

1. Definitions

- 1.1 “**Contract**” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “**Supplier**” means R & S Trade Group Limited T/A Totalsite Supplies & BLS Ladders, its successors and assigns or any person acting on behalf of and with the authority of R & S Trade Group Limited T/A Totalsite Supplies & BLS Ladders.
- 1.3 “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “**Equipment**” means all Equipment (including but not limited to, telehandlers, scaffolding, forklifts, ladders, temporary fencing, barriers, cherry pickers, scissors lifts and/or any accessories that may also include the erection, dismantling and/or transport of said Equipment plus any cargo together with any container, packaging, or pallet(s) to be handled, lifted and/or carried by the Supplier for the Client.) supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of “**Services**”). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Client.
- 1.5 “**Goods**” means all Goods or Services supplied by the Supplier to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.6 “**Minimum Hire Period**” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, as outlined in clause 8.1 or any other forms as provided by the Supplier to the Client.
- 1.7 “**Worksite**” means the location/s at which the Equipment is to be operated.
- 1.8 “**PPSA**” means the Personal Property Securities Act 1999 as amended from time to time.
- 1.9 “**PPSR**” means the Personal Property Securities Register established under the PPSA.
- 1.10 “**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 Client does not wish to allow Cookies to operate in the background when using the Supplier’s website, then the Client 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.
- 1.11 “**Business Day**” means Monday to Friday 8.00am-5.00pm for normal business to be conducted, excluding a Saturday, Sunday or public holiday. Outside of these trading hours will be subject to overtime rates (normal hourly rate plus overtime rate) or penal rates (Public Holiday)
- 1.12 “**Charges**” means the Charges payable for the Goods/Equipment hire (plus any Goods and Services Tax (“GST”) where applicable) as agreed between the Supplier and the Client in accordance with clause 7 below.

2. Interpretation

- 2.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
- (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
 - (c) the words ‘include’ and ‘including’, and any variants of those words, will be treated as if followed by the words ‘without limitation’; and
 - (d) a reference to dollars (\$), is a reference to New Zealand currency; and
 - (e) this Contract is not to be interpreted against the Supplier merely because they prepared this Contract; and
 - (f) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
 - (i) Terms and Conditions of Trade; and
 - (ii) any schedules.
 - (g) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. Acceptance

- 3.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by this contract if the Client places an order for Equipment, or accepts Delivery.
- 3.2 A waiver of the Client’s obligations hereunder is ineffective, unless it is in writing and is verified and signed by a duly appointed officer of the Supplier.
- 3.3 The Client acknowledges that the supply of Equipment on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.
- 3.4 In the event that the supply of Equipment request exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery. NO credit will be extended to overdue accounts.
- 3.5 Where the Client requesting or organising the Supplier to provide Services is acting on behalf of any third party and that third party is intended to be responsible for the payment of the Charges then in the event that the third party does not pay for the Services when due, the Client acknowledges that they shall be liable for the payment of the Charges as if they had contracted the Services on their own behalf.
- 3.6 None of the Equipment shall be sublet or cross-hired by the Client. The Client shall not assign or transfer its interest in the Contract, or part with possession of all, or any portion, of the Equipment, without the prior written consent of the Supplier, which may be arbitrarily withheld.

