

# AT-PAC NEW ZEALAND LIMITED

## CREDIT ACCOUNT APPLICATION

**To Be Completed By Applicants** - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

|                                                                                      |             |                  |                         |                                 |                 |
|--------------------------------------------------------------------------------------|-------------|------------------|-------------------------|---------------------------------|-----------------|
| Type of Business:                                                                    | Sole Trader | Trust            | Partnership             | Company                         | Limited Company |
|                                                                                      |             |                  |                         |                                 |                 |
| Company Name:                                                                        |             |                  |                         | NZBN:                           |                 |
| Trading Name:                                                                        |             |                  |                         | Company Number:                 |                 |
|                                                                                      |             |                  |                         |                                 |                 |
| Physical Address:                                                                    |             |                  |                         | Region:                         | Postcode:       |
| Billing Address:                                                                     |             |                  |                         |                                 |                 |
| Email Address:                                                                       |             |                  |                         | Phone No:                       |                 |
| Alternative Email Address:                                                           |             |                  |                         | Fax No:                         |                 |
|                                                                                      |             |                  |                         |                                 |                 |
| Directors / Owners / Trustee (if more than two, please attach a separate sheet)      |             |                  |                         |                                 |                 |
| Full Name:                                                                           |             |                  |                         | D.O.B.                          |                 |
| Private Address:                                                                     |             |                  |                         | State:                          | Postcode:       |
| Driver Licence No:                                                                   |             | Phone No:        |                         | Mobile No:                      |                 |
|                                                                                      |             |                  |                         |                                 |                 |
| Full Name:                                                                           |             |                  |                         | D.O.B.                          |                 |
| Private Address:                                                                     |             |                  |                         | State:                          | Postcode:       |
| Driver Licence No:                                                                   |             | Phone No:        |                         | Mobile No:                      |                 |
|                                                                                      |             |                  |                         |                                 |                 |
| Date Business / Company Established: (Current Owners)                                |             |                  |                         | Requested Credit Limit : \$     |                 |
| Nature of Business:                                                                  |             | Paid Up Capital: |                         | Estimated Monthly Purchases: \$ |                 |
| Principal Place of Business is:    Rented    Owned    Mortgaged (to whom)            |             |                  |                         |                                 |                 |
|                                                                                      |             |                  |                         |                                 |                 |
| <b>Purchase Order Required:</b>                                                      | YES         | NO               | Accounts to be emailed? |                                 | YES      NO     |
| Accounts Email Address:                                                              |             |                  |                         |                                 |                 |
| Accounts Contact:                                                                    |             | Phone No:        |                         | Mobile No:                      |                 |
| Bank and Branch:                                                                     |             |                  |                         | Account No:                     |                 |
|                                                                                      |             |                  |                         |                                 |                 |
| Account Terms: COD                                                                   |             | 14 Days          | 30 Days                 | Other:                          |                 |
|                                                                                      |             |                  |                         |                                 |                 |
| Trade References: (Please provide companies that are willing to do trade references) |             |                  |                         |                                 |                 |
| Name                                                                                 |             | Address          |                         | Email / Phone :                 |                 |
| 1.                                                                                   |             |                  |                         |                                 |                 |
| 2.                                                                                   |             |                  |                         |                                 |                 |
| 3.                                                                                   |             |                  |                         |                                 |                 |

I certify that the above information is true and correct and that I am authorised to make this application for credit. I confirm that I have read and understand the Terms and Conditions of Trade of AT-PAC New Zealand Limited, which form part of, and are intended to be read in conjunction with, this Credit Account Application, and I agree to be bound by those terms. I authorise the collection, use, and disclosure of my personal information in accordance with the Privacy Act 2020 (New Zealand) and as set out in the Terms and Conditions of Trade. If I am a director and/or shareholder (holding at least 15% of the shares) of the Client, I agree to personally guarantee and indemnify A T-PAC New Zealand Limited for the due and punctual performance of all obligations of the Client under this agreement.

SIGNED

(CLIENT): SIGNED

(CLIENT):

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

WITNESS TO CLIENT'S SIGNATURE:

Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_



# Deed of Guarantee, Indemnity & Charge

To AT-PAC NEW ZEALAND LIMITED Company Number 9417984 and associated, related, subsidiary and parent companies, successors and assigns (all of which are

referred to as “Us” “We” and “Our”).

**WARNING: THIS IS AN IMPORTANT LEGAL DOCUMENT.  
YOU SHOULD SEEK LEGAL ADVICE IF YOU ARE UNSURE OF ITS MEANING AND EFFECT.**

You enter this Deed in consideration of Us supplying Goods or credit to the Customer named in Item 1 of the Schedule, or not commencing or continuing legal action against that Customer, at Your request. You enter this Deed and agree with Us as follows:

## Guarantee

1. To guarantee and be responsible for the payment of the Money Secured to Us by the Customer.
2. This guarantee and indemnity is given for valuable consideration and is a continuing guarantee to Us for the whole of the Money Secured.
3. We may at any time at Our discretion and without giving any notice whatsoever to You refuse to provide further Goods to the Customer.
4. Where more than one person is a Guarantor, this Deed is enforceable against all persons signing as Guarantor and each Guarantor will be jointly and severally liable immediately on signing this Deed.
5. If more than one person is intended to be a Guarantor, this Deed will remain enforceable against each person signing as Guarantor. This applies even where any person contemplated to sign this Deed does not in fact do so.
6. We may at any time release or discharge You or any of the persons included as Guarantor from the obligations of this Deed, or We may grant time to pay, or We may accept or enter arrangements with the Customer or any Guarantor without affecting the liability of any other Guarantor under this Deed. Any payment received by Us under such arrangement will only operate as a discharge of liability to the extent of the payment.
7. Any payment made by or on behalf of the Customer which is later avoided by the application of any statutory provision will be deemed not to discharge the Customer's indebtedness and in any such event the parties will be restored to rights which each respective party would have had if the payments had not been made.
8. Where You have the right to prove in any liquidation, receivership or voluntary administration of the Customer, You must do so and hold any dividends received on trust for Us.

