Orange Scaffold Limited – Terms & Conditions

1. Definitions

1.1 **"Charges"** shall mean the cost of the hire (including any Goods and Services Tax (GST) where applicable) of the Equipment as agreed between the Contractor and the Customer subject to clause 6 of this Contract.

1.2 **"Contract"** means the terms and conditions contained herein, together with any quotation, hire form, invoice or other document or amendments expressed to be supplemental to this Contract.

1.3 **"Contractor"** shall mean Orange Scaffold Limited, its successors and assigns.

1.4 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when using the Contractor's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**

1.5 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Contractor to provide the services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
- (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Customer's executors, administrators, successors and permitted assigns.

1.6 **"Equipment"** shall mean all Equipment supplied either by sale or by hire to the Customer by the Contractor at the Customer's request from time to time, and:
- (a) includes any erection and/or dismantle of the Equipment, any parts, accessories and/or consumables supplied by the Contractor to the Customer, either separately or deposited incidentally by the Contractor in the course of it conducting, or supplying to the Customer, the Equipment; and
- (b) where the context so permits the terms 'Equipment' or 'Services' shall be interchangeable for the other. The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Contractor to the Customer.

1.7 **"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 the Contractor to the Customer.

1.8 **"Site"** means the location/s at which the Equipment is to be operated.

2. Acceptance

2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
- (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Equipment or Services.

2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.4 The Customer acknowledges and accepts that:
- (a) the supply of Equipment on credit shall not take effect until the Customer has completed a credit application with the Contractor and it has been approved with a credit limit established for the account. In the event that the supply of Equipment requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery;
- (b) the product supply of shrink-wrap offers a manufacturer's guarantee of UV protection and can withstand up to the manufacturers specified tolerance and/or Bureau of Meteorology definition regarding gale force winds, being winds of up to 63-75kph;
- (c) following the handover of the certified Equipment to the Customer, it shall be the Customer's responsibility to check the Equipment before each use. If the Equipment is deemed to be damaged, altered or appears unsafe it should not be used, and the Contractor is to be notified;
- (d) the Contractor reserves the right to remove the Equipment without prejudice should the Equipment be considered unsafe due to washout and/or erosion, upon such action this shall not be deemed to be a breach of Contract. The Contractor will not accept any claim for in respect of any consequential loss to the Customer that may result from such an event; and
- (e) when the Contract period for hire completes under this Contract and payment is not forthcoming when due and payable, then the Contractor reserves the right at their discretion to leave the scaffolding erected until such time as payment effected and the Customer shall be liable for all loss hire charges in accordance with clause 13.3(e)(ii).

2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

3.1 Unless otherwise limited as per clause 3.2, the Customer agrees that should the Customer introduce any third party to the Contractor as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Equipment, and/or to request any variation thereto, on the Customer's behalf (such authority to continue until all requested Equipment has been returned to the Contractor, or the Customer otherwise notifies the Contractor in writing that said person is no longer the Customer's duly authorised representative).

3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.

3.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Equipment, or variation/s thereto, requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

4.1 The Customer acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Equipment hire and/or/Services.

4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Customer:
- (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
- (b) shall not be responsible for any additional costs incurred by the Contractor arising from the error or omission.

5. Change in Control

5.1 The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.

6. Charges and Payment

6.1 At the Contractor's sole discretion, the Charges shall be either:
- (a) as indicated on invoices provided by the Contractor to the Customer in respect of Equipment supplied; or
- (b) the Contractor's quoted price (subject to clause 6.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor's quotation in writing within fifteen (15) days.

6.2 The Contractor reserves the right to change the Charges:
- (a) if a variation to the Equipment which is to be supplied is requested (including, but not limited to, if the returned quantities is less than the quantities originally supplied, etc.); or
- (b) if a variation to the Services originally scheduled (including any applicable plans, erection and dismantle charges, Site requirements or specifications) is requested; or
- (c) if variations which are beyond the Contractor's control occur (such as the cost of materials, labour, taxes, levies, duties, fluctuations in currency exchange rates, insurance and/or freight or any Government or regulatory body imposing or increasing fees etc.); or
- (d) where additional Equipment or Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather or environmental conditions, limitations to accessing the Site, any subsidence of ground conditions, availability of machinery, protruding or dismantled formwork, repositioning or adjusting the Equipment due to sub contractor's moving planks, any relocation and/or alteration to working platforms and/or hop up brackets (or the Equipment entirely), additional Site visits required, safety considerations (e.g. overhead hazards, etc.), prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services.

6.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Customer shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Charges.

6.4 At the Contractor's sole discretion, a reasonable deposit (in the form of a bond) shall be required at the commencement of this Contract, which shall be refunded to the Customer by within thirty (30) days of the return of the Equipment, provided that the Customer has complied with their obligations hereunder. The deposit may be used to offset any applicable Charges payable by the Customer under clause 13.3, and any outstanding balance thereof shall be due as per clause 6.5.

6.5 Time for payment for the Equipment being of the essence, the Charges will be payable by the Customer on the date/s determined by the Contractor, which may be:
- (a) on delivery of the Equipment; or
- (b) on completion of the Services or part thereof; or
- (c) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Equipment delivered to the Site but not yet installed; or
- (d) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
- (e) the date specified on any invoice or other form as being the date for payment; or
- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Contractor.

6.6 The Contractor may in its discretion allocate any payment received from the Customer towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.

6.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Customer and the Contractor.

6.8 The Customer acknowledges and agrees that the Customer's obligations to the Contractor for the supply of Equipment on hire shall not cease until:
- (a) the Customer has paid the Contractor all amounts owing for the install/dismantle and hire of the Equipment; and
- (b) the Customer has met all other obligations due by the Customer to the Contractor in respect of all contracts between the Contractor and the Customer.

6.9 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised.

6.10 The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.

6.11 Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Charges. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

7. Hire Period

7.1 Hire charges shall commence from the time the handover certificate is first issued and/or from when the scaffold has started to be used legally and shall continue until the return of the Equipment thereto, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

7.2 The minimum terms of hire will be based on the final quotation, and then weekly charges thereafter will apply, after the minimum hire period has past.

7.3 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.

7.4 No allowance whatever can be made for time during which the Equipment is not in use for any reason unless the Contractor confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies the Contractor immediately, hiring Charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.

7.5 Off-hire receipts will only be issued when the Equipment has been either collected by the Contractor or returned to the Contractor's premises.

8. Delivery

8.1 Delivery ("**Delivery**") of the Equipment is taken to occur at the time that the Contractor (or the Contractor's nominated carrier) delivers the Equipment to the Customer's nominated address even if the Customer is not present at the address.

8.2 The cost of Delivery is either included in the Charges or is in addition to the Charges as agreed between the parties.

8.3 The Contractor may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

8.4 Any time specified by the Contractor for Delivery of the Equipment is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Equipment as agreed solely due to any action or inaction of the Customer, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.

9. Risk

9.1 The Contractor retains ownership of the Equipment nonetheless; all risk for the Equipment passes to the Customer on Delivery.

9.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Contractor 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 Customer.

9.3 The Customer will insure, or self insure, the Contractor's interest in the Equipment against physical loss or 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 Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

9.4 The Customer accepts full responsibility for and shall keep the Contractor indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

10. Access and Installation

10.1 The Customer shall ensure that the Contractor has clear and free access to the nominated delivery address to enable the Contractor to install and/or dismantle the Equipment.

10.2 It shall be the Customer's responsibility to ensure that where Equipment is installed on concreted areas, patios, driveways, timber decks, lower-level roof areas or other structures that suitable coverings are put in place to help prevent any marking/staining of the finished product. The Contractor shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways, lower-level roofs, and concreted or paved or grassed areas) unless due to the negligence of the Contractor.

10.3 The Customer shall ensure that the nominated delivery address is cleared and ready for installation of the Equipment prior to delivery of the Equipment, and that the foundations upon which the Contractor is to install the Equipment is sufficiently firm and otherwise suitable to safely carry the structure and the load to be put on it without subsidence. The Customer will be liable to the Contractor for any loss, costs, or damages which the Contractor may suffer or incur by reason of the Customer's failure to carry out its obligations hereunder if the Contractor is unable or unwilling to install the Equipment due to the Site not being cleared and ready as a foresaid. Nevertheless, the Customer shall be liable to pay the costs on the hire of the Equipment on the terms stated herein.

10.4 Where the Equipment is not installed by the Contractor, the Customer shall ensure that Equipment is erected and dismantled by qualified persons. A suitable qualified person shall be the holder of any certificate of competency or license that may be required by any legislation or local regulatory authority for the purpose of the erection or the dismantling of the Equipment.

