

**1. DEFINITIONS**

- 1.1. If applicable, capitalised terms have the meaning given to them in this Agreement. In addition, the following definitions apply in this Agreement:
- 1.2. 'Supplier,' 'we', or 'us' means Technical Access Solutions Limited trading as Technical Access Solutions Ltd (our successors and assigns) or any person acting with the authority of Technical Access Solutions Limited.
- 1.3. 'Client,' 'you', or 'your' means the Client requesting us to provide the Equipment on Hire and any Services specified in any Hire form, quotation, order, invoice or other documentation (or any person acting on your behalf, including authorised agents).
- 1.4. 'Worksite' means the address or location you nominate for us to provide the Equipment on Hire or the Services.
- 1.5. 'Price' means the Price payable for the Hire of the Equipment (including all Hire Charges in accordance with clause 6).
- 1.6. 'Agreement' means these terms & conditions of trade, as may be amended from time to time (including our privacy policy, any orders, Hire of Equipment or schedules as applicable).
- 1.7. 'Equipment' means all scaffolding, safety nets, shrink wrap, site fencing or other products (including any accessories) supplied on Hire to you by us at your request and:
  - (a) includes any erection, dismantling and transport of the Equipment, any components, accessories, or consumables supplied to you by us in the course of providing you with the Equipment; and
  - (b) where the context permits the terms 'Equipment' and 'Services' shall be interchangeable.
- 1.8. 'Scaffold Handover Certificate' means a certificate certifying the Equipment is safe and giving its specifications that you sign and return to us (and shall include any safe-for-use tag indicating the Equipment is safe to use).
- 1.9. 'Hire' means the supply of Equipment on Hire to you by us (in accordance with clause 8) and includes any wet Hire (where the Equipment is hired with an operator who shall at all times remain our employee).
- 1.10. 'Hire Period' means the period from when the Equipment is erected and the Scaffold Handover Certificate or safe-for-use tag is first issued or from when the Equipment has started to be used until you advise us that the Equipment is ready for removal from the Worksite by providing seven (7) Business days notice (the Off-Hire Notice) and such Equipment is removed from the Worksite (in accordance with clause 8).
- 1.11. 'Minimum Hire Period' means the Minimum Hire Period of seven (7) days, as described on the invoices, quotation, authority to Hire, or any other forms we provide.
- 1.12. 'Hire Charges' means any applicable charges for Equipment Hired to you and any Services provided by us (in accordance with clause 6).
- 1.13. 'Off-Hire Notice' means the seven (7) days notice prior to removal of the Equipment that you are required to provide us, which will be charged as seven (7) full days of Hire.
- 1.14. 'Off-Hire Period' means the time when the Equipment is no longer in use, is ready for collection, and Hire Charges are not charged.
- 1.15. 'Off-Hire Docket' means the document issued to you on the return of the Equipment and shall be conclusive legal evidence of the returned quantities of the Equipment and its condition at the time of return.
- 1.16. 'Amounts Owing' means any amount owed by you to us, from time to time, including the Price, any interest payable, any of your liability under this Agreement and any enforcement expenses incurred by us in seeking payment of any Amounts Owing by you.
- 1.17. 'Business Day' means Monday to Friday, excluding public holidays in New Zealand.
- 1.18. 'Confidential Information' means all information that could be reasonably regarded in the circumstances as confidential, including information that relates to the business, interests or affairs of a party, this Agreement, the Equipment or Services (as applicable), and intellectual property rights, but excludes information which is:
  - (a) in the public domain, other than as a result of a breach of this Agreement;
  - (b) in the possession of a party prior to the commencement of this Agreement without any obligation of confidentiality; and
  - (c) is independently developed or acquired by a party prior to the commencement of this Agreement without relying on information that would itself be Confidential Information.
- 1.19. 'Event of Default' means failing to comply with this Agreement (including your obligations in clause 6).
- 1.20. 'Insolvency Event' means an event of insolvency or bankruptcy, including:
  - (a) the appointment of an insolvency administrator, manager, receiver or liquidator;
  - (b) any action related to winding up or making a material arrangement in relation to creditors;
  - (c) applying for any type of protection against creditors;
  - (d) being unable to pay your debts as they fall due; or
  - (e) taking or suffering any similar or analogous action in any jurisdiction as a consequence of debt.
- 1.21. 'Personnel' means directors, officers, employees, agents and contractors.
- 1.22. 'CCLA' means the Contract and Commercial Law Act 2017.
- 1.23. 'PPSA' means the Personal Property Securities Act 1999.
- 1.24. 'CCA' means the Construction Contracts Act 2002.
- 1.25. 'Security Agreement' and 'Security Interest' have the meanings given to them in Part 2, sections 16 and 17 of the PPSA.
- 1.26. 'Regulator' means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or Services.
- 1.27. 'Related Company' has the meaning given to it in Part 1, section 2(3) of the Companies Act 1993.

**2. INTERPRETATION**

- 2.1. In this Agreement, unless the context otherwise requires:
  - (a) headings are for convenience only and do not affect interpretation;
  - (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
  - (c) a reference to 'in writing' includes by email;
  - (d) the words 'include' or 'including' or similar expressions are to be construed without limitation;
  - (e) a reference to a party shall include that party's successors, permitted assigns and substitutes; and
  - (f) a word importing the singular includes the plural and vice versa.

**3. ACCEPTANCE**

- 3.1. All orders are subject to our acceptance, and we may (at our sole discretion) accept any order in whole or in part by issuing an invoice for the applicable Services, delivering the Equipment or Services or otherwise confirming the order in writing.
- 3.2. If you place an order for or accept any Services from us, you are taken to accept this Agreement and are bound jointly and severally (including if you are part of a trust, in which case you shall be bound in your capacity as a trustee). You do not need to sign any formal documentation to indicate your acceptance. It will be assumed from you continuing to order any Equipment or Services.
- 3.3. Your acceptance of this Agreement shall continue to all future orders, purchases or schedules (as applicable), and this Agreement will be or is deemed to be incorporated into and form part of each order, purchase or schedule as if this Agreement was set out or implied therein in full.
- 3.4. You acknowledge and agree that:
  - (a) the supply of Equipment on credit shall not take effect until you have completed our credit application and it has been approved with a credit limit established for the account; and
  - (b) if the supply of Equipment requests exceeds your credit limit or the account exceeds the payment terms, we reserve the right to refuse delivery.
- 3.5. Both parties shall accept electronic signatures (including acceptance by a receiving mail server) provided both parties have complied with sections in Part 4, subpart 3 and all other relevant sections in Part 4 of the CCLA.
- 3.6. This Agreement may only be amended with our written consent and shall supersede any other document or agreement between both parties.

