

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, Hire form, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“FP”** shall mean FallProof Limited, its successors and assigns or any person acting on behalf of and with the authority of FallProof Limited.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting FP to provide the services as specified by FP or agreed by FP in any proposal, quotation, order, invoice or other documentation forming part of this Contract, 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 **“Goods”** means all Goods or Services supplied by FP 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).
- 1.5 **“Guarantor”** means any guarantor of the Client.
- 1.6 **“Equipment”** shall mean all Equipment supplied on hire by FP to the Client, at the Client’s request from time to time, and:
(a) includes any erection, dismantling and transport of the Equipment (**“Services”**), any parts, accessories and/or consumables supplied by FP to the Client, either separately or deposited incidentally by FP in the course of it conducting, or supplying to the Client, the Equipment; and
(b) where the context so permits the terms ‘Equipment’ or ‘Services’ shall be interchangeable for the other.
The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by FP to the Client.
- 1.7 **“Minimum Hire Period”** shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by FP to the Client.
- 1.8 **“Maximum Hire Period”** shall mean the Maximum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by FP to the Client.
- 1.9 **“Site”** means the location/s at which the Equipment is to be delivered and Services supplied.
- 1.10 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: 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) and pricing details.
- 1.11 **“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 FP’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.**
- 1.12 **“Charges”** shall mean the cost of the hire (including any Goods and Services Tax (GST) where applicable) of the Equipment or Services supplied as agreed between FP and the Client subject to clause 6 of this Contract.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 FP reserves the right to amend this Contract on written notice to you. Any other amendment to the terms and conditions contained in this Contract requires the written consent of both parties.
- 2.4 The Client acknowledges that the supply of Equipment on credit shall not take effect until the Client has completed a credit application with FP and it has been approved (in FP’s sole discretion) with a credit limit established for the account.
- 2.5 In the event that the supply of Equipment requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, FP reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by FP in relation to Goods or Equipment supplied is given in good faith, is based on FP’s own knowledge and experience and shall be accepted without liability on the part of FP and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Equipment.
- 2.7 FP will:
(a) ensure that all completed standing scaffolds be tagged with an Aculog Scaffold Tag System certifying that the scaffolds are complete and safe to use; and
(b) regularly inspect all standing scaffolds prior to the Services commencing as per the Health and Safety requirements.
- 2.8 The Client acknowledges and accepts:
(a) the product supply of shrink wrap offers a manufacturer’s guarantee of UV protection and can withstand up the MetService definition regarding strong gale force winds, being winds of up to 63-74kph; and
(b) that following the handover of the certified Equipment to the Client, it shall be the Client’s responsibility to check the Equipment before each use. If the Equipment is deemed to be damaged, altered or appears unsafe it should not be used and FP is to be notified; and
(c) FP reserves the right to remove the Equipment without prejudice should the Equipment be considered to be unsafe due to washout and/or erosion, upon such action this shall not be deemed to be a breach of Contract. FP will not be liable and the Client shall not make any claim in respect of any loss or costs to the Client that may result from such an event.

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- 2.9 Installation of scaffold shall be carried out during normal business hours (7:30AM – 5:00PM, Mon-Fri). In the event that the Client requests FP to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then FP reserves the right to charge the Client additional labour costs (penalty rates will apply at double time normal rates), unless otherwise agreed between FP and the Client.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.11 These terms and conditions may be meant to be read in conjunction with FP's Hire Forms, and:
- (a) where the context so permits, the terms 'Services' or 'Equipment' shall include the supply of labour, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2, the Client agrees that should the Client introduce any third party to FP as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any scaffolding and/or Equipment, and/or to request any variation thereto, on the Client's behalf (such authority to continue until all requested scaffolding and/or Equipment has been returned to FP, or the Client otherwise notifies FP in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise FP in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to FP for all additional costs incurred by FP (including FP's profit margin) in providing any scaffolding and/or Equipment, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that FP 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 FP 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 FP in respect of the Equipment hire and/or services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of FP; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

- 5.1 The Client shall give FP 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 FP as a result of the Client's failure to comply with this clause.

6. Charges and Payment

- 6.1 At FP's sole discretion the Charges shall be either:
- (a) as indicated on invoices provided by FP to the Client in respect of Equipment, Goods or Services supplied; or
 - (b) FP's current Charges, at the date of delivery of the Equipment or Goods, according to FP's current price list; or
 - (c) FP's quoted price (subject to clause 6.2) which shall be binding upon FP provided that the Client shall accept FP's quotation in writing within thirty (30) days.
- 6.2 FP reserves the right to change the Charges if:
- (a) if a variation to the Goods/Equipment which is to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans, erection and dismantle charges, Site requirements or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, unforeseen site conditions, poor weather conditions, limitations to accessing the Site, availability of machinery, protruding or dismantled formwork, repositioning or adjusting the Equipment, additional Site visits required, safety considerations, prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services;
 - (d) if increases which are beyond FP's control occur (such as the cost of materials, labour, taxes, levies, duties, insurance and/or freight etc.)
- 6.3 Variations will be charged for on the basis of FP's quotation, and will be detailed in writing, and shown as variations on FP's invoice. The Client shall be required to respond to any variation submitted by FP within ten (10) working days. Failure to do so will entitle FP to add the cost of the variation to the Charges.
- 6.4 Notwithstanding any other provision of this clause 6, FP shall have the right to increase the Charges every 6 months during the hire period or if FP agrees to extend the hire period beyond the Maximum Hire Period.
- 6.5 At FP's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this Contract, which shall be refunded to the Client by within thirty (30) days of the return of the Equipment, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable Charges payable by the Client under clause 6.7, and any outstanding balance thereof shall be due as per clause 6.6.
- 6.6 Time for payment for the Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by FP, which may be:
- (a) on delivery of the Equipment;
 - (b) by way of instalments in accordance with FP's payment schedule;
 - (c) payment for approved Clients shall be 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;

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- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by FP.
- 6.7 FP may in its discretion allocate any payment received from the Client towards any invoice that FP determines and may do so at the time of receipt or at any time afterwards. On any default by the Client FP may re-allocate any payments previously received and allocated. In the absence of any payment allocation by FP, payment will be deemed to be allocated in such manner as preserves the maximum value of FP's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.
- 6.8 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and FP.
- 6.9 Receipt by FP of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 6.10 The 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 FP nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.11 Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Client must pay to FP an amount equal to any GST FP must pay for any supply by FP under this or any other agreement for the 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.
- 6.12 FP may ask the Client for funds in advance in relation to the Equipment. FP is not liable to perform any of its obligations under this Contract until any requested funds have been paid.

7. Hire Period

- 7.1 Hire charges shall commence from the time the Equipment is signed off and leaves FP's premises and shall continue until the later of the return of the Equipment thereto, and/or the expiry of the Minimum Hire Period.
- 7.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 7.3 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless FP confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies FP 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 or any other party other than FP.
- 7.4 Off-hire receipts will only be issued when the Equipment has been either collected by FP, or returned to FP's premises.

8. Delivery

- 8.1 Delivery ("**Delivery**") of the Equipment is taken to occur at the time that FP (or FP's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address. The Client is to ensure that FP has all necessary access in order to deliver the Equipment.
- 8.2 At FP's sole discretion the cost of Delivery is in addition to the Charges.
- 8.3 FP may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 8.4 Any time specified by FP for Delivery of the Equipment is an estimate only and FP will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. The Client cannot cancel the Contract because of late delivery without FP's consent. However both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that FP is unable to supply the Equipment as agreed other than due to any action or inaction of FP, then FP shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.

9. Risk

- 9.1 FP retains ownership in the Equipment at all times nonetheless; all risk for the Equipment passes to the Client on the earlier of collection of the Equipment from the Client's premises or Delivery.
- 9.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies FP 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.
- 9.3 The Client will insure, or self-insure, FP's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the 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 is to provide FP with evidence of any insurance pursuant to this clause 9.3 prior to Delivery of the Equipment and at any other time during the hire period upon request from FP.
- 9.4 The Client accepts full responsibility for and shall keep FP 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.
- 9.5 FP shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client for the purposes of estimating quantities and type of Equipment required. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, FP accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information and that the Client shall pay to the FP any additional Charges required as a result of any such inaccuracies.
- 9.6 In the event of damage to a building as a result of any action by FP's employees or contractors, FP must be informed in order that FP may inspect such damage before any agreement to rectification costs can be accepted.
- 9.7 Any Equipment that is erected or dismantled by FP's trained and licensed employees or contractors shall be as per the manufacturers and New Zealand Codes of Practice requirements. The Client acknowledges and accepts that FP shall not be liable in any way for any claim made in connection with the erection and dismantling of the Equipment by non-FP employees or contractors.

10. Access and Installation

- 10.1 The Client shall ensure that FP has clear and free access to the nominated delivery address to enable FP to install and/or dismantle the Equipment, and, where FP is collecting the scaffolding from the Site, FP agrees at the time of collection to remove the scaffolding and carry out any reasonable clean-up of the Site required as a result of the installation or removal of the scaffolding. Furthermore, it is acknowledged that it is unreasonable to expect the clean-up to restore the property to its pre-existing condition, especially in the event where existing grass has died off due to the covering of base blocks to establish foundation support for the Equipment, such damage will remain the Client's responsibility.
- 10.2 The Client acknowledges and accepts that where the Equipment is required to be tied to the building structure, with ties at each scaffold lift, using either bolts, pins or screw eyes, the subsequent repairs of these holes and/or repainting shall be the responsibility of the Client.
- 10.3 The quotation is based upon wire ties and/or bolted scaffold ties to secure the Equipment to the building and the construction procedures must allow for these ties to remain in position whilst the Equipment is in use.
- 10.4 It shall be the Client's responsibility to ensure that where Equipment is installed on concreted areas, patios, driveways or timber decks that suitable coverings are put in place to help prevent any marking/staining of the finished product. FP shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of FP.
- 10.5 The Client shall ensure that the nominated delivery address is cleared and ready for installation of the Equipment prior to delivery of the Equipment, and that the foundations upon which FP is to install the Equipment is sufficiently firm and otherwise suitable to safely carry the structure and the load to be put on it without subsidence. The Client will be liable to FP for any loss, costs or damages which FP may suffer or incur by reason of the Client's failure to carry out its obligations hereunder if FP is unable or unwilling to install the Equipment due to the Site not being cleared and ready as aforesaid. Nevertheless, the Client shall be liable to pay the costs on the hire of the Equipment on the terms stated herein.
- 10.6 The Client shall provide access at any time for FP to be able to inspect the Equipment on the Site (or wherever the Equipment may be located).
- 10.7 Any Equipment above five metres (5m) high may only be erected, altered or dismantled under the supervision of a scaffolder holding a certificate of competency or license that may be required by any legislation or local regulatory authority for the purpose of the erection or the dismantling of the Equipment or FP.
- 10.8 If during the course of the Client's work, the Equipment is modified or removed by the Client to the extent the Equipment is no longer compliant with the applicable legislative requirements or the requirements set out in this Contract, any rectification work performed by FP will be at the Client's expense.
- 10.9 The Client acknowledges and agrees that:
- (a) FP's erect and dismantle quotation, unless otherwise agreed, does not allow for subsequent visits to the Site to adjust or alter the Equipment, any additional rectification services will be charged as an extra; and
 - (b) any standing scaffold over five metres (5m) high or intended to extend over five metres (5m) high requires FP and the people intending to use the scaffold to provide a notification to WorkSafe prior to any services commencing; and
 - (c) in the event FP require access, in order to erect, alter or dismantle the Equipment, to an adjoining or adjacent property or land to the nominated Site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner at its own cost to use the above mentioned property throughout the erection, alteration or dismantling of the Equipment. 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 FP in gaining permission to access and/or use the property through any legal process that may be deemed necessary.
- 10.10 The Client shall be responsible for:
- (a) confirming with the relevant authorities that all power cables are safe within four metres (4m) of the intended Equipment prior to the services commencing; and
 - (b) providing FP, while at the Site, with adequate access to available water, electricity, toilet and washing facilities unless catered for within the Contract preliminary in general.

