
Safe Hire Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Safe Hire Limited”** means Safe Hire Limited, its successors and assigns or any person acting on behalf of and with the authority of Safe Hire Limited.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Safe Hire Limited to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 **“Equipment”** means all Equipment (including but not limited to, telehandlers, scaffolding, forklifts, ladders, temporary fencing, barriers, cherry pickers, scissors lifts and/or any accessories that may also include the erection, dismantling and/or transport of said Equipment plus any cargo together with any container, packaging, or pallet(s) to be handled, lifted and/or carried by Safe Hire Limited for the Client.) supplied on hire by Safe Hire Limited to the Client (and where the context so permits shall include any supply of **“Services”**). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Safe Hire Limited to the Client.
- 1.5 **“Goods”** means all Goods or Services supplied by Safe Hire Limited to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.6 **“Minimum Hire Period”** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, as outlined in clause 8.1 or any other forms as provided by Safe Hire Limited to the Client.
- 1.7 **“Worksite”** means the location/s at which the Equipment is to be operated.
- 1.8 **“PPSA”** means the Personal Property Securities Act 1999 as amended from time to time.
- 1.9 **“PPSR”** means the Personal Property Securities Register established under the PPSA.
- 1.10 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.11 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.12 **“Business Day”** means Monday to Friday 8.00am-5.00pm for normal business to be conducted, excluding a Saturday, Sunday or public holiday. Outside of these trading hours will be subject to overtime rates (normal hourly rate plus overtime rate) or penal rates (Public Holiday)
- 1.13 **“Charges”** means the Charges payable for the Goods/Equipment hire (plus any Goods and Services Tax (“GST”) where applicable) as agreed between Safe Hire Limited and the Client in accordance with clause 7 below.

2. Interpretation

- 2.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
- (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
- (c) the words ‘include’ and ‘including’, and any variants of those words, will be treated as if followed by the words ‘without limitation’; and
- (d) a reference to dollars (\$), is a reference to New Zealand currency; and
- (e) this Contract is not to be interpreted against Safe Hire Limited merely because they prepared this Contract; and
- (f) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
(i) Terms and Conditions of Trade; and
(ii) any schedules.
- (g) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. Acceptance

- 3.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by this contract if the Client places an order for Equipment, or accepts Delivery.
- 3.2 A waiver of the Client’s obligations hereunder is ineffective, unless it is in writing and is verified and signed by a duly appointed officer of Safe Hire Limited.
- 3.3 The Client acknowledges that the supply of Equipment on credit shall not take effect until the Client has completed a credit application with Safe Hire Limited and it has been approved with a credit limit established for the account.
- 3.4 In the event that the supply of Equipment request exceeds the Client’s credit limit and/or the account exceeds the payment terms, Safe Hire Limited reserves the right to refuse delivery. NO credit will be extended to overdue accounts.

Safe Hire Limited – Terms & Conditions of Trade

- 3.5 Where the Client requesting or organising Safe Hire Limited to provide Services is acting on behalf of any third party and that third party is intended to be responsible for the payment of the Charges then in the event that the third party does not pay for the Services when due, the Client acknowledges that they shall be liable for the payment of the Charges as if they had contracted the Services on their own behalf.
- 3.6 None of the Equipment shall be sublet or cross-hired by the Client. The Client shall not assign or transfer its interest in the Contract, or part with possession of all, or any portion, of the Equipment, without the prior written consent of Safe Hire Limited, which may be arbitrarily withheld.
- 3.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Credit and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that Safe Hire Limited shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Safe Hire Limited in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Safe Hire Limited in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Safe Hire Limited; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Authorised Representatives

- 5.1 Unless otherwise limited as per clause 5.2 the Client agrees that should the Client introduce any third party to Safe Hire Limited as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services or Goods on the Client's behalf and/or to request any variation to the works on the Client's behalf (such authority to continue until all requested works have been completed or the Client otherwise notifies Safe Hire Limited in writing that said person is no longer the Client's duly authorised representative).
- 5.2 In the event that the Client's duly authorised representative as per clause 5.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Safe Hire Limited in writing of the parameters of the limited authority granted to their representative.

6. Change in Control

- 6.1 The Client shall give Safe Hire Limited not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Safe Hire Limited as a result of the Client's failure to comply with this clause.