**4. AUTHORISED AGENTS**

- 4.1. We are under no obligation to enquire as to the authority of any person placing an order on your behalf.
- 4.2. If you introduce any third party to us as your authorised agent, you agree that the agent shall have your full authority to order any Services on your behalf, and such authority shall continue until the Services have been completed or you notify us in writing that the third party is no longer your authorised agent.
- 4.3. Where your authorised agent is to have only limited authority to act on your behalf, you must explain the parameters of the limited authority to us in writing.

**5. CHANGES TO DETAILS**

- 5.1. You agree that you will give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change to your name or any other changes to your details (including changes to the ownership of the company, address, email, contact phone or business structure).
- 5.2. You acknowledge and accept that if you fail to comply with clause 5.1, you will breach this Agreement and shall be liable for any expense or loss of profit suffered by us (including any Related Company).

**6. PRICE AND PAYMENT**

- 6.1. You will pay us the Price set out in any quotation or documentation that we provide to you under this Agreement, plus any 'Goods and Services Tax' (as defined and imposed in Part 2, section 8(1) of the Goods and Services Tax Act 1985 (GST)).
- 6.2. Unless otherwise agreed by us in writing, the Price shall be:
  - (a) indicated on invoices provided by us in respect of all Hire Charges for the Equipment supplied on Hire; or
  - (b) our quoted Price (subject to clause 6.3 and a site inspection), which shall be binding upon us provided that you have accepted our quotation in writing within seven (7) days.
- 6.3. Unless otherwise stated, the following will be excluded from the quote:
  - (a) any engineer's costs for calculations;
  - (b) the cost of any additional work resulting from the engineer's requirements;
  - (c) any traffic management that is required;
  - (d) any costs to make access near power lines safe; or
  - (e) any required Regulator or authority consents.
- 6.4. If the Price is not set out in quotations or other documentation, the Price for the relevant Equipment or Services will be at our standard rate according to our current Price list or at a rate notified to you.
- 6.5. Time for payment for the Hire of the Equipment being of the essence, the Price will be payable by you on the dates determined by us, which may be:
  - (a) before or on delivery of the Equipment;
  - (b) the date specified on any invoice or other document as being the date for payment; or
  - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to you.
- 6.6. Invoices may be submitted as payment claims under the CCA. A payment schedule must be provided to us within twenty (20) working days from receipt of our payment

- claim (and if you wish to dispute the amount of any payment claim, you must do so in accordance with Part 2, subpart 3 of the CCA).
- 6.7. At our sole discretion, we may allocate any payment from you towards any invoice that we determine and may do so at the time of receipt or any time afterwards. We may re-allocate any previously received and allocated payments if an Event of Default occurs. In the absence of any payment allocation by us, payment will be deemed to be allocated in such a manner as preserves the maximum value of our Security Interests (as defined in the PPSA) in the Equipment or Services.
  - 6.8. No allowance has been made in the Price for the deduction of retentions. If retentions are made, we reserve the right to treat all retentions as placing your account into default.
  - 6.9. Where we pay any subcontractor's account on your behalf, you agree to reimburse us for the payment of the subcontractor's account within seven (7) days (unless otherwise agreed in writing).
  - 6.10. We reserve the right at any time to alter any Price lists. Any alterations to any Price list will be effective from the date specified by us and apply to all orders or purchases we accept on or after that date.
  - 6.11. Payment may be made by cash, online banking, or any other method we agree to in writing.
  - 6.12. Payment in any form other than cash shall not be taken to be payment for the Amounts Owing, and all ownership rights of the Services remain with us until that form of payment has been cleared and received (in accordance with clause 18.1).
  - 6.13. We may require that you pay a deposit or provide a guarantee as security for paying any Amounts Owing.
  - 6.14. You shall not withhold payment of any Amounts Owing because part of the Services are disputed, and if part of the Services is disputed, you agree that you will:
    - (a) perform all of your obligations to us under this Agreement and pay in full any Amounts Owing except for the amount that is in dispute; and
    - (b) provide a specific and detailed explanation of the dispute in writing within seven (7) days from delivery.
  - 6.15. If an Insolvency Event occurs, all Amounts Owing will (whether or not due for payment) immediately become due and payable.

## 7. VARIATIONS

- 7.1. The Price will be adjusted to reflect any extra cost or expense incurred by us because of any instruction received from you (or your authorised agent) or any action or inaction on your part.
- 7.2. We reserve the right to change the quoted Price if:
  - (a) there is any change to the Services, including: (i) any information you provide is inaccurate; (ii) there is an increase or decrease in the quantity of the Services; (iii) you request any change to plans or specifications; (iv) there is a change in the character or quality of the Services; (v) there are changes to the level, line, position, or dimensions of the Services; or (vi) there is any changes to the timing or sequencing of the Services;
  - (b) where additional Services are required due to: (i) the discovery of hidden or unidentifiable difficulties which is only discovered on the commencement of the Services; (ii) poor weather or environmental conditions affecting the Services; (iii) any limitations to accessing the Worksite (including if trucks cannot access the Worksite and we are required to manually transport the Equipment); (iv) any subsidence of ground conditions; (v) if machinery necessary for the completion of the Services is unavailable; (vi) any protruding or dismantled formwork on the Worksite which requires additional installations of Equipment; (vii) repositioning or adjustments to the Equipment which is required because of a third party's actions (including relocation or alteration to working platforms to make the installation safe or compliant with regulations); (viii) any additional site visits that are required; (ix) safety considerations (such as overhead hazards or difficulties to safely erect ties or brackets); or (x) prerequisite work by any third party not being completed or up to standard that affects the installation of Equipment; or
  - (c) the cost increases due to changes beyond our control, including: (i) economic factors such as inflation or supply shortages (including shrink wrap); (ii) any taxes imposed by any Regulator; (iii) overseas transactions that may increase due to variations in foreign currency rates of exchange; or (iv) international freight and insurance charges.
- 7.3. Variations to this Agreement you request that are subject to labour charges shall be at our current hourly rate unless otherwise stated at the time of the variation request.
- 7.4. Where you request us to estimate the quantity of the Equipment to be supplied from sketches, plans, schedules, specifications or otherwise, you agree to pay for any variation between the estimate and the actual quantities provided, and this Agreement shall be deemed to be adjusted accordingly to reflect the increased Price.
- 7.5. Variations will be charged based on our quotation, detailed in writing, and shown as variations on our invoice. You shall be required to respond to any variation we submit within seven (7) days, and failure to do so will entitle us to add the cost of the variation to the Price.