11. Client's Responsibilities

- 11.1 The Client shall:
- (a) maintain the Equipment as is required by FP
 - (b) notify FP immediately by telephone of the full circumstances of any mechanical breakdown or accident in connection with the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification.
 - (c) satisfy itself prior to taking delivery of the Equipment that the Equipment is suitable for its purposes;
 - (d) use the Equipment safely, strictly in accordance with the law and the terms of this Contract, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by FP or posted on the Equipment;
 - (e) ensure that all persons erecting or using 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;
 - (f) comply with all relevant health and safety laws relating to the Equipment and its use;
 - (g) keep the Equipment in their own possession and control and shall not assign the benefit of, transfer or subcontract the hire Contract nor be entitled to take a lien, or grant any encumbrance over the Equipment;
 - (h) not alter or make any additions to the Equipment including but without limitation defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (i) 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;
 - (j) ensure all overhead power likely to cause a hazard or adversely affect the installation of Equipment is turned off prior to the installation of the equipment

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- (k) ensure that no digging or excavation work is performed near or under the Equipment during the installation or once the Equipment is installed
 - (l) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (m) not use or carry any illegal, prohibited or dangerous substance on the Equipment;
 - (n) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
 - (o) on termination of the hire, deliver up the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to FP.
- 11.2 Immediately on request by FP the Client will pay:
- (a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to FP;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage other than fair wear and tear due to the ordinary use of the Equipment by the Client;
 - (d) the cost of fuels and consumables provided by FP and used by the Client;
 - (e) any costs incurred by FP in dismantling the Equipment and returning it to FP's premises if the Client does not return the Equipment to FP's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;
 - (f) any lost hire fees FP would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (g) any insurance excess payable in relation to a claim made by either the Client or FP in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or FP's.
- 11.3 FP may terminate the hire contract, without being liable for damages for doing so, if:
- (a) the Client defaults in the punctual payment of any monies due;
 - (b) the Client fails to observe or perform any condition in this, or any other uncompleted hire Contract between FP and the Client;
 - (c) the Client is declared bankrupt, or an official manager is appointed to any of the Client's assets;
 - (d) the Client applies to take benefit of any law for the relief of bankrupt or insolvent debtors, compounds with their creditors, or makes an assignment of their remuneration for their benefit;
 - (e) the hire period exceeds the Maximum Hire Period.
- 12. Affixation of Equipment to Land or Buildings**
- 12.1 If the Equipment or any part thereof is affixed to any land or buildings pursuant to this Contract, and the land or buildings are or become the subject of a mortgage or charge whether under the PPSA or otherwise at law, then the Client shall, without first receiving any request from FP, obtain the written acknowledge of the mortgagee or chargeholder (as the case may be) that:
- (a) the Equipment or any part thereof is not a fixture for the purposes of the mortgage or charge; and
 - (b) that the mortgagee or chargeholder will not make any claim in relation to the Equipment or any part thereof; and
 - (c) that the mortgagee or chargeholder will permit FP (whether or not there has been any default under the mortgage or charge) to enter upon the land or buildings and to remove the Equipment or part thereof.
- 13. Compliance with Laws**
- 13.1 The Client and FP shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Equipment (including but not limited to, the Good Practice Guidelines for scaffolding / edge fall protection / fall through protection) as outlined in the Scaffolding In New Zealand published by WorkSafe and any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Equipment/services.
- 13.2 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") FP agrees at all times comply with sections 29 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Site or where they may be acting as a subcontractor for the Client who has engaged a third party head contractor.
- 13.3 The Client shall obtain (at the expense of the Client) all engineering reports, certificates, and all licenses, permits and approvals that may be required for the supply of Equipment/Services (including, but not limited to, providing an engineer's certificate confirming that the structure is sound and designed for the shrink wrap system to withstand all environmental loads etc.) .
- 14. Title**
- 14.1 The Equipment is and will at all time remain the absolute property of FP.
- 14.2 If the Client fails to return the Equipment to FP then FP or FP's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 14.3 The Client is not authorised to pledge FP's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 15. Personal Property Securities Act 1999 ("PPSA")**
- 15.1 Upon assenting to these terms and conditions in writing the 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 Equipment and/or collateral (account) – being a monetary obligation of the Client to FP for services – that have previously been supplied and that will be supplied in the future by FP to the Client.
- 15.2 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 FP may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, FP for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Equipment charged thereby;

