

TERMS OF TRADE

These Terms govern the rental of the Equipment and provision of the Services from FPL to the Customer. The acceptance by the Customer of the Equipment and the Services indicates the Customer's acceptance of these Terms.

1. Definitions

- 1.1 "Customer" includes any agent of the Customer.
- 1.2 "Equipment" means all equipment including, but not limited to, scaffolding, machinery, plant, fittings, accessories and parts supplied by FPL to the Customer pursuant to these Terms.
- 1.3 "FPL" means FallProof Limited 1684561.
- 1.4 "Insolvency Event" means becomes insolvent, enters into a composition with creditors, is declared bankrupt, goes into liquidation, a receiver or administrator is appointed to any or all of its assets or undertakings, or ceases to carry on business, or an event analogous to or having a substantially similar effect to any of the events specified in this definition.
- 1.5 "Rental Fee" means the rental fee as provided in FPL's estimate or invoice, and in the event that the Equipment is required for a longer period than the Rental Period as provided in FPL's estimate and/or further services are required by the Customer, the Customer will be the additional rental fee as calculated by FPL.
- 1.6 "Rental Period" means the period commencing at the time at which the Equipment is erected onsite and terminating at the time at which the Equipment is dismantled and removed from the site.
- 1.7 "Services" means the services provided by FPL to the Customer in relation to the installation, modification and dismantling of the Equipment.
- 1.8 "Terms" means these terms of trade.

2. Rental of Equipment

- 2.1 The Customer agrees to rent from FPL and FPL agrees to rent to the Customer the Equipment for the Rental Period pursuant to these Terms.
- 2.2 The Rental Fee for the Rental Period is calculated on a weekly basis.
- 2.3 The Customer must notify FPL within 24 hours of the Equipment being delivered if any of the Equipment is missing or damaged on delivery, otherwise the Equipment will be deemed to be delivered in good condition.
- 2.4 Should there be any failure, breakage or breakdown of the Equipment, the Customer must immediately notify FPL. FPL will use its best endeavors to replace or substitute the affected Equipment as soon as possible if the failure etc. resulted from the proper use of the Equipment in accordance with these Terms but will not be liable for loss of damage arising from failure, breakage or breakdown of the Equipment.

3. Provision of Services

- 3.1 The Customer wishes FPL to provide the Services and FPL agrees to provide such Services pursuant to these Terms.
- 3.2 The Customer will pay all fees in relation to the Services.

4. Risk and Insurance

- 4.1 The Equipment remains the sole property of FPL at all times.
- 4.2 Notwithstanding clause 4.1, the Customer is responsible for the insurance of and risk in the Equipment during the Rental Period.
- 4.3 The Customer agrees to obtain at its own cost, keep current and not act so as to void insurance

cover in respect of its potential liability under these Terms. Any insurance monies pursuant to the above mentioned policy, shall be first applied to the indemnification of FPL.

5. Payment Terms

- 5.1 Payment shall be made in full on the 20th day of the month following the end of the Rental Period. Payment must be made by direct credit to the account specified in FPL's invoice unless otherwise consented to by FPL.
- 5.2 Where these Terms form a 'construction contract' in terms of the Construction Contracts Act 2002 there shall be no progress payments and the Rental Fee shall be paid for in one sum on the due date.

6. Obligations of the Customer

- 6.1 The Customer:
 - (a) Agrees that it is responsible for ensuring that the Equipment which is rented is suitable for purpose. The Customer understands that should the Customer need to change the Equipment, additional charges may be payable.
 - (b) Must use the Equipment in a proper manner and in accordance FPL's instructions at handover and the instructions on the scaffold tags. In no circumstances will the Customer use the Equipment for a purpose for which it was not designed.
 - (c) Is responsible for complying with all health and safety legislation and all codes of practice in relation to the use of the Equipment, including but not limited to the OSH approved Code of Practice for scaffolding.
 - (d) Must ensure that only competent and qualified tradespeople use the Equipment.
 - (e) Must take care of the Equipment and ensure that the Equipment is available for pickup in a clean and proper condition and in working order. The Customer agrees to pay any and all costs relating to any damage to or loss of the Equipment, and any cleaning costs incurred in the event that the Equipment is not returned in a good and clean condition.
 - (f) Shall not allow any third party to have possession or use of the Equipment for any amount of time and shall not represent to any third party that the Equipment is owned by the Customer or any third party.
 - (g) Shall not alter or make any additions to the Equipment.
 - (i) Agrees that the Customer is responsible for any loss of or damage to of the Equipment during the Rental Period.