## Indemnity

9. You indemnify Us against any and all losses and expenses of any nature including the costs of preparation of this Deed and collection or legal costs on a solicitor/client basis arising in any way out of Our dealings with the Customer, the intent being that You are primarily liable for payment to Us for such losses and expenses and for the Money Secured.

## Charge

10. For the purpose of securing payment of the Money Secured to Us, You:
  - a) Hereby charge all of Your beneficial interest in real and personal property (including all property acquired after the date of this Deed) in favour of Us whether or not a demand has been made on the Customer or You;
  - b) Agree to deliver to Us within seven (7) days of written demand a Memorandum of Mortgage in registrable form incorporating the covenants and conditions contained in Memorandum No. 2015/4328 registered at Land Information New Zealand pursuant to section 209 of the Land Transfer Act 2017 (NZ) (or such other memorandum as We may nominate), or such amendments or substitutions thereof as are current at the time of execution. You also agree that the Money Secured is payable on demand and that such Memorandum of Mortgage shall be amended as necessary to comply with and reflect any appropriate laws in the jurisdiction(s) where You have any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration.
  - c) Authorise and consent to Us taking all actions necessary to give effect to this security, including the lodgement of a caveat upon title of Your real property. You irrevocably appoint Us and any person nominated by Us severally as Your attorney with power to execute, sign, seal and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.
  - d) If the charge created by this section is or becomes void or unenforceable, it may be severed from this Deed without any effect on its validity and You will not be exonerated in whole or in part, nor will Our right, remedies or recourse against You be in any way prejudiced or adversely affected by such severance.

## General

11. A certificate signed by a director, secretary, financial controller or credit manager of the Company is prima facie evidence of the amount of the Money Secured owed by the Customer or You at that time.
12. **You acknowledge that We have afforded You the full and unrestricted opportunity of seeking independent legal advice on Your obligations under this Deed of Guarantee, Indemnity and Charge prior to signing it.**
13. You acknowledge that You have made and will continue to make Your own enquiries as necessary of the Customer regarding the Customer's past and prospective dealings with Us and the Customer's ability to comply with its obligations to Us. You acknowledge that You are satisfied as to the extent of Your obligations arising from this Deed and that We are under no obligation to notify You of any changes to Our trading terms or dealings with the Customer even if these changes increase Your liability under this Deed.
14. This Deed will be construed according to the laws of New Zealand. Proceedings may be instituted in any court of competent jurisdiction in New Zealand. You consent to any proceedings being instituted and heard by any appropriate Court sitting in New Zealand applying the laws of New Zealand.
15. In accordance with the Privacy Act 2020 (NZ), You give Us Your permission to carry out such credit enquiries as We may in Our sole discretion determine and to provide such information concerning You to any other parties as We may in Our sole discretion determine. You indemnify Us in respect of any claims or actions in relation to exercising Our discretion under this section to obtain or provide information concerning You.
16. You acknowledge that any credit limit applying from time-to-time in respect of the credit facilities provided by Us to the Customer is for Our benefit and administrative convenience only. You also acknowledge that such credit limit does not constitute a term of any agreement with the Customer or this Deed in respect of Yours and the Customer's obligations.

## Personal Property Securities Act 1999 (NZ) ("PPS Act")

17. You acknowledge and agree that:
  - a) This Deed constitutes a security agreement for the purposes of the PPSA ("Security Agreement") and creates a security interest in the Personal Property and any proceeds of the sale of the Personal Property to secure payment of the Money Secured ("Security Interest"); and

- b) We may lodge a financing statement on the Personal Property Securities Register ("PPSR") in respect of the Security Interest in the Personal Property and the proceeds of the sale of the Personal Property pursuant to this Deed.
18. You must do all such things, provide all such information and sign all such documents as are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Personal Property, including for the purposes of:
- a) Ensuring that any Security Interest created under, or provided for, by this document attaches to the collateral that is intended to be covered by that Security Interest and is enforceable, perfected and otherwise effective and has the priority required by Us;
- b) Enabling Us to prepare and register a financing statement or financing change statement; and
- c) Enabling Us to exercise and maintain any of Our rights or powers in connection with any such Security Interest.
19. If You dispose of the Personal Property, You must immediately pay any proceeds to Us in reduction of all amounts owing by the Customer to Us, which We may apply towards amounts owing by the Customer to Us in such order as specified by section 116 of the PPSA, unless otherwise specified in writing by Us. You must not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
20. If a higher-priority security interest does arise in the Personal Property despite this section, You must ensure that You receive cash proceeds for the Personal Property of at least equal to the market value. You must immediately pay those proceeds to Us in reduction of all amounts owing by the Customer to Us, which We may apply towards amounts owing by the Customer to Us in such order as We see fit.
21. You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any manner which would impact on Our registered Security Interest without Our prior written consent. No such event shall affect Your liability under this Deed, as named, until a new Deed in the Guarantor's new entity name as restructured or changed is received and approved by Us in writing.
22. To the extent the law permits and for the purposes of section 107 of the PPSA, We do not need to comply with sections 114, 116, 120(2), 121, 126, 127, 129, and sections 134 and 135 are excluded.
23. To the extent the law permits and for the purposes of section 107 of the PPSA, We do not need to comply with sections 129 and 133.

### UNDERSTANDING THIS DOCUMENT

**"Company"** means AT-PAC NEW ZEALAND LIMITED Company Number 9417984 and associated, related, subsidiary and parent companies, successors and assigns (referred to as **"We"**, **"Us"** and **"Our"**).

**"Customer"** means the person or company set out in Item 1 of the Schedule.

**"Deed"** means this Deed of Guarantee, Indemnity and Charge.

**"Guarantor"** means the person or company set out in Item 2 of the Schedule or any other person or persons signing or purporting to sign this Deed as Guarantor and that person's personal representative (referred to as **"You"** and **"Your"**).

**"Goods"** means all goods, merchandise and services supplied or which may be supplied in the

future at the Customer's request or credit extended by Us to the Customer.

**"Money Secured"** means all monies now payable or which may become payable in the future or contingently by the Customer to Us for any reason whether alone or jointly with another person including without limitation; money owed by the Customer for the supply of Goods; all money We pay or become liable to pay at the request of the Customer; all losses and expenses including legal costs on a solicitor/client basis however directly or indirectly arising from any dealing or default by the Customer under its contract with Us or by You under this Deed; all the costs incurred by Us for recovering monies under any related security.

**"Personal property"** means the personal property referred to in Clause 10.

**"Security Agreement"** has the meaning referred to in Section 10 of the PPS Act.

## SCHEDULE

Item 1: The Customer

Name: ..... (ACN) ..... (ABN) .....

Registered Office: .....

Item 2: The Guarantor/s

|                                                                    |                                                                    |
|--------------------------------------------------------------------|--------------------------------------------------------------------|
| <b>1 Name:</b> .....                                               | <b>2 Name:</b> .....                                               |
| <b>Address:</b> .....                                              | <b>Address:</b> .....                                              |
| .....                                                              | .....                                                              |
| <b>Financial Details</b>                                           | <b>Financial Details</b>                                           |
| Account Name .....                                                 | Account Name .....                                                 |
| BSB ..... Account No .....                                         | BSB ..... Account No .....                                         |
| Bank ..... Branch .....                                            | Bank ..... Branch .....                                            |
| Licence No ..... Copy of licence provided <input type="checkbox"/> | Licence No ..... Copy of licence provided <input type="checkbox"/> |

EXECUTED AS A DEED on: .....

| SIGNED SEALED & DELIVERED BY:   |                               |
|---------------------------------|-------------------------------|
| .....<br>(guarantor signature)  | .....<br>(witness signature)  |
| .....<br>(print guarantor name) | .....<br>(print witness name) |
| .....<br>(date)                 | .....<br>(date)               |
|                                 | .....<br>(witness address)    |
|                                 | .....<br>(date)               |

| SIGNED SEALED & DELIVERED BY:   |                               |
|---------------------------------|-------------------------------|
| .....<br>(guarantor signature)  | .....<br>(witness signature)  |
| .....<br>(print guarantor name) | .....<br>(print witness name) |
| .....<br>(date)                 | .....<br>(date)               |
|                                 | .....<br>(witness address)    |
|                                 | .....<br>(date)               |

\*Please note that all witnesses to this Deed must be independent and cannot be a party to this Deed

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## TERMS & CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

**Additional Expenses** means any fees, expenses, duties, taxes (including GST) and disbursements that We incur to supply the Goods and Services, including delivery and freight charges, permit and licence fees, toll or other road charges, insurance costs, storage fees, return and restocking fees, hire-purchase costs, cleaning and repair of Equipment, third-party services, administration and account keeping fees, merchant fees and payment surcharges at rates advised by Us from time-to-time.

**Credit Account** means the approved commercial account You have with Us to purchase Goods and Services on credit pursuant to these Terms.

**Customer** means any person, firm or company placing an Order with Us for the purchase of Goods and Services pursuant to these Terms (also referred to as "You" and "Your").

**Due Date** means the date that Your payment of Goods and Services is due. Unless agreed between the parties in writing or listed on Our invoice, the Due Date is 30 days EOM.

**Equipment** means the scaffolding, parts, tools, machinery or appliances, accessories and other equipment that We hire to You as part of the Services.

**Force Majeure** means something outside a party's reasonable control, including war, strikes, lockouts and lockdowns, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm, flood, theft and vandalism.

**Goods** means any products, materials, parts and other goods that We supply to You pursuant to any Quote, Order and/or these Terms.

**Hire Period** means the period of time that You agree to hire Equipment or have Equipment in Your possession, including all rollover, extended possession or agreed extension of time for hire of the Equipment.

**Hire Schedule** means the document specifying the Equipment, Hire Period and/or any other details for provision of the Services pursuant to these Terms.

**Insolvency Event** means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

**Loss** means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

**Order** means Your request to purchase Goods and Services.

**PPSA** means:

- (a) the *Personal Property Securities Act 1999* (NZ) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of the PPS Act.

**Quote** means Our written description and price of the Goods and Services to be supplied to You, which is valid for 30 days.

**Services** means the hire of Equipment and associated services that We supply to You pursuant to any Quote, Order and/or these Terms.

**Site** means any place where You request Goods and Services to be supplied.

**Supplier** means the entity or entities specified in these Terms as supplying Goods and Services to You (also referred to as "Us", "We" and "Our").

**Website** means [www.at-pac.com](http://www.at-pac.com) as redirected from time to time.

In these Terms:

- (a) a reference to 'Terms' means these Terms and Conditions of Business;
- (b) a Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods and Services are supplied;
- (c) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day;
- (d) a reference to writing includes communication via email and Our website;
- (e) a reference to a clause or paragraph is a reference to these Terms;
- (f) a reference to a party to these Terms includes that party's associated, related, subsidiary and parent companies, executors, administrators, successors and permitted assigns;
- (g) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (h) headings, explanatory notes and paragraphs are for readability only and do not affect the meaning or interpretation of these Terms;
- (i) a reference to 'including' does not convey any limitation and should be interpreted as if the words 'without limitation' also appear.

## About these Terms

### 2. OUR AGREEMENT

- (a) The entire agreement between the parties for all Goods and Services supplied is comprised of these Terms, any Credit Account application, any Hire Schedule, and any special conditions written in those documents. Unless the parties otherwise agree in writing, these Terms apply to the extent of any inconsistency between documents.
- (b) You warrant that You are authorised to enter into and perform the agreement created by these Terms. You warrant that any person signing these Terms or instructing Us as to the Goods and Services has Your authority and power to do so.
- (c) You accept these Terms by signing and returning a copy of them to Us or by other conduct, by verbal acceptance, submitting an Order, or by instructing Us

to supply Goods and Services.

- (d) We are engaged to provide Goods and Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (e) These Terms are interpreted according to the laws of New Zealand. Legal proceedings by either party may be conducted in any court of competent jurisdiction in New Zealand.

### **3. CHANGES AND UPDATES TO THESE TERMS**

- (a) We may update or vary non-material provisions of these Terms from time-to-time, provided that such updates or variations do not alter the pricing of Goods and Services, limitations of liability, security provisions, indemnities or payment terms.
- (b) We will provide You with no less than 30 days' written notice of any updates or variations to these Terms pursuant to clause 3(a). Updated or varied Terms will apply to all Orders that You place after the expiry of the notice period, unless You object in writing within the notice period. If You object to Our updated Terms, You may exercise Your termination rights outlined in these Terms and We may choose not to accept any new Orders from You until You accept Our Terms as updated or varied.
- (c) You agree to be notified of any changes to these Terms by email.
- (d) Any variation to the pricing of Goods and Services, limitations of liability, security provisions, indemnities or payment terms under these Terms will only take effect if agreed to in writing and signed by both parties.
- (e) Any other changes that You request to these Terms or to the Goods or Services to be supplied are subject to Our consent (which will not be unreasonably withheld). Any such changes will only apply if agreed to in writing and signed by the parties.
- (f) You must notify Us in writing of any material change to Your organisation, including a change of director, legal entity, bank account details or change of address.
- (g) The parties may only assign or transfer all or any of their title, estate, interest, benefit, rights, duties and obligations in these Terms to any person with the other parties' written consent and provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (h) You must not charge, encumber or otherwise deal with any of Your rights and obligations under these Terms without Our prior written consent.

## **How to Purchase Our Goods and Services**

### **4. ABOUT OUR GOODS AND SERVICES**

- (a) Goods are sold and Equipment is hired to You with all due skill and care in accordance with Our professional standards.
- (b) To facilitate supply of Our Goods and Equipment, You must provide:
  - i) all resources that We reasonably require, including but not limited to accurate and complete instructions, all Site specifications and measurements, files and records, plans, licenses and permits, traffic management systems, third parties where applicable and people (whether engineers, builders, management or staff) with the relevant authority that We reasonably require;
  - ii) a safe, suitable and compliant Site for the supply of Goods and/or Our Equipment in accordance with the Health and Safety at Work Act 2015 (NZ);
  - iii) a firm and level foundation at any Site for the installation of the Goods or Our Equipment;
  - iv) adequate storage and protection for Our Equipment on hire at any Site.
- (c) You acknowledge and agree that:
  - i) Our Services are limited to the particular job, project, solution, tasks, activities or other scope of work that is listed in the Hire Schedule or that We have otherwise agreed to carry out;
  - ii) We reserve the right to determine the method of installation, calibration, repair and maintenance of Our Equipment;
  - iii) The Services provided are based on information that You provide to Us or available to Us at the time. We are entitled to rely on the accuracy and completeness of the information for the Services, whether that information is obtained by Us or provided by You, Your staff or Your third-party service providers;
  - iv) We are entitled to rely on the accuracy and completeness of the information for the Services, whether that information is obtained by Us or provided by You, Your officers or staff, or Your advisors or consultants; and
  - v) You must promptly notify Us if any of the information that You have provided to Us changes or if You become aware of something which renders such information obsolete or inaccurate.

### **5. MINIMUM HIRE PERIODS**

- (a) We may impose minimum Hire Periods on Orders for hire of Equipment.
- (b) Minimum Hire Periods are periods of time that We advise from time-to-time and are determined in Our reasonable discretion depending on the nature of the Goods and Services being supplied.
- (c) Unless We otherwise agree in writing, You agree to take possession of and pay for the Equipment for the full Hire Period listed in the Hire Schedule.
- (d) You may request to shorten or extend the Hire Period, acceptance of which is in Our sole discretion and will not be unreasonably withheld.
- (e) You agree to pay for all Services and Additional Expenses associated with the Equipment for the full Hire Period, including any rollover or extension of the Hire Period.

### **6. PRICING & ORDERING**

- (a) We may vary or cancel any Quote before accepting an Order from You.
- (b) You may purchase Goods and Services by placing an Order with Us verbally or in writing. You warrant that the person who places the Order is authorised by You to do so.
- (c) You acknowledge and agree that We are not responsible for any errors in specifications for Orders placed verbally. We encourage You to place all Orders in writing.
- (d) We may accept or decline any Order by notifying You verbally or in writing, or by supplying the Goods and Services to You.
- (e) We may ask You to pay a deposit for an Order in any amount that We advise from time-to-time. We are not required to accept Your Order until payment of the deposit has been made. The balance of the Order must be paid as We direct.

- (f) Since cancelled Goods have no re-sale value, You may only cancel an Order if We have not taken steps to fulfil the Order.
- (g) You cannot cancel Orders for non-stocklist Goods, Goods made to Your custom specifications, or Services where production or work has commenced, unless You pay Us for the Loss that we incur as a result of Your cancellation.
- (h) In all other situations, You cannot cancel an Order without Our written consent (which We will not unreasonably withhold).
- (i) Unless the parties otherwise agree in writing, the price You must pay for Goods and Services is specified in Our invoice for the Goods and Services.
- (j) We may charge You Additional Expenses that We incur in supplying the Goods and Services.
- (k) We have the right to change our rates and prices for Goods and Services to be supplied under these Terms from time-to-time.
- (l) If We need to change the price of any current Order, We will provide You with 30 days' written notice of a price change when:
  - i) Our scope of Services changes, including where conditions of a Site differ from what We have quoted You;
  - ii) You change Your Order;
  - iii) The price of Goods is subject to market rises and falls that are beyond Our control;
- (m) Unless You provide Us with a written objection within the notice period, the updated prices for Our Goods and Services will apply to all Orders submitted after expiry of the notice period.

## Hiring Our Equipment

### 7. HIRE OBLIGATIONS

#### **Before Hiring Our Equipment**

- (a) Before taking possession of the Equipment, You must:
  - i) Determine the suitability of the Equipment for any purpose You require; and
  - ii) Take out and maintain at all times during the Hire Period:
    - 1. Insurance for the full insurable value of the Equipment against damage or destruction to the Equipment, any commonly insurable risk for equipment of similar nature to the Equipment, public and third-party liability and any other insurable risks that We reasonably require; and
    - 2. Public liability insurance for property damage, personal injury and death in an amount not less than NZD \$10M;
  - iii) Provide us with a certificate of currency for such insurance on request.
- (b) You warrant that You are using the Equipment for business purposes.
- (c) When the Equipment is delivered, You must:
  - i) Immediately inspect the Equipment for its condition; and
  - ii) Within 24 hours of delivery notify Us in writing of any discrepancy, unsatisfactory condition, damage or defect in the Equipment.

#### **During the Hire Period**

- (a) During the Hire Period, You must:
  - i) Use the Equipment in a skilful and workman like manner and only for the purposes and within the capacity for which the Equipment is designed;
  - ii) Ensure that the Equipment is used by suitably certified, trained or licensed personnel;
  - iii) Ensure that the Equipment is used in accordance with Yours and Our instructions, the manufacturer's instructions and any user guides or instruction manuals;
  - iv) Ensure the safety of all personnel using the Equipment, including:
    - 1. Attaching any relevant safety signs, calibration seals and anti-tamper notices to the Equipment, ensuring that they are clearly legible by all users of the Equipment;
    - 2. Maintaining the safety signs, seals and notices and ensuring that they are not defaced or removed from the Equipment;
    - 3. Ensuring that all safety information supplied with the Equipment is conveyed to any person using it; and
    - 4. Ensuring that all users of the Equipment wear suitable clothing and protective equipment required or recommended by the manufacturer's safety and operating instructions, or as recommended by Us;
  - v) Keep the Equipment in good repair and condition, including:
    - 1. Perform periodic checks, inspections, cleaning and general maintenance of the Equipment;
    - 2. Service the Equipment in a manner and frequency recommended by the manufacturer; and
    - 3. Provide us with written records of all checks and maintenance on request;
  - vi) Prevent the Equipment from being lost, stolen or damaged in any way; and
  - vii) Advise us immediately in writing of any fault, loss, damage or need for repair in relation to the Equipment.
- (b) During the Hire Period, You must not without Our prior written consent:
  - i) On-hire the Equipment to any third party;
  - ii) Affix the Equipment to any land or premises;
  - iii) Move the Equipment from the Site;
  - iv) Claim any lien over, sell, transfer, charge, part with possession of, assign, or encumber the Equipment in any way;
  - v) Interfere with the Equipment, including altering, adding to, defacing, or erasing any identifying mark, plate or number on or in the Equipment; or
  - vi) Service or repair the Equipment.

#### **Ending the Hire Period**

- (a) You are responsible for any and all loss and damage that occurs to the Equipment, or in relation to the Equipment, during the Hire Period. This responsibility includes the costs to repair or replace Equipment that is lost, stolen or damaged during the Hire Period. We reserve all rights to charge You for repair or replacement of such Loss.
- (b) We may access the Equipment from time to time during the Hire Period for the purpose of inspection and providing any Services. You must permit and arrange such access to the Equipment.
- (c) You must return all Equipment to Us at the end of the Hire Period and return the Equipment in a clean condition.

## Getting the Goods and Equipment to You

### 8. DELIVERY

- (a) You may collect the Goods and Equipment from Our premises or have them delivered to Your Site.
- (b) You authorise Us to:
  - i) deliver Goods and Equipment to the Site nominated by You; and
  - ii) leave Goods and Equipment at the Site whether or not any person is there to accept delivery.
- (d) The method of delivering Goods and Equipment is at Our sole discretion. At any time, We may appoint a third party agent to perform Our delivery obligations of these Terms.
- (e) We may deliver Goods and Equipment by separate instalments.
- (f) You must pay all Additional Expenses to deliver Goods and Equipment.
- (g) We are not obliged to obtain a signed receipt, delivery docket or other acknowledgement of Goods and Equipment being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods and Equipment delivered.
- (h) You acknowledge and agree that any supply and delivery times indicated by Us are given in good faith and are estimates only. Estimates of time may change subject to Goods and Equipment being available, Our reasonable ability to supply Goods and Equipment on the estimated date, Force Majeure Events and receiving cooperation from You and third-party service providers.
- (i) We will endeavour to deliver Goods and Equipment at the time you need, but if We fail to deliver within a specified time due to factors beyond Our control or Your acts or omissions, You are not permitted to cancel Your Order, refuse to accept supply or refuse to pay for Our Goods and Services.
- (j) You acknowledge and agree that We may incur Additional Expenses (such as storage, handling and re-delivery costs) if You or a third-party service provider causes a delay in delivery.
- (k) Delivery is deemed to occur when Goods and Equipment are delivered to the Site or handed to You or Your representative.
- (l) You must:
  - i) inspect and examine the Goods and Equipment immediately on delivery, where the Goods are delivered to You; or
  - ii) ensure that any third-party service provider inspects and examine the Goods immediately on delivery, where the Goods are delivered to a third-party Site.
- (m) If You believe there are any Order errors, defects or damage in the Goods and Equipment at the time of delivery, You must notify Us within 24 hours of delivery of the Goods and Equipment, and You must follow Our returns procedure outlined in these Terms.
- (n) You will be deemed to have accepted the Goods (including any alleged errors, defects or damage) on delivery if You do not follow the returns procedure.

## How to Pay for Our Goods and Services

### 9. CREDIT ACCOUNTS

- (a) You may apply for a Credit Account with Us to purchase Goods and Services.
- (b) We have no obligation to provide credit facilities to You.
- (c) You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (d) A Credit Account must only be used by You. Your Credit Account cannot be assigned, transferred or made available for use by any other entity or person (including any purchaser of Your business) without Our prior written consent.
- (e) You authorise Us to debit Your Credit Account with the price of Goods and Services supplied to You and all other amounts that You owe Us (including Additional Expenses and interest payable under the Contract).
- (f) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt that You owe Us.
- (g) Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (h) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment to return Your Credit Account to its credit limit before accepting further Orders from You.

### 10. PAYMENT

- (a) Unless the parties otherwise agree in writing, You must pay for Goods and Services by the Due Date.
- (b) All amounts payable by You for Goods and Services are exclusive of GST as defined in the Goods and Services Tax Act 1985 (NZ) (unless expressly stated otherwise).
- (c) You must pay Us GST imposed on any supply of Goods and Services made under these Terms. Payment of any GST must be made at the same time as payment for the Goods and Services.
- (d) Payment must be made by an approved payment method. There may be Additional Expenses associated with Your method of payment, such as a surcharge.
- (e) We may charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);
- (f) We may request payment of Goods and Services by instalments or progress claims.
- (g) If You believe that You have a set-off claim against Us (including any query, dispute or claim), You cannot withhold any payment of Goods and Services on that basis without Our prior written consent.
- (h) If You do not pay for Goods and Services by the Due Date, We may:
  - i) Charge You interest on all overdue accounts at a rate which is 4% higher than the Official Cash Rate last published by the Reserve Bank of New Zealand as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;

- ii) Require You to pay cash on delivery of any further Goods and Services;
  - iii) Suspend or cease supplying Goods and Services to You;
  - iv) Demand Your immediate payment of all outstanding monies on Your account whether or not the Due Date has passed;
  - v) Allocate any payments received from You against interest charges, costs and Additional Expenses first before allocating payments to the Goods and Services; and
  - vi) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.
- i) Time is of the essence in relation to Your payment obligations.

## Managing Issues That May Arise

### 11. RISK AND OWNERSHIP

- (a) Unless the parties otherwise agree in writing:
  - i) All risk in the Goods and Equipment passes to You when the Goods and Equipment are handed to You (or Your agent, representative or nominated carrier) or delivered to Your Site;
  - ii) All risk in Equipment remains with you until the Hire Period ends.
- (b) You are responsible for obtaining and maintaining an appropriate level of insurance for the Goods from the time that risk in the Goods passes to You.
- (c) Legal ownership of Equipment remains with Us at all times and never passes to You.
- (d) Legal ownership of Goods does not pass to You until We have received all amounts owing by You on any account whatsoever with Us, including any Additional Expenses.
- (e) Until legal ownership of the Goods passes to You, all Goods are held by You for Us as bailee.
- (f) You must store the Goods and Equipment separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Goods and Equipment as Our property and prevents the Goods and Equipment from being damaged or spoiled.
- (g) You may resell any Goods before legal ownership passes to You, provided that You:
  - i) Resell the Goods to a third party in the ordinary course of business;
  - ii) Act in any transaction as Our fiduciary agent;
  - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
  - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
  - v) Allow us to inspect any records of any payments received for Goods.
- g) If You do not pay for Goods and Services by the Due Date or You suffer an Insolvency Event, then We may repossess the Goods and Equipment wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any Site or premises occupied by You without notice for the purpose of identifying and repossessing any of the Goods and Equipment. We reserve these repossession rights without being liable to You or any other third party in any way. You acknowledge and agree that You are liable for, and must pay Us, all repossession costs that We incur in accordance with this clause.

### 12. RETURNS

- (a) Unless provided by these Terms or We otherwise agree in writing, We are not required to accept returned Goods or Equipment from You or issue You with a credit for Goods and Equipment.
- (b) You may request a return of Goods and Equipment in the following situations:
  - i) You have received the incorrect product type or Order quantity due to an error by Us;
  - ii) The Goods or Equipment are damaged or faulty at the time of delivery.
- (c) All other requests for return or credit may only be accepted on a case-by-case basis and strictly in Our sole discretion.
- (d) **You must request any return within 24 hours of the date that the Goods or Equipment were delivered.**
- (e) You must take all steps necessary to mitigate any Loss arising from any defect in the Goods or Equipment supplied. You will be deemed to accept the Goods and Equipment (including any defects) if You do follow this returns procedure.
- (f) You must allow Us or Our authorised representatives access to the Goods and Equipment for inspection, if required.
- (g) If We accept a return from You, You are responsible for any Additional Expenses associated with the return (unless due to Our error). We may charge You reasonable restocking, storage, disposal or repacking charges which We incur from the Goods or Equipment being returned.
- (h) Returns cannot be accepted in the following situations:
  - i) Goods or Equipment which are not in original or resaleable condition;
  - ii) Goods or Equipment which have been subject to incorrect handling, storage or environments by You;
  - iii) Damage to the Goods or Equipment has occurred after risk has passed to You (i.e. after delivery of the Goods and Equipment);
  - iv) Goods that have already been used, commingled or affixed to another surface;
  - v) Any error in the Order caused by You; and
  - vi) Goods ordered or produced to Your custom specifications.

### 13. MAINTENANCE, LOSS AND DAMAGE OF EQUIPMENT

- (a) You are responsible for any loss, theft or damage to Equipment during the Hire Period (including delivery and transit) for any cause whatsoever, except where that loss, theft or damage has been directly caused by Us.
- (b) If the Equipment is lost, stolen or damaged, you are responsible for:
  - i) The cost of repairs; or
  - ii) The cost of replacement (if the Equipment cannot be repaired, which will be determined at Our reasonable discretion);
  - iii) Ongoing hire charges until the Equipment is repaired or replaced, unless otherwise agreed by Us; and
  - iv) Any Additional Expenses associated with the repair and/or replacement of the Equipment.
- (c) If the Equipment breaks down, needs recalibration, repair or maintenance, or becomes unsafe to use during the Hire Period then You must:

- i) Immediately stop using the Equipment;
  - ii) Notify Us of the breakdown, fault, repair or recalibration required;
  - iii) Take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
  - iv) Take all steps necessary to prevent further fault or damage to the Equipment;
  - v) Not repair or attempt to repair the Equipment without Our prior written consent; and
  - vi) Give Us access to the Equipment for the purpose of inspection and assessment of damage.
- (d) If the breakdown, fault, repair or maintenance of the Equipment is not Your fault, then We will:
- i) Repair, recalibrate or replace the Equipment (as may be required in Our sole discretion) as soon as practicable and at Our expense; and
  - ii) Either credit or not impose hire charges for the portion of the Hire Period that the Equipment was out-of-use.
- (e) If the breakdown, fault, repair or maintenance of the Equipment is due to Your use, act or omission in relation to the Equipment (including Your negligence, recklessness or misuse of the Equipment) then You are liable for all costs for repair or replacement of the Equipment and continuing hire charges while the Equipment is being repaired and/or replaced.
- (f) You must pay Us any and all insurance proceeds that You receive for any Loss of Equipment that We incur (up to an amount that is equal to the amount of Loss that We incur in accordance with this section).
- (g) The amount of Loss that You are responsible for under this section is not limited or reduced if You receive an amount of insurance proceeds which is less than the Loss We incur

## Making Sure We Get Paid

### 14. SECURITY OVER REAL PROPERTY

- (a) To secure payment of all monies You owe Us for the supply of Goods and Services, and without limiting clause 15 (which deals exclusively with security over personal property), You grant the following security over Your real property (being land and interests in land):
- i) Charge all of Your interest in real property (including all property acquired after the date of these Terms) in favour of Us, whether or not a demand has been made on You ("**Charge**"). This Charge is given as an equitable charge and mortgage over Your real property, governed by the Property Law Act 2007 (NZ) and the Land Transfer Act 2017 (NZ);
  - ii) Authorise and consent to Us lodging a caveat upon any title of Your real property, whether held in Your own right or as trustee of any trust, for the purpose of protecting Our equitable mortgage interest arising from the Charge and Your contractual promise to grant a formal mortgage pursuant to clause 14(a)(iii), provided that such caveat upon any title may only be lodged where You are in default of any obligation owed to Us under these Terms or where We reasonably consider that Our security interest in Your real property is at risk. You must not object to or take any steps to remove any caveat so lodged, and You authorise and consent to Us taking all other actions necessary to give effect to the Charge, including the lodgement of any other security document; and
  - iii) Agree to deliver to Us within 7 days of written demand a Memorandum of Mortgage in registrable form incorporating the covenants and conditions contained in Memorandum No. 2015/4328 registered at Land Information New Zealand pursuant to section 209 of the Land Transfer Act 2017 (NZ) (or such other memorandum as We may nominate), or such amendments or substitutions thereof as are current at the time of execution. You agree that any amount payable to Us is payable on demand and that such Memorandum of Mortgage shall be amended as necessary to comply with and reflect any appropriate laws in the jurisdiction(s) where You have any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration.
  - iv) Irrevocably appoint Us and any person nominated by Us severally as Your attorney, with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such caveat, mortgage or other security document to effect the Charge granted under this part.

### 15. PERSONAL PROPERTY SECURITIES ACT 1999 (NZ)

#### **Security for Goods and/or Equipment Supplied**

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Goods and/or Equipment supplied by Us from time to time and any proceeds of the sale or supply of the Goods and/or Equipment to secure payment for the Goods and/or Equipment supplied ("**Security Interest**").
- (b) Each sale or supply of Goods and/or Equipment by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Goods and/or Equipment and the proceeds of the sale or supply of the Goods and/or Equipment, including as a purchase money security interest (as that term is defined in the PPSA) ("**PMSI**"), pursuant to these Terms.

#### **General Security Agreement**

- (a) For the purpose of any general security agreement ("**General Security Agreement**"), "Collateral" means all Your present and after-acquired personal property, including circulating and non-circulating assets. Collateral includes any personal property in respect of which You have at any time, or may in the future have at any time, a sufficient legal or equitable right, title, interest or power to grant a security interest either in Your own right or as trustee of a trust.
- (b) You acknowledge and agree that:
  - i) In addition to any other Security Interest created by these Terms, these Terms also constitute a General Security Agreement for the purposes of the PPSA and create a security interest in Your Collateral to secure payment for the Goods and/or Equipment supplied ("**Security Interest**");
  - ii) Each supply of Goods and/or Equipment by Us under these Terms is subject to the General Security Agreement for the purposes of the PPSA; and
  - iii) We may lodge a financing statement on the PPSR in respect of the Security Interest in the Collateral pursuant to these Terms.

#### **Assurances**

- (a) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods, Equipment and/or Collateral (as the case may be) including for the purposes of:
  - i) Ensuring that any Security Interest created under, or provided for, by these Terms:
    - 1. Attaches to the Goods, Equipment and/or Collateral that is intended to be covered by that Security Interest; and
    - 2. Is enforceable, perfected and otherwise effective; and

3. Has the priority required by Us.
  - ii) Enabling Us to prepare and register a financing statement or financing change statement;
  - iii) Enabling Us to register a PMSI pursuant to the PPSA (where applicable);
  - iv) Enabling Us to register an all present and after-acquired property security interest pursuant to the PPSA (where applicable); and
  - v) Enabling Us to exercise and maintain any of Our rights or powers in connection with any such Security Interest.
- (b) If You dispose of the Goods or Collateral, You must:
  - i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by section 116 of the PPSA, unless otherwise specified by Us in writing; and
  - ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (c) If a higher-priority security interest does arise in the Goods, Collateral and/or their proceeds of sale despite Your obligations under this section, You must:
  - i) Ensure that You receive cash proceeds for the Goods and/or Collateral of at least equal to the market value of the Goods and/or Collateral; and
  - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (d) You must never dispose of the Equipment, but if You do dispose of the Equipment in any way, You must:
  - i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by section 116 of the PPSA, unless otherwise specified by Us in writing; and
  - ii) Not allow any other charge or security interest to exist over those proceeds or the Equipment without Our written consent if that security interest could rank ahead of Our Security Interest.
- (e) If a higher-priority security interest does arise in the Equipment and the proceeds of sale despite Your obligations under this section, You must:
  - i) Ensure that You receive cash proceeds for the Equipment of at least equal to the market value of the Equipment; and
  - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (f) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

#### **Exclusion of Notices and Other Obligations**

- (a) To the extent permitted by law and for the purposes of section 107 of the PPSA:
  - i) We do not need to comply with sections 114, 116, 120(2), 121, 126, 127, and 129; and
  - ii) Sections 134 and 135 are excluded;
  - iii) For the purposes of section 107 of the PPSA, We do not need to comply with sections 129 and 133.
- (b) To the extent permitted by law, You agree to waive:
  - i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
  - ii) Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- (c) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

#### **Provision of Information**

- (a) You agree not to exercise Your rights to make any request of Us under section 177 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (b) The parties must not disclose information of the kind mentioned in section 177 of the PPSA, except in the circumstances where:
  - i) Disclosure is required by law; and/or
  - ii) We disclose information of a kind mentioned in section 177 of the PPSA to the extent that We are not doing so in response to a request made under section 177 of the PPSA.
  - iii) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 177 of the PPSA, or request information under section 177 of the PPSA, if We approve such disclosure or request for information in writing.
- (c) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

#### **Other**

- (a) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (b) Nothing in this part limits or is limited by any other provision of these Terms or any other agreement between the parties.

### **How We Reduce Risk**

#### **16. WARRANTIES AND EXCLUSIONS**

- (a) Neither party excludes or limits the application of any statute (including the *Consumer Guarantees Act 1993 (NZ)* and the *Fair Trading Act 1986 (NZ)*) each as amended from time to time), where to do so would contravene that statute or cause any provision of these Terms to be void. Nothing in these Terms modifies or excludes the conditions, warranties, and undertakings and other legal rights under those Acts and other laws.
- (b) You acknowledge and agree that the Goods and Services supplied under these Terms are supplied and acquired in trade for business purposes. Pursuant to section 43 of the Consumer Guarantees Act 1993 (NZ), the parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 (NZ) to the fullest extent permitted by law. You acknowledge that:
  - i) this contracting-out provision is in writing and forms part of the agreement between the parties;
  - ii) it is fair and reasonable that the parties should be bound by this contracting-out provision, having regard to all the circumstances including the subject

matter and value of the Goods and Services, the respective bargaining positions of the parties, the fact that both parties are commercial entities acting in trade, and the opportunity afforded to You to seek independent legal advice prior to entering into these Terms;

- iii) You have had the opportunity to obtain independent legal advice on the effect of this contracting-out provision before agreeing to these Terms; and
- iv) You have voluntarily agreed to contract out of the Consumer Guarantees Act 1993 (NZ) on the terms set out in these Terms.
- (c) You further acknowledge and declare that the credit provided under these Terms and any Credit Account is to be used wholly or predominantly for business or investment purposes (within the meaning of the Credit Contracts and Consumer Finance Act 2003 (NZ)) ("CCCFA") and not for personal, domestic, or household purposes. You confirm that You have read and understood this declaration and that the credit contract formed by these Terms is not a consumer credit contract for the purposes of the CCCFA. You agree that the CCCFA does not apply to the credit provided under these Terms or any Credit Account. We have entered into these Terms in reliance on this declaration and have no reasonable grounds to believe that the credit is to be used for personal, domestic, or household purposes.
- (d) Subject to this clause 16, and except as expressly set out by the manufacturer, in these Terms, or in a separate warranty document, We give no implied warranties or representations under these Terms or in connection with the Goods and Services that We supply.
- (e) You acknowledge and agree that:
  - i) You are responsible for ensuring that the Goods and Services are suitable for Your intended Site and use. In that regard, You agree that You have not relied on any inducement, representation or statement made by or on behalf of Us in purchasing the Goods and Services;
  - ii) No sale under these Terms constitutes a sale by sample. You acknowledge that any sample may vary from the Goods and Equipment that are supplied;
  - iii) No sale under these Terms constitutes a sale by description. Any description of Goods or Equipment is by way of identification only; and
  - iv) To the extent permitted by law, all other implied warranties, terms and conditions are excluded.

## 17. LIMITATION OF LIABILITY

- (a) This section applies to Loss that You may suffer or incur as a result of or in connection with these Terms, the Goods or Services.
- (b) To the extent permitted by law, and where it is appropriate to do so, We may limit Our liability to You pursuant to these Terms by Our choice of:
  - i) Resupplying the Goods and Services; or
  - ii) Replacing the Goods and Services with an equivalent (or paying the cost to supply an equivalent); or
  - iii) Refunding the price You paid for the Goods and Services.
- (c) To the extent permitted by law, Our liability for Loss that You suffer or incur in relation to these Terms will not exceed the total price of all Goods and Services supplied, except for the following types of Loss:
  - i) Personal injury (including sickness and death);
  - ii) Breach of privacy legislation;
  - iii) Breach of intellectual property rights;
  - iv) Breach of confidentiality;
  - v) Statutory liability that cannot be contracted out of;
  - vi) Property damage that is covered by insurance.
- (d) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages, indirect or consequential loss of any kind.
- (e) We will not be liable to You for Loss in relation to the Goods and Services where:-
  - i) You have not paid for the Goods and Services;
  - ii) The Loss is caused by Your incorrect use or misuse of the Goods or Equipment, including negligence, failure to supervise staff or third-parties in using the Goods and Equipment, or failure to use and maintain the Goods and Equipment in accordance with Our instructions or industry standards;
  - iii) Any Loss and damage to the Goods or Equipment after delivery to You or a third-party service provider, or collected by You or a third-party service provider;
  - iv) You have used Goods and Equipment other than for the purposes for which they were designed or intended, including for an illegal purpose;
  - v) Your failure to provide a suitable and safe Site for the delivery of Goods and Equipment, and operation of the Equipment, including a Site that is compliant with the Health and Safety at Work Act 2015 (NZ);
  - vi) Goods and Equipment have been installed, calibrated, repaired or modified by You or a third-party; or
  - vii) Goods and Equipment have been subject to abnormal conditions, including temperature, water, fire, humidity, pressure, neglect or other environmental conditions.
- (f) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for Goods, Services and any Additional Expenses.
- (g) Nothing in these Terms affects the duty of a party to mitigate damages after a breach of these Terms by the other party.

## 18. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any direct Loss that We suffer or incur as a direct result of Your act or omission (or any entity or person that You are responsible for) pursuant to these Terms or in relation to the Goods and Services, including but not limited to Your breach of these Terms, breach of a warranty provided by these Terms, negligence, fraud or illegal conduct.
- (b) Specific situations that You must indemnify Us against and pay Us for (or Our agents, employees or contractors) include:
  - i) All legal costs which We incur as a result of any breach, act or omission by You under these Terms. This includes legal or mercantile agent fees on an indemnity basis for the recovery of unpaid Goods and Services, any action taken to secure a charge and repossession of unpaid Goods;
  - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with any Credit Account and supply of Goods and Services;
  - iii) Any Loss that We incur as a result of You cancelling your Order in a way that is not permitