions about the Customer and the right to request Summit Solutions to correct any incorrect information about the Customer.

#### 20. CONSUMERS GUARANTEES ACT 1993

- 20.1 The parties agree that where the Equipment hired under this Hire Agreement is provided in trade, then they contract out of the provisions of the Consumer Guarantees Act 1993.

#### 21. HEALTH AND SAFETY

- 21.1 The Customer is responsible for undertaking its own health and safety policies, procedures and program at the Customer's Site. If requested by Summit Plumbing, the Customer shall supply Summit Solutions with a copy of its health and safety program.
- 21.2 The Customer acknowledges and accepts that Summit Solutions has its own health and safety policies and, if requested by Summit Plumbing, the Customer will review these.
- 21.3 The Customer acknowledges and agrees that it is liable for ensuring that the Customer's Site complies with the sanitary obligations outlined in the Building Act 2004 at all times. Where Summit Plumbing's Equipment contains the only toilets on the Customer's Site, it is the Customer's responsibility to ensure that a suitable alternative is installed before Summit Solutions removes their Equipment. Summit Solutions shall not be liable for any fines, penalties, costs, expenses or other charges should the Customer fail to comply with their obligations under this provision and the Customer's indemnity in clause 25.5 shall apply in favour of Summit Plumbing.

#### Summit Solutions Summit Solutions 22. FORCE MAJEURE

- 22.1 Summit Solutions shall not be liable for any default under the Hire Agreement due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm, pandemic or other event beyond its reasonable control.

#### 23. SURVIVAL OF TERMS

- 23.1 The termination of this Hire Agreement howsoever caused shall be without prejudice to any obligations or rights of either party which have accrued prior to such termination and shall not affect any provision of this Hire Agreement which is expressly or by implication provided to come into effect on, or continue in effect after, such termination.

#### 24. ENTIRE AGREEMENT

- 24.1 This Hire Agreement constitutes the entire agreement between Summit Solutions and the Customer and supersedes any request for quotation, Summit Plumbing's quotation, all negotiations and/or previous agreements either written or oral.

#### 25. MISCELLANEOUS

- 25.1 **Waiver:** No waiver by Summit Solutions in respect of any breach of the Hire Agreement shall operate as a waiver in respect of any subsequent breach.
- 25.2 **Severability:** If any clause(s) of these terms and conditions of trade shall be declared invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining clauses shall not be affected, prejudiced or impaired.
- 25.3 **Amendments:** The parties may amend this Hire Agreement by agreement in writing.
- 25.4 **Jurisdiction:** These terms and conditions of trade are governed by and construed in accordance with the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 25.5 **Indemnity:** The Customer indemnifies Summit Solutions in relation to any loss, damage, liability, costs and/or expenses it incurs, including legal costs on a solicitor-client basis, in relation to this Hire Agreement. For the avoidance of doubt this includes any period for which the Equipment is in the possession of a Sub-Hiree under clause 4.3.