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- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of FP.
- 15.3 FP and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by FP, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by FP under clauses 15.1 to 15.5.
- 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15.8 Only to the extent that the hire of the Equipment exceeds a twelve (12) month hire period (or a six (6) month hire period with the right of renewal), shall clause 15 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 15 will apply generally for the purposes of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of FP agreeing to supply the 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).
- 16.2 The Client indemnifies FP from and against all FP's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising FP's rights under this Contract.
- 16.3 The Client irrevocably appoints FP and each director of FP as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.
- 17. Defects**
- 17.1 The Client shall inspect the Equipment on Delivery and shall within twenty-four (24) hours notify FP of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford FP an opportunity to inspect the Equipment within a reasonable time following Delivery if the Client believes the Equipment is defective in any way. If the Client fails to comply with this obligation the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which FP has agreed in writing that the Client is entitled to reject, FP's liability is limited to replacing the Equipment.
- 18. Warranty**
- 18.1 No warranty is given by FP as to the quality or suitability of the Equipment for any purpose and, to the extent permitted by law, any implied warranty is expressly excluded. The Client shall indemnify and hold harmless FP in respect of all claims arising out of the use of the Equipment.
- 18.2 For Goods not manufactured by FP, the warranty shall be the current warranty provided by the manufacturer of the Goods. FP 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.
- 18.3 In the case of second hand Goods, the Client acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by FP as to the quality or suitability for any purpose and, to the extent permitted by law, any implied warranty, statutory or otherwise, is expressly excluded. FP shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 18.4 All warranties are strictly conditional upon full payment for the Equipment to FP.
- 18.5 FP makes no warranty or representations as to the state, quality or fitness of the Equipment for any purpose and no such warranty shall be implied.
- 19. Consumer Guarantees Act 1993**
- 19.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 20. Default and Consequences of Default**
- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at FP's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes FP any money the Client shall indemnify FP from and against all costs and disbursements incurred by FP in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, FP's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies FP may have under this Contract, if the Client has made payment to FP, 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 FP under this clause 20 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.
- 20.4 Without prejudice to FP's other remedies at law FP shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to FP shall, whether or not due for payment, become immediately payable if:
- any money payable to FP becomes overdue, or in FP's opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by FP;
 - the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Intellectual Property

- 21.1 Where FP has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of FP and may be used by FP for any purpose. Under no circumstances may such designs, drawings and documents be used without the express written approval of FP.
- 21.2 The Client warrants that all designs, specifications or instructions given to FP will not cause FP to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify FP against any action taken by a third party against FP in respect of any such infringement.

22. Cancellation

- 22.1 Without prejudice to any other remedies FP may have, if at any time the Client is in breach of any obligation (including those relating to payment) under this Contract FP may suspend under clause 25 or terminate the supply of Equipment on hire to the Client. FP will not be liable to the Client for any loss or damage the Client suffers because FP has exercised its rights under this clause.
- 22.2 FP reserves the absolute right to:
- (a) cancel, terminate, or determine this Contract;
 - (b) immediately repossess the Equipment;
- at any time before or during the hire period, without reason, without prior notice, without payment of compensation and without prejudice to any other rights which FP may have against the Client. FP or its agents may enter any property or premises as per clause 14.2 where the Equipment may be kept, for this purpose.
- 22.3 In addition to clause 22.1 in these terms and conditions, FP shall be entitled to cancel the Contract if:
- (a) FP reasonably believes that a third party may attempt to take possession of the Equipment; or
 - (b) the Equipment is at risk; or
 - (c) any of the circumstances in clause 20.4 occur;
 - (d) any judgement against the Client remains unsatisfied for more than 7 days.
- 22.4 In the event that the Client wishes to cancel this Contract then the Client agrees to provide a minimum of seventy-two (72) hours' notice of termination of hire by either telephone or email. The Client shall remain liable for all hire charges due up to the time of cancellation until such notice is given.
- 22.5 Upon cancellation of this Contract, FP reserves the right:
- (a) To treat all moneys which are then outstanding from the Client to FP as being immediately due and payable;
 - (b) by its agents to enter onto the Client's property (without having to give notice) or any other location where the Equipment is, to search for and remove and take possession of the Equipment without being in any way liable to the Client or anyone claiming under it for so doing.

