

Alpha Scaffolding Ltd Terms and Conditions of Trade

The supply and hire of all Equipment, Goods and/or Services including without limitation all scaffolding services supplied by the Owner to the Hirer is governed by these terms and conditions (**Terms**).

1. Definitions

1.1 "Owner" shall mean Alpha Scaffolding Ltd its successors and assigns or any person acting on behalf of and with the authority of Alpha Scaffolding Ltd.

1.2 "Hirer" shall mean the Hirer or any person acting on behalf of and with the authority of the Hirer.

1.3 "Equipment" shall mean Equipment supplied on hire by the Owner to the Hirer as described on the invoices, quotation, work authorisation or any other forms as provided by the Owner to the Hirer (and where the context so permits shall include any supply of Services as hereinafter defined).

1.4 "Goods" shall mean all goods supplied by the Owner to the Hirer from time to time including goods described on the invoices, quotations, work authorisations or any other forms provided by the Owner to the Hirer.

1.5 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Hirer on a principal debtor basis.

1.6 "Services" shall mean all services supplied by the Owner to the Hirer and includes all advice or recommendations.

1.7 "Price" shall mean the cost of the supply and hire of Equipment, Goods and Services determined by the Owner.

2. Acceptance

2.1 Any instructions received by the Owner from the Hirer for the supply of Equipment, Goods and/or Services and/or the Hirer's acceptance of Goods, Equipment and/or Services, shall constitute acceptance of the Terms contained herein.

2.2 Where more than one Hirer has entered into these Terms, the Hirers shall be jointly and severally liable for all payments of the Price.

2.3 These Terms are irrevocable and can only be amended with the written consent of the Owner.

2.4 The Hirer will give the Owner at least fourteen (14) days notice of any change in the Hirer's name, address and/or any other change in the Hirer's details.

3. Price and Payment

3.1 At the Owner's sole discretion the Price shall be either:

(a) as indicated on invoices provided by the Owner to the Hirer in respect of the Goods, Services and Equipment supplied; or

(b) the Owner's quoted Price (subject to clause 3.2) which shall be binding upon the Owner provided that the Hirer shall accept the Owner's quotation in writing within thirty (30) days.

3.2 The Owner reserves the right to change the Price in the event of a variation to the Owner's quotation. Any variations in design or quantity from the quotation shall be charged as an extra at the Owner's normal rates.

3.3 At the Owner's sole discretion a deposit may be required.

3.4 Time for payment for any Equipment, Goods and/or Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due twenty (20) days following the end of the month in which a statement is posted to the Hirer's address or address for notices.

3.5 At the Owner's sole discretion;

(a) payment shall be due on delivery of the Goods and Equipment, or

(b) payment shall be due before delivery of the Goods and Equipment, or

(c) payment for approved hirers shall be made by instalments in accordance with the Owner's payment schedule.

3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Hirer and the Owner.

3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery of Goods and/or Equipment

4.1 At the Owner's sole discretion delivery of the Goods and/or Equipment shall take place when:

(a) the Hirer takes possession of the Goods and/or Equipment at the Owner's address; or

(b) the Hirer takes possession of the Goods and/or Equipment at the Hirer's address (in the event that the Goods and/or Equipment is delivered by the Owner or the Owner's nominated carrier); or

(c) the Hirer's nominated carrier takes possession of the Goods and/or Equipment in which event the carrier shall be deemed to be the Hirer's agent.

4.2 At the Owner's sole discretion the costs of delivery are:

(a) included in the Price; or

(b) in addition to the Price; or

(c) for the Hirer's account.

4.3 The Hirer shall make all arrangements necessary to take delivery of the Goods and/or Equipment whenever they are tendered for delivery. In the event that the Hirer is unable to take delivery of the Goods and/or Equipment as arranged then the Owner shall be entitled to charge a reasonable fee for redelivery.

4.4 Delivery of the Goods and/or Equipment to a third party nominated by the Hirer is deemed to be delivery to the Hirer for the purposes of these Terms.

4.5 The failure of the Owner to deliver shall not entitle either party to treat these Terms as repudiated.

4.6 The Owner shall not be liable for any loss or damage whatever due to failure by the Owner to deliver the Goods and/or Equipment (or any of them) promptly or at all.

5. Risk

5.1 Risk for the Goods and Equipment passes to the Hirer on delivery.

5.2 The Hirer accepts full responsibility for the safekeeping of the Goods and Equipment and indemnifies the Owner for all loss, theft or damage to the Goods and 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 Hirer.

5.3 The Hirer will insure, or self insure, the Owner's interest in the Goods and 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 Goods and Equipment. Further the Hirer will not use the Goods and Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

6. Title

6.1 The Equipment is and will at all times remain the absolute property of the Owner. The Goods will remain the absolute property of the Owner until full payment is received for the Goods.

6.2 The Owner or the Owner's employee, agent or contractors shall have the right to enter upon and into land and premises owned, occupied or used by the Hirer, or any premises where the Equipment is situated to inspect the Goods and Equipment, and if the Hirer fails to return the Equipment to the Owner upon termination of these Terms, to dismantle and/or take possession of the Equipment, without being responsible for any damage thereby caused.

6.3 The Hirer is not authorised to pledge the Owner's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

6.4 The Owner retains the right to make it known publicly by means of notices displayed on the scaffolding and on the premises where it is erected that the scaffolding is the property of the Owner and has been let on hire only to the Hirer.

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

7.1 The Hirer acknowledges and agrees that:

(a) these Terms constitute a security agreement for the purposes of the PPSA; and

(b) a security interest is taken in all Goods and Equipment previously supplied or hired by the Owner to the Hirer (if any) and all Goods and Equipment that will be supplied or hired in the future by the Owner to the Hirer.

7.2 The Hirer 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 Owner 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 Owner for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods and/or Equipment charged thereby;

(c) not register a financing change statement or a change demand without the prior written consent of the Owner.

7.3 The Owner and the Hirer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.

7.4 The Hirer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

7.5 Unless otherwise agreed to in writing by the Owner, the Hirer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

7.6 The Hirer shall unconditionally ratify any actions taken by the Owner under clauses 7.1 to 7.5.

Hirer's Disclaimer

8. Hirer's Responsibilities

8.1 The Hirer shall:

(a) provide all lighting and hoardings necessary; and

(b) obtain all permits and licences and give all notices required under any statute regulation or bylaw in force, and obtain all necessary consents required from any local authority inspector or adjoining owners in respect of the Equipment, Goods and/or Services; and

(c) be responsible for the protection of all roof areas; and

(d) if the Hirer is erecting the Equipment or installing Goods, comply with all applicable statutory provisions, orders, regulations and by-laws (including those relating to scaffolds) and shall comply with the provisions of the approved code of practice for the safe erection and use of scaffolding – as issued and approved by the Minister of Labour as at September 1995 and any statutory modifications, (and also with the Australian/New Zealand Standard AS/NZS 4576 1995); and

(e) where the Hirer is erecting the Equipment or installing Goods ensure that all persons erecting the Equipment are suitably instructed in its safe and proper use, and where necessary, hold all applicable certificates and/or licenses;

(f) if the Equipment is to be erected by the Owner, not alter or interfere with the Equipment in any way. This also applies to planks and kickboards supplied by the Owner;

(g) comply with all occupational health and safety laws relating to the Goods and/or Equipment and its operation;

(h) notify the Owner immediately by telephone of the full circumstances of any breakdown or accident in connection with the Goods and/or Equipment. The Hirer is not absolved from the requirements to safeguard the Goods and Equipment by giving such notification;

(i) keep the Goods and Equipment safe and secure and in their own possession and control;

(j) employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;

(k) solely install and use the Goods and/or Equipment for its intended purpose and in accordance with the manufacturer's and the Owner's guidelines and specifications;

(l) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold land;

(m) 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 Owner.

8.2 Immediately on request by the Owner the Hirer will pay:

(a) The new list price of any Equipment that is for whatever reason destroyed, written off, or not returned to Owner;

(b) All costs incurred in cleaning the Equipment;

(c) All costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;

(d) The cost of repairing any damage to the Equipment caused by the negligence of the Hirer or the Hirer's employee, agent or contractor;

(e) The cost of repairing any damage to the Equipment caused by vandalism, or (in the Owner's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer;

9. Warranties

9.1 The Hirer acknowledges and warrants to the Owner that: (a) it has satisfied itself prior to taking delivery of the Goods and/or Equipment that the Goods and/or Equipment is suitable for its purposes; and (b) it has relied solely on its own skill and judgment and it has not relied on any representation, statement or warranty made by the Owner or any of the Owner's employees, agents or contractors about the performance of the Equipment, Goods and/or Services or the suitability of the Equipment, Goods and/or Services for its intended use.

9.2 These Terms are 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).

9.3 All warranties and guarantees express or implied (including, any implied warranties of merchantable quality and fitness for purpose) that may be excluded by law are excluded to the maximum extent permitted by law including the warranties and guarantees set out in the Sale of Goods Act 1908.

10. Limitation of Liability

10.1 Notwithstanding anything to the contrary in these Terms, and except to the extent prohibited by law, the Owner will not be liable whether in tort, contract or otherwise, to the Hirer for any loss or damage of any kind whatsoever, indirect, special or consequential losses, damages, liabilities, costs and/or expenses sustained, suffered and/or incurred by the Hirer and/or any other party in relation to the installation and use of the Equipment and/or Goods (**Loss**) including any Loss arising from any of the following:

(a) any of the following particular weather conditions: (i) wind or wind gusts greater than wind load forces specified by the manufacturer or the Owner of the Goods and Equipment; (ii) hail; (iii) temperatures in excess of 35 degrees celsius; (iv) temperatures below 0 degrees celsius; or (v) any other weather, as advised by the national weather bureau as being "severe" or including other "weather warning", or

(b) any act or omission of the Hirer or its employees, agents or contractors or any other person. For the avoidance of doubt this includes, without limitation, any damage caused to the Equipment or Goods by that third party.

10.2 If the Owner is found to be liable, the Owner's liability under these Terms, whether in contract, tort or otherwise is limited (to the fullest extent permitted by law), at the Owner's option, to replacing the Goods and/or Equipment, or to an amount not exceeding the total Price for the relevant Equipment, Goods and/or Services.

11. Indemnity

11.1 The Hirer will at all times indemnify the Owner from and against all loss, costs, claims, damages, expenses (including all legal costs and expenses incurred on a solicitor/own client basis) the Owner incurs and all actions, suits, claims, demands and other proceedings whatsoever or howsoever made or brought against the Owner, as a consequence of: (a) any breach of these Terms by the Hirer; or (b) any representation made, or any act, omission, or negligence committed by the Hirer or by those for whom the Hirer is responsible; or (c) any failure to install or use the Equipment or Goods in accordance with the manufacturer's and the Owner's guidelines and specifications.

12. Default & Consequences of Default

12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.

12.2 If the Hirer defaults in payment of any invoice when due, the Hirer shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in pursuing the debt including legal costs on a solicitor and own client basis and the Owner's collection agency costs.

12.3 Without prejudice to any other remedies the Owner may have, if at any time the Hirer is in breach of any obligation (including those relating to payment), the Owner may suspend or terminate the supply of the Goods and/or Services to the Hirer and any of its other obligations under the Terms. The Owner will not be liable to the Hirer for any loss or damage the Hirer suffers because the Owner exercised its rights under this clause.

12.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

12.5 Without prejudice to the Owner's other remedies at law the Owner shall be entitled to cancel all or any part of any order of the Hirer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to the Owner becomes overdue, or in the Owner's opinion the Hirer will be unable to meet its payments as they fall due; or

(b) the Hirer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer.

13. Security and Charge

13.1 Despite anything to the contrary contained herein or any other rights which the Owner may have howsoever:

(a) where the Hirer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Hirer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Owner or the Owner's nominee to secure all amounts and other monetary obligations payable under the Terms. The Hirer and/or the Guarantor acknowledge and agree that the Owner (or the Owner's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) should the Owner elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Hirer and/or Guarantor shall indemnify the Owner from and against all the Owner's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Hirer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Owner or the Owner's nominee as the Hirer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

14. Cancellation

14.1 The Owner may cancel these Terms or cancel the supply of Equipment, Goods and/or Services at any time before the Goods and/or Equipment is delivered or the Services supplied by giving written notice. On giving such notice the Owner shall repay to the Hirer any sums paid in respect of the Price. The Owner shall not be liable for any loss or damage whatever arising from such cancellation.

14.2 In the event that the Hirer cancels the supply of Equipment, Goods and/or Services the Hirer shall be liable for any loss incurred by the Owner (including, but not limited to, any loss of profits) up to the time of cancellation.

15. Privacy Act 1993

15.1 The Hirer and the Guarantor/s (if separate to the Hirer) authorises the Owner to:

(a) collect, retain and use any information about the Hirer, for the purpose of assessing the Hirer's creditworthiness or marketing products and services to the Hirer; and

(b) to disclose information about the Hirer, whether collected by the Owner from the Hirer directly or obtained by the Owner 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 Hirer.

15.2 Where the Hirer is an individual the authorities under (clause 16.1) are authorities or consents for the purposes of the Privacy Act 1993.

15.3 The Hirer shall have the right to request the Owner for a copy of the information about the Hirer retained by the Owner and the right to request the Owner to correct any incorrect information about the Hirer held by the Owner.

16. Guarantee

16.1 In consideration of the Owner entering into these Terms the persons named the Guarantor (if any): (a) guarantees the due, punctual and full performance by the Hirer of its obligations under or in relation to these Terms; and (b) indemnifies the Owner from and against any action, suit, claim, demand, cost or expense (including legal costs and expenses on a solicitor/own client basis) arising directly or indirectly as a result of any act or omission by the Hirer or any breach of your obligations under these Terms or under any legislation, regulation or bylaw. The liability of the Guarantor (if any) under this clause shall constitute a principal obligation of the Guarantor (if any) and shall not be relieved or in any way effected in a manner prejudicial to the Owner by any granting of time, waiver or forbearance to sue by the Owner. This guarantee shall be a continuing guarantee and shall remain in full force and effect until all of the Hirers obligations under these Terms are fully satisfied.

17. General

17.1 If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2 These Terms and 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 New Zealand.

17.3 The Hirer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Hirer by the Owner.

17.4 The Owner may license or sub-contract all or any part of its rights and obligations without the Hirer's consent.

17.5 The Owner reserves the right to review these Terms at any time. If, following any such review, there is to be any change to these Terms, then that change will take effect from the date on which the Owner notifies the Hirer of such change.

17.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.