

## TERMS OF TRADE – MOBILE SCAFFOLD HIRE WELLINGTON LIMITED

1. The following Terms of Trade are incorporated into every Contract between Mobile Scaffold Hire Wellington Limited (where the context requires, being also referred to below as any of "us", "we", or "our") and you as the Client, unless specifically excluded in writing.
2. **DEFINITIONS**

"Client" means the Client named in our Quotation (including any person acting on behalf of and with the authority of the Client), or any other person purchasing goods and/or services from us, and includes the Client's executors, administrators, successors and permitted assigns. Where:

  - a) more than one person is named as the Client, the persons named as the Client shall be liable to us jointly and severally;
  - b) the Client is a partnership, it shall bind each partner jointly and severally; and
  - c) the Client is a part of a Trust, they shall be bound in their capacity as a trustee.

"Contract" means our Quotation, these Terms of Trade and any other documents that we may agree in writing are to be part of the contract between us and the Client, such as drawings and specifications.

"Due Date" has the meaning in clause 6.2 of these Terms of Trade.

"Equipment" shall mean all Equipment (including any accessories) supplied on hire by us to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by us to the Client.

"Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by us to the Client, and in all other cases shall be 24 hours.

"Price" means the cost of hire for the Equipment as agreed between us and the Client in accordance with clause 4 below, subject to any adjustments in accordance with this Contract and, unless otherwise specifically agreed in writing, is expressed exclusive of GST and any other applicable taxes and duties.

"PPSA" means the Personal Property Securities Act 1999.

"Quotation" means our Client Quotation for the supply of Equipment provided with these Terms of Trade or as separately provided.
3. **ACCEPTANCE**
  - 3.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for and accepts delivery of the Equipment.
  - 3.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
  - 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing with the consent of both parties.
  - 3.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
4. **PRICE**
  - 4.1 The Client must pay us the Price at the times and in the manner described in this Contract.
  - 4.2 The Price stated in our Quotation shall be valid for acceptance for thirty (30) calendar days from the date of issue of the Quotation. After the expiry of this period, we are entitled to withdraw the Quotation and may provide an updated quotation, including with an altered Price or other details in the updated quotation.
- 4.3 At our sole discretion, a non-refundable deposit shall be payable immediately at the commencement of this Contract. The deposit may be used to offset any applicable charges payable by the Client under clause 10.4.17, and any outstanding balance thereof shall be due as per clause 6.1.
- 4.4 Deposits for bookings shall be a minimum of fifty percent (50%) in order to reserve the Equipment and are non-refundable. Failure by the Client to pay a deposit may result in the requested Equipment not being available.
5. **VARIATIONS**
  - 5.1 Up to 48 hours prior to the scheduled delivery date of the Equipment, the Client may request a variation that:
    - 5.1.1 increases or decreases the amount of Equipment; or
    - 5.1.2 changes to the delivery location for the Equipment.
  - 5.2 Notwithstanding clause 5.1.2 above, the Client shall not, without our prior written agreement, request a variation to decrease the Equipment to have that Equipment supplied by another contractor or by the Client.
  - 5.3 For any variation, the parties must agree in writing on:
    - 5.3.1 the scope of the increase or decrease that is the subject of the variation;
    - 5.3.2 the price for the variation and how the price of the variation is to be calculated; and
    - 5.3.3 any change to the scheduled delivery date of the Equipment.
  - 5.4 If there is a variation, the parties acknowledge that the Price may be adjusted to reflect the value of the variation and the adjustment shall be included by us in our next or any subsequent invoice/payment claim.
  - 5.5 There is an administration cost of \$150 or 5% of the variation value, whichever is greater, for us pricing each variation. The lesser of these costs is payable by the Client to us even if the variation does not proceed.
  - 5.6 The Client acknowledges and agrees for a final invoice to be issued (where applicable) at the completion of the hire period for charges relating to breakages, extras, and any add-ons.
6. **PAYMENT**
  - 6.1 We may serve on the Client payment claims by email or post:
    - 6.1.1 in respect of a deposit; and/or
    - 6.1.2 in respect of an invoice issued pursuant to clause 5.6; and/or
    - 6.1.3 by way of weekly, fortnightly or monthly progress claims for long-term (2 weeks and over) hires; and/or
    - 6.1.4 by way of a single payment claim on the last day of hire for short-term hires.
  - 6.2 Time being of the essence, the due date for payment of any payment claim served by us under clause 6.1 is:
    - 6.2.1 on the commencement of the Contract;
    - 6.2.2 on delivery of the Equipment;
    - 6.2.3 before delivery of the Equipment;
    - 6.2.4 by way of instalments/progress payments in accordance with our payment schedule, if any;
    - 6.2.5 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;
    - 6.2.6 the date specified on any invoice or other form as being the date for payment; or
    - 6.2.7 failing any notice to the contrary, the date which is seven (7) days following the date of any payment claim is served by us on the Client, ("the Due Date").
  - 6.3 If the Client intends to pay us less than the amount claimed in a payment claim, then the Client must respond to the payment claim by providing a payment schedule to us within five (5) calendar days after the date that the relevant payment claim is served on the Client.

