

Uppercuts Butchery BBQ Hire Agreement

Date:

Parties

Upper Cuts Butchery Limited ("Owner")

_____ ("Hirer")

Agreement

The Owner hires to you and you take on hire from the Owner the Chattel described in Item 1 of the Schedule to this Agreement on the terms and conditions set out in this Agreement.

Signed by

Signed by the Owner

Director of Upper Cuts Butchery Limited

Signed by the Hirer, who acknowledges and confirms they have read and agreed to be bound by the attached terms and conditions

Signature

Schedule

- | | |
|---------|---|
| Item 1 | Description of Chattel BBQ Trailer |
| Item 2 | The premises at which the Chattel is to be collected and returned 166 Florence Road, Winton (Corner of Winton-Hedgehope Highway and Florence Road) |
| Item 3 | Term From _____ to _____ |
| Item 4 | Hire charges \$250.00 including GST per day |
| Item 5 | Cleaning Charge \$50.00 including GST |
| Item 6 | Bond \$ _____ |
| Item 7 | Insurance Charge \$20.00 (including GST) |
| Item 8 | Designated Operator(s) Name: _____ Driver's Licence Number: _____ Car registration details: _____ |
| Item 9 | Default interest rate 18% per annum |
| Item 10 | Credit card details Card Number: _____ Expiry Date: ____ / ____ Name on Card: _____ |

Terms and Conditions

1. Definitions

- 1.1 In this Agreement, the following terms have the meanings given below, unless the context otherwise requires:
"Agreement" means both the front page of this agreement (including the Schedule) and these terms and conditions.
"Chattel" means the Chattel described in Item 1 of the Schedule to this Agreement hired to you by the Owner and includes all accessories and other goods or equipment of the Owner attached to or used in connection with the Chattel.
"GST" means goods and services tax in terms of the Goods and Services Act 1985, at the prevailing rate from time to time.
"persons under your control" means your employees and agents and any other person who may be at any time under your control or direction including but not limited to, the Designated Operator, subcontractors, independent contractors and their employees or agents.
"Term" means the term of the hire of the Chattel commencing at the time and on the date, and ending at the time and on the date, in each case as set out in Item 3, unless terminated earlier in accordance with the terms of this Agreement.
- 1.2 Any term defined in the Schedule, has that meaning throughout this Agreement.
- 1.3 Headings are inserted for convenience and shall not affect the interpretation of this 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 subclause is a reference to a clause or subclause of this Agreement. A reference to the Owner includes its employees and agents.
- 1.4 The rule of construction known as the contra proferentem rule does not apply to this Agreement.
- 1.5 A reference to a statute includes:
(a) all regulations, orders, rules or notices made pursuant to that statute;
(b) all amendments to that statute and those regulations, orders, rules or notices; and
(c) any statute passed in substitution of that statute.
- ### 2. Term
- 2.1 The hire of the Chattel is fixed for the Term, unless terminated earlier in accordance with this Agreement.
- 2.2 Unless otherwise agreed with the Owner, you shall be responsible for collecting the Chattel at the premises designated by the Owner in Item 2 of the Schedule at the commencement of the Term.
- 2.3 You shall not be entitled to a refund or reduction of the hire charge specified in Item 4 of the Schedule if you choose to return the Chattel to the Owner before the end of the Term.
- 2.4 You agree that the Owner may charge you additional hire charges if the Chattel is not returned to the Owner at the end of the Term, without limiting the Owner's rights in clause 8.
- ### 3. Charges
- 3.1 The hire charge for the Chattel is set out in Item 4 of the Schedule, subject to the terms of this Agreement.
- 3.2 GST is payable in addition to all payments and charges specified as being payable by you under this Agreement.
- 3.3 Unless the Owner agrees otherwise, you shall pay the hire charge in full to the Owner prior to collecting the Chattel with such payment to be made using the credit card specified in Item 10 of the Schedule.
- 3.4 If a bond amount is stated in Item 6 of the Schedule you are required to pay the amount of the bond to the Owner at the commencement of the Term in addition to the hire charge. The Owner shall refund the bond to you in full provided that you return the Chattel in good condition to the Owner immediately at the end of the Term. If the Chattel is not returned, or are returned late, or not in good condition, the Owner is entitled to retain the bond or any part of it and may also require you to pay to replace or repair the Chattel, or to pay additional hire charges.
- 3.5 Without prejudice to the Owner's other remedies under these conditions, at law or otherwise, you will pay interest at the default interest rate specified in Item 9 of the Schedule on all amounts owing to the Owner under this Agreement which remain outstanding after the due date for payment, until all outstanding amounts have been paid in full. This provision shall not constitute a waiver of your default and the default interest is not an extension of credit to you.
- 3.6 You shall pay to the Owner all costs and expenses incurred by the Owner in recovering money or in connection with the exercise or attempted exercise of any of the Owner's rights or remedies under this Agreement, including commissions and legal costs on a solicitor and client basis.
- 3.7 You must make all payments due under this Agreement without set-off or deduction of any kind.
- 3.8 You acknowledge and accept that by signing this Agreement and by providing a credit card for payment, all charges under this Agreement may be charged

