

## 1. Interpretation

### 1.1. In these terms:

- 1.1.1. "Agreement" means these Terms together with the Rental or Sales or Services Agreement (whichever is applicable);
- 1.1.2. "Charges" means the moneys charged by the Supplier to the Client for the Equipment as specified in the Quote or the Agreement.
- 1.1.3. "Client" means that person or persons entering into this Agreement and where that person or persons enters into this Agreement for or on behalf of an entity, includes such entity. This expression also extends to those claiming under or authorised by the Client.
- 1.1.4. "Equipment" means all articles of equipment rented from or sold by the Supplier to the Client, including all portable buildings or other structures, fittings, accessories, parts and packaging pursuant to this Agreement (and includes any incidental supply of services);
- 1.1.5. "GST" means goods and services tax as defined in the Goods and Services Tax Act 1985;
- 1.1.6. "Intellectual Property Rights" means all present and future intellectual property rights of whatever nature (whether or not registered or registrable) including, but not limited to, patents, designs, copyrights, trade marks, know-how, brand names, domain names, inventions, product names, trade secrets, and any other rights subsisting in the results of intellectual effort in connection with the Equipment and/or the Services;
- 1.1.7. "Rental Agreement" means the estimate / invoice for the rental of Equipment between the Supplier and Client;
- 1.1.8. "Rental Charges" means the moneys charged by the Supplier for the Rental of the Equipment during the Rental Period". "Rental Period" means the period as defined in clause 5 of these Terms;
- 1.1.9. "PPSA" means the Personal Property Securities Act 1999;
- 1.1.10. "Supplier" means Event Base Limited (company number 2352828) trading as Pacific Portables;
- 1.1.11. "Suppliers Premises" means 12 Timothy Place, Avondale, Auckland, New Zealand
- 1.1.12. "Sales or Services Agreement" means the estimate / invoice for the

- Sale of Equipment between the Supplier and Client;
- 1.1.13. "Services" means all services provided by the Supplier or its assignees, subcontractors, employees or agents, in connection with the Equipment or the Agreement, including (but not limited to) , design, installation, construction, dismantling, labour and transportation thereof.
- 1.1.14. "Terms" means these Terms and Conditions .
- 1.1.15. "Warranty Terms" means the warranty terms accompanying this agreement.

## 2. Acceptance

- 2.1. These Terms apply to all Equipment rented or sold and to Services provided by the Supplier to the Client.
- 2.2. The Client shall be deemed to have accepted these Terms once they have signed or accepted (including by email or conduct) the Rental Agreement or Sales Agreement.
- 2.3. The Client acknowledges and agrees that: (a) no employee or agent of the Supplier may make any representation, warranty or promise in relation to the Equipment other than as contained in the Agreement; and (b) they have determined the Equipment fit for the purpose for which it is required; (c) they have not relied on the skill and judgment of the Supplier in selecting the Equipment; and (d) they have checked the Equipment for suitability, functionality and completeness.

## 3. Authority of Signatory

- 3.1. If the Client is not an individual, the person signing the Agreement for and on behalf of the Client warrants that they have the authority to enter into the Agreement on the Client's behalf and bind the Client to the Agreement. The person signing hereby indemnifies the Supplier against all losses and costs that may be incurred by the Supplier arising out of the person signing the Agreement failing to have such power or authority.

## 4. Charges for Rentals, Sales, and/ or Services

- 4.1. Rental Charges for Equipment Rentals are set out in the Rental Agreement. Sale prices for sales of Equipment are set out in the Sale Agreement. The charges for the Services are set out in the relevant Sales or Services Agreement with the Client (together the "Charges").
- 4.2. The Supplier may at any time increase the Charges to reflect any increase in the cost to the Supplier in the provision

