

FALLPROOF TERMS AND CONDITIONS OF TRADE

GENERAL:

“**FallProof**” means FallProof Limited, a company duly incorporated in New Zealand and trading as FallProof, including its successors and assigns.

“**Customer**” means the person(s), firm or company specified in the quotation, which is hiring the scaffold Equipment and/or purchasing scaffold Services from FallProof.

“**Customer Site**” means the site, specified in the quotation, at which FallProof will deliver the Equipment and perform the Services.

“**Equipment**” means all shrink wrap material, all safety nets, scaffolding equipment and associated fittings, accessories and tools delivered to or left at the Customer Site by FallProof, including (without limitation), scaffolding tube, planks, boards, decks, system scaffold, ladders, clips and shrink wrap film.

“**Services**” means the services required to deliver, erect, dismantle, alter and maintain the Equipment along with any other services provided under this Agreement.

The following terms and conditions of trade are incorporated into every contract between the Customer and FallProof for the supply of Equipment and Services along with any terms (including price) set out in the applicable quotation and/or confirmation provided by FallProof (the “**Agreement**”).

This Agreement is subject to and governed by the laws of New Zealand.

TERMS OF TRADE

1. The directors (in the case of a company), or the partners (in the case of a partnership or limited partnership), or the trustees (in the case of a trust), or the individuals (in the case of sole traders or private individuals), are personally liable for all debts owing to FallProof (the “**Guarantors**”), and by signing the FallProof Quotation Acceptance form or otherwise accepting the quote (including accepting delivery of the Equipment), provide a personal guarantee of all moneys owing to FallProof.
2. All obligations herein are joint and several. All obligations herein shall bind the Customer, their executors, administrators, successors and assigns.

ORDERS

3. No quotation made by FallProof constitutes a binding offer by FallProof. Verbal or written acceptance of FallProof’s quotation or orders (including purchase orders) received by FallProof are deemed to constitute an offer by the Customer to enter into a contract on these conditions. A quotation made by FallProof and subsequently accepted by the Customer, constitutes a binding offer once FallProof has confirmed the Customer’s acceptance. No order from the Customer will be accepted other than on these conditions of trade, and any terms proffered by the Customer are hereby excluded unless expressly agreed to in writing by a director of FallProof.

CANCELLATION

4. The Customer is not entitled to cancel any order accepted by FallProof. If FallProof agrees to a request for cancellation, FallProof may charge the Customer a cancellation fee of 50% of the fees payable as per the quote.
5. FallProof may cancel any order relating to the supply and/or installation of Equipment at any time prior to delivery of the Equipment. In such an event, FallProof will promptly repay to the Customer any deposits paid in respect of such services. FallProof shall not be liable for any loss or damage incurred by the Customer arising from such cancellation.

DELIVERY

6. FallProof will endeavor to deliver and commence erecting the Equipment at the Customer Site on the date agreed for delivery; however, FallProof will not be liable for the consequences of any delay howsoever arising. Delayed delivery or installation shall not invalidate the contract or subject FallProof to any payment of costs, damages or penalty and the Customer will accept the goods when installed and pay the fees set out in the quotation notwithstanding any such delay.
7. Installation of scaffold will be carried out during normal working hours i.e. 7:30am to 5:00pm on the weekdays excluding Statutory Holidays unless otherwise agreed in writing by FallProof. Any work required outside these hours will require a variation order and the Customer will be charged at an additional rate up to double time.
8. The Customer shall inspect the Equipment and notify FallProof within 24 hours of the erection or alteration of the Equipment, setting out any alleged defects, shortages, damage or non-compliance affecting the Equipment or Services. Failure by the Customer to notify FallProof in accordance with this clause shall result in the Equipment and Services being deemed to be accepted by the Customer as compliant and in accordance with the terms of this Agreement.
9. FallProof shall be afforded the opportunity to inspect the Equipment within a reasonable time following notification under clause 8 and if FallProof concurs that the Equipment and/or Services is non-compliant with this Agreement, FallProof’s liability shall be limited in accordance with clause 38.

HIRE PERIOD

10. The weekly rental charges for the Equipment shall commence from the date that the Equipment is delivered to the Customer’s site and continue until the date which is 3 working days following receipt of the Customer’s notice to dismantle and remove the Equipment or 1 week from delivery, whichever is the later (the “**Hire Period**”). Unless otherwise agreed in writing, no allowance shall be made for any period of time during which the Equipment is not in use.

PAYMENT

11. Prior to commencement of the work, FallProof may require payment of a deposit if specified in its quote or confirmation. Any such deposit shall become immediately due and payable and is non-refundable. The erection and dismantle fee shall be payable in full following erection of the Equipment at the Customer Site. The weekly rental for the Equipment will be invoiced and payable for the duration of the Hire Period.
12. Where there are any variations: (a) requested by the Customer or its employees or authorised contractors; (b) from the plan of scheduled Services; (c) from the specifications/plans provided for the quotation; or (d) as a result of unknown or unforeseen impediments or difficulties discovered following commencement of the Services (including poor weather, restrictions accessing the site or delays in the commencement or continuity of the Services caused by any act or omission of the Customer or its suppliers), which results in an increase in costs incurred by FallProof, these variations will be charged for on a time and materials basis (or as otherwise specified in the quotation) and will be payable in full at the time of completion.
13. Payments are due in full within 7 days of the date of invoice unless otherwise specified in the invoice. Time for payment for the Equipment and Services shall be of the essence.
14. All amounts payable by the Customer are to be paid into FallProof’s nominated bank account free and clear of, and (to the extent permitted by law) without deduction or withholding on account of any tax.
15. In no event shall the fees payable by the Customer be subject to any set-off by the Customer.
16. FallProof reserves the right to correct any errors and omissions in relation to its quotations or invoices.

UNPAID ACCOUNTS

17. If any amount due is not paid by the due date FallProof may apply to the overdue amount a one-off 5% penalty charge. This penalty charge will be added to the previous overdue amount as at the due date and so will form a ‘new’ overdue amount.
18. FallProof may also charge interest on any overdue balance from the due date to the actual date of payment, at a rate of 24% (twenty four percent) per annum.
19. The Customer shall pay all costs directly and reasonably incurred by FallProof in the enforcement and collection of any overdue amounts including any penalties, interest, legal fees, commissions or other associated collection charges.

OWNERSHIP OF EQUIPMENT AND PPSA

20. The Equipment shall at all times remain the sole and exclusive property of FallProof. The Customer shall have no right, title or interest in the Equipment except as expressly set out in this Agreement. The Customer covenants and agrees not to assign, charge, encumber, mortgage, pledge, sell, sub-let or hire out or otherwise part with possession or control of the Equipment or any part thereof or attempt to do so at any time.
21. The relationship of the Customer to FallProof shall be as fiduciary in respect of the Equipment which shall be held by the Customer as bailee. The Customer shall store the Equipment in such a way that identifies the Equipment as the property of FallProof.
22. The Customer acknowledges and agrees that this Agreement constitutes a security agreement for the purpose of the Personal Property Securities Act 1999 (“PPSA”) and a security interest is taken in regards to all Equipment previously supplied, or which will be supplied in the future, by FallProof to the Customer.
23. The Customer undertakes to:
 - (a) provide complete and accurate information as FallProof may reasonably require to register a financing statement or financing charge statement on the Personal Properties Security Register (PPSR) in respect of the Equipment and to give at least 14 days prior written notice of any changes to the information supplied; and
 - (b) not register any financing charge statement or a charge demand in respect to the Equipment or FallProof.
24. FallProof and the Customer agree that nothing in sections 112(1)(a), 133 and 134 of the PPSA shall apply to this Agreement. Further, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA along with any rights it may have as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
25. The Customer unconditionally ratifies any action taken by FallProof under and by virtue of the power of attorney given by the Customer to FallProof under clauses 22 to 24 above.

RISK

26. All risk associated with the Equipment shall be vested in the Customer upon delivery of the Equipment to the Customer Site. The Customer accepts full responsibility for the safekeeping of the Equipment and shall indemnify FallProof for all loss and/or damage to the Equipment howsoever arising.
27. The Customer will provide adequate insurance for the Equipment to cover against any loss or damage to the Equipment including, but not limited to, the perils of accidents, fire, theft, burglary and all other usual risks both natural and man-made. Further the Customer will ensure that no party uses the Equipment in a manner as would permit an insurer to decline any claim. The production of this Agreement is sufficient evidence of FallProof's rights to receive the insurance proceeds without the need for any person dealing with FallProof to make further enquiries.

CUSTOMER RESPONSIBILITIES

28. The Customer shall perform its responsibilities as set out in the Schedule which forms part of this Agreement.

DEFAULT

29. In the event that:
 - (a) the Customer fails to pay any amount owing on the due date or is in breach of any other terms and conditions of this Agreement or any other contract between the Customer and FallProof, and such default continues for 5 days following notice of the breach from FallProof; or
 - (b) the Customer has an execution levied against it, becomes bankrupt or insolvent, or commits any act of bankruptcy or enters into or attempts to enter into any compromise or arrangement with its creditors (voluntary, informal or otherwise) or in the case of a company, does any act which would render it liable to be wound up or have a receiver or statutory manager appointed over its property or if it has a winding up order made against it or passes or attempts to pass a resolution for the winding up or is a party to the appointment of or have a manager or receiver appointed over the whole or any part of its property or undertaking; or
 - (c) FallProof believes the Equipment to be at risk for any reason whatsoever, including but not limited to, the manner in which it is used, adverse weather or work conditions, or that the Customer is unable to, or might be unable to pay any fees payable to FallProof; or
 - (d) the Equipment is damaged, lost, stolen or destroyed; then the total price payable by the Customer will be immediately due and payable and FallProof may:
 - (i) enforce payment of the balance of the total sum due and payable together with any penalties and interest payable; and/or
 - (ii) refuse to deliver any further Equipment or Services to the Customer (under this Agreement or under any other agreement) until default on the part of the Customer is remedied; and/or
 - (iii) retake possession of any Equipment currently provided to the Customer. The Customer irrevocably authorises FallProof its agents and servants to search for and remove the Equipment and for that purpose to enter onto any site or into any premises where the Equipment may be found using such force as is necessary. The Customer will indemnify FallProof against any costs and liabilities that may arise as a result of the entry by FallProof into any premises or the seizure by FallProof of any Equipment under this clause; and or
 - (iv) terminate this Agreement with immediate effect.
30. Any rights exercised by FallProof pursuant to this clause do not extinguish the Customer's liabilities under this Agreement or prejudice any other right or remedy FallProof has at law or equity.
31. The Customer will pay the costs and expenses including the legal fees incurred by FallProof in exercising any of its rights or remedies or enforcing any of the terms, conditions or provisions of this Agreement.

GENERAL TERMS

32. **Waiver:** Failure or omission by FallProof at any time to enforce or require strict or timely compliance of any provision of this Agreement shall not affect or impair that provision in any way or the rights of FallProof to avail itself of the remedies it may have in respect of any breach of that provision whether pursuant to this Agreement or at law.
33. **Severance:** The illegality, invalidity or unenforceability of a provision of this Agreement under any law does not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of any other provision of this Agreement.
34. **Indemnity:** The Customer fully and effectively indemnifies FallProof against any and all claims, actions, suits, proceedings, costs, expenses, damages and liability, including all legal fees arising out of or connected with or resulting from a breach by the Customer of its obligations under this Agreement or as a result of injury to any person or property caused by or in connection with the use by the Customer of the Equipment (including without limitation the selection, delivery, possession, use or operation of the Equipment) whether arising under statute or common law.
35. **Use:** The Customer will comply with all laws, by-laws and regulations; take out and maintain all licenses; meet all operating expense relating to the use, operation and maintenance of the Equipment; and do so at its sole cost and

- expense. The Customer will ensure that no-one, other than FallProof, alters or moves any part of the Equipment at the Customer Site
36. **Force Majeure:** FallProof shall not be liable for any delay, alteration or failure to perform its obligations under this Agreement if occasioned by any event, action or omission beyond FallProof's control ('force majeure'). The Customer acknowledges that Force Majeure includes (without limitation) any adverse weather that may: (a) compromise the safety of FallProofs employees, contractors or sub-contractors; or (b) compromise the integrity of the Equipment or the intended structure that will comprise the Equipment (including the shrink wrap film). The performance of FallProof's obligations under this agreement will be suspended for the period of any delay due to force majeure.
37. **Representations and Warranties:** Any representation undertaking or warranty made by FallProof or any agent employee or representative of FallProof unless recorded in writing and set in the FallProof quote or in these terms, is cancelled and withdrawn and does not apply to this Agreement or any contract collateral to this Agreement. To the extent permitted by law all warranties, conditions and guarantees implied by law (including but not limited to any warranties as to suitability of the goods for the use to which they will be put and the statutory guarantees implied under the Consumer Guarantees Act) are excluded from this Agreement and do not apply to it. In respect of any shrink wrap film supplied by FallProof under this Agreement, FallProof specifically excludes any liability regarding any damage or losses that may result from failure by the shrink wrap to withstand wind or wind gusts exceeding 80km per hour.
38. **Liability:** The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon FallProof which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on FallProof, FallProof's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute. Except as otherwise provided by this clause, FallProof shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of the Services and Equipment by FallProof to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Equipment and Services supplied by FallProof to the Customer. FallProof's liability under this or any associated contract is limited to rectifying, replacing or (at the election of FallProof), repairing any defective Equipment to the entire exclusion of any other remedy which, but for this clause, the Customer might have. FallProof shall be under no liability for any damage, injury, direct, consequential, or other loss, or loss of profit; or costs, charges or expenses on the part of the Customer or any other person other than to repair or replace as mentioned above. Notwithstanding the above, under no circumstances shall FallProof's liability exceed the price for the Equipment and/or Services payable by the Customer.
39. **Sub-contract:** FallProof may licence or sub-contract all or any part of its rights and obligations without the Customer's consent provided that FallProof remains primarily liable to the Customer.
40. **Representations/Variations:** No FallProof employee, agent or representative are authorised to make any representations, statements, conditions, agreements or variations to this Agreement and nor shall FallProof be bound by any such unauthorised statements. Only FallProof's Directors can make any representations or variations to this Agreement, all of which must be in writing.
41. **Privacy Act:** The Customer and Guarantors (if separate from the Customer) authorise FallProof to collect, retain and use any information about the Customer or the Guarantors for the purpose of assessing the Customer's creditworthiness, marketing any Equipment and Services provided by FallProof and enforcing any rights under this Agreement. FallProof is further authorised to disclose such information for these purposes only. Where the Customer and/or Guarantors is a natural person, the authority granted under this clause shall be deemed to be an authority or consent under the terms of the Privacy Act 1993. The Customer and Guarantors shall have the right to request a copy of the information about the Customer and/or Guarantors retained by FallProof and the right to request FallProof to correct any incorrect information about the Customer and/or Guarantors held by FallProof. The Customer consents to receiving commercial electronic messages from FallProof for the purposes of the unsolicited Electronic Messages Act 2007.
42. **No Assignment:** The Customer may not assign any of its rights or obligations under this Agreement without the prior written consent of FallProof.