to the nominated credit card or to any other credit card that may be provided by you.

4. Ownership and Risk

- 4.1 You acknowledge that the Chattel remains the property of the Owner at all times and until they are returned to the Owner, subject to clause 5, loss or damage of the Chattel is at your risk.

5. Insurance – Insurance Charge

- 5.1 Subject to clauses 5.2 and 5.3 below, if you have paid the Insurance Charge specified in Item 7 of the Schedule for the insurance cover provided by the Owner, you will be indemnified up to the market value at the time of loss in respect of damage to any property belonging to any third party and arising out of the use of the Chattel.
- 5.2 For the avoidance of doubt you acknowledge that even if you pay the Insurance Charge, the Owner's insurance will not cover damage, injury or loss due to:
(a) non-return of the Chattel;
(b) theft of the Chattel by you;
(c) mysterious disappearance;
(d) loss or damage resulting from your negligent acts or omissions;
(e) operating the Chattel under the influence of alcohol or any drug which affects his or her ability to operate the Chattel;
(f) the driver of the vehicle towing the Chattel (the "Vehicle") being under the influence of alcohol or any drug which affects his or her ability to operate the Vehicle;
(g) the Vehicle being unsafe or unroadworthy and that condition caused or contributed to the loss or damage of the Chattel and the driver was aware or ought to have been aware of the unsafe or unroadworthy condition of the Vehicle;
(h) the Vehicle being driven by any person who at the time of driving the Vehicle did not have a licence, or was disqualified from holding a licence to drive the Vehicle;
(i) the Chattel being operated outside the hire period or any extension of the term;
(j) The Chattel being used for something other than its purpose;
(k) personal belongings of you or any third party being within the Chattel.

- 5.3 Special conditions or exclusions may apply depending on the nature or location of your use of the Chattel. You must therefore notify the Owner of your intended use for the Chattel and where you will use it prior to collecting the Chattel.

- 5.4 The Owner requires you to pay the Insurance Charge unless you provide written confirmation of insurance cover of the Chattel suitable to the Owner prior to you collecting the Chattel.

- 5.5 All claims under the Owner's insurance are subject to an excess charge of \$550.00 inclusive of GST which shall be payable by you in addition to the Insurance Charge.

6. Owner's Undertakings

- 6.1 The Owner undertakes with you that:
(a) the Owner will arrange for the Chattel to be available at the commencement of the Term with all necessary permits, certificates and licences and in operational order;
(b) the Owner is responsible at its cost for all repairs and replacements to the Chattel not caused by any failure by you to properly service or operate the Chattel as required under this Agreement;
(c) the gas cylinder will be full of gas at the commencement of the Term.