## 8. HIRE PERIOD

- 8.1. All Hire Charges are for a minimum of seven (7) days of Hire and then calculated daily at the weekly Hire rate divided by seven (7) days.
- 8.2. Hire Charges shall commence when the Equipment is erected and the Scaffold Handover Certificate or safe-for-use tag is first issued or from when the Equipment has started to be used and shall continue until you advise us that the Equipment is ready for removal from the Worksite. If you revoke the Off-Hire Notice or have continued to use the Equipment after the Off-Hire period has occurred, then the

- Hire Charges shall continue without interruption until the end of the Hire Period or until the expiry of the Minimum Hire Period (whichever occurs last).
- 8.3. It is agreed by both parties that:
    - (a) you must provide us with seven (7) days notice (Off-Hire Notice) that the Equipment is available for collection;
    - (b) the date upon which you provide us with the Off-Hire Notice and the subsequent seven (7) days shall be treated as a full days Hire;
    - (c) any return of Equipment to our premises must be completed during our regular business hours and while our staff are present;
    - (d) in the event the Equipment is not returned to us by the end of the specified Hire period, you will be charged at our current daily rate until the Equipment is returned; and
    - (e) you must not submit the Equipment for return if it has not been cleaned (including removing all asbestos fibres or other hazardous substances such as mortar, render, epoxy, or other applied finish debris).
  - 8.4. No allowance can be made for time during which the Equipment is not used for any reason unless we confirm special prior arrangements in writing. In the event of any Equipment malfunction (provided you notify us immediately), Hire Charges will not be payable during the time the Equipment is not working (unless the malfunction is due to negligence or misuse on your part or is attributable to your actions).
  - 8.5. We shall inspect the Equipment every week (including after any storm, earthquake or adverse weather event where, in our opinion, an inspection is required) at our current hourly rate. Notwithstanding this clause, we retain the right to inspect the Equipment at any time during the Hire Period.
  - 8.6. Where you request us to inspect the Equipment other than the initial or weekly inspection, you acknowledge and agree that all associated costs for such Services shall be charged additionally as a variation (in accordance with clause 7).
  - 8.7. None of the Equipment shall be sublet or cross-hired by you, and you agree to not assign or transfer your interest in this Agreement, or part with possession of all, or any component of the Equipment, without our prior written consent (which may be withheld at our sole discretion).
  - 8.8. Should the Hire of the Equipment exceed a twelve (12) month Hire Period (or a six (6) month Hire Period with the right of renewal), clause 20 shall apply and will constitute a Security Agreement in the form of a lease for a term of more than one (1) year (as defined in Part 2, section 16 of the PPSA). You agree that we may register a security interest as a Purchase Money Security Interest (PMSI) over the Equipment supplied (the collateral).

## 9. DELIVERY

- 9.1. We will deliver the Equipment or Services to the delivery location that we each agree to in writing, and if the delivery location is at your premises (subject to clause 25), you will provide us (and our Personnel) with suitable access to the premises, together with any amenities reasonably required by us (or our Personnel) to perform delivery of the Equipment or Services.
- 9.2. Delivery of the Equipment and Services is taken to occur at the time that we (or our nominated carrier) deliver the Equipment (where it is installed and the Scaffold Handover Certificate is issued) and any Services to your nominated address, even if you are not present at the address. If you (or your authorised agent) are not present at the time of delivery, our delivery docket will remain sufficient evidence of delivery.
- 9.3. Before the delivery of the Equipment, it will be checked in our yard for quantity and condition. Return of the Equipment will be completed when the Equipment has been dismantled and accepted by us, with a completed Off-Hire Docket. Where the Equipment is returned by your transport, it shall be counted in our yard, and the Off-Hire Docket issued to you shall be conclusive evidence of the quantities of Equipment returned and its condition at the time of return. In both cases, the check in our yard for quantity and condition will be the only legal proof of the quantity and condition of the Equipment returned.
- 9.4. If we have received advice from you that the Equipment is ready for return and upon arrival, you still require the Equipment (which subsequently requires us to return to collect the Equipment at a later date and time), all Hire Charges shall continue, and you shall be charged for any associated cost incurred by us (including any travel costs) which shall be invoiced as a variation (in accordance with clause 7).
- 9.5. You must take delivery by receipt or collection of the Equipment whenever it is tendered for delivery. If we cannot supply the Equipment as agreed solely due to your action or inaction, then we shall be entitled to charge a reasonable fee for re-delivery of the Equipment at a later time and date.
- 9.6. We may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid under this Agreement.
- 9.7. Any time specified by us for delivery of the Equipment is an estimate only. We will not be liable for any expenses or losses incurred due to your reliance on our estimated time for delivery, nor can you cancel any order for any delay in delivery that is less than fourteen (14) days after our estimated time for delivery, or any delay in delivery due to any event beyond our control.

## 10. ERRORS AND OMISSIONS

- 10.1. You agree that we have no liability in respect of any errors or omissions:
  - (a) resulting from an inadvertent mistake made by us in the formation or administration of this Agreement; or
  - (b) contained in any documentation we supplied regarding the Equipment or the Services.
- 10.2. If such an error or omission occurs and is not attributable to our negligence or willful misconduct, all obligations or rights under or in connection with this Agreement shall continue in full force and effect.

**11. DEFECTS**

11.1. You shall inspect the Equipment on delivery and shall, prior to signing the Scaffold Handover Certificate, notify us of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote (and you agree that you will not use the Equipment if there is an alleged defect). You shall allow us to inspect the Equipment within a reasonable time following delivery if you believe the Equipment is defective. If you fail to comply with any of these provisions, the Equipment shall be presumed free from any defect or damage, and all Services will be considered accepted without any fault. For defective Equipment, which we have agreed in writing that you are entitled to reject, our liability is limited to replacing the Equipment.

**12. WARRANTY**

12.1. We give no warranty as to the quality or suitability of the Equipment for any purpose, and any implied warranty is expressly excluded. You shall indemnify us in respect of all claims arising out of your use of the Equipment.

12.2. For any Equipment, the warranty shall be the current warranty provided by the Equipment manufacturer. We shall not be bound by or be responsible for any condition, representation or warranty other than that which the Equipment manufacturer gives.

**13. PRIVACY ACT 2020**

13.1. You authorise (us and our agents) to collect, use, retain and disclose 'personal information' (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your Personnel that you or they provide to us for the following purposes:

- (a) exercising our rights or performing our obligations under this Agreement;
- (b) using the services of credit reporting and debt collection agencies, and you consent to us disclosing personal information (including any information about an Event of Default or repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
- (c) monitoring your credit file with credit reporting agencies;
- (d) registering any Security Interest under this Agreement;
- (e) direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us; and
- (f) the use or transfer of personal information to a Related Company in connection with the performance of our obligations or exercise of our rights under this Agreement.

13.2. You (if you are an individual) have the right under information privacy principles 6 and 7, and sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access and request correction of any of your personal information held by us, and if you provide any personal information about a third party (including your Personnel) to us, you confirm that you are authorised to do so by the relevant individual, and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.

13.3. If the Services are expected to involve sharing any data sets or other personal information, we will enter into a separate data protection agreement with you.

13.4. If you do not provide the personal information requested, we may be unable to perform our obligations under this Agreement.

**14. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY**

14.1. Each party must keep confidential all Confidential Information, however, nothing in clause 14 prevents a party from disclosing Confidential Information:

- (a) in the circumstances provided for in this Agreement;
- (b) if the disclosure is required by law or Regulator (but only to the extent necessary); or
- (c) if the disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement.

14.2. We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Agreement.

14.3. We own all right, title and interest (including all intellectual property rights) in the Equipment or Services at all times.

14.4. Any new intellectual property created as a result of, or in connection with, the provision of our Equipment or Services will be owned by us (unless otherwise agreed in writing).

14.5. If, notwithstanding clauses 14.3 and 14.4, any intellectual property rights in any of the Equipment or Services vests in you, you assign those intellectual property rights to us with effect from creation and agree to do all things reasonably required to give effect to such assignment.

14.6. You warrant that the use by us of any designs, instructions, plans, specifications or other technical information provided by you will not infringe the intellectual property rights of any other person and indemnify us against any expenses or losses (including full legal costs on a solicitor client-basis) that we may incur or suffer in the event of any such infringement.

**15. CONSUMER GUARANTEES ACT 1993 & FAIR TRADING ACT 1986**

15.1. Subject to clause 15.2, nothing in this Agreement will affect any rights you may have as a 'consumer' (as defined under the Consumer Guarantees Act 1993 (CGA)) under the CGA.

15.2. For the purposes of section 2 and Part 5, section 43(2) of the CGA, the parties acknowledge and agree that, if you are acquiring, or hold yourself out as acquiring, the Equipment or Services in trade:

- (a) to the extent permitted by law, you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by this Agreement); and
- (b) it is fair and reasonable for the parties to be bound by clause 15.2.

15.3. If you are acquiring the Services to resupply the Services in trade, you undertake that you will:

- (a) contract out of the CGA to the maximum extent permitted by law in your contracts with your clients; and
- (b) procure that your clients and each person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with clients.

15.4. For the purposes of section 5D of the Fair Trading Act 1986 (FTA), the parties acknowledge and agree that if you are acquiring, or hold yourself out as acquiring, the Equipment or Services in trade:

- (a) to the extent permitted by law, you are contracting out of sections 9, 12A and 13 of the FTA; and
- (b) it is fair and reasonable for the parties to be bound by clause 15.4.

15.5. You will indemnify us against any expenses or losses incurred by us due to your breach of clause 15.

**16. CANCELLATION**

16.1. Either party may cancel the Services provided under this Agreement if:

- (a) any provision of this Agreement authorises cancellation in the circumstances;
- (b) either party have a right to cancel this Agreement under Part 2, subpart 3 of the CCLA (or any other statute); or
- (c) either party have permanently abandoned the Services before completion or has become incapable of complying with the obligations under this Agreement.

16.2. If you cancel this Agreement, you agree that we are entitled to charge for any reasonable loss of profit and without prejudice to our other rights and remedies, we may forfeit your deposit or any amount paid in advance and apply it to any Amounts Owing.

16.3. If either party cancels this Agreement, the cancellation shall take effect on the service of a notice on the other party (in accordance with clause 31.7) advising of the cancellation and the reason for the cancellation.

16.4. If either party exercises a right to cancel this Agreement:

- (a) you shall pay us for all Equipment delivered and all Services performed up to the date of cancellation, and if the amount owed for the Equipment or Services is not apparent from the provisions of this Agreement, it shall be calculated as if the relevant Equipment and Services were provided as a variation (in accordance with clause 8); and
- (b) we shall provide possession of the Services to you (subject to all Amounts Owing being paid in full) and remove from the Worksite all Equipment, tools, plant, equipment, and vehicles belonging to us (and our subcontractors).

16.5. We shall be entitled to cancel all or part of any order of yours which remains unperformed, and all Amounts Owing to us shall become immediately due if:

- (a) any Amounts Owing to us become overdue, or in our opinion, you will be unable to meet your payments as they fall due; or
- (b) an Insolvency Event occurs, and you become insolvent or bankrupt, convene a meeting with your creditors, or a liquidator or similar person is appointed for you or any of your assets.

16.6. You may cancel this Agreement if we commit any of the following acts of default and we have not remedied the default within twenty (20) Business Days of receiving written notice of the default, including if we:

- (a) become insolvent or bankrupt, convene a meeting with our creditors or a liquidator or similar person is appointed in respect of our assets;
- (b) have persistently failed to proceed with the Services with reasonable diligence; or
- (c) persistently or wilfully neglected our obligations under this Agreement.

16.7. Orders to your specifications or non-stock-list items cannot be cancelled once the Services have commenced.

16.8. All provisions of this Agreement intended to continue in force beyond cancellation shall continue to bind the parties (in accordance with clause 31.12).

16.9. Subject to clause 16.9, on cancellation, each party shall be immediately discharged from any further obligation or liability regarding the Services and this Agreement (without prejudice to any right or remedy arising from either party's prior breach or unlawful act occurring before the cancellation).

16.10. We reserve the absolute right to immediately repossess the Equipment at any time before or during the Hire Period, without reason, without prior notice, without paying compensation to you and without prejudice to any other rights which we may have under this Agreement and shall refund you any money already paid to us (less any Amounts Owing up to the time of repossession). We (or our agents) may enter any property or premises in accordance with clause 18.2, where the Equipment may be kept for this purpose, and we will not be liable to you for any loss or damage you suffer because we have exercised our rights under clause 16.

16.11. In addition to clause 16.10, we shall be entitled to cancel this Agreement if we reasonably believe:

- (a) that a third party may attempt to take possession of the Equipment; or
- (b) the Equipment is at risk in any way.

16.12. If you wish to cancel this Agreement, you agree to provide a minimum of seven (7) days prior notice of intention to cancel the Hire by either phone or email. If you cancel and give less than seven (7) days notice from the scheduled dismantling of the Equipment or cancel any Hire that is less than seven (7) days in duration, a cancellation fee of fifty percent (50%) of the Hire Price may be applicable (at our sole discretion), which will be charged additionally to any Hire Charges incurred prior to such cancellation.

**17. EVENT OF DEFAULT**

- 17.1. Unless waived by us in writing, we may charge interest at a rate of two and a half percent (2.5%) per calendar month on any outstanding Amounts Owing from the due date of payment until the date the outstanding amount is paid (and interest shall compound monthly at such a rate).
- 17.2. You agree to reimburse us for any fees or expenses we incur in recovering any Amounts Owing (including, without limitation, administration fees, debt collection agency fees, disbursements and full legal costs on a solicitor-client basis).
- 17.3. Should you fail to pay any account, we may withhold the release of any producer statement, certification, or documentation relating to the Services provided until all Amounts Owing are paid in full.
- 17.4. You acknowledge and agree that if you are in default, we may, at our sole discretion:
  - (a) appoint a receiver in respect of your assets to take any action necessary to fulfil your obligations to us (including paying all Amounts Owing); and
  - (b) charge you any associated costs to complete this process.

**18. RETENTION OF TITLE**

- 18.1. The Equipment is and will at all times remain our property.
- 18.2. If any Amounts Owing is overdue, or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere Equipment may be stored, to remove any Equipment. We shall not be liable in contract, tort or otherwise for any damages, expenses, or losses incurred by you or any third party, and you indemnify us against any liability we may have to any third party (including full legal expenses on a solicitor-client basis), as a result of us exercising our rights under clause 18.2, except where damages, expenses or losses are due to our negligence or fraud. If you fail to return the Equipment, we (or our agent) may enter upon and into land and premises owned or used by you (or any premises where the Equipment is situated) and take possession of the Equipment without being responsible for any damage (except for negligence on our part).
- 18.3. If any Equipment is damaged, you agree that we are entitled to:
  - (a) receive all insurance proceeds paid for the Equipment; and
  - (b) supply this Agreement as a binding legal agreement, which is sufficient evidence for us to deal directly with the insurance company to receive all proceeds for the Equipment we legally own.
- 18.4. You are not authorised to pledge our credit for repairs to the Equipment or to create a lien over the Equipment regarding any repairs without our written authorisation.
- 18.5. We may commence proceedings to recover the Price of the Services provided, notwithstanding that ownership has not passed to you.

**19. SECURITY AND LIEN**

- 19.1. Subject to us providing any Equipment or Services, you charge all of your right, title and interest (whether joint or several) in any land, real estate or other assets capable of being legally charged with a lien owned by you either now or in the future, to secure the performance of all obligations (including full payment of all Amounts Owing) under this Agreement.
- 19.2. You irrevocably appoint all directors of our companies (including any Related Company) as your true and lawful attorney(s) and agree that the appointed attorney(s) may perform all necessary acts to enforce our rights provided in clause 19.1 of this Agreement (including signing any document on your behalf).
- 19.3. You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 19 to secure the performance of your obligations under this Agreement.
- 19.4. It is fair and reasonable for the parties to be bound by clause 19.

**20. PERSONAL PROPERTY SECURITIES ACT 1999**

- 20.1. You acknowledge and agree that:
  - (a) this Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Equipment supplied on Hire (the collateral) and Services or the cash proceeds of such Services; and
  - (b) the Security Interest granted to us secures the payment of all Amounts Owing (all present and after-acquired property) you may owe us from time to time and at any time.
- 20.2. You agree that you will sign any further documentation and provide any information which we may reasonably require to ensure we are paid all Amounts Owing due to us and otherwise to protect our interests under this Agreement, including by registration of a financing statement and ensuring that we have a first ranking perfected Security Interest in the Equipment or Services, or a Security Interest in the proceeds of any Services (a Security Interest taken in all collateral and any cash proceeds).
- 20.3. To the extent permitted by law, we each contract out of:
  - (a) sections 114(1)(a), 133 and 134 of the PPSA; and
  - (b) your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.
- 20.4. You waive your right to receive a verification statement under section 148 of the PPSA regarding any financing statement relating to a Security Interest.
- 20.5. Nothing in this Agreement is to be construed as an agreement that: (i) a Security Interest in the Equipment (collateral) attaches at a later time than the time specified in Part 3, section 40(1) of the PPSA; (ii) a Security Interest is perfected in accordance with Part 3, section 41(1) of the PPSA; (iii) a Security Interest in all after-acquired property attaches at the time specified in Part 4, section 44(1) of the PPSA; and (iv) a Security Interest in collateral shall extend to the proceeds as specified in Part 4, section 45(1) of the PPSA.
- 20.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.

- 20.7. You must provide us with information and any associated documentation reasonably requested by us from time to time relating to your financial status.
- 20.8. If at any time we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interests as security for the Amounts Owing, and we may suspend or cancel further supply of Equipment or Services until you have provided such Security Interests.
- 20.9. You shall unconditionally ratify any actions taken by us under clause 20.

