



Espressoworkz Limited
PO Box 67141, Mount Eden
AUCKLAND 1349
Ph 0800 377 737
Fax (09) 623 0019



FREE TRIAL PERIOD FORM

DATE:
CLIENT'S TRADE NAME:
CLIENT'S FULL or LEGAL NAME:
Phone: Fax:
Mobile: Email:
Billing Address: Physical Address:
Postcode: Postcode:

Contact Details:

Name: Position: Accounts Payable Phone: Email/Fax:
Name: Position: Machine Guardian Phone: Email/Fax:
Name: Position: Manager/Sponsor/Other Phone: Email/Fax:

Credit References:

Company: Phone: Contact Name:
Company: Phone: Contact Name:

FREE TRIAL PERIOD:

Trial Commences Date/Time: Trial Completion Date/Time:

The Client agrees to hire the Equipment on a trial basis for the period specified above and agrees that within 14 days from the end of the trial period the Equipment must be returned to Espressoworkz Ltd, OR purchased and paid for in full by the Client OR a rental form must be completed and signed by both parties.

Model: Serial No:

Only product purchased through Espressoworkz Limited is to be dispensed through this equipment.

PAYMENT TERMS:

I accept this trial period and certify that the above information is true and correct. I have read and understand the TERMS AND CONDITIONS OF HIRE (overleaf) of Espressoworkz Limited which form part of, and are intended to be read in conjunction with this Free Trial Period Form and agree to be bound by these conditions. I agree that if I am a director or a shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.

SIGNED (ESPRESSOWORKZ): SIGNED (CLIENT):
Name: Name:
Position: Position:
Date: Date:

# Espressoworkz Limited – Terms & Conditions of Hire and Service

## 1. Definitions

- 1.1 "Espressoworkz" shall mean Espressoworkz Limited its successors and assigns or any person acting on behalf of and with the authority of Espressoworkz Limited.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Equipment" shall mean Equipment supplied on hire by Espressoworkz to the Client and are as described on the invoices, quotation, work authorisation or any other forms as provided by Espressoworkz to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.4 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.5 "Services" shall mean all services supplied by Espressoworkz to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Equipment as defined above).
- 1.6 "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Espressoworkz to the Client.
- 1.7 "Price" shall mean the cost of the hire of the Equipment as agreed between Espressoworkz and the Client subject to clause 3 of this contract.

## 2. Acceptance

- 2.1 Any instructions received by Espressoworkz from the Client for the hiring of Equipment and/or the Client's acceptance of Equipment supplied on hire by Espressoworkz shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of Espressoworkz.
- 2.4 The Client shall give Espressoworkz not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Espressoworkz as a result of the Client's failure to comply with this clause.
- 2.5 These terms and conditions are meant to be read in conjunction with Espressoworkz service agreement (where applicable). If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.6 Equipment is supplied by Espressoworkz only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

## 3. Price And Payment

- 3.1 At Espressoworkz' sole discretion the Price shall be either;
  - (a) as indicated on invoices provided by Espressoworkz to the Client in respect of Equipment supplied; or
  - (b) Espressoworkz' quoted Price (subject to clause 3.2) which shall be binding upon Espressoworkz provided that the Client shall accept Espressoworkz' quotation in writing within thirty (30) days.
- 3.2 Espressoworkz reserves the right to change the Price in the event of a variation to Espressoworkz' quotation.
- 3.3 Espressoworkz may submit detailed progress payment claims in accordance with Espressoworkz' specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
- 3.4 At Espressoworkz' sole discretion a deposit may be required.
- 3.5 At Espressoworkz' sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to Espressoworkz.
- 3.6 All rental agreement payments are due monthly in advance and should be paid by automatic payment or direct debit.
- 3.7 Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 3.8 Payment will be made or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and Espressoworkz.
- 3.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 4. Hire Period

- 4.1 Hire Charges shall commence from the time the Equipment is collected by the Client from Espressoworkz' premises and will continue until the return of the Equipment to Espressoworkz' premises.
- 4.2 If Espressoworkz agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves Espressoworkz' premises and continue until the Client notifies Espressoworkz that the Equipment is available for collection.

## 5. Delivery Of Equipment

- 5.1 At Espressoworkz' sole discretion delivery of the Equipment shall take place when;
  - (a) the Client takes possession of the Equipment at Espressoworkz' address or
  - (b) the Client takes possession of the Equipment at the Client's address (in the event that the Equipment is delivered by Espressoworkz or Espressoworkz' nominated carrier).
- 5.2 At Espressoworkz' sole discretion the costs of delivery are;
  - (a) included in the Price, or
  - (b) in addition to the Price, or
  - (c) for the Client's account.
- 5.3 The failure of Espressoworkz to deliver shall not entitle either party to treat this contract as repudiated.
- 5.4 Espressoworkz shall not be liable for any loss or damage whatever due to failure by Espressoworkz to deliver the Equipment (or any of part of the Equipment) promptly or at all.

## 6. Risk

- 6.1 Espressoworkz retains property in the Equipment nonetheless; all risk for the Equipment passes to the Client on delivery.
- 6.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Espressoworkz for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 6.3 The Client will insure, or self insure, Espressoworkz' interest in the Equipment against physical loss of damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 6.4 The Client accepts full responsibility for and shall keep Espressoworkz indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.

## 7. Title

- 7.1 The Equipment is and will at all time remain the absolute property of Espressoworkz.
- 7.2 If the Client fails to return the Equipment to Espressoworkz when requested then Espressoworkz or Espressoworkz' agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated as the invitee of the Client and take possession of the Equipment, without being responsible for any damage thereby caused.
- 7.3 The Client is not authorised to pledge Espressoworkz' credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

## 8. Defects

- 8.1 The Client shall inspect the Equipment on delivery and shall within seven (7) days notify Espressoworkz of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Espressoworkz an opportunity to inspect the Equipment within a reasonable time following delivery if the Client believes the Equipment is defective in any way. If the Client shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which Espressoworkz has agreed in writing that the Client is entitled to reject, Espressoworkz' liability is limited to replacing the Equipment.

## 9. Client's Responsibilities

- 9.1 The Client shall:
  - (a) allow Espressoworkz to inspect the Equipment at the Client's premises at any reasonable time;
  - (b) notify Espressoworkz immediately by telephone of the full circumstances of any breakdown or accident in connection with the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification.
  - (c) satisfy itself prior to taking delivery of the Equipment that the Equipment is suitable for its purposes;
  - (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by Espressoworkz or posted on the Equipment;
  - (e) ensure that all persons operating the Equipment are suitably instructed in its safe and proper use;

- (f) comply with all occupational health and safety laws relating to the Equipment and its operation;
  - (g) keep the Equipment in their own possession and control;
  - (h) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
  - (i) employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;
  - (j) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
  - (k) on termination of the hire, deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to Espressoworkz.
- 9.2 Immediately on request by Espressoworkz the Client will pay:
    - (a) the new list price of any Equipment that is for whatever reason destroyed, written off, or not returned to Espressoworkz;
    - (b) all costs incurred in cleaning the Equipment;
    - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
    - (d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
    - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in Espressoworkz' reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.

## 10. Warranty

- 10.1 Espressoworkz warrants that the Equipment functions in accordance with the manufacturers specifications. Espressoworkz shall not be liable for Equipment damage caused by the Client's failure to clean the Equipment or operate it correctly. The Client agrees to notify Espressoworkz immediately should Equipment failure occur. Espressoworkz shall, at its own expense, maintain, repair, or replace faulty Equipment at the earliest possible time. Work carried out as a result of incorrect operation, normal wear and tear, or failure to clean the machine properly shall be charged to the Client.
- 10.2 Where a fault in the Equipment is deemed in Espressoworkz opinion to be caused by the use of non-Espressoworkz supplied consumables, then all related repair costs shall be charged to the Client.

## 11. Contractual Remedies Act 1979

- 11.1 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.

## 12. Consumer Guarantees Act 1993

- 12.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).

## 13. Default & Consequences Of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Espressoworkz' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Espressoworkz.
- 13.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Espressoworkz from and against all costs and disbursements incurred by Espressoworkz in pursuing the debt including legal costs on a solicitor and own client basis and Espressoworkz' collection agency costs.
- 13.4 Without prejudice to any other remedies Espressoworkz may have, if at any time the Client is in breach of any obligation (including those relating to payment) Espressoworkz may repossess the Equipment as per clause 7.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. Espressoworkz will not be liable to the Client for any loss or damage the Client suffers because Espressoworkz has exercised its rights under this clause.
- 13.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.6 Without prejudice to Espressoworkz' other remedies at law Espressoworkz shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to Espressoworkz shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to Espressoworkz becomes overdue, or in Espressoworkz' opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 14. Cancellation

- 14.1 Espressoworkz may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice Espressoworkz shall repay to the Client any sums paid in respect of the Price. Espressoworkz shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Equipment the Client shall be liable for any loss incurred by Espressoworkz (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14.3 Once a rental agreement or a service agreement is in place the Client may only terminate this agreement within Espressoworkz minimum duration period (as specified on Espressoworkz' rental agreement or service agreement forms) by giving Espressoworkz three (3) months notice in writing.

## 15. Privacy Act 1993

- 15.1 The Client and the Guarantor/s (if separate to the Client) authorise Espressoworkz to:
  - (a) collect, retain and use any information about the Client and/or the Guarantor/s, for the purpose of assessing the Client's and/or the Guarantor/s creditworthiness or marketing products and services to the Client and/or the Guarantor/s; and
  - (b) to disclose information about the Client and/or the Guarantor/s, whether collected by Espressoworkz from the Client and/or the Guarantor/s directly or obtained by Espressoworkz and/or the Guarantor/s from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client and/or the Guarantor/s.
- 15.2 Where the Client and/or the Guarantor/s are an individual the authorities under (clause 15.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 15.3 The Client and/or the Guarantor/s shall have the right to request Espressoworkz for a copy of the information about the Client and/or the Guarantor/s retained by Espressoworkz and the right to request Espressoworkz to correct any incorrect information about the Client and/or the Guarantor/s held by Espressoworkz.

## 16. Personal Property Securities Act 1999 ("PPSA")

- 16.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods previously supplied by Espressoworkz to the Client (if any) and all Goods that will be supplied in the future by Espressoworkz to the Client.
- 16.2 The Client undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Espressoworkz may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) not register a financing change statement or a change demand without the prior written consent of Espressoworkz.
- 16.3 Espressoworkz and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 16.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 16.5 Unless otherwise agreed to in writing by Espressoworkz, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 16.6 The Client shall unconditionally ratify any actions taken by Espressoworkz under clauses 16.1 to 16.5.

## 17. General

- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Auckland.
- 17.3 Espressoworkz shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client due to Equipment failure or arising out of a breach by Espressoworkz of these terms and conditions.

«LegalName» T/A «CustomerName»  
«Address1», «Address2», «Address3» «PostCode», Ph «Phone» - Fax «Fax»  
Email (INSERT), Web (INSERT)