- of the Equipment or Services or the installation of the Equipment including but not limited to costs which are due to (a) any factor beyond the control of the Supplier (such as, without limitation, any change in customer requirements, supplier costs, foreign exchange fluctuation, currency regulation, alteration of duties, site specific or resource consents, significant increase in the cost of labour, materials or other costs of accessories requested); (b) any change to the scope of the Services requested by the Client (such as, without limitation, any change in delivery dates, quantities/ structures or specifications); (c) any additional costs incurred by the Supplier due to failure of the Client to give the Supplier adequate information or instructions; (d) unforeseen site conditions or access that makes the delivery, Services, relocation and/or removal of the Equipment more complex than anticipated by the Supplier.
- 4.3. The Client must pay the Charges as specified the Sale Agreement or Rental Agreement or otherwise in the Supplier's invoice in full, without deduction or set-off (unless expressly permitted in these Terms).
- 4.4. Unless otherwise agreed in writing, in relation to Sales, a booking deposit payment of 50% of the total quote (or such higher amount as the Supplier requires) must be provided by the Client to the Supplier immediately upon the Client's acceptance of the quote. This amount shall be offset against the total Charges. In relation to a Rentals, a booking deposit of the first month rental Charges and 50% of the costs of the Services (or such higher amount the Supplier requires) must be provided by the Client to the Supplier immediately upon the Client's acceptance of the quote.
- 4.5. Unless agreed otherwise in writing, any quotes for the supply of Equipment or Services, or renting Equipment, or Services is an estimate only and based on information supplied by the Client to the Supplier. The Client shall be responsible for the accuracy of any information upon which the quotation is based.
- 4.6. The Client agrees to pay the Supplier any GST and any other taxes, duties or other levies applicable in respect of the Equipment or Services provided by the Supplier. All GST shall be payable on the due dates for payments relating to