- 3.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Credit and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 3.8 If the Supplier has been requested by the Client to prepare a quotation that involves multiple site visits or third-party involvement (including but not limited to engineers, surveyor or local councils), all costs involved will be charged to the Client irrespective of whether or not the Services go ahead.
- 3.9 The Client acknowledges and accepts that where the Client wishes to postpone the Services that the Supplier must be notified within forty-eight (48) hours of the proposed commencement date as agreed to between both parties. Where such notice is received inside this timeframe, the Supplier reserves the right to charge a reasonable fee for the delay in the commencement of the Services.
- 3.10 Estimates or quotations based on non-consented plans are subject to variation as required work may change once consent has been obtained as per clause 7.2.
- 3.11 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Supplier reserves the right to vary the Price with alternative Goods as per clause 7.2. The Supplier also reserves the right to halt all Services until such time as the Supplier and the Client agree to such changes.
- 3.12 The Supplier will provide the Client with a code that will allow 24 hour access to the Suppliers premises to facilitate the after-hours return of the Equipment. The Client agrees to keep any such code confidential. The Client acknowledges and accepts that misuse of access codes may result in a complaint to the Police.
- 4. Errors and Omissions**
- 4.1 The Client acknowledges and accepts that the Supplier 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 Supplier 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 Supplier in respect of the 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 Supplier; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 5. Authorised Representatives**
- 5.1 The Client acknowledges that the Supplier shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to the Supplier, that person shall have the full authority of the Client to order any Services, and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Services, or variation/s requested thereto by the Client's duly authorised representative.
- 6. Change in Control**
- 6.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.
- 7. Charges and Payment**
- 7.1 At the Supplier's sole discretion the Charges shall be either:
- (a) as indicated on any invoice provided by the Supplier to the Client; or
 - (b) the Supplier's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 The Supplier reserves the right to change the Charges:
- (a) if a variation to the Goods/Equipment which is to be supplied is requested; or
 - (b) where Equipment becomes unavailable and the Supplier is required to temporarily source Equipment from external sources; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the Worksite, delays by any third party, availability of Equipment, safety considerations etc) which are only discovered on commencement of the Services;
 - (d) in the event of increases to the Supplier in the cost of labour or materials, or foreign exchange fluctuations, which are beyond the Supplier's control.
- 7.3 At the Supplier's sole discretion a non-refundable deposit may be required.
- 7.4 Time for payment for the Goods/Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by the Supplier, which may be:
- (a) for certain approved Clients, 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;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 7.5 At the agreement of both parties, payment of the Charges may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Charges. The Client shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A - section 18(a) to 18(i) of the Construction Contracts Amendment Act 2015.
- 7.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Supplier.

- 7.7 The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 7.8 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by the Supplier is a claim made under the Construction Contracts Act 2002.
- 7.9 Unless otherwise stated the Charges do not include GST. In addition to the Charges, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client 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.

8. Hire Period

- 8.1 Hire charges shall commence from the time the Equipment is collected by the Client from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, or as specified in the specified Hire Period as follows:
- (a) Half Day – four (4) hours or overnight providing the Equipment is collected after 4pm and returned by 8.30am the following day with a maximum usage time of four (4) hours.
 - (b) Daily – twenty four (24) hours with a maximum usage time of 8 hours. Should the current Weekly rate be lesser than the accumulated daily rate, then the Weekly hire rate will apply.
 - (c) Weekly – shall mean five (5) consecutive days with a maximum usage time of fifty six (56) hours.
 - (d) Monthly – shall mean one (1) calendar month with a maximum usage time of one hundred and eighty (180) hours.
 - (e) Weekend – shall be as agreed with the Supplier, otherwise daily hire rates will apply.
- 8.2 If the Supplier agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Client notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 8.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 8.4 Late return will incur a minimum of four (4) hour additional fee.
- 8.5 If the Client wishes to de-hire the Equipment at an earlier date than was originally agreed, then the Supplier reserves the right to charge the Client at the applicable rate for the actual Hire Period used and any long term discount previously applied will be void.
- 8.6 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier 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 Client.

9. Delivery of Goods/Equipment

- 9.1 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at the Supplier's address; or
 - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 9.2 In the event the Client (or a representative thereof) is not present at the time of Delivery, the Supplier's delivery docket remains prima facie evidence of such.
- 9.3 At the Supplier's sole discretion the cost of Delivery is either included in the Charges or is in addition to the Charges.
- 9.4 Delivery of the Goods/Equipment to a carrier, either named by the Client or failing such naming to a carrier at the discretion of the Supplier for the purpose of transmission to the Client, is deemed to be delivery of the Goods/Equipment to the Client.
- 9.5 The costs of carriage and any insurance which the Client reasonably directs the Supplier to incur shall be reimbursed by the Client (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Client's agent.
- 9.6 Where there is no agreement that the Supplier shall send the Goods/Equipment to the Client, delivery to a carrier at limited carrier's risk at the expense of the Client is deemed to be delivery to the Client.
- 9.7 The Supplier may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 9.8 Any time specified by the Supplier for Delivery of the Goods/Equipment is an estimate only. The Client must take Delivery by receipt or collection of the Goods/Equipment whenever they are tendered for Delivery. The Supplier will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods/Equipment as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

10. Accuracy of Clients Plans and Measurements

- 10.1 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 10.2 In the event the Client gives information relating to measurements and quantities of the Goods required to complete the services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Supplier places an order based on these measurements and quantities. The Supplier accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