SCHEDULE – CUSTOMER RESPONSIBILITIES

The Customer must:

- a) Ensure that FallProof is granted full unrestricted and safe access to the Customer site where the Equipment has been or will be installed and it shall ensure that it has the appropriate consents and authorisations to provide such access.
- b) Provide FallProof with clear and unrestricted access to the ground/floor area which is adequate for placement of the scaffolding. If restrictions to areas are to be imposed, FallProof will require notification in writing prior to start of the scaffold erection. If access is restricted, this may affect the quoted price. If access is across an existing boundary line, it is the customer's responsibility to advise FallProof what the exact boundary details are and obtain permission from the adjacent property owner prior to commencement on site;
- c) Immediately notify FallProof of the full circumstances of any fault or damage relating to the Equipment during the Hire Period; however, such notification shall not absolve the Customer from the requirement to safeguard and insure the Equipment;
- d) Satisfy themselves upon erection that the Equipment is fit for the intended purpose;
- e) Use the Equipment solely for its intended purpose and strictly in accordance with the law (including health and safety regulations and guidelines) and any instructions provided by FallProof including on the scaffold tag;
- f) Ensure that all persons using the Equipment have been appropriately instructed on its safe and proper use and are competent to use the Equipment;
- g) Upon termination or expiry of the Agreement, ensure that the Equipment is returned to FallProof in the same condition as it was when delivered, excluding fair wear and tear;
- h) Not make any additions or alterations to the Equipment and ensure that no one other than FallProof are to make any additions or alterations to the Equipment. Where such unauthorized additions or alterations are made, FallProof reserves the right to charge any additional fees necessary to cover the costs to safely rectify such unauthorized alterations. Should the Customer dismantle all or part of the Equipment, it will not be entitled to any refund of fees paid for such dismantle or removal services and any unpaid fees for such Services will still be payable by the Customer;
- i) Use the Equipment solely for the Customer's own works and shall not allow any third party to use any part of the Equipment for any other works;
- j) Not exceed the recommended and legal load limits for the Equipment;
- k) Ensure that there is no excavation of foundation surface next to or near the Equipment. If this is required then Customer is responsible for shoring the area and for the stability of structure. If extra scaffold is required for shoring then this will be charged to the Customer as a variation;
- l) Put in place adequate security precautions so as to prevent unauthorised access to site or buildings via the Equipment. FallProof will not accept responsibility for any loss or damage caused due to unauthorised entry.
- m) Not fix the Equipment to any land so as to make it a legal fixture forming part of any freehold or leasehold;
- n) Pay any costs incurred by FallProof on demand to replace the equipment at market cost, that resulted from loss, theft, damage or destruction during the Hire Period; and
- o) Pay any costs incurred by FallProof on demand to repair maintain alter or adjust the goods if such repair, maintenance, alteration or adjustment is due to the fault of the Customer.

The erection of scaffold on to existing or new structure that may require additional support i.e. Back Propping to support the additional dead and live loads of scaffold will require the following:

- (a) The Customer is to supply written authorisation to use the existing building structure from the Building owner prior to scaffold commencing.
- (b) The Customer is to approve the design and give written approval from the Customers on-site engineers prior to scaffold erection.

Shrink Wrap Specific Terms

In addition to the Customer's obligations above, where FallProof are providing shrink wrap services on a structure not supplied by FallProof, the Customer must provide an Engineer's Certificate confirming that the structure is sound and appropriately designed for the shrink wrap system and confirming that it will be able to withstand all loads (including environmental loads) that may be applied to the structure following installation of the shrink wrap.