- any Equipment or Services as set out in the invoice(s).
- 4.7. All invoices are due and payable within seven days of the date of the invoice, unless otherwise specified on the relevant Rental Agreement, Sales Agreement or the invoice.
  - 4.8. If the Client defaults in payment of any invoice when due, the Client will be responsible for, and indemnifies the Supplier for, all legal costs and disbursements calculated on a solicitor client basis and any and all costs incurred by the Supplier in recovering the amount owing by the Client to the Supplier.
  - 4.9. If the Client defaults in payment of any invoice by the due date, without prejudice to the Suppliers other remedies under this Agreement, at law or otherwise, the Supplier may:
    - 4.9.1. Stop the further supply of any additional Equipment or Services
    - 4.9.2. Terminate the rental of the Equipment and repossess the Equipment under this agreement
    - 4.9.3. Charge the Client interest on any sum owing at a rate of 3% per month or part month from the Due Date until such time that it is paid in full
  - 4.10. The Client is responsible for payment of all costs relating to freight or delivery of Equipment unless otherwise agreed with the Supplier beforehand in writing. The Supplier may charge for any travel costs to collect any Equipment the Client wishes to no longer rent from the Supplier, or otherwise at the end of a Rental Period.
  - 4.11. The Supplier is not responsible for any costs incurred from inaccurate measurements or inaccurate information given by the Client to the Supplier, for the purpose of quantifying, pricing or supplying Equipment and Services.
  - 4.12. The Client shall be liable for payment of any costs associated with engineering reports or other inspections required, including any building or resource consents.
  - 4.13. Total Charges may not necessarily be final. The Client agrees to pay any shortfall in charges to the Supplier and shall receive a refund for any overcharges acknowledged by the Supplier.
- 5. Equipment Rental**
- 5.1. Equipment may be supplied for rent for the Rental Period specified in the Rental Agreement and must be returned (or if collection is agreed, made available for collection) at the end of that Rental Period at the cost of the Client. The Client must give notice in writing at least 30 days prior to the expiration of the Rental Period if they will be returning the Equipment. The Client must return the Equipment to the Supplier, or ensure it is ready for pick-up if arranged with the Supplier, in good working order, fair wear and tear excluded.
  - 5.2. If all or part of the Equipment supplied for rent to the Client is not returned at the end of the Rental Period, it will automatically extend periodically on a monthly basis unless one of the below applies:
    - 5.2.1. The Client requests in writing, and the Supplier agrees, to extend the Rental Agreement for a specific period that may be more or less than one month. ; or
    - 5.2.2. The Client gives the Supplier 30 days notice to return the Equipment or otherwise arrange for the Supplier to collect the Equipment, in each case, at the Client's cost; or
    - 5.2.3. The Client requests to purchase the Equipment, and the Supplier agrees, for a purchase price determined by the Supplier payable by the Client at the end of the Rental Period or at such time as mutually agreed between the parties.
  - 5.3. Charges are calculated at the rate specified in the Rental Agreement, with a week being charged as seven days, unless otherwise stated by the Supplier.
  - 5.4. Charges under a Rental Agreement will be invoiced every four weeks, unless otherwise stated by the Supplier
  - 5.5. A minimum Rental Period for the Equipment of 12 months will apply unless otherwise stated by the Supplier
  - 5.6. Subject to clause 5.1, Charges are payable for the Equipment by the Client from the commencement of the Rental Period as calculated in accordance with clause 5.3 to the end of the Rental Period calculated in accordance with clause 5.8.
  - 5.7. Notwithstanding the Rental Period specified in the Rental Agreement, the Rental Period commences at the earlier of: (a) The agreed date of collection or delivery of the Equipment; or (b) The time the Equipment leaves the Supplier's Premises whether by collection or delivery, whichever is the earlier.
  - 5.8. The Rental Period ends at: (a) the agreed date of return or collection of the Equipment specified in the Rental Agreement (subject to clause 5.2); or (b) if the Equipment is lost, subject to clause 5.9 the time the Equipment is recovered and returned to the Supplier or replaced by an equivalent or comparable item of equipment and is available for Rental by the Supplier; or (c) if the Equipment is damaged, subject to clause 5.9, the time the Equipment is repaired and is available for rent; or (d) if the Equipment is destroyed, subject to clause 5.9, the time the Equipment is replaced by an equivalent or comparable item of Equipment and is available for Rental by the Supplier, whichever is the later.
  - 5.9. If the Equipment is lost, damaged or destroyed, the Rental Period shall end no later than eight (8) weeks after the agreed date for the return of the Equipment (provided that the Client will remain liable for any loss, damage or destruction).
  - 5.10. Cleaning fees will be assessed and charged if the Client returns the Equipment that the Supplier deems (in its sole discretion) to be dirty.
- 6. Equipment Sale**
- 6.1. The price for the Sale of the Equipment is payable by the Client prior to the Equipment leaving the Supplier's Premises.
  - 6.2. Subject to the express terms of the Agreement, where delivery and/or collection of the Equipment has been arranged by the Supplier; (a) Minimum delivery and transportation charges apply, which shall be shown on the Rental Agreement or Sales or Services Agreement. The Supplier reserves the right to increase transportation charges due to, without limitation, increased driver waiting time and/or access difficulties. (b) The costs of transportation shall be paid by the Client (without any set-off) and shall be due on the date for payment of the Rental Charges or such other costs as specified on the relevant invoice.
  - 6.3. If delivery and collection by the Supplier has been agreed, the Client shall ensure free access to the delivery site by the Supplier. In the event of any delays due to free access being unavailable the Client shall reimburse the Supplier for all associated lost Rental Charges. The Client shall also be responsible for any other expenses and costs incurred by the Supplier related to delays in access to the delivery site including time incurred by the Suppliers employees and contractors during delivery. The risk of Equipment security is transferred to the Client from the time the Equipment leaves the Suppliers Premises.
- 7. Delivery & Transportation of Equipment**
- 7.1. The Supplier will use its reasonable endeavours to supply the Equipment and provide the Services by the delivery date specified, however, the Supplier will not be liable for any costs, losses, damages or claims relating to any failure or delay in supply, and the Client will not be able to terminate this agreement or

- any agreement with the Supplier due to any failure or delay in supply. If the Supplier is unable to supply the Equipment or Services as agreed solely due to any action or inaction of the Client then the Supplier will be entitled to charge a reasonable fee for re-supplying the Equipment or Services at a later time and date.
- 7.2. Where transportation is provided by the Supplier (or its contractors), the Supplier will be responsible for the Equipment while in transport until it is delivered to the Client's site and will arrange insurance for such Equipment. To the extent that Supplier's liability is not otherwise limited or excluded, and to the maximum extent permitted by law, the Supplier's aggregate liability to the Client in relation to any damage, loss or claim in relation to the Equipment while in transport will be the amount recovered by the Supplier under such insurance..
- 7.3. Unless transportation is provided by the Supplier (or its contractors), the Supplier shall not be liable for any loss or damage to the Equipment caused during transportation, howsoever caused (unless the loss or damage is intentionally caused by the Supplier) or failure by the Supplier to deliver the Equipment (or part of it) promptly. The Supplier may deliver the Equipment in separate deliveries each of which is deemed to be a delivery for the purposes of the Agreement.
- 7.4. Unless transportation is provided by the Supplier (or its contractors), all transportation of Equipment or transportation of Client's equipment is at the Client's own risk. Unless transportation is provided by the Supplier (or its contractors), the Client accepts full responsibility for the Equipment and the Client's own equipment during transport and indemnifies the Supplier for all loss or damages incurred by the Supplier howsoever incurred arising from this transport, and for all loss, theft, or damage to the Equipment or the Client's equipment howsoever incurred. Without limiting the generality of the foregoing, this indemnity will apply whether or not such loss or damage, or loss, theft or damage is attributable to any negligence, failure or omission of the Supplier or its contractors. Unless transportation is provided by the Supplier (or its contractors), the Client is responsible for insuring the Equipment (and it's own equipment) during transportation.

## 8. Inspection

- 8.1. The Supplier reserves the right to inspect the Equipment during the Rental Period at any time.
- 8.2. The Client shall inspect the Equipment on collection or delivery and shall notify the Supplier by calling the telephone number provided on the Rental Agreement or Sale or Services Agreement as soon as reasonably possible of any alleged defect or failure. Unless the Client complies with this, the Equipment shall be deemed to have been accepted in good order and condition and compliant with those specifications and descriptions set out in the Agreement.
- 8.3. No claims for any credits shall be accepted by the Supplier after seven (7) days of the commencement of the Rental Period.
- ### 9. Rented Equipment Damage and Maintenance of Rented Equipment
- 9.1. The Client shall be held liable in the event of theft, loss and/ or damage to the Equipment during the Rental Period.
- 9.2. The Client shall take proper care of the Equipment and shall only use it in suitable weather conditions for the purpose for which it has been designed and shall not attempt to alter, repair, relocate, modify or clean the Equipment outside of the maintenance instructions provided.
- 9.3. The Client is provided with a maintenance checklist for the Equipment which must be followed by the Client and evidence provided on request to the Supplier of the maintenance checks, unless it has been agreed in writing between the Client and Supplier that the Supplier will provide regular maintenance checks at the price and intervals specified in the Rental Agreement.
- 9.4. The Client is expressly prohibited from cooking directly under any structure or canopy which may be included in the Equipment.
- 9.5. In the event of any damage to the Equipment, the Client shall: (i) Immediately notify the Supplier by telephone; (ii) return the Equipment or make arrangements with the Supplier to have the Equipment collected; (iii) not attempt to repair the damage and expressly agrees not to use nails, staples or glue or any other similar repair item on the Equipment; (iv) be liable to the Supplier for the sum equivalent to the cost of making good the damage whether by repair or replacement.
- 9.6. In the event of loss or destruction of the Equipment the Client shall pay to the Supplier the sum equivalent to the cost of replacing the lost Equipment. In the

event of breakdown of the Equipment; (i) the Client must immediately notify the Supplier by telephone at the number provided in the Rental Agreement; (ii) the Supplier shall not be liable for any loss suffered by the Client or liability incurred by the Client as a result of the breakdown howsoever caused. (iii) Notwithstanding the foregoing any liability the Supplier may have to the Client under the Agreement, under law or in equity shall be limited to the amount equivalent to the total Charges due under the Agreement.