11. Risk to Goods/Equipment

- 11.1 Risk of damage to or loss of the Goods/Equipment passes to the Client on Delivery and the Client must insure the Goods/Equipment on or before Delivery.
- 11.2 If any of the Goods/Equipment are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods/Equipment. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 11.3 If the Client requests the Supplier to leave Goods/Equipment outside the Supplier's premises for collection or to deliver the Goods/Equipment to an unattended location then such Goods/Equipment shall be left at the Client's sole risk.
- 11.4 Where the Supplier gives advice or recommendations to the Client, or the Client's agent, regarding any aspect of the scope of the Services (including but not limited to, a particular course of action, product selection or the condition of the materials supplied by the Client being inferior), and such advice or recommendations are not acted upon, then the Supplier shall require the Client or their agent to authorize commencement of the Services in writing. The Supplier shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services nor will such losses or damages be deemed a defect. If the Client instructs the Supplier to rectify any damage or defects in the materials supplied, this will become a variation to the original quotation and will be charged at the Supplier's normal hourly rate.
- 11.5 The Client acknowledges that Goods supplied may
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 11.6 The Client warrants that any structures or land (where applicable) to which the Goods are to be affixed are able to withstand the installation of the Goods once installed. If for any reason (including the discovery of asbestos, erosion, etc.) that the Supplier, or employees of the Supplier, reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then the Supplier shall be entitled to delay installation of the Goods until the Supplier is satisfied that it is safe for the installation to proceed.
- 11.7 Whilst the Supplier will take all due care during installation the Supplier will not accept any responsibility for tiles or pavers damaged during installation.
- 11.8 Where fencing is installed on a retaining wall the Supplier shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall.
- 11.9 The Client acknowledges and agrees that in the event the Supplier requires access, in order to undertake the Services, to an adjoining or adjacent property or land to the nominated job Worksite, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above mentioned property throughout the process or delivering the Services. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by the Supplier in gaining permission to access and/or use the property through any legal process that may be deemed necessary.

12. Client's Responsibilities (Use, Operation and Maintenance)

- 12.1 The Client shall:
- (a) insure the Supplier's interest in the Equipment (and accessories) 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 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. The Client accepts a damage waiver will apply unless Client is able to confirm they have adequate insurance cover for the Equipment and accessories.
 - (b) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (c) satisfy itself at commencement 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 the Supplier or posted on the Equipment;
 - (e) ensure that all persons operating 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 to operate the Equipment and shall provide evidence of the same to the Supplier upon request;
 - (f) comply with all workplace health and safety laws relating to the Equipment and its operation;
 - (g) 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 Supplier;
 - (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) 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;
 - (j) 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;
 - (k) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (l) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - (m) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
 - (n) indemnify and hold harmless the Supplier in respect of all claims arising out of the Client's use of the Equipment.
- 12.2 Immediately on request by the Supplier the Client will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Supplier;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by the ordinary use 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) any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire Contract;
 - (f) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
 - (g) the cost of fuels and consumables (including safety equipment such as harnesses) provided by the Supplier and used by the Client.
- 12.3 In the event the Equipment is hired with an operator, the operator of the Equipment remains an employee of the Supplier and operates the Equipment in accordance with the Client's instructions. As such the Supplier shall not be liable for any actions of the operator where the operator has followed the Client's instructions.
- 13. Compliance With Laws**
- 13.1 The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 13.3 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") the Supplier agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety.
- 14. Underground Locations**
- 14.1 Prior to the Supplier commencing any work the Client must advise the Supplier of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Client 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 the Worksite.
- 14.2 Whilst the Supplier will take all care to avoid damage to any underground services the Client agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 14.1.
- 15. Public Liability Insurance**
- 15.1 The Supplier shall have public liability insurance of at least ten million dollars (\$10m). It is the Client's responsibility to ensure that they are similarly insured.
- 16. Title**
- 16.1 Where this is a **Hire** Contract:
- (a) the Equipment are and will at all times remain the absolute property of the Supplier, however the Client accepts full responsibility for:
 - (i) the safekeeping of the Equipment and indemnifies the Supplier 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; and
 - (ii) shall keep the Supplier 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 Client or any other persons.Furthermore, the Client will insure, or self-insure, the Supplier 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 affect 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.
 - (b) the Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 16.2 Where is this a Contract for the **Purchase** of the Goods/Equipment:
- (a) the Supplier and the Client agree that ownership of the Goods/Equipment shall not pass until:
 - (i) the Client has paid the Supplier all amounts owing to the Supplier; and
 - (ii) the Client has met all of its other obligations to the Supplier.
 - (b) Receipt by the Supplier 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.
 - (c) It is further agreed that, until ownership of the Goods/Equipment passes to the Client in accordance with clause (a):
 - (i) the Client is only a bailee of the Goods/Equipment and must return the Goods to the Supplier on request.
 - (ii) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods/Equipment being lost, damaged or destroyed.
 - (iii) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
 - (iv) the Client should not convert or process the Goods/Equipment or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.