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- 6.4 Any payment schedule issued by the Client must comply with the requirements of the Construction Contracts Act 2002 and must be sent to us to the email address stated in our Quotation.
- 6.5 We may at our discretion allocate any payment received from the Client towards any invoice that we determine and may do so at the time of receipt or at any time afterwards. On any default by the Client, we may re-allocate any payments previously received and allocated. In the absence of any payment allocation by us, payment will be deemed to be allocated in such manner as preserves the maximum value of our Purchase Money Security Interest (as defined in the PPSA) in the Equipment.
- 6.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by us nor to withhold payment of any invoice because the whole or part of that invoice is in dispute.
- 6.7 Unless otherwise stated the Price includes GST. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 7. HIRE PERIOD

- 7.1 Hire charges shall commence from the time the Equipment leaves our premises and will continue until the return of the Equipment to our premises, and/or until the expiry of the Minimum Hire Period, whichever occurs last. Such charges may be based on daily, weekend, or weekly rates.
- 7.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire and:
- 7.2.1 if received within five (5) working days of the scheduled delivery date, will incur a cancellation charge equal to 50% of the Price; and
- 7.2.2 if received within two (2) working days of the scheduled delivery date, will incur a cancellation charge equal to 100% of the Price.
- 7.3 Any Equipment not returned before 1pm on the due date shall be treated as a full day's hire with the applicable rate being charged.
- 7.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless we confirm special prior arrangements in writing.
- 7.5 In the event of Equipment breakdown, the Client must notify us immediately for the hiring charges to not be payable during the time that the Equipment is not working unless the condition is due to negligence or misuse on the part of or attributable to the Client.

### 8. DELIVERY OF EQUIPMENT

- 8.1 Delivery ("Delivery") of the Equipment is taken to occur at the time that:
- 8.1.1 the Client or the Client's nominated carrier takes possession of the Equipment at our address; or
- 8.1.2 we (or our nominated carrier) deliver the Equipment to the Client's nominated address, even if the Client is not present at the address.
- 8.2 At our sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 8.3 The Client shall provide vehicle and trolley access to facilitate the loading and unloading of the Equipment. Additional charges may apply where stairs, stairwells, uneven and unstable ground is present.
- 8.4 We may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.5 Any time specified by us for delivery of the Equipment is an estimate only and we will not be liable for any loss or damage incurred by the Client as a result of delivery being late; however, both parties agree that they shall make reasonable endeavours to enable the Equipment to be delivered at the time and place as was arranged between both parties. In the event that we are unable to supply the

Equipment as agreed solely due to any action or inaction of the Client, then we shall be entitled to charge a reasonable fee for redelivery and/or storage.

### 8.6 The Client:

- 8.6.1 acknowledges and accepts that Delivery may take longer than estimated due to circumstances beyond our control, such as ground conditions, distance for unloading, etc. Any additional costs incurred by us shall be charged as an extra; and
- 8.6.2 understands the Installation Instructions and any associated Operations Instructions given and/or made available by us; and
- 8.6.3 where required, a site evaluation or site access form has been completed.

### 9. RISK

- 9.1 We at all times retain property in the Equipment.
- 9.2 Notwithstanding clause 9.1, all risk for the Equipment passes to the Client on delivery.
- 9.3 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies us for all loss, theft, or damage to the Equipment howsoever caused and, without limiting the generality of the foregoing, whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 9.4 The Client accepts full responsibility for and shall keep us 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 irrespective of whether it arises from any negligence, failure or omission of the Client or any other persons.

### 10. CLIENT'S RESPONSIBILITIES

- 10.1 The Client acknowledges and accepts that:
- 10.1.1 the Client shall check that all the Equipment ordered has been delivered on Delivery;
- 10.1.2 that while we will use all methods available at the time, the Client understands that, due to Health and Safety protocols, some Equipment may not be used in adverse weather conditions and therefore, it shall be the Client's responsibility to have an alternative plan if the weather does not permit the Equipment to be used safely.
- 10.2 The Equipment must not be erected on unstable ground or at heights greater than 5 metres (measured from the highest point of the Equipment).
- 10.3 Once the Equipment is erected, should strong wind, rain or storm conditions arise during the time of any event, then the Client shall immediately disassemble the Equipment. We shall not be held responsible or liable for any damages that may occur in these circumstances as weather conditions are outside of our control and no refund shall apply.
- 10.4 The Client shall:
- 10.4.1 satisfy itself at the commencement of the Contract that the Equipment is suitable for its purposes;
- 10.4.2 at all times, keep the Equipment within their control and not assign the benefit of this agreement nor be entitled to lien over the Equipment;
- 10.4.3 not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
- 10.4.4 ensure that all persons assembling or disassembling the Equipment are suitably instructed and qualified to do so;
- 10.4.5 only use the Equipment in suitable weather conditions, where there are no heavy winds or weather warnings;
- 10.4.6 be fully responsible for ensuring that the ground on which the Equipment will be assembled is stable, dry, clear of sharp or damaging objects, and is not prone to flooding so that it will not cause any damage to the Equipment;
- 10.4.7 ensure that the Equipment is a safe distance from

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any obstructions such as trees, which may damage the Equipment or the waterproofing of the Equipment by contact and/or rubbing;

- 10.4.8 use the Equipment properly, safely, and for its intended purpose;
- 10.4.9 maintain and return the Equipment clean, dry, fully disassembled, and in the same state as when received by the Client. In the event the Equipment or a part thereof is lost, not returned, damaged, or unclear in any way, then cleaning, repair and/or replacement charges may apply in the amount that we reasonably determine;
- 10.4.10 ensure the Equipment remains free from any unauthorised access, use, or other interference by any third party or otherwise;
- 10.4.11 not alter or make any additions to the Equipment including but not limited to: altering, making 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;
- 10.4.12 not exceed the recommended or legal load and capacity limits of the Equipment;
- 10.4.13 not use or carry any illegal, prohibited, or dangerous substance in or on the Equipment;
- 10.4.14 not allow pets on or around the Equipment;
- 10.4.15 notify us immediately in writing of the full circumstances of any breakage or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
- 10.4.16 indemnify and hold us harmless in respect of all claims (including, but not limited to loss, damage or injury) arising out of the Client's use of the Equipment;
- 10.4.17 immediately on request pay:
  - a. the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to us. The Client shall accept our report on all missing Equipment;
  - 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 full cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
  - e. the full cost of repairing any damage to the Equipment caused by vandalism, or (in our reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
  - f. any lost hire fees we would have otherwise been entitled to for the Equipment, under this agreement, or any other hire agreement;
  - g. any insurance excess payable in relation to a claim made by the Client in relation to any damage caused by, or to, the Equipment whilst the same is hired by the Client.

### 11. DEFAULT

- 11.1 If the Client does not make payment on the Due Date, the Client shall be liable to pay:
  - 11.1.1 default interest at the rate of 2.5% per month compounding monthly, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full; and
  - 11.1.2 all costs and disbursements incurred by us in pursuing the debt including indemnity legal costs that we incur incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms of Trade and collection agency costs.
- 11.2 If the Client fails to pay any amount owing on the Due Date and any such default continues for five (5) calendar days then we shall be entitled to immediately suspend the Works without notice and such suspension shall be on the same basis as if it were a suspension under section 24A of the Construction Contracts Act 2002.

### 12. WARRANTIES

- 12.1 No warranty is given by us as to the quality or suitability of the Equipment for any purpose and any implied warranty is expressly excluded.
- 12.2 In the Event of Equipment breakdown, the Client must immediately notify us of the fault, and we will replace the Equipment, unless the fault is due to the Client's negligence or misuse.
- 12.3 The Client shall indemnify and hold us harmless in respect of all claims arising out of the use of the Equipment.
- 12.4 If, provided the Client has complied with the notification obligations under this contract, the Equipment is found to be faulty on delivery, we will replace the Equipment at our cost as soon as reasonably practicable.

### 13. LIMITATION OF LIABILITY

- 13.1 Despite any other provision to the contrary:
  - 13.1.1 we shall not be liable for any claims for loss of profits (whether direct or indirect), or loss of business opportunity or anticipated savings or for any indirect or consequential loss whatsoever; and
  - 13.1.2 our total aggregate liability to the Client arising out of or in connection with the Equipment whether in contract, under any indemnity, in tort (including negligence), by statute, or otherwise at law or in equity is limited as follows:
    - a. to the value of our original Price (excluding variations) for the Equipment; or
    - b. for liability arising out of events or circumstances in respect of which insurance proceeds are available under an insurance policy required to be effected by us or you for the Equipment (or would have been available had you or we complied with our obligations under the relevant insurance policy), the amount which is paid under that policy, or would have been paid, had we so complied, up to the limits of such insurance as we or you are required to have in place for the Equipment.
- 13.2 Clause 13.1 does not limit our liability to the extent that it:
  - 13.2.1 cannot be limited at law; or
  - 13.2.2 arises out of or in connection with any willful default, fraud or criminal conduct.