- 9.7. At the end of the Rental Period, the Client shall ensure that the Equipment is complete and in good order as delivered or collected, fair wear and tear accepted. The Client shall not pledge the Supplier's credit for repairs or create a lien over the Equipment in respect of any repairs. In the event the Equipment is returned in a worse condition than can be accounted for by fair wear and tear, the Supplier may charge the Client for cleaning, reconditioning, renewing or replacing the Equipment as it considers necessary.

## 10. Relocation

- 10.1. Any relocation of the Equipment supplied to the Client for Rent, must be performed by the Supplier unless the Supplier otherwise consents in writing, and if the Supplier consents, then the relocation will be undertaken at the Client's risk and in accordance with the terms and conditions set out in the Supplier's written consent.
- 10.2. The Client must give at least 72 hours notice to the Supplier requesting to relocate the Equipment.
- 10.3. If the Client requires the Equipment to be moved, the Equipment must be immediately ready for removal or relocation at the time specified by the Supplier. The Client indemnifies the Supplier for any cost or loss incurred from the Equipment not being ready for relocation at that specified time.
- 10.4. All relocation works by the Supplier will be quoted and invoiced at standard delivery rates, notified to the Client at the time of the request.

## 11. External Fixtures including Branding/ Signage

- 11.1. The Client must not place or allow any other party to place any branding or signage or affix anything externally to the Equipment rented from the Supplier without the Suppliers written consent.

## 12. PPSR

- 12.1. The Client acknowledges that title to the Equipment supplied for rent from the Supplier to the Client, remains with the Supplier at all times.