7. Your Undertakings

- 7.1 You undertake with the Owner that you:
(a) are responsible for all loss or damage whatsoever including the cost of repairs suffered or incurred by the Owner in consequence of any breakdown or damage to the Chattel where such breakdown or damage is caused by any negligent act or omission or misdirection or misuse of the Chattel on your part or by persons under your control to the extent that the Owner's insurance cover does not cover such loss or damage;
(b) ensure the person driving the Vehicle holds a current full driver's licence appropriate for the Vehicle.
(c) will use only competent appropriately qualified operators to operate the Chattel, and where a Designated Operator is specified in Item 8 of the Schedule, you will ensure that only that person will operate the Chattel unless the Owner agrees otherwise in writing with you;
(d) will at your own expense supply all electricity for the operation of the Chattel;
(e) are responsible, subject to clause 5 (Insurance – Insurance Charge), for any loss or damage to the Chattel from the time you take possession of the Chattel until it is returned to the Owner's possession;
(f) shall notify the Owner in writing immediately if the Chattel is lost or damaged and shall follow all reasonable instructions of the Owner;
(g) shall take proper and reasonable care of the Chattel and return it in good order and condition;
(h) shall satisfy yourself that the Chattel is suitable for your intended use;

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- (i) shall use the Chattel in a lawful manner with due regard to all laws and regulations pertaining to the use of such Chattel;
- (j) shall immediately notify the Owner by telephone if the Chattel breaks down;
- (k) shall 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 you or arising directly or indirectly from your use of the Chattel;
- (l) shall indemnify the Owner against any claim made by any person against the Owner for any loss suffered or liability incurred arising directly or indirectly out of your use or possession of the Chattel;
- (m) shall ensure that when the Chattel is not in use during the Term it is securely stored and/or locked;
- (n) shall not sell, assign or transfer the Chattel, or otherwise part with possession of, or mortgage, charge or encumber the Chattel in any way.
- (o) shall not operate the Vehicle or Chattel or permit it to be operated in breach of the Land Transport Act 1998, the Traffic Regulations 1976 or any other Act, regulations, rules or bylaws relating to road traffic;
- (p) shall not use a Vehicle to tow the Chattel or permit it to be towed/operated for the transport of more than the weight of goods specified in the certificate of loading for the Vehicle;
- (q) will ensure that a copy of this Agreement is kept within the Vehicle throughout the Term and produced without delay for inspection upon demand by an enforcement officer;
- (r) will ensure you return the Chattel in the same order and condition in which it was required and ensure that it is cleaned. If the Chattel is not returned in such a condition, you acknowledge you will be charged the cleaning charge as detailed in Item 5, which the Owner can deduct from any bond held prior to release of the balance of the bond to you.
- 7.2 You will be responsible for all penalties relating to traffic offences incurred during the Term, including without limitation speeding, parking, toll and traffic signal offences. You acknowledge that an administration fee of \$45.00 including GST will be charged by the Owner to you to process these infringements.
- 7.3 You warrant that all persons who use the Chattel shall use them in the manner they were designed to be used, and follow any directions from the Owner, local authorities, codes of practice or from the manufacturer of the Chattel relating to the use and safety of the Chattel, and shall comply with all obligations in relation to the use and control of the Chattel and persons using the Chattel with the Health and Safety in Employment Act 1992 and all other relevant legislation.
- 7.4 If you are not an individual, then the person who signs this Agreement on your behalf warrants that they have authority to bind you and will, in any event, be personally liable for the performance of your obligations under this Agreement.
- 8. Owner's Right to Cancel**
- 8.1 If the Owner believes the Chattel to be at risk for any reason whatsoever including but not limited to:
- (a) the manner of their use by you; or
- (b) adverse weather or work conditions; or
- (c) where you are unable to, or might be unable to pay any amounts payable to the Owner; or
- (d) where you otherwise fail to comply with this Agreement, the Owner may at any time cancel this Agreement and upon such cancellation you shall immediately return the Chattel or the Owner may take action as necessary to retake possession of the Chattel.
- 8.2 You grant to the Owner, or will ensure that the Owner is granted, an irrevocable right and authority to enter at any time onto any place where the Chattel is situated or thought to be situated to remove the Chattel.
- 8.3 Cancellation of this Agreement by the Owner is without prejudice to any rights that the Owner may have under this Agreement.