7. PPSR

- 7.1 Notwithstanding clause 4.1, the Customer grants to FPL a security interest in the Equipment that FPL supplies to the Customer. Such security interest includes the Equipment and proceeds of the Equipment, including those relating to Equipment which has become an accession to other goods, processed or comingled or mixed with other goods.

- 7.2 The Customer waives all rights to receive a copy of any verification statement relating to a financing statement.
- 7.3 The Customer authorises FPL to:
- (a) Request any information from any secured party relating to any of the Customer's security interests; and
 - (b) Search the Personal Property Securities Register at any time for information relating to the Customer or the Customer's related entities.
- 7.4 The Customer will be responsible for all reasonable costs relating to the discharge or amendment of a financing statement by FPL.
- 8. Termination**
- 8.1 FPL may terminate supply of the Equipment or the Services to the Customer pursuant to these Terms without payment of compensation:
- (a) At any time on two hours' notice to the Customer.
 - (b) Without notice in the event that:
 - (i) The Customer breaches these Terms;
 - (ii) The Customer suffers an Insolvency Event; or
 - (iii) FPL believes the Equipment to be at risk for any reason whatsoever.
- 8.2 On termination or expiration of the supply of the Equipment, FPL is entitled to immediately take possession of the Equipment and the Customer irrevocably appoints FPL its agent for this purpose and authorises FPL to enter onto any land or premises owned by or under the control of the Customer, upon which the Equipment is situated, and agrees to indemnify FPL in respect to any claims, damages or expenses arising under this clause.
- 9. Indemnity**
- 9.1 The Customer agrees to indemnify and keep indemnified FPL from and against any and all loss, damage or liability suffered (including legal fees and costs incurred on a solicitor/client basis) by FPL or any third party resulting from:
- (a) Any act, neglect or default of the Customer or its agents, employees or licensees; or
 - (b) A breach of these Terms by the Customer.
- 10. Liability**
- 10.1 To the extent permitted by statute and common law, our liability shall be limited to, at our option, either proper replacement of the Equipment, or the amount paid by the Customer for the Equipment and the Services.
- 11. Privacy**
- 11.1 The Customer consents to FPL collecting, storing and using information about the Customer for the following purposes:
- (a) Provision of the Equipment and Services under these Terms;
 - (b) Undertaking enquiries with any credit agency in relation to the creditworthiness of the Customer;
 - (c) Marketing FPL's goods and services; and
 - (d) Enforcing FPL's rights against the Customer.
- 11.2 Where the Customer is an individual, the provisions of the Privacy Act 1993 apply, including the right for the Customer to access their personal information held by FPL, and request a correction of any such information held. Any queries should be directed to FPL's Privacy Officer at FPL's address.
- 11.3 The Customer consents to receiving commercial electronic messages from FPL for the purposes of the Unsolicited Electronic Messages Act 2007.
- 12. General**
- 12.1 No failure or delay by any party to enforcing a provision of these Terms at any time shall be a waiver of that provision. No waiver shall be effective unless it is in writing. No waiver of any breach of these Terms shall be deemed to be a waiver of any other or any subsequent breach.
- 12.2 Any clause of these Terms which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other clause(s) which shall remain in full force and effect.
- 12.3 No variation to these Terms shall be valid or binding unless recorded in writing and signed by both parties.
- 12.4 The Customer may not assign or transfer all or any part of its rights or obligations under these Terms without the prior written consent of FPL.
- 12.5 Where the Customer acquires the Equipment for the purposes of a business, or if the Customer holds itself out as acquiring it for the purposes of a business, the Customer agrees that the Consumer Guarantees Act 1993 shall not apply. These Terms are made in New Zealand and its construction, validity, and performance shall be determined under New Zealand law. The parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 12.7 All notices must be in writing and must be served by one of the following means and in respect of each is deemed to have been served as described:
- (a) By person or delivery, when received by the addressee; or
 - (b) By posting by registered or ordinary mail, on the second working day following the date of posting to the addressee's last known address for correspondence;
 - (c) By email when acknowledged by the addressee by returned email or otherwise in writing;
 - (d) By facsimile transmission, when sent to the addressee's facsimile number (with transmission confirmation).