- 12.2. Equipment purchased from the Supplier remains the property of the Supplier until the Client has paid all Charges in full then owing from the Client to the Supplier.
- 12.3. The Client agrees that the Rental of the Equipment does, and that the acquisition of the Equipment does, create a security interest in the Equipment in favour of the Supplier to secure the full payment of all moneys payable to the Supplier and the performance by the Client of all of its other obligations to the Supplier. This Agreement constitutes a security agreement for the purposes of the PPSA and the provisions of clauses 12.4 to 12.6 apply. Unless otherwise defined in the Agreement, all terms in this clause 12 have the meaning given to them in the PPSA and section references are sections to sections of the PPSA.
- 12.4. On the request of the Supplier, the Client shall promptly execute any documents, provide all necessary information and do anything else required by the Supplier to ensure that the security interest created under the Agreement constitutes a perfected security interest in the Equipment and their proceeds which will have priority over all other security interests in the Equipment.
- 12.5. The Supplier may allocate all amounts received by the Client in any manner it determines including any manner required to preserve any purchase money security interests in the Equipment.
- 12.6. The Client will pay to the Supplier all fees and expenses incurred by the Supplier in relation to the filing and maintenance of a financing statement in connection with the Agreement.
- 12.7. The Client waives its rights under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 148 of the PPSA.
- 12.8. Nothing in this clause 12 affects the Supplier's rights as an unpaid seller in relation to Equipment purchased from the Supplier.
- 13. Sale of Equipment Warranty and Claims**
- 13.1. To the maximum extent permitted by law and otherwise in accordance with our Warranty Terms (including the limitations set out in our Warranty Terms), the Supplier warrants that all new Equipment manufactured and/or built by the Supplier, , are warranted against faulty workmanship or materials for thirty (30) days and agrees to replace or repair the same at its cost (excluding travelling costs and expenses), subject to the limitations contained in the Agreement and the Warranty Terms.
- 13.2. Proprietary articles supplied as part of the Equipment Sale are subject only to the warranty given by the manufacturers of the Equipment.
- 13.3. The Supplier is not responsible for any damage whatsoever caused either to the Equipment supplied or as a result of the malfunction of the Equipment if:
- 13.3.1. The Equipment is fitted by unqualified tradespersons or are fitted in an unprofessional manner; or
- 13.3.2. The instructions for operating or maintaining the Equipment have not been complied with; or
- 13.3.3. The Equipment is adapted to a use for which it is not specifically intended; or
- 13.3.4. The Equipment is added to or repaired using components not recommended or approved by the manufacturer; or
- 13.3.5. The Equipment is improperly stored or transported; or
- 13.3.6. The damage is as a result of fair wear and tear, lack of lubrication, dirt, misuse, neglect or accident.
- 13.4. Without restricting the limitations of liability contained elsewhere in the Agreement, the Suppliers liability in relation to the supply of the Equipment is limited to the Charges in respect of which such liability arises.
- 13.5. The warranties contained in this clause will be effective only where the Client has complied with its payment obligations under these terms and to the fullest extent permitted by law, this warranty shall be the Client's sole remedy against the Supplier.
- 14. Re-sale of Equipment/ Buy-back**
- 14.1. If the Equipment includes any structures, including, a Portable Building unit, Truss System or Marquee System, the Client agrees as follows:
- 14.2. That if the Client wishes to -on sell any Structures provided by the Supplier, they will first offer the Supplier and its licensees the first right to purchase that Equipment at either: (a) a price agreed between the parties, or (b) if no price can be agreed within 30 business days of the Client's notice of its intention to sell, at price being no greater than the Client paid for the Buy-Back Equipment, less depreciation (based on a straight-line depreciation) and as determined by the Supplier (acting reasonably).
- 14.3. If the Supplier and its licensees elect to not take up the offer set out in clause 14.2, the Client must not sell any Structures to any third party at a lower price than that offered to the Supplier without first offering to sell the Structures to those entities at such a lower price.
- 15. Default**
- 15.1. (a) If the charges are not paid for in accordance with the Agreement; or (b) The Supplier reasonably believes that a third party may attempt to take possession of the Equipment; or (c) Any other event occurs which is likely to adversely affect the Clients ability to pay the charges (including but not limited to the appointment of a receiver, administrator, liquidator or similar person to the Client's undertaking); then the Supplier may at any time thereafter, without notice to the Client and without prejudice to any other rights which it may have against the Client, terminate the Agreement and collect the Equipment (at the cost of the Client).
- 16. Right to Enter Premises**
- 16.1. In the event of any of the circumstances referred to in clause 15, the Client: (a) Authorises the Supplier, its agents or representatives at all times without notice to enter onto and at all necessary time(s), to remain in and on any premises where the Equipment is located in order to collect the Equipment without being liable in anyway for trespass; and (b) assigns to the Supplier all the Clients rights to enter onto and remain in and on such premises until the Equipment has been collected.
- 17. Obligations**
- 17.1. The Client shall be responsible for:
- 17.1.1. Determining that the Equipment is suitable for its requirements.
- 17.1.2. Ensuring that the Equipment is used in a proper manner and only for the purposes for which it was designed.
- 17.1.3. Undertaking to arrange at their own expense all permits, licences, consents or other requirements of the relevant local authorities, Government department or agency or other statutory body relating to the storage, installation, use and dismantling of Equipment and further undertakes to indemnify the Supplier against any loss or fine imposed on the Supplier as a result of any alleged or actual non-compliance with this clause or any term or condition of any such permit, licence or consent.
- 17.1.4. The Client shall not make any alterations to the Rental Equipment.
- 17.1.5. At all times upon the request of the Supplier the Client shall advise the Supplier of the whereabouts of the Equipment and allow the Supplier access to inspect the Equipment.
- 17.1.6. The Client acknowledges that:

- 17.1.7. The Supplier does not warrant or represent the suitability of any Equipment or Service for the Client's use;
- 17.1.8. The Client shall be responsible for ensuring that any instructions, applicable standards, guidelines and code of practice(s), applications and installation methods are followed and/or warnings observed;
- 17.1.9. Where the Supplier is installing Equipment for the Client, the Client shall provide the Supplier with all required information about the environment including an underground plan showing drainage, water, and electrical power services and any Health and Safety notifications. If the Client does not provide the relevant information or a plan, then the Supplier will not be responsible for any damages to the services.
- 17.1.10. The Client must ensure that all foundations are in a condition to withstand the planned pressure from the base of the Equipment in accordance with all current standard and regulations
- 17.1.11. The Supplier makes every effort to ensure that all structures areas are as waterproof and weatherproof as practicable, however, the Supplier will not be responsible for any damage or inconvenience caused as a result of water or weather entering into the Equipment.
- 17.1.12. While the Supplier will use all methods available at the time, the Client understands that due to Health & Safety risks, Equipment may not be used in adverse weather conditions. It is the Client's responsibility to have an alternative plan if the weather does not permit for the Equipment to be safely used. The Supplier is in no way responsible for losses or delays caused by or resulting from extreme weather conditions.
- 17.1.13. If any recommendation or advice has been given by Supplier, the Supplier will not be responsible for the actual implementation of the recommendation or the advice or actions or performance of the Client.

## 18. Suppliers Liability and Warranties

- 18.1. The Client shall accept full responsibility for and shall indemnify the Supplier against all claims for injury to persons and/or damage to property caused by, or in connection with or arising out of, the use, erection, dismantling, storage or transportation of Equipment however arising including the negligence of third parties and against all costs and charges

- in connection with such claims whether arising under statute or common law.
- 18.2. The Client shall accept full responsibility for the safekeeping of the Equipment and shall indemnify the Supplier for all loss, theft or damage to the Equipment.
- 18.3. The Supplier will not be liable for failure to deliver the Equipment on a specific date or within a specified time from receipt of the order.
- 18.4. Any drawings, designs or specifications which the Supplier provides to the Client in connection with the Agreement do not constitute a warranty or guarantee on the practicability, efficacy or safety of anything derived from those drawings, designs or specifications. The Supplier will not be responsible for the cost of any additional work caused by defects in such drawings, designs or specifications.
- 18.5. The Supplier will not be liable for any consequential loss or damage caused directly or indirectly by the Equipment or any defects in any drawings, designs or specifications which the Supplier provides.
- 18.6. To the extent allowed by law, the Supplier has no liability (whether statutory, in contract or tort (including negligence), or howsoever) to the Client for any physical, direct or indirect damage, economic loss of any kind, and any other loss or costs, (including legal and solicitor/client costs) caused or contributed to by the Supplier in respect of any Equipment or services supplied to the Client. Without limiting the foregoing, the Supplier also has no liability or responsibility for any failure by the Client to meet its obligations under these terms and conditions or to ensure that the Equipment is used in accordance with any instructions issued.
- 18.7. To the extent that Supplier's liability is not otherwise limited or excluded, and to the maximum extent permitted by law, the Supplier's aggregate liability to the Client whether in tort, contract, at law (including for a misrepresentation) or otherwise for any loss damage or injury in relation to the Equipment or the Services is limited to: (a) in relation to a Sale or Services provided in relation to a Sale, the Charges actually paid by the Client; or (b) in relation to a Rental or Services provided in relation to a Rental, 6 months of Rental Charges.
- 18.8. Despite anything else contained in these Terms and to the maximum extent permitted by law:
- 18.8.1. the parties agree and acknowledge that if the Equipment and Services are supplied or acquired in trade within the meaning of the Fair Trading Act 1986, that sections 9, 12A,

and 13 of the Fair Trading Act 1986 will not apply to the agreement between us, and that it is fair and reasonable to exclude their application;

- 18.8.2. the parties agree and acknowledge that if they are both in trade, and that the Equipment and Services are supplied or acquired in trade, that the provisions of the Consumer Guarantees Act 1993 will not apply to the agreement between us, and that it is fair and reasonable to exclude their application;
- 18.8.3. the parties agree and acknowledge that the provisions of Part 3 of the Contract and Commercial Law Act 2017 will not apply;
- 18.8.4. to the fullest extent permissible by law, all warranties, conditions or other terms implied by law are excluded unless these Terms expressly provide or the parties agree otherwise in writing; and
- 18.8.5. for the purposes of this clause the Client acknowledges that it had a reasonable opportunity to review these Terms, discuss them with the Supplier, and receive advice from its legal advisor, if it wished to do so.
- 18.9.