### 14. TITLE

- 14.1 If the Client fails to return the Equipment to us then we or our agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 14.2 The Client is not authorised to pledge our credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 14.3 The Equipment is, and will at all times remain, our absolute property; however, the Client accepts full responsibility for:
  - 14.3.1 the safekeeping of the Equipment and indemnifies us 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 shall keep us 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; and
  - 14.3.3 the Client is not authorised to pledge our credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 14.4 The Client will insure, or self-insure, our interest in the Equipment against physical loss or damage including, but

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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. In addition, the Client will not use the Equipment nor permit them to be used in such a manner as would permit an insurer to decline any claim.

- 14.5 If the Client fails to return the Equipment to us, then we or our agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment are situated and take possession of the Equipment, without being responsible for any damage thereby caused.

### 15. PPSA

- 15.1 All terms in this clause 15 have the meaning given to those terms in the Personal Property Securities Act 1999.
- 15.2 The Client acknowledges that it grants a security interest in: 1) all of its present and after acquired property; and 2) all goods supplied by us and in any proceeds, as security for its obligations to us. The Client must do all things at its own expense, including executing all documents, that we require to provide us with a first ranking security interest in goods.
- 15.3 The Client may not grant any other security interest or any lien over goods that we have a security interest in.
- 15.4 If goods that we have a security interest in are processed, included, or dealt with in any way causing them to become accessions, processed or commingled goods, our security interest will continue in the whole in which they are included. You will not grant any other security interest or any lien in either the goods or in the whole.
- 15.5 The Client waives the right to receive copies of any verification statements and waives any rights it may have under ss114(1)(a), 116, 120(2), 121, 125, 129, 131, 133, and 134 of the PPSA.
- 15.6 The Client agrees to indemnify us for any costs we incur in registering, maintaining and for enforcing the security interest created by these terms including actual legal costs on a solicitor/client basis.
- 15.7 The Client must not change its name, registered office, or place of business without notifying us of the change at least 10 days before the change takes effect.

### 16. CONSUMER GUARANTEES ACT

- 16.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires services from us for the purposes of a business in terms of sections 2 and 43 of that Act.

### 17. DISPUTE RESOLUTION

- 17.1 If any dispute arises in connection with the Equipment or payments claimed by us, or any other matter pertaining to business between us and the Client, the parties agree to give written notice to the other detailing the nature of the dispute and attempt to resolve such dispute or differences amicably and in good faith between themselves.
- 17.2 If the dispute has not been resolved within 20 calendar days after the date of giving written notice under clause 17.1 above, then either party may refer the dispute to any other form(s) of dispute resolution available at law.

### 18. PRIVACY

- 18.1 The Client (including any individual representing the Client) authorises us:
- 18.1.1 to collect, retain and use information about the Client (or individual(s) representing the Client) from any person for the purpose of assessing the Client's creditworthiness; and
- 18.1.2 to disclose information about the Client:
- to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Client's obligations to us;
  - to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our

rights, remedies and powers under these Terms of Trade.

- 18.2 The Client shall have the right to request us for a copy of the information about the Client retained by us and the right to request us to correct any incorrect information about the Client held by us.

### 19. CANCELLATION

- 19.1 Without prejudice to any other remedies we may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions we may suspend or terminate the supply of Equipment to the Client. We will not be liable to the Client for any loss or damage the Client suffers because we have exercised its rights under this clause.
- 19.2 We may cancel any Contract to which these terms and conditions apply or cancel delivery of Equipment at any time before the Equipment are delivered by giving 48 hours' written notice to the Client. On giving such notice, we shall repay to the Client any money paid by the Client for the Equipment. We shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Client cancels delivery of Equipment, and subject to clause 7.2, the Client shall be liable for any and all loss incurred (whether direct or indirect) by us as a direct result of the cancellation (including, but not limited to, any loss of profits).

### 20. GENERAL

- 20.1 The Client shall not make any claim against any individual employee or employees or director or agent of us for any costs, losses or damages sustained by the Client arising from the Equipment.
- 20.2 If any provision of these Terms of Trade is found to be invalid or void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.3 If the quotation is not signed, then the Client will be deemed by its conduct to have accepted these Terms of Trade if the Client asks us verbally or in writing to arrange for delivery of any part of the Equipment and/or the Client pays any required deposit.
- 20.4 Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, drought, storm, pandemic, or other event beyond the reasonable control of either party.
- 20.5 Our failure to enforce any provision of these Terms of Trade shall not be treated as a waiver of that provision, nor shall it affect our right to subsequently enforce that provision.