

HIRE CONTRACT CONDITIONS

Fletcher Distribution Limited trading as PlaceMakers.
Company Number 951999



NOTE TO CUSTOMER

- Please read this agreement very carefully. It constitutes a legally binding contract for the hire of goods and contains important information as to your obligations and liabilities.
- These terms of hire apply to the exclusion of any other terms you may propose.
- You are responsible for damage to equipment you hire and for damage you cause to someone else's property when using the equipment.
- Please make sure you know all the features of the equipment before you hire it.
- You must have appropriate personal protective equipment when operating the equipment.
- A PAT licence in your name is required to be shown when renting any powder accentuated tools and related consumables.
- We may refuse to hire equipment to you for any reason.

1. HIRE PERIOD AND RATES

- 1.1. You acknowledge that all information, specifications, dimensions and descriptions of any equipment published by PlaceMakers or otherwise contained in any estimate, catalogue, price list, website or other advertising matter are an approximation only and no representation is made by PlaceMakers that the Equipment strictly complies with those particulars.
- 1.2. PlaceMakers may substitute the Equipment with equipment that is similar to the Equipment in the event that the Equipment is unavailable for any reason.
- 1.3. The Hire Period starts when the Equipment leaves PlaceMakers' premises and ends when it is returned to the same branch. Equipment must be returned by 4pm.
- 1.4. You must check the Hire Form on receipt and, unless you notify us before collection of the Equipment that you disagree with anything in the Hire Form, the terms of the Hire Form are accepted by you.
- 1.5. You must pay the following charges:
 - a. the Rates for all Equipment hired;
 - b. Damage Waiver Excess (if applicable);
 - c. any damage to or loss of the Equipment not covered by the Damage Waiver (if applicable);
 - d. cleaning fees (if applicable); and
 - e. default interest for late payment (if applicable).
- 1.6. Cleaning fees will be assessed and charged if you return Equipment that we consider (in our sole discretion) to be excessively dirty.

2. PAYMENT

- 2.1. All Rates will specify whether they are inclusive or exclusive of GST. The Hire Form will set out the Rates and applicable GST payable by you.
- 2.2. At the beginning of the Hire Period, we will register Equipment against your account. The applicable Rates will be charged to your account when the Equipment is returned. Any applicable cleaning and damage charges will also be applied upon return.
- 2.3. Upon return, you will also pay, or your account will be charged with, the cost of any applicable Damage Waiver Excess for hired Equipment, the amount of which will be notified to you.
- 2.4. For trade account customers, PlaceMakers will send you an invoice for Rates and charges incurred. You must pay the invoice by the 20th of the month following the date of invoice. PlaceMakers reserves the right to reverse any previously agreed discount for credit account customers if the account is not paid in full by the due date.
- 2.5. You must raise all queries or issues with invoiced amounts within one month of the date on the relevant invoice so that any such queries or issues can be promptly reviewed and resolved.
- 2.6. Without prejudice to PlaceMakers' other remedies at law or otherwise, you will pay default interest at the rate of 2% above PlaceMakers' overdraft rate per calendar month on all outstanding amounts from the end of the Hire Period (for cash customers) or from the 20th of the month following date of invoice (for trade account customers), until all monies have been paid in full.
- 2.7. No credit shall be extended on overdue accounts.
- 2.8. Your obligations to pay Rates and any other sums to PlaceMakers continue despite any mechanical defect, break down, theft of, or accident or damage caused to the Equipment.

3. YOUR OBLIGATIONS

- 3.1. You hire the Equipment at your own risk and warrant to PlaceMakers that you are competent and qualified to use the Equipment.

3.2. You must:

- a. comply with all instructions and/or directions from PlaceMakers and/or Hilti relating to the use, control and maintenance of the Equipment;
- b. satisfy yourself that the Equipment is suitable for your intended use;
- c. if the Equipment is intended to be used in a location or manner which is outside its usual or ordinary use, advise PlaceMakers of the intended location and/or nature of use at the time of hiring the Equipment;
- d. comply with any special conditions or exclusions (which may apply to specific Equipment or the nature or location of your intended use of such equipment) notified to you prior to the Equipment leaving the PlaceMakers' branch;
- e. take proper and reasonable care of the Equipment (including keeping the Equipment locked and secured when not in use) and return it to us at the end of the Hire Period (to the place of hire, unless otherwise specified in the Hire Form) in the same order and condition as at the start of the Hire Period (fair wear and tear excepted) and in a reasonably clean state (taking into account the cleanliness of the Equipment at the outset of the Hire Period);
- f. carry out all necessary daily servicing of the Equipment, (including the inspection and/or the supply of all necessary, water, oils, grease and fuel as may reasonably be required as part of the daily operation of the hired equipment) at your expense;
- g. use the Equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such Equipment;
- h. have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment;
- i. ensure that any person collecting or taking delivery of Equipment on your behalf is authorised by you to do so and you will not allege that any such person is not so authorised;
- j. ensure that all persons operating the Equipment are suitably instructed in their safe and proper use and, where necessary, hold the relevant certificates and/or are fully licensed. A PAT licence in your name is required to be shown when renting any powder accentuated tools and related consumables;
- k. operate the Equipment with an adequate power source;
- l. immediately report, by telephone, and provide full details to us of any accident or damage to the Equipment, or if they are faulty or break down, and immediately cease to use the Equipment;
- m. obtain a police report in respect of any theft of the Equipment;
- n. not tamper with, damage or repair the Equipment;
- o. not allow any person to operate the Equipment under the influence of drugs or alcohol; and
- p. not allow any person other than your employees or contractors to operate the Equipment.