**21. ACCESS AND INSTALLATION**

- 21.1. You shall ensure that we have clear and free access to the nominated delivery address at all times (and that such access is suitable to accept the weight of laden trucks or other heavy equipment as may be deemed necessary) to enable us to erect, install and dismantle the Equipment. We agree at the time of completion to carry out (in a reasonable manner) the cleanup of the site where the Equipment was installed, however, you acknowledge that it is unreasonable to expect the cleanup to restore the property to its pre-existing condition (including grass that has died off due to the covering of base blocks to establish foundation support for the Equipment or the weight of the Equipment causing hairline cracks in existing concrete) and any such damage will be your responsibility.
- 21.2. You accept 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 (including the repainting) shall be your responsibility.
- 21.3. If our quotation is based upon wire ties or bolted scaffold ties to secure the Equipment to the building, you accept that the construction procedures must allow these ties to remain in position whilst the Equipment is in use.
- 21.4. It shall be your responsibility to ensure that where Equipment is installed on concreted areas, patios, driveways, timber decks, lower-level roof areas or other structures, suitable covering is put in place to help prevent any marking or damage. We shall not be liable for any loss or damage to the Worksite (including damage to lower-level roofs, guttering, windows, cladding, pathways, driveways, concrete, tiles or grassed areas) unless due to our negligence.
- 21.5. You shall ensure that the nominated delivery address is cleared and ready for the installation of the Equipment prior to delivery and that the foundations upon which we are to erect the Equipment are sufficiently firm and otherwise suitable to safely carry the structure and the load to be put on it without subsidence.
- 21.6. You will be liable for any loss, costs or damages we may suffer or incur due to your failure to perform your obligations under clause 21.5.
- 21.7. If we are unable or unwilling to install the Equipment due to the site not being cleared and ready, then it shall not be considered a breach by us of this Agreement, and we shall be entitled to charge for the re-delivery of the Equipment.
- 21.8. You are responsible for providing access at any time for us to inspect the Equipment on the Worksite (wherever the Equipment may be located).
- 21.9. 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 licence that may be required by any legislation or Regulator (issued by the Scaffolding, Access and Rigging Association of New Zealand (SARNZ)) and valid for four years from being issued).
- 21.10. The WorkSafe New Zealand Notification of Particularly Hazardous Work form must be completed for scaffolding over five (5) metres high, and a copy must be provided to site management.
- 21.11. If, during the course of Hire, the Equipment is modified or removed by you to the extent the Equipment is no longer compliant with the applicable legislative requirements, any rectification that is required and performed by us will be at your expense and treated as a variation (in accordance with clause 7).
- 21.12. You acknowledge and agree that:
  - (a) our erect and dismantle quotation does not allow for subsequent visits to the site to adjust or alter the Equipment, and any additional rectification or Services will be charged as an additional cost;
  - (b) any scaffolding over or intended to extend over five metres (5m) high requires all parties intending to use the Equipment to provide a notification to WorkSafe New Zealand prior to any services commencing;
  - (c) in the event we require access to erect or alter the Equipment to any adjoining property or land to the nominated site, that is not owned by you, it is your responsibility to gain permission from the land owner to use the adjoining property throughout the erection, alteration and dismantling of the Equipment. In the event the land owner denies access or use of the land or property, you shall be liable for all costs incurred by us in gaining permission to access and use the property through any legal process that may be deemed necessary; and
  - (d) where required, a Traffic Management Plan (TMP) has been submitted to and accepted by the local authority, and a copy of the TMP is to be provided to site management.
- 21.13. It is further agreed that you shall be responsible for:
  - (a) confirming with the relevant authorities that all power cables are safe within four metres (4m) of the intended use of the Equipment prior to the Services commencing; and
  - (b) providing us with adequate access to all necessary services while at the Worksite.
- 21.14. If the Equipment or any part thereof is affixed to any land or buildings under this Agreement, and the land or buildings are or become the subject of a lien or charge (whether under the PPSA or otherwise under any law or agreement), you shall, without first receiving any request from us, provide written confirmation to the lien or charge holder (as the case may be) that:
  - (a) the Equipment and any components are not a fixture for the purposes of the lien or charge;

- (b) that the lien or charge holder will not make any claim in relation to the Equipment or any component of the Equipment; and
- (c) that the lien or charge holder will permit us (whether or not there has been any default under any agreement regarding the lien or charge) to enter upon any land or buildings to remove the Equipment.

## 22. CLIENT'S RESPONSIBILITIES

### 22.1. You agree that you shall:

- (a) maintain the Equipment as required by us (including any instructions);
- (b) notify us immediately by phone of the full circumstances of any damage or accident in connection with the Equipment (and upon giving such notice, you accept that you are not absolved from the requirements to safeguard the Equipment);
- (c) satisfy yourself prior to taking delivery of the Equipment that the Equipment is suitable for any intended purposes;
- (d) use the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by us 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 are fully licenced;
- (f) comply with all occupational health and safety laws relating to the Equipment and its use;
- (g) keep the Equipment in your possession and control and not assign the benefit of the Hire of the Equipment to any other party, take a lien over the Equipment or grant any encumbrance over the Equipment;
- (h) not move, alter or make any additions to the Equipment (including defacing or erasing any identifying mark, plate or number on the Equipment or in any other manner interfering with the Equipment);
- (i) utilise the Equipment solely for your purposes and not permit the Equipment (or any part of the Equipment) to be used by any other third party for any additional work;
- (j) ensure all overhead power lines or connections likely to cause a hazard or adversely affect the installation of the Equipment are turned off prior to the erection of any Equipment;
- (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 any illegal, prohibited or dangerous substances whilst operating on or near 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 Period, deliver the Equipment complete with all components and accessories clean and in good order (as delivered) to us fair wear and tear accepted).

### 22.2. Immediately on our request, you will pay us:

- (a) the new list price of any Equipment or accessories that are, for whatever reason, destroyed, written off or not returned to us;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by: (i) the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment; (ii) wilful or negligent actions by you or your agents; (iii) vandalism; or (iv) any use other than the ordinary use of the Equipment;
- (d) any costs incurred by us in dismantling the Equipment and returning it to our premises if you do not return the Equipment to our premises or any pre-arranged and agreed pickup location;
- (e) any lost Hire Charges we would have otherwise been entitled to for the Equipment, under this, or any other Hire Agreement;
- (f) any insurance excess payable in relation to a claim made by either party regarding any damage caused by, or to, the Hired Equipment whilst the same is Hired by you (irrespective of whether the cost is charged by your insurers or ours).

22.3. You agree to remove any furniture, furnishings or other property from the vicinity where the Services will be completed and accept that we shall not be liable for any damage caused by your failure to remove any property unless due to our negligence.