23. Privacy Policy

- 23.1 All emails, documents, images or other recorded information held or used by FP is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. FP acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). FP acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by FP that may result in serious harm to the Client, FP will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to FP in respect of Cookies where the Client utilises FP's website to make enquiries. FP 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 FP when FP sends an email to the Client, so FP may collect and review that information ("collectively Personal Information")
- If the Client consents to FP's use of Cookies on FP's website and later wishes to withdraw that consent, the Client may manage and control FP's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Client authorises FP or FP'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 FP from the Client directly or obtained by FP 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.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 23.5 The Client shall have the right to request (by e-mail) from FP, a copy of the Personal Information about the Client retained by FP and the right to request that FP correct any incorrect Personal Information.
- 23.6 FP 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.

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23.7 The Client can make a privacy complaint by contacting FP via e-mail. FP 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 Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

24. Dispute Resolution

24.1 The parties undertake to use all reasonable endeavours in good faith to resolve any dispute which arises pursuant to this Contract.

24.2 If any dispute arises which cannot be resolved between the parties within 10 working days, either party may by written notice to the other refer the dispute to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

24.3 This clause 24 will not prevent FP taking any legal action against the Customer to recover any moneys payable by the Client or from exercising any of its rights under its security interest.

25. Suspension of Services

25.1 The Client hereby expressly acknowledges that:

- (a) FP has the right to suspend work within five (5) working days of written notice of its intent to do so if:
 - (i) any payment due under this Contract is not paid in full by the due date for payment in accordance with clause 6.6 and, if the invoice is a Construction Contracts Act 2002 compliant payment claim 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 FP by a particular date; and
- (b) if FP 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 FP exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to FP 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 FP suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes FP from continuing the Services or performing or complying with FP's obligations under this Contract, then without prejudice to FP's other rights and remedies, FP 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 FP as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

25.2 If pursuant to any right conferred by this Contract, FP suspends the Services and the default that led to that suspension continues unremedied subject to clause 22.1 for at least ten (10) working days, FP shall be entitled to terminate the Contract, in accordance with clause 22.

25.3 The suspension right in this clause 25 is in addition to any suspension right FP has under the Construction Contracts Act 2002.

26. Service of Notices

26.1 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.

26.2 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.

27. Trusts

27.1 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 FP may have notice of the Trust, the Client covenants with FP 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 FP (FP 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.

28. Guarantee

- 28.1 In consideration of FP entering into this Contract, the Guarantor:
- (a) Irrevocably and unconditionally guarantees payment of all sums due and the performance by the Client of this Contract;
 - (b) Indemnifies FP against any loss FP might suffer as a consequence of the Client's default in its obligations to FP or should this Contract be lawfully disclaimed or abandoned by any liquidator, receiver or other person.
- 28.2 The Guarantor covenants with FP that:
- (a) no release, delay or other indulgence given by FP to the Client or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety will release, prejudice or affect the liability of the Guarantor as a guarantor or as an indemnifier;
 - (b) as between the Guarantor and FP, the Guarantor may for all purposes be treated as the Client and FP will be under no obligation to take proceedings against the Client before taking proceedings against the Guarantor;
 - (c) the guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the benefit of FP under this Contract;
 - (d) should there be more than one Guarantor their liability under this guarantee will be joint and several.
- 28.3 The failure of any guarantor to execute this Contract or that this guarantee shall not be enforceable against any guarantor for any reason whatsoever, shall not release the Client or any other guarantor from any liability under this Contract.
- 28.4 This is a continuing guarantee which applies in respect of all Equipment to be supplied by FP and the Guarantor shall not be released from this guarantee other than in writing by FP.

29. General

- 29.1 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.
- 29.2 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 Queenstown, New Zealand.
- 29.3 FP shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by FP of these terms and conditions and in addition FP's liability (whether in tort, contract, equity or otherwise) shall be limited to damages which under no circumstances shall exceed the Charges) and is subject to the Client having first fully paid all sums due to FP under this Contract.
- 29.4 FP may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 29.5 The Client cannot assign, transfer, subcontract or licence without the written approval of FP.
- 29.6 FP may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of FP's sub-contractors without the authority of FP.
- 29.7 The Client agrees that FP 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 FP to provide Equipment to the Client.
- 29.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party provided that this shall not apply to an obligation to make payment under this Contract.
- 29.9 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.