- 3.3. You must not lease, hire, bail or give possession of the Equipment to any else or grant or create any security interest in the Equipment.

4. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- 4.1. You acknowledge that the Equipment remains the property of PlaceMakers at all times.
- 4.2. You agree that the hire of the Equipment may create a security interest in the Equipment to secure the full payment of all moneys payable to us and the performance by you of all of your other obligations to us. If the Hire Form constitutes a security interest, these terms constitute a security agreement for the purposes of the PPSA and the provisions of clauses 4.3 to 4.5 apply. Unless otherwise defined in the Hire Form, all terms in

this clause 4 have the meaning given to them in the PPSA and section references are sections of the PPSA.

- 4.3. On the request of PlaceMakers, you must promptly execute any documents, provide all necessary information and do anything else required by us to ensure that the security interest created under the Hire Form constitutes a perfected security interest in the Equipment and their proceeds which will have priority over all other security interests in the Equipment.
- 4.4. We may allocate all amounts you receive in any manner we determine including any manner required to preserve any purchase money security interests in the equipment.
- 4.5. You will pay to us all fees and expenses incurred by us in relation to the filing and maintenance of a financing statement in connection with the Hire Form.
- 4.6. You waive your rights under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 148 of the PPSA.

5. DAMAGE WAIVER

- 5.1. We agree that in certain circumstances, subject to the exclusions set out in clauses 5.3 and 5.4, you will not be liable to PlaceMakers for any loss of or damage to the Equipment during the Hire Period other than the Damage Waiver Excess. (Damage Waiver)
- 5.2. You must pay the Damage Waiver Excess in respect of each piece of Equipment before the Damage Waiver covers the loss of or damage to any item of Equipment. The "Damage Waiver Excess" is the repair cost of an item of Equipment or 20% of the current replacement cost of that item of Equipment as reasonably determined by us plus GST, or as otherwise agreed between the parties and detailed in the Hire Form.
- 5.3. The Damage Waiver will not cover you if you have not:
 - a. at all times acted with reasonable care and not negligently or wilfully;
 - b. delivered to PlaceMakers (within 12 hours of the time when you first become aware of the loss of or damage to the Equipment) a complete, correct, written report of the circumstances of such loss of or damage to the Equipment;
 - c. complied with your obligations under clause 3 (Your Obligations); and
 - d. rendered such assistance and done such other things as PlaceMakers reasonably requires for the purposes of enabling PlaceMakers to recover such loss or damage, including from any potentially responsible third party.
- 5.4. Damage Waiver will not cover:
 - a. loss, theft of or criminal damage to Equipment;
 - b. the user of the Equipment was not suitably licensed;
 - c. the user of the Equipment was under the influence of drugs or alcohol;
 - d. the Equipment has been wilfully damaged;
 - e. damage or loss due to misuse (including use other than for the intended purpose, not in compliance with the relevant operating instructions or other than with the appropriate parts), abuse or overloading of the Equipment or failure to take reasonable care of it (including any overloading of any motors or other electrical appliances or devices);
 - f. damage caused to tyres and tubes by blowout, bruises, cuts, kerbing or other causes arising from the use of the Equipment;
 - g. loss of inserts, consumables and accessories including power cords and batteries;
 - h. loss or damage to the Equipment resulting from lack of lubrication or other normal servicing of the Equipment;
 - i. loss or damage of tools, accessories, grease guns, hoses and similar, electrical cords and other similar accessories;
 - j. loss or damage to the Equipment where such loss or damage is due to any incident or accident involving (in any way) water;
 - k. loss or damage of the Equipment arising from a breach by you of the conditions of this Contract;
 - l. loss or damage due to your breach of any special conditions or exclusions notified to you;
 - m. loss or damage from the use of the Equipment in breach of any statute, regulation or by-law; or
 - n. any consequential loss or damage incurred by PlaceMakers and/or any third parties.
- 5.5. The damage waiver is not insurance.
- 5.6. In the event that the Damage Waiver does not apply, you indemnify PlaceMakers against any loss of or damage to the Equipment.