22.4. You warrant that you have sufficient funds available to honour your obligations of payment and will, on request, provide us with evidence verifying such funds through a letter of credit from your banking institution.

## 23. INSURANCE AND RISK

23.1. Notwithstanding that we retain ownership of the Equipment at all times, all risk for the Equipment passes to you on delivery until the return of the Equipment to our premises.

23.2. You accept full responsibility for the safekeeping of the Equipment and indemnify us from all loss, theft or damage to the Equipment, however caused (whether or not such loss, theft, or damage is attributable to your negligence).

23.3. You will insure (in our insurable interest) the Equipment against physical loss or damage, including accidents, fire, theft and burglary (and all other usual risks) and will affect adequate public liability insurance covering any loss, damage or injury to property arising out of the use of the Equipment. Further, you will not use the Equipment or permit it to be used in such a manner that would cause an insurer to decline any claim.

23.4. We shall be entitled to rely on the accuracy of any plans, specifications and other information provided by you to estimate quantities and the type of Equipment

required. You acknowledge and agree that if any of this information provided is inaccurate, we accept no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

23.5. In the event of damage to a building due to any action by our employees or contractors, we must be informed and have the opportunity to inspect such damage before any liability to rectify any damages can be accepted.

23.6. Any Equipment erected or dismantled by our trained and licenced employees or contractors shall be as per the manufacturers and New Zealand codes of practice requirements. You accept that we shall not be liable for any claim made in connection with the erection and dismantling of the Equipment by any third party or any third party's employees or contractors.

23.7. Managers and site supervisors shall ensure that all Equipment supplied on Hire complies with the following:

- (a) the WorkSafe good practice guidelines for Scaffolding in New Zealand;
- (b) all AS/NZS 4576:1995 Guidelines for Scaffolding;
- (c) all manufacturer's specifications; and
- (d) any engineer's design specifications.

23.8. It is further agreed that:

- (a) the supply of shrink wrap offers a manufacturer's guarantee of protection against wind and ultra-violet light and can withstand up to the manufacturer's specified tolerances; and
- (b) that when the period for Hire is complete under this Agreement and payment is not received by us when due, we reserve the right (at our sole discretion) to leave the Equipment erected until payment is received, and you shall be liable for all additional Hire Charges (in accordance with clause 6).

23.9. Where we are required to erect Equipment, you warrant that the structure of the premises upon which the Equipment is to be installed is sound and will sustain the installation. We shall not be liable for any damages or expenses caused by the premises or equipment being unable to accommodate the Equipment.

23.10. Any advice, recommendation, information, assistance or Services provided in relation to the Equipment supplied is given in good faith, are based on our knowledge and experience and shall be accepted without liability on our part. You shall be responsible for confirming the accuracy and reliability of any advice or recommendations we provide regarding using the Equipment.

## 24. NOTIFICATION OF SERVICES

24.1. You must precisely locate all unseen or underground services on the Worksite and mark the same prior to us commencing any of the Services (including electrical services, gas services, sewer services, water mains, telephone cables, fibre optic cables, or any other services that may be present on the Worksite).

24.2. You agree that we are in no way liable for any damages, expenses or fines incurred due to any unseen or underground services that are not precisely located and marked by you (in accordance with clause 24.1).

24.3. It is your responsibility to contact the local council to check if any tree located on the Worksite is protected in the council system and to obtain any required resource consent prior to the commencement of the Services (and to ensure that all parties present on the Worksite follow any applicable rules set out in the Resource Management Act 1991 (RMA)). Should you fail to obtain the required consent or ensure that all district rules are adhered to, you shall be liable for any fines imposed by any Regulator.

24.4. A tree is protected (through district rules set out in Subpart 3, section 76(4A) and (4B) of the RMA) and requires resource consent to trim, cut down or work around if the tree is:

- (a) listed as a protected tree by any district council or other Regulator;
- (b) a notable tree or it is in a significant ecological area;
- (c) protected by a condition on a previous resource consent or protected by a covenant or a consent notice on a certificate of title; or
- (d) near steep coastal cliffs, river banks or within or close to sensitive coastal or wetland areas.

24.5. You agree to be solely liable for all compliance costs associated with applying for resource consent (including a report prepared by a suitably qualified and experienced Arborist).

## 25. HEALTH AND SAFETY AT WORK ACT 2015

25.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all health and safety duties specified in Part 2 of the HSW Act, as well as all other applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.

25.2. You must notify us of any known hazards arising from your premises to which any person may be exposed, as well as inform us of any notifiable injury, illness, incident or event (as defined in Part 1, subpart 3 of the HSW Act) to ensure that your workplace is without risks to the health and safety of any person.

25.3. Each party must consult, cooperate and coordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Equipment or Services (including in connection with the delivery of the Equipment or Services).

## 26. PLANS AND SPECIFICATIONS

26.1. Where you supply us with any plans, specifications or other technical information (such as CAD drawings or any other electronic software that provides detailed and specific technical information), you shall be responsible for providing accurate data, and we shall be entitled to rely on the accuracy of any plans, specifications or other technical information supplied by you.

26.2. We are not responsible for any errors in the Equipment or Services or additional expenses caused by you supplying inaccurate plans, specifications or other technical information.

## 27. COMPLIANCE AND CONSENTS

27.1. You agree to obtain (at your expense) all approvals, consents and licences that may be required (including geotechnical data or any other reports required for the completion of the Services) and, where applicable:

- (a) you shall be responsible for applying for and obtaining the code compliance certificates for the Services; and
- (b) we shall provide you with all the necessary information to apply for code compliance certificates.

27.2. You are responsible for obtaining any consent or other authority necessary for the Services and providing that to us upon request. Where building consent is required, and you have failed to obtain it, we may lodge a building consent application as your agent at your expense.

27.3. Both parties shall comply with the provisions of all legislation and regulations (imposed by any Regulator, including any government body or other public authority) that may apply to the Equipment (including the best practice guidelines for scaffolding, edge protection, fall protection and fall through protection as outlined and published by WorkSafe New Zealand) and any WorkSafe health and safety laws relating to any other relevant safety standards or legislation relevant to the Equipment or the Services.