11. Service Locations

11.1 Prior to the Contractor supplying Equipment, the Customer must advise the Contractor of the precise location of all mains/services on the Site and clearly mark the same. The mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on Site.

12. Compliance with Laws

12.1 The Customer and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Equipment including, but not limited to, the best practice guidelines for scaffolding as outlined in the Guidelines for the Provision of Facilities and General Safety in the Construction Industry Standards and/or any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Equipment/Services.

12.2 The Contractor has not and will not at any time assume any obligation as the Customer's agent or otherwise which may be imposed upon the Customer from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, the Contractor shall not be the person who controls the place of work in terms of the HSW Act.

12.3 The Customer shall obtain (at the expense of the Customer) all engineering reports, certificates, and all licenses, permits and approvals that may be required for the supply of Equipment/Services.

13. Customer's Responsibilities

13.1 The Customer shall:
- (a) maintain the Equipment as is required by the Contractor;
- (b) use 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 the Contractor or posted on the Equipment;
- (c) notify the Contractor immediately by telephone of the full circumstances of any breakdown/malfunction/damage etc. or accident in connection with the Equipment. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (d) ensure that:
  - (i) all persons using or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed;
  - (ii) the user of any Equipment is not under the influence of alcohol or any drug that may impair their ability to use the Equipment;
- (e) 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 the Contractor;
- (f) all overhead power likely to cause a hazard or adversely affect the installation of Equipment is turned off prior to the installation of the equipment;
- (g) no digging or excavation work is performed near or under the Equipment during the installation or once the Equipment is installed;
- (h) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
- (i) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- (j) indemnify and hold harmless the Contractor in respect of all claims arising out of the Customer's use of the Equipment.

13.2 The Customer shall not:
- (a) 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;
- (b) exceed the recommended or legal load and capacity limits of the Equipment;
- (c) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (d) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.

13.3 Immediately on request by the Contractor the Customer will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Contractor;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by:
  - (i) the ordinary use of the Equipment;
  - (ii) the negligence of the Customer or the Customer's agent;
  - (iii) vandalism, or (in the Contractor's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer.
- (d) the cost of fuels and consumables provided by the Contractor and used by the Customer;
- (e) any:
  - (i) costs incurred by the Contractor in dismantling the Equipment and returning it to the Contractor' premises if the Customer does not return the Equipment to the Contractor' premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so;
  - (ii) lost hire fees the Contractor would have otherwise been entitled to for the Equipment, under this, or any other install/dismantle and hire agreement;
  - (iii) insurance excess payable in relation to a claim made by either the Customer or the Contractor in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or the Contractor's.

14. Title

14.1 The Equipment is and will at all times remain the absolute property of the Contractor.

14.2 If the Customer fails to return the Equipment to the Contractor, then the Contractor or the Contractor's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.

14.3 The Customer is not authorised to pledge the Contractor's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

15. Personal Property Securities Act 1999 ("PPSA")

15.1 Upon assenting to these terms and conditions in writing the Customer 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 Equipment that have previously been supplied and that will be supplied in the future by the Contractor to the Customer, and the proceeds from such Equipment as listed by the Contractor to the Customer in invoices rendered from time to time.

15.2 The Customer 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 the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Equipment charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment or the proceeds of such Equipment in favour of a third party without the prior written consent of the Contractor.

15.3 Unless otherwise agreed to in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

15.4 The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 15.1 to 15.3.

15.5 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15.6 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period shall clause 15 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 15 will apply generally for the purposes of the PPSA.

16. Security and Charge

16.1 In consideration of the Contractor agreeing to supply the Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.

16.2 The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.

16.3 The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.

17. Defects and Warranty

17.1 The Customer shall inspect the Equipment on delivery and shall, prior to signing the Handover Certificate (or otherwise at the earliest opportunity, but no more than twenty-four (24) hours following Delivery) notify the Contractor of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote. The Customer shall afford the Contractor an opportunity to inspect the Equipment within a reasonable time following delivery if the Customer believes the Equipment is defective in any way. If the Customer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Contractor has agreed in writing that the Customer is entitled to reject, the Contractor's liability is limited to replacing the Equipment.

17.2 The warranty shall be the current warranty provided by the manufacturer of the Equipment. The Contractor shall not be bound by nor be responsible for any term, condition, representation, or warranty other than that which is given by the manufacturer of the Equipment.

18. Consumer Guarantees Act 1993 and the Fair Trading Act 1986

18.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 **("CGA")** in all cases except where the Customer is not contracting as a consumer within the meaning of the CGA.

18.2 The Contractor agrees to abide by the provisions of the Fair Trading Act **("FTA")**.

19. Default and Consequences of Default

19.1 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 a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

19.2 If the Customer owes the Contractor any money the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).

19.3 Further to any other rights or remedies the Contractor may have under this Contract, if the Customer has made payment to the Contractor, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.

19.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by the Contractor;
- (c) the Customer becomes insolvent or bankrupt, 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

20. Cancellation

20.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Equipment and Services to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.

20.2 If the Contractor, due to reasons beyond the Contractor's reasonable control, is unable to the deliver any Equipment or Services to the Customer, the Contractor may cancel these terms and conditions or cancel Delivery of Equipment or Services at any time before the Equipment or Services is delivered by giving written notice. On giving such notice the Contractor shall repay to the Customer any sums paid in respect of the Charges. The Contractor shall not be liable for any loss or damage whatever arising from such cancellation.

20.3 The Customer may cancel Delivery of the Equipment and/or Services by written notice served within twenty-four (24) hours of placement of the order. Failure by the Customer to otherwise accept Delivery of the Equipment and/or Services shall place the Customer in breach of this Contract.

20.4 In the event that the Customer wishes to cancel the hire agreement then the Customer agrees to provide a minimum of seventy-two (72) hours' notice of termination by either telephone or email. The Customer shall remain liable for all hire charges due up to the time of cancellation until such notice is given.

20.5 Cancellation of orders for Equipment made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Privacy Policy

21.1 All emails, documents, images or other recorded information held or used by the Contractor is **"Personal Information"** as defined and referred to in clause 21.3 and therefore considered confidential. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Contractor that may result in serious harm to the Customer, the Contractor will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.

21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Contractor in respect of Cookies where the Customer utilises the Contractor's website to make enquiries. The Contractor agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the Contractor when the Contractor sends an email to the Customer, so the Contractor may collect and review that information ("collectively Personal Information")

If the Customer consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Customer may manage and control the Contractor's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

21.3 The Customer authorises the Contractor or the Contractor's agent to:
- (a) access, collect, retain and use any information about the Customer;
  - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by the Contractor from the Customer directly or obtained by the Contractor 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 Customer.

21.4 Where the Customer is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.

21.5 The Customer shall have the right to request (by e-mail) from the Contractor, a copy of the Personal Information about the Customer retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information.

21.6 The Contractor will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

21.7 The Customer can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at http://www.privacy.org.nz.

22. Suspension of Services

22.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
- (a) the Contractor has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
  - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer; or
  - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
  - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Contractor by a particular date; and
  - (iv) the Contractor has given written notice to the Customer of its intention to suspend the carrying out of work under the construction Contract.
- (b) if the Contractor suspends work, it:
  - (i) is not in breach of Contract; and
  - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
  - (iii) is entitled to an extension of time to complete the Contract; and
  - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if the Contractor exercises the right to suspend work, the exercise of that right does not:
  - (i) affect any rights that would otherwise have been available to the Contractor under the Contract and Commercial Law Act 2017; or
  - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Contractor suspending work under this provision;
- (d) due to any act or omission by the Customer, the Customer effectively precludes the Contractor from continuing the Services or performing or complying with the Contractor's obligations under this Contract, then without prejudice to the Contractor's other rights and remedies, the Contractor may suspend the Services immediately after serving on the Customer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by the Contractor as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.

22.2 If pursuant to any right conferred by this Contract, the Contractor suspends the Services and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, the Contractor shall be entitled to terminate the Contract, in accordance with clause 20.

23. Service of Notices

23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

24. Trusts

24.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Customer covenants with the Contractor as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust, the trustees and the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Customer will not during the term of the Contract without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
  - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust fund or trust property.

25. General

25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

25.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.

25.3 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 North Shore, Auckland, New Zealand.

25.4 Subject to the CGA, the liability of the Contractor and the Customer under this Contract shall be limited to the Charges.

25.5 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.

25.6 The Customer cannot assign or licence without the written approval of the Contractor.

25.7 The Contractor may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.

25.8 The Customer agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Contractor to provide Equipment to the Customer.

25.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the Contractor, following cessation of a Force Majeure.

25.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

Please note that a larger print version of these terms and conditions is available from the Contractor on request.

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