6. RIGHT TO TERMINATE

- 6.1. PlaceMakers may terminate a contract created by a Hire Form or this Contract by notice with immediate effect if:
 - a. you do not pay any amount owed to PlaceMakers by the due date;
 - b. you breach any provision of the Hire Form and do not remedy the breach within a reasonable period of time (having regard to the breach);
 - c. we believe on reasonable grounds that the Equipment may be at risk for any reason whatsoever, including the manner of its use by you, adverse weather or work conditions, or you are unable to, or might be unable to, pay any Rate, cost, or fee in connection with the Equipment; or

- d. any step is taken to appoint a receiver, manager, trustee in administration, liquidator, provisional liquidator, statutory manager, administrator or other like person over the whole or any part of your assets or business.
- 6.2. PlaceMakers may terminate a contract created by a Hire Form at any time without reason by giving you 48 hours' written notice.
 - 6.3. Where we exercise our rights under clause 6.1, you indemnify us against, and must pay to us, on demand, any cost (including legal costs), claim, damage, expense or liability suffered or incurred by us whether arising directly or indirectly from us acting to recover any Equipment hired or monies payable by you pursuant to the Hire Form, or otherwise in connection with the exercise or attempted exercise of any of our rights or remedies under the Hire Form.
 - 6.4. Upon termination of a contract created by a Hire Form or this Contract, you must immediately return or deliver up any hired Equipment to us and must pay to us:
 - a. all Rates and other moneys due to us at the date of termination; and
 - b. the balance of all Rates yet to accrue from the date of termination to the expiry of the Hire Period discounted for early payment in such amount as we, at our sole discretion, allow.
 - 6.5. Any termination of a Hire Form or this Contract by us is without prejudice to any rights that we may have under that Hire Form or this Contract.

7. LIMITATION OF LIABILITY

- 7.1. By hiring the Equipment, you acknowledge that we have no liability to you for any indirect or consequential loss or damage or for any loss of revenue or loss of actual or anticipated profit (or any other form of economic loss) arising in connection with the hire of Equipment (whether in contract or in tort) including that resulting from the use by you of the Equipment (including as a result of breakdown or malfunction), or arising by operation of law.
- 7.2. Subject to the exclusion of liability in clause 7.1 above, our maximum aggregate liability for all claims made by you, whether as a result of any breach of the Contract or on any other ground or terms whatsoever (including liability as a result of tort, including negligence) will not exceed the lesser of the Rates paid by you to us pursuant to the Contract and three months' hire charges.
- 7.3. We will have no liability to you if the Rates have not been paid in full by the due date.
- 7.4. Unless such loss is covered by the Damage Waiver under clause 5.1 you indemnify us against any liability, losses, damages or expenses incurred or suffered by us as a result of any claim made by a third person against us in respect of any loss or liability arising from or out of the use of the Equipment hired by you.
- 7.5. We shall have no liability for any loss or damage caused or contributed to by your continuing to use defective Equipment after a defect has become apparent or suspected or should reasonably have become apparent.

8. EXCLUSION OF WARRANTIES

- 8.1. PlaceMakers and you confirm, acknowledge and agree that because you are in trade (within the meaning of the Consumer Guarantees Act 1993) (CGA) and the Equipment is supplied to you in trade, the statutory guarantees and implied terms, covenants and conditions contained in the CGA do not apply.
- 8.2. Where you are a consumer for the purposes of the CGA, the CGA applies and you have the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.
- 8.3. PlaceMakers makes no warranty or representations as to the state, quality or fitness of the Equipment for any purpose and no such warranty will be implied.

9. GOVERNING LAW

- 9.1. The Contract is governed by the law of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

10. DEFINITIONS

- CONTRACT** – means these terms and the terms on any Hire Form.
CUSTOMER or **YOU** – means the person or entity (including a trust) hiring the Equipment from PlaceMakers Equipment as stated on the Hire Form and includes your employees, agents and contractors.
DAMAGE WAIVER – is as defined in clause 5.1 above.
DAMAGE WAIVER EXCESS – means the amount specified in clause 5.2 above in respect of damage or loss of Equipment.
EQUIPMENT – means the equipment listed in the applicable Hire Form.
HILTI – means Hilti New Zealand Limited.
HIRE PERIOD – means from the start date until the end of the period shown on the Hire Form. The minimum Hire Period will be one day or multiple days but no part-days. The Hire Period may only be extended if you request it and if we agree. We may issue an amended Hire Form for any extension of the Hire Period.
HIRE FORM – means a document setting out the particulars of the Equipment and the Hire Period and such other information as we may decide to include.
PLACEMAKERS or **WE** – means Fletcher Distribution Limited (trading as PlaceMakers).
RATES – means the amounts stated in the invoice payable by you for hiring the Equipment.