7. Charges and Payment

- 7.1 At Safe Hire Limited's sole discretion the Charges shall be either:
- (a) as indicated on any invoice provided by Safe Hire Limited to the Client; or
 - (b) Safe Hire Limited's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 Safe Hire Limited reserves the right to change the Hire Charges:
- (a) if a variation to the Goods/Equipment which is to be supplied is requested; or
 - (b) where Equipment becomes unavailable and Safe Hire Limited is required to temporarily source Equipment from external sources; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the Worksite, availability of Equipment, safety considerations etc) which are only discovered on commencement of the Services;
 - (d) in the event of increases to Safe Hire Limited in the cost of labour or materials, or foreign exchange fluctuations, which are beyond Safe Hire Limited's control.
- 7.3 At Safe Hire Limited's sole discretion a non-refundable deposit may be required.
- 7.4 Time for payment for the Goods/Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by Safe Hire Limited, which may be:
- (a) on Delivery of the Goods/Equipment;
 - (b) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Safe Hire Limited.
- 7.5 At the agreement of both parties, payment of the Charges may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Charges. The Client shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with sections 18A to 18I of the Construction Contracts Act 2002.
- 7.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and Safe Hire Limited.
- 7.7 Safe Hire Limited may in its discretion allocate any payment received from the Client towards any invoice that Safe Hire Limited determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Safe Hire Limited may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Safe Hire Limited, payment will be deemed to be allocated in

Safe Hire Limited – Terms & Conditions of Trade

such manner as preserves the maximum value of Safe Hire Limited's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.

- 8.8 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by Safe Hire Limited nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by Safe Hire Limited is a claim made under the Construction Contracts Act 2002.
- 8.9 Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Client must pay to Safe Hire Limited an amount equal to any GST Safe Hire Limited must pay for any supply by Safe Hire Limited under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

8. Hire Period

- 8.1 Hire charges shall commence from the time the Equipment is collected by the Client from Safe Hire Limited's premises and will continue until the return of the Equipment to Safe Hire Limited's premises, or as specified in the specified Hire Period as follows:
- (a) Half Day – four (4) hours or overnight providing the Equipment is collected after 4pm and returned by 8.30am the following day with a maximum usage time of four (4) hours.
 - (b) Daily – twenty four (24) hours with a maximum usage time of 8 hours. Should the current Weekly rate be lesser than the accumulated daily rate, then the Weekly hire rate will apply.
 - (c) Weekly – shall mean five (5) consecutive days with a maximum usage time of fifty six (56) hours.
 - (d) Monthly – shall mean one (1) calendar month with a maximum usage time of one hundred and eighty (180) hours.
 - (e) Weekend – shall be as agreed with Safe Hire Limited, otherwise daily hire rates will apply.
- 8.2 If Safe Hire Limited agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves Safe Hire Limited's premises and continue until the Client notifies Safe Hire Limited that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 8.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 8.4 If the Client wishes to de-hire the Equipment at an earlier date than was originally agreed, then Safe Hire Limited reserves the right to charge the Client at the applicable rate for the actual Hire Period used and any long term discount previously applied will be void.
- 8.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Safe Hire Limited confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies Safe Hire Limited immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

9. Delivery of Goods/Equipment

- 9.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at Safe Hire Limited's address; or
 - (b) Safe Hire Limited (or Safe Hire Limited's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 9.2 At Safe Hire Limited's sole discretion the cost of Delivery is either included in the Charges or is in addition to the Charges.
- 9.3 Safe Hire Limited may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 9.4 Any time specified by Safe Hire Limited for Delivery of the Goods/Equipment is an estimate only. The Client must take Delivery by receipt or collection of the Goods/Equipment whenever they are tendered for Delivery. Safe Hire Limited will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods/Equipment as arranged then Safe Hire Limited shall be entitled to charge a reasonable fee for redelivery and/or storage.