- (v) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods/Equipment are kept and recover possession of the Goods/Equipment.
- (vi) the Supplier may recover possession of any Goods/Equipment in transit whether or not Delivery has occurred.
- (vii) the Client shall not charge or grant an encumbrance over the Goods/Equipment nor grant nor otherwise give away any interest in the Goods/Equipment while they remain the property of the Supplier.
- (viii) the Supplier may commence proceedings to recover the Price notwithstanding that ownership of the Goods/Equipment has not passed to the Client.

17. Personal Property Securities Act 1999 (“PPSA”)

- 17.1 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/Equipment and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.
- 17.2 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 the Supplier 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 Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Supplier; and
 - (d) immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 17.3 The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 17.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 17.5 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 17.6 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 17.1 to 17.5.
- 17.7 Subject to any express provisions to the contrary (including those contained in this clause 17), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 17.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 17 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 17 will apply generally for the purposes of the PPSA.

18. Security and Charge

- 18.1 In consideration of the Supplier agreeing to supply the Goods/Equipment, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 18.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 18.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Client's behalf.

19. Limitation of Liability

- 19.1 Subject to clause 20, the Supplier shall be under no liability whatsoever to the Client for any indirect, direct, and consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (including, any negligent or wilful act by the Supplier). Without limiting the generality of the foregoing, this exclusion extends to any claim against the Supplier for loss or damage or delay or payment of any cost, charge, fine, penalty, sales tax or duty, whether the claim be founded in contract, bailment or tort.
- 19.2 In the event of any breach of this Contract by the Supplier, the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Supplier exceed the Charges of the Services.
- 19.3 The Client covenants and agrees that, notwithstanding whether the Supplier has effected insurance in respect of the risks, the Client indemnifies and will keep indemnified the Supplier against the loss or damage to the Equipment whether by fire, theft, accident, seizure, confiscation, corrosion, rust, oxidation and chemical reactions of every nature and kind whatsoever, or otherwise, 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, and:
- (a) the appraisal of such loss or damage shall be based upon the replacement value of new plant; and
 - (b) all other losses, damages, claims or actions or proceedings, penalties, liabilities, costs and expenses, including legal costs, howsoever arising incurred as a result of or in connection with the Equipment (including, but not limited to, any injury to or death of persons, damage to property, or otherwise arising out of the possession, use, maintenance, repair or storage of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons) or the seizure or the taking of possession of the Equipment by the Supplier.
- 19.4 *Load Measuring Devices*
- (a) If any Equipment has been fitted with a load measuring device, the Client hereby acknowledges and agrees that the Supplier has made no warranties or representations whatsoever with respect to the ability of said load measuring device too accurately or consistently

measure the weight of the load being lifted by such Equipment. The Client further acknowledges and agrees that it is the responsibility of the Client to independently determine the weight of every load to be lifted by any Equipment comprising all or a portion of the Equipment so as to ensure that any such load to be lifted does not exceed the rated load as determined by such Equipment's capacity chart and that the load measuring device shall be used as an operator-aid only.

20. Consumer Guarantees Act 1993

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

21. Defects and Returns

21.1 The Client shall inspect the Goods/Equipment on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Goods/Equipment within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.

21.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 21.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein) provided that:

- (a) the Client has complied with the provisions of clause 21.1; and
- (b) the Supplier has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Client's cost within fourteen (14) days of the Delivery date; and
- (d) the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

22. Warranty

22.1 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier 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 Goods.

23. Intellectual Property

23.1 Where the Supplier has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.

23.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

23.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which the Supplier has created for the Client.