## 19. Title and Risk

- 19.1. The Client acknowledges and accepts that for the duration of the Rental Period: (a) the Supplier retains title to the Equipment; (b) the Equipment is possessed by the Client merely as bailee; (c) the Client has no right to agree, attempt, offer or support to sell, assign, sublet, pledge, mortgage, let on Rental or otherwise part, assign, part with the personal possession of or otherwise deal with the Equipment; (d) all responsibility lies with the Client for safekeeping of the Equipment for the Rental Period and the Supplier is therefore indemnified against 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 by the Client; (e) the Supplier accepts no liability for any claims in respect of any injury to persons or damage to property arising out of use of the Equipment however caused; (f) the Client shall be responsible for any permits that may be required to operate the Equipment and hereby indemnifies the Supplier from any penalties or other obligation incurred due to the Client's failure to obtain or comply with any such permit; (g) the Client shall be liable for any costs or penalties due to the Equipment creating an obstruction

including without limitation any local authority fines, towage costs, seizure or impoundment costs during the Rental Period.

- 19.2. Notwithstanding clause 19.1 above, risk of any loss or damage to all Equipment due to any cause whatsoever shall be borne by the Client from the time the Equipment leaves the Suppliers premises. The Client is responsible for ensuring they have adequate insurance that follow the following requirements (a) broad form public liability insurance for at least \$10 million per occurrence (b) property insurance to cover the full replacement cost of all of the Supplier's Equipment on Rental and will on request have the Supplier added to the insurance policy as "joint insured".
- 19.3. The Client must provide proof of insurance on request by the Supplier for all Equipment.
- 19.4. The Client acknowledges that when Equipment is sold to the Client, the risk is transferred to the Client at the time the Equipment leaves the Suppliers Premises.
- 19.5. The Client acknowledges and accepts that when the Equipment is sold to the Client as part of a Sales or Services Agreement, notwithstanding the passing of risk, title to the Equipment shall remain with the Supplier until the Client has all charges in full then owing from the Client to the Supplier.

## **20. Privacy Act 2020**

- 20.1. In the case of a person entering into the Agreement in a private capacity as Client, the Client by entering into the Agreement hereby authorises the disclosure of personal information regarding their creditworthiness by any other party to the Supplier and that this personal information may be used by the Supplier to advise the Client of the Supplier's other Equipment and services. The Client has rights of access to and correction of personal information contained in this contract subject to the provisions of the Privacy Act 2020.

## **21. Additional Clauses:**

- 21.1. Failure by the Supplier to insist on strict performance of any term(s) of the Agreement shall not constitute a waiver of any of the Suppliers rights or remedies and is not a waiver of any subsequent breach or default by the Client
- 21.2. The Agreement is personal to the Client and neither the Agreement nor any rights arising under it may be assigned by the Client.
- 21.3. If any provision in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity of the

remaining provisions shall not be affected,

- 21.4. All Equipment and Services supplied by the Supplier are subject to the laws of New Zealand and the Supplier takes no responsibility for changes in the law, which affect the Equipment or the Services supplied.
- 21.5. The Supplier shall not be responsible for any breach of the Agreement due to any matter or thing beyond its control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, industrial action, war, riot or civil commotion, the intervention of public authority or accident).
- 21.6. Ownership in all Intellectual Property Rights is retained by the Supplier or its licensee, unless specifically released in writing (by the Supplier or its licensee) and after all charges have been paid.