- 8.4 Notwithstanding that the Owner may have cancelled this Agreement, you indemnify the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner exercising its rights under this clause or otherwise acting to recover any Chattel hired or monies payable by you under this Agreement.
- 8.5 The Owner will not be liable to you or any other persons for any loss suffered or liability incurred arising from cancellation of this Agreement or repossession of the Chattel.
- 8.6 Any obligations that you have to the Owner under this Agreement which remain wholly or partly unfulfilled at the time of cancellation of this Agreement or the end of the hire period shall continue and not be released notwithstanding the end of the hire period or the cancellation of this Agreement.
- 9. Liability**
- 9.1 If you are hiring the Chattel for the purposes of a business as defined in the Consumer Guarantees Act 1993, then guarantees and undertakings applying to the Owner under the Consumer Guarantees Act 1993 are excluded to the maximum extent permitted by law.
- 9.2 Except where the Owner is in breach of an applicable guarantee under the Consumer Guarantees Act 1993, in entering into this Agreement you agree that the Owner shall not be liable for direct or consequential damage or lost profit or business, loss or expense whatsoever and howsoever arising (whether in contract or in tort) including that resulting from the negligence of the Owner or arising by operation of law and whether suffered by you and/or any third party for any amount that exceeds the amount you have actually paid to the Owner under this Agreement.
- 9.3 In the event of a defect in the Chattel, the Owner may at its discretion refund the hire charges you have paid.
- 9.4 You acknowledge that the Owner makes no representation or warranty to you regarding the suitability of the Chattel for use in any particular conditions and that any condition or warranty expressed or implied by law in respect of the hire of the Chattel to you is expressly excluded to the maximum extent permitted by law.
- 10. No Assignment**
- 10.1 You may not assign, transfer or subcontract in any way your rights, powers or obligations under this Agreement.
- 11. Personal Property Securities Act 1999 (PPSA)**
- 11.1 All terms in this clause 11 have the meaning given in the PPSA and section references are to sections of the PPSA.
- 11.2 On the request of the Owner, you shall promptly execute any documents, provide all necessary information and do anything else required by the Owner to ensure that the security interest created under this Agreement in favour of the Owner constitutes a perfected security interest in the Chattel and their proceeds which will have priority over all other security interests in the Chattel.
- 11.3 You will pay to the Owner all fees and expenses incurred by the Owner in relation to the filing of a financing statement in connection with this Agreement.
- 11.4 You waive your rights under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, 134 and 148 of the PPSA.
- 12. Privacy Act 1993**
- 12.1 If you are an individual, this clause 12 applies. This Agreement collects personal information about you. The information is principally collected to evaluate the hire of Chattel to you and such information is collected and held by the Owner.
- 12.2 The failure to provide the information in the Schedule may result in your application to the Chattel being declined or this Agreement subsequently being terminated by the Owner.
- 12.3 You have rights of access to your personal information contained in this Agreement, subject to the provisions of the Privacy Act 1993. You authorise the disclosure of personal information held by any other party regarding any previous hire agreements entered into by you. You agree to the Owner releasing to other parties information regarding this Agreement.
- 12.4 You and each Designated Operator authorise the Owner:
- (a) to collect, retain and use information about you or the Designated Operator from any person for the purpose of assessing you or the Designated Operator's creditworthiness and traffic offence history;
- (b) to disclose information about you or the Designated Operator:
- (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to the Owner;
- (ii) to such persons as may be necessary or desirable to enable the Owner to exercise any power or enforce or attempt to enforce any of the Owner's rights, remedies and powers under this Agreement.
- 13. General**
- 13.1 Subject to clause 13.2, the terms of this Agreement shall not be modified, amended or waived, in whole or in part, except by written agreement with the Owner.
- 13.2 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of New Zealand, neither the legal validity nor enforceability of the remaining provisions of this Agreement shall in any way be affected or impaired with the intent that this Agreement should be construed as if the provision or part thereof in question has been deleted.
- 13.3 This Agreement is governed by the laws of New Zealand.
- 13.4 Any claim or dispute arising under this Agreement shall be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.

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