24. Default and Consequences of Default

24.1 An event of default ("Default Event") occurs if:

- (a) any money payable under this Contract is not paid before or on the due date for payment;
- (b) the Client fails to observe and perform any of the Client's covenants, other than the failure to pay money, and such failure continues for more than three (3) days after the Supplier had given the Client notice requiring the Client to remedy the breach;
- (c) the Client, being an individual, commits an act of bankruptcy, is declared mentally ill or is convicted of a criminal offence or dies;
- (d) a receiver, or an agent in possession for a mortgagee, is appointed in respect of any property of the Client;
- (e) a mortgagee takes possession of any property of the Client;
- (f) any execution or similar process is made against the property of the Client;
- (g) an application is made, a resolution is passed or a meeting is convened for the purpose of considering a resolution for the Client to be wound up, unless the winding up is for the purpose of reconstruction or amalgamation;
- (h) a compromise or arrangement is made between the Client and its creditors;
- (i) a resolution is passed, or a meeting is convened for the purpose of considering a resolution for the Client to be placed under official management;
- (j) the Client admits in writing its inability to pay its debts;

24.2 On the occurrence of a Default Event:

- (a) the Supplier may:
 - (i) take possession of the Equipment with, or without notice to the Client, in accordance with clause 16.2(c)(vi);
 - (ii) charge interest on overdue invoices, which 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 the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment;
- (b) if the Client owes the Supplier any money, the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs and/or and bank dishonour fees);

- (c) further to any other rights or remedies the Supplier may have under this agreement, if the Client has made payment to the Supplier and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 24 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract;
- (d) without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel, suspend or terminate the supply of Equipment/Goods/Services or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies the Supplier may have and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.

25. Cancellation

- 25.1 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods/Equipment to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 25.2 the Supplier may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods/Equipment. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 25.3 In the event that the Client cancels Delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 25.4 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

26. Force Majeure

- 26.1 Neither party shall be liable for any default due to any act of God, war, terrorism, civil disturbance, riot, Government intervention or regulations, Council conditions or specifications, strike, lock-out, industrial action/dispute, fire, flood, storm or other event beyond the reasonable control of either party ("Force Majeure").
- 26.2 If a party becomes unable (wholly or in part) by Force Majeure, to carry out any of its duties or obligations under this Contract:
 - (a) The party must give the other party prompt written notice of:
 - (i) detailed particulars of the Force Majeure;
 - (ii) so far as is known, the probably extent to which the party will be unable to perform or will be delayed in performing the duty or obligation.
 - (b) the relevant duty or obligation, so far as it is affected by the Force Majeure, will be suspended during the continuance of the Force Majeure; and
 - (c) the party will use all reasonable efforts to overcome or remove the Force Majeure as quickly as possible; and
 - (d) shall be entitled (at its option) to terminate this Contract or extend the time for performance without penalty, if the Force Majeure event continues for a period in excess of fourteen (14) business days.

27. Privacy Policy

- 27.1 All emails, documents, images or other recorded information held or used by the Supplier is "**Personal Information**" as defined and referred to in clause 27.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Acts 1993 and 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 27.2 Notwithstanding clause 27.1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. The Supplier 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 Client'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 Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 27.3 The Client authorises the Supplier or the Supplier's agent to:
 - (a) access, collect, retain and use any information about the Client;
 - (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 Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.

- (b) disclose information about the Client, whether collected by the Supplier from the Client directly or obtained by the Supplier 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.
- 27.4 Where the Client is an individual the authorities under clause 27.3 are authorities or consents for the purposes of the Privacy Acts 1993 and 2020.
- 27.5 The Client shall have the right to request (by e-mail) from the Supplier, a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information.
- 27.6 The Supplier will destroy Personal Information upon the Client'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.
- 27.7 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

28. Service of Notices

- 28.1 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.
- 28.2 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.

29. Suspension of Services

- 29.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Client hereby expressly acknowledges that:
- (a) the Supplier 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 Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 7.4 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Supplier by a particular date; and
 - (iv) the Supplier has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if the Supplier 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 Client or by any person claiming through the Client; 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 Supplier 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 Supplier under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Supplier suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes the Supplier from continuing the Services or performing or complying with the Supplier's obligations under this Contract, then without prejudice to the Supplier's other rights and remedies, the Supplier may suspend the Services immediately after serving on the Client 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 Supplier as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 29.2 If pursuant to any right conferred by this Contract, the Supplier suspends the Services and the default that led to that suspension continues un-remedied subject to clause 25.1 for at least ten (10) working days, the Supplier shall be entitled to terminate the Contract, in accordance with clause 25.

30. Trusts

- 30.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust 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 Client against the Trust or the trust fund. The Client 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 Client will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
- (i) the removal, replacement or retirement of the Client 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 property.

31. General

- 31.1 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 adjudicate in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 31.2 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.
- 31.3 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 Timaru.
- 31.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 31.5 The Client cannot licence or assign without the written approval of the Supplier.
- 31.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 31.7 The Client agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods/Equipment to the Client.
- 31.8 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.