## 28. CONSTRUCTION CONTRACTS ACT 2002

28.1. We reserve the right to suspend the Services (in accordance with Part 2, subpart 4 of the CCA) by providing five days written notice if: (i) a claimed amount is not paid in full by the due date; (ii) if we have issued a payment claim and no payment schedule has been provided to us; or (iii) a scheduled amount is not paid in full by the due date for its payment even though a payment schedule given by you indicates a scheduled amount that you propose to pay to us.

28.2. If we suspend the Services under clause 28.1, you agree that: (i) the suspension of the Services is not in breach of this Agreement; (ii) we are not liable for any loss or damage suffered by you (or by any person claiming through you); (iii) we are entitled to an extension of time to complete the Services; and (iv) all rights in this Agreement shall remain in full force and effect (including the right to cancel the Services in accordance with clause 16).

28.3. If the Services are suspended, you acknowledge and agree that:

- (a) the suspension does not affect any rights that would otherwise have been available to us under Part 2, subpart 3 of the CCLA; and
- (b) we may exercise any rights for payments or adjudication of disputes under Part 2 and Part 3 of the CCA.

## 29. SUBCONTRACTORS AND THIRD PARTY SUPPLIERS

29.1. We may subcontract any portion of the Services but may not assign or sublet the whole of the Services without your written consent.

29.2. We, at all times, shall be responsible for:

- (a) our Subcontractor's services;
- (b) ensuring that our subcontractors have appropriate insurance in place;
- (c) obtaining applicable warranties, guarantees, certificates and records of work required from our subcontractors; and
- (d) taking all reasonable steps to ensure our subcontractors comply with health and safety legislation regarding the Services (in accordance with clause 25).

29.3. If you request and authorise us to arrange the provision of Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, this Agreement shall apply to our Services in arranging such supply, provided that we exclude all liability in connection with the supply of Services to you directly by a third party supplier. You agree to pay all Amounts Owing under this Agreement if we arrange any Services provided directly to you by a third party supplier. We offer no warranty regarding the quality of the workmanship of the third party supplier (including if their recommendations are appropriate or accurate).

## 30. LIABILITY

30.1. To the extent permitted by law, we shall have no liability whatsoever to you for any direct or indirect expense or loss of profit suffered by you arising out of a breach by us of this Agreement (including any unintentional misrepresentation made to you by us regarding any of the Equipment or Services).

30.2. To the extent permitted by law, our liability shall not exceed the Price of the Services provided by us under this Agreement.

30.3. To the extent permitted by law, our total liability under or in connection with this Agreement and the Equipment or Services is limited to, at our option:

- (a) in the case of the Equipment or Services, any one or more of the following: (i) the replacement of the Equipment or Services or the supply of equivalent Equipment or Services; or (ii) the payment of the expense of having the Equipment or Services resupplied.

30.4. If, notwithstanding clause 29, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:

- (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with this Agreement will be limited to the lesser of: (i) the Price paid by you to us for the applicable Hire of the Equipment or Services; or (ii) the actual loss or damage suffered by you; and
- (b) we will not be liable for any: (i) indirect, special or consequential loss or damage whatsoever; or (ii) loss of profits, revenue, data, goodwill, clients, opportunities or loss of or damage to reputation.

30.5. The limitations and exclusions on liability in this clause 30 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort or statute, except negligence and fraud.

30.6. In no circumstances will we have any liability whatsoever under or in connection with this Agreement:

- (a) for the acts or omissions of any third party;
- (b) any act or omissions performance in accordance with your instructions (or instructions from your authorised agents); or
- (c) to any third party.

## 31. GENERAL

31.1. Governing law: This Agreement is governed by and to be construed in accordance with the laws of New Zealand, and each party submits to the exclusive jurisdiction of the courts of New Zealand.

31.2. Entire Agreement: This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.

31.3. Priority: To the extent of an inconsistency between:

- (a) this Agreement;
- (b) all other schedules to this Agreement;
- (c) any privacy or data agreement (if applicable); and
- (d) the order of priority set out above will apply (with (a) having the highest priority).

31.4. Subcontracting: We may subcontract the performance of our obligations (including to a Related Company) on the basis that we remain solely liable to you for the performance of our obligations.

31.5. Assignment: You must not assign, novate or transfer your rights or obligations under this Agreement without our prior written consent (which may be withheld at our sole discretion). We may assign this Agreement to any other person. Without limiting the foregoing, we may assign all or part of the Amounts Owing by you to any other person.

31.6. Amendments: Except where stated otherwise in this Agreement, any amendment to this Agreement must be in writing, signed by both parties, except where we are required to make changes to ensure compliance with applicable laws, in which case we can give you notice of any such amendments required, and you will be bound by the same.

31.7. Notices: Any notice, demand or other communication to be served on a party must be in writing and sent by personal delivery, pre-paid post or email to the address of the relevant party (or otherwise notified to the other party from time to time). Any notice or other communication is deemed to be received (i) if personally delivered, on receipt, (ii) if posted by pre-paid official postal service, on the fifth Business Day after posting (or seven Business Days after posting if sent from one country to another), and (iii) if sent by email on the date and time that the email was sent (as evidenced in the sender's email sent history). Notices received after 5pm on a Business Day will be deemed received on the next Business Day.

31.8. Force majeure: We will not be liable to you for any failure or delay in performing our obligations under this Agreement where such failure or delay is caused by events or circumstances beyond our reasonable control (including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of god).

31.9. Severability: If any part of this Agreement is illegal or unenforceable, you agree that part shall be amended to the extent permitted by law to allow the enforceability of any rights, and if it is not able to be modified, then it will be severed, and all remaining rights in this Agreement will continue in full force and effect.

31.10. Waiver: A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

31.11. Termination: Either party may terminate this Agreement immediately by written notice if the other party breaches a term of this Agreement which is not capable of remedy or, where the breach is capable of remedy, fails to remedy the breach within 20 Business Days of written notice of the breach.

31.12. Survival: Any rights or obligations under or in connection with this Agreement, which is by nature a continuing obligation, will survive termination of this Agreement by either party.

31.13. Rights of third parties: This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.

31.14. Relationship: We will provide Equipment or Services to you as an independent contractor. Nothing in this Agreement creates any partnership, joint venture or employment relationship between the parties.

31.15. Non-exclusive: This Agreement is not exclusive, and you agree that there are no restrictions on us to provide any Equipment or Services to any other person.

31.16. Counterparts: This Agreement may be executed in any number of counterparts (including by electronic signature or email exchange of pdf copies), constituting one instrument.