10. Risk to Goods/Equipment

- 10.1 Risk of damage to or loss of the Goods/Equipment passes to the Client on Delivery and the Client must insure the Goods/Equipment on or before Delivery.
- 10.2 If any of the Goods/Equipment are damaged or destroyed following Delivery but prior to ownership passing to the Client, Safe Hire Limited is entitled to receive all insurance proceeds payable for the Goods/Equipment. The production of these terms and conditions by Safe Hire Limited is sufficient evidence of Safe Hire Limited's rights to receive the insurance proceeds without the need for any person dealing with Safe Hire Limited to make further enquiries.
- 10.3 If the Client requests Safe Hire Limited to leave Goods/Equipment outside Safe Hire Limited's premises for collection or to deliver the Goods/Equipment to an unattended location then such Goods/Equipment shall be left at the Client's sole risk.
- 10.4 The Client shall disclose to Safe Hire Limited the nature of the Goods to be handled, lifted and/or carried. If Safe Hire Limited deems the Goods are, or may become dangerous or offensive, Safe Hire Limited may do anything it believes to be appropriate to avoid or minimise any loss, damage or offence.
- 10.5 *Portable Building Risk*
- (a) where Safe Hire Limited gives advice or recommendations to the Client, or the Client's agent, regarding any aspect of the scope of the Services (including but not limited to, a particular course of action, product selection or the condition of the materials supplied by the Client being inferior), and such advice or recommendations are not acted upon, then Safe Hire Limited shall require the Client or their agent to authorize commencement of the Services in writing. Safe Hire Limited shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services nor will such losses or damages be deemed a defect. If the Client instructs Safe Hire Limited to rectify any damage or defects in the materials supplied, this will become a variation to the original quotation and will be charged at Safe Hire Limited's normal hourly rate.
 - (b) The Client acknowledges that Goods supplied may

Safe Hire Limited – Terms & Conditions of Trade

- (i) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.
- (c) whilst every effort will be taken by Safe Hire Limited to match virtual colours with physical colours, Safe Hire Limited will take no responsibility for any variation between the virtual sale sample displayed on the Client's computer and/or the supplied Goods.
- (d) the Client warrants that any structures or land (where applicable) to which the Goods are to be affixed are able to withstand the installation of the Goods once installed. If for any reason (including the discovery of asbestos, erosion, etc.) that Safe Hire Limited, or employees of Safe Hire Limited, reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then Safe Hire Limited shall be entitled to delay installation of the Goods until Safe Hire Limited is satisfied that it is safe for the installation to proceed.

10.6 Temporary Fencing Risk

- (a) Safe Hire Limited warrants that the structure of the premises or equipment in or upon which these Equipment are to be installed or erected is sound and will sustain the installation and Services incidental thereto and Safe Hire Limited shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- (b) whilst Safe Hire Limited will take all due care during installation Safe Hire Limited will not accept any responsibility for tiles or pavers damaged during installation.
- (c) where fencing is installed on a retaining wall Safe Hire Limited shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall.
- (d) the Client acknowledges and agrees that in the event Safe Hire Limited requires access, in order to undertake the Services, to an adjoining or adjacent property or land to the nominated job Worksite, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above mentioned property throughout the process or delivering the Services. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by Safe Hire Limited in gaining permission to access and/or use the property through any legal process that may be deemed necessary.

11. Compliance With Laws

- 11.1 The Client and Safe Hire Limited shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 11.3 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Safe Hire Limited agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety.

12. Title

12.1 Where this is a *Hire* Contract:

- (a) the Equipment are and will at all times remain the absolute property of Safe Hire Limited, however the Client accepts full responsibility for:
- (i) the safekeeping of the Equipment and indemnifies Safe Hire Limited for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client; and
 - (ii) shall keep Safe Hire Limited indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- Furthermore, the Client will insure, or self-insure, Safe Hire Limited interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- (b) the Client is not authorised to pledge Safe Hire Limited's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

12.2 Where is this a Contract for the *Purchase* of the Goods/Equipment:

- (a) Safe Hire Limited and the Client agree that ownership of the Goods/Equipment shall not pass until:
- (i) the Client has paid Safe Hire Limited all amounts owing to Safe Hire Limited; and
 - (ii) the Client has met all of its other obligations to Safe Hire Limited.
- (b) Receipt by Safe Hire Limited of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- (c) It is further agreed that, until ownership of the Goods/Equipment passes to the Client in accordance with clause (a):
- (i) the Client is only a bailee of the Goods/Equipment and must return the Goods to Safe Hire Limited on request.
 - (ii) the Client holds the benefit of the Client's insurance of the Goods on trust for Safe Hire Limited and must pay to Safe Hire Limited the proceeds of any insurance in the event of the Goods/Equipment being lost, damaged or destroyed.
 - (iii) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Safe Hire Limited and must pay or deliver the proceeds to Safe Hire Limited on demand.

Safe Hire Limited – Terms & Conditions of Trade

- (iv) the Client should not convert or process the Goods/Equipment or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Safe Hire Limited and must sell, dispose of or return the resulting product to Safe Hire Limited as it so directs.
- (v) the Client irrevocably authorises Safe Hire Limited to enter any premises where Safe Hire Limited believes the Goods/Equipment are kept and recover possession of the Goods/Equipment.
- (vi) Safe Hire Limited may recover possession of any Goods/Equipment in transit whether or not Delivery has occurred.
- (vii) the Client shall not charge or grant an encumbrance over the Goods/Equipment nor grant nor otherwise give away any interest in the Goods/Equipment while they remain the property of Safe Hire Limited.
- (viii) Safe Hire Limited may commence proceedings to recover the Price notwithstanding that ownership of the Goods/Equipment has not passed to the Client.

13. Personal Property Securities Act 1999 (“PPSA”)

- 13.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Client to Safe Hire Limited for Services – that have previously been supplied and that will be supplied in the future by Safe Hire Limited to the Client.
- 13.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Safe Hire Limited may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Safe Hire Limited for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Safe Hire Limited; and
 - (d) immediately advise Safe Hire Limited of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3 Safe Hire Limited and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by Safe Hire Limited, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by Safe Hire Limited under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 13 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 13 will apply generally for the purposes of the PPSA.

14. Security and Charge

- 14.1 In consideration of Safe Hire Limited agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies Safe Hire Limited from and against all Safe Hire Limited’s costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising Safe Hire Limited’s rights under this clause.
- 14.3 The Client irrevocably appoints Safe Hire Limited and each director of Safe Hire Limited as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client’s behalf.

15. Client’s Responsibilities (*Use, Operation and Maintenance*)

- 15.1 The Client shall:
- (a) notify Safe Hire Limited immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (b) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (c) operate 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 Safe Hire Limited or posted on the Equipment;
 - (d) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to Safe Hire Limited upon request;
 - (e) comply with all workplace health and safety laws relating to the Equipment and its operation;
 - (f) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Safe Hire Limited;
 - (g) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
 - (h) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (i) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;

Safe Hire Limited – Terms & Conditions of Trade

- (j) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (k) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - (l) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
 - (m) indemnify and hold harmless Safe Hire Limited in respect of all claims arising out of the Client's use of the Equipment.
- 15.2 Immediately on request by Safe Hire Limited the Client will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Safe Hire Limited;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
 - (d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
 - (e) any lost hire fees Safe Hire Limited would have otherwise been entitled to for the Equipment, under this, or any other hire Contract;
 - (f) the cost of repairing any damage to the Equipment caused by vandalism, or (in Safe Hire Limited's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
 - (g) the cost of fuels and consumables (including safety equipment such as harnesses) provided by Safe Hire Limited and used by the Client.
- 16. Limitation of Liability**
- 16.1 Subject to clause 17, Safe Hire Limited shall be under no liability whatsoever to the Client for any indirect, direct, and consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Safe Hire Limited of these terms and conditions (including, any negligent or wilful act by Safe Hire Limited). Without limiting the generality of the foregoing, this exclusion extends to any claim against Safe Hire Limited for loss or damage or delay or payment of any cost, charge, fine, penalty, sales tax or duty, whether the claim be founded in contract, bailment or tort.
- 16.2 In the event of any breach of this Contract by Safe Hire Limited, the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of Safe Hire Limited exceed the Charges of the Services.
- 16.3 The Client covenants and agrees that, notwithstanding whether Safe Hire Limited has effected insurance in respect of the risks, the Client indemnifies and will keep indemnified Safe Hire Limited against the loss or damage to the Equipment whether by fire, theft, accident, seizure, confiscation, corrosion, rust, oxidation and chemical reactions of every nature and kind whatsoever, or otherwise, howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client, and:
- (a) the appraisal of such loss or damage shall be based upon the replacement value of new plant; and
 - (b) all other losses, damages, claims or actions or proceedings, penalties, liabilities, costs and expenses, including legal costs, howsoever arising incurred as a result of or in connection with the Equipment (including, but not limited to, any injury to or death of persons, damage to property, or otherwise arising out of the possession, use, maintenance, repair or storage of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons) or the seizure or the taking of possession of the Equipment by Safe Hire Limited.
- 16.4 *Load Measuring Devices*
- (a) If any Equipment has been fitted with a load measuring device, the Client hereby acknowledges and agrees that Safe Hire Limited has made no warranties or representations whatsoever with respect to the ability of said load measuring device too accurately or consistently measure the weight of the load being lifted by such Equipment. The Client further acknowledges and agrees that it is the responsibility of the Client to independently determine the weight of every load to be lifted by any Equipment comprising all or a portion of the Equipment so as to ensure that any such load to be lifted does not exceed the rated load as determined by such Equipment's capacity chart and that the load measuring device shall be used as an operator-aid only.
- 17. Consumer Guarantees Act 1993**
- 17.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Hirer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 18. Defects and Returns**
- 18.1 The Client shall inspect the Goods/Equipment on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Safe Hire Limited of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Safe Hire Limited an opportunity to inspect the Goods/Equipment within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which Safe Hire Limited has agreed in writing that the Client is entitled to reject, Safe Hire Limited's liability is limited to either (at Safe Hire Limited's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 18.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 18.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein) provided that:
- (a) the Client has complied with the provisions of clause 18.1; and
 - (b) Safe Hire Limited has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within fourteen (14) days of the Delivery date; and
 - (d) Safe Hire Limited will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 18.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

Safe Hire Limited – Terms & Conditions of Trade

19. Warranty

19.1 For Goods not manufactured by Safe Hire Limited, the warranty shall be the current warranty provided by the manufacturer of the Goods. Safe Hire Limited shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

20. Intellectual Property

20.1 Where Safe Hire Limited has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of Safe Hire Limited. Under no circumstances may such designs, drawings and documents be used without the express written approval of Safe Hire Limited.

20.2 The Client warrants that all designs, specifications or instructions given to Safe Hire Limited will not cause Safe Hire Limited to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Safe Hire Limited against any action taken by a third party against Safe Hire Limited in respect of any such infringement.

20.3 The Client agrees that Safe Hire Limited may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which Safe Hire Limited has created for the Client.

21. Default and Consequences of Default

21.1 An event of default ("**Default Event**") occurs if:

- (a) any money payable under this Contract is not paid before or on the due date for payment;
- (b) the Client fails to observe and perform any of the Client's covenants, other than the failure to pay money, and such failure continues for more than three (3) days after Safe Hire Limited had given the Client notice requiring the Client to remedy the breach;
- (c) the Client, being an individual, commits an act of bankruptcy, is declared mentally ill or is convicted of a criminal offence or dies;
- (d) a receiver, or an agent in possession for a mortgagee, is appointed in respect of any property of the Client;
- (e) a mortgagee takes possession of any property of the Client;
- (f) any execution or similar process is made against the property of the Client;
- (g) an application is made, a resolution is passed or a meeting is convened for the purpose of considering a resolution for the Client to be wound up, unless the winding up is for the purpose of reconstruction or amalgamation;
- (h) a compromise or arrangement is made between the Client and its creditors;
- (i) a resolution is passed, or a meeting is convened for the purpose of considering a resolution for the Client to be placed under official management;
- (j) the Client admits in writing its inability to pay its debts;

21.2 On the occurrence of an Default Event:

- (a) Safe Hire Limited may:
 - (i) take possession of the Equipment with, or without notice to the Client, in accordance with clause 12.2(c)(vi);
 - (ii) charge interest on overdue invoices, which shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Safe Hire Limited's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment;
- (b) if the Client owes Safe Hire Limited any money, the Client shall indemnify Safe Hire Limited from and against all costs and disbursements incurred by Safe Hire Limited in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Safe Hire Limited's collection agency costs and/or and bank dishonour fees);
- (c) further to any other rights or remedies Safe Hire Limited may have under this agreement, if the Client has made payment to Safe Hire Limited and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Safe Hire Limited under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract;
- (d) without prejudice to Safe Hire Limited's other remedies at law, Safe Hire Limited shall be entitled to cancel, suspend or terminate the supply of Equipment/Goods/Services or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies Safe Hire Limited may have and all amounts owing to Safe Hire Limited shall, whether or not due for payment, become immediately payable. Safe Hire Limited will not be liable to the Client for any loss or damage the Client suffers because Safe Hire Limited has exercised its rights under this clause.

22. Cancellation

22.1 Without prejudice to any other remedies Safe Hire Limited may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Safe Hire Limited may suspend or terminate the supply of Goods/Equipment to the Client. Safe Hire Limited will not be liable to the Client for any loss or damage the Client suffers because Safe Hire Limited has exercised its rights under this clause.

22.2 Safe Hire Limited may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice Safe Hire Limited shall repay to the Client any money paid by the Client for the Goods/Equipment. Safe Hire Limited shall not be liable for any loss or damage whatsoever arising from such cancellation.

22.3 In the event that the Client cancels Delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by Safe Hire Limited as a direct result of the cancellation (including, but not limited to, any loss of profits).

22.4 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

23. Force Majeure

- 23.1 Neither party shall be liable for any default due to any act of God, war, terrorism, civil disturbance, riot, Government intervention or regulations, Council conditions or specifications, strike, lock-out, industrial action/dispute, fire, flood, storm or other event beyond the reasonable control of either party ("**Force Majeure**").
- 23.2 If a party becomes unable (wholly or in part) by Force Majeure, to carry out any of its duties or obligations under this Contract:
- (a) The party must give the other party prompt written notice of:
 - (i) detailed particulars of the Force Majeure;
 - (ii) so far as is known, the probably extent to which the party will be unable to perform or will be delayed in performing the duty or obligation.
 - (b) the relevant duty or obligation, so far as it is affected by the Force Majeure, will be suspended during the continuance of the Force Majeure; and
 - (c) the party will use all reasonable efforts to overcome or remove the Force Majeure as quickly as possible; and
 - (d) shall be entitled (at its option) to terminate this Contract or extend the time for performance without penalty, if the Force Majeure event continues for a period in excess of fourteen (14) business days.

24. Privacy Policy

- 24.1 All emails, documents, images or other recorded information held or used by Safe Hire Limited is Personal Information as defined and referred to in clause 24.3 and therefore considered confidential. Safe Hire Limited acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Safe Hire Limited acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Safe Hire Limited that may result in serious harm to the Client, Safe Hire Limited will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 24.2 Notwithstanding clause 24.1, privacy limitations will extend to Safe Hire Limited in respect of Cookies where transactions for purchases/orders transpire directly from Safe Hire Limited's website. Safe Hire Limited agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Safe Hire Limited when Safe Hire Limited sends an email to the Client, so Safe Hire Limited may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Safe Hire Limited's website.
- 24.3 The Client authorises Safe Hire Limited or Safe Hire Limited's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by Safe Hire Limited from the Client directly or obtained by Safe Hire Limited from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 24.4 Where the Client is an individual the authorities under clause 24.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 24.5 The Client shall have the right to request Safe Hire Limited for a copy of the Personal Information about the Client retained by Safe Hire Limited and the right to request Safe Hire Limited to correct any incorrect Personal Information about the Client held by Safe Hire Limited.
- 24.6 Service of Notices
- 24.7 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 24.8 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

25. Trusts

- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Safe Hire Limited may have notice of the Trust, the Client covenants with Safe Hire Limited as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.

Safe Hire Limited – Terms & Conditions of Trade

- (c) the Client will not without consent in writing of Safe Hire Limited (Safe Hire Limited will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

26. Suspension of Services

- 26.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) Safe Hire Limited has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 7 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Safe Hire Limited by a particular date; and
 - (iv) Safe Hire Limited has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if Safe Hire Limited suspends work, it:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if Safe Hire Limited exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Safe Hire Limited under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Safe Hire Limited suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes Safe Hire Limited from continuing the Services or performing or complying with Safe Hire Limited's obligations under this Contract, then without prejudice to Safe Hire Limited's other rights and remedies, Safe Hire Limited may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by Safe Hire Limited as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 26.2 If pursuant to any right conferred by this Contract, Safe Hire Limited suspends the Services and the default that led to that suspension continues un-remedied subject to clause 22.1 for at least ten (10) working days, Safe Hire Limited shall be entitled to terminate the Contract, in accordance with clause 22.

27. General

- 27.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudicate in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 27.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Nelson.
- 27.4 Safe Hire Limited may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.5 The Client cannot licence or assign without the written approval of Safe Hire Limited.
- 27.6 Safe Hire Limited may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Safe Hire Limited's sub-contractors without the authority of Safe Hire Limited.
- 27.7 The Client agrees that Safe Hire Limited may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Safe Hire Limited to provide Goods/Equipment to the Client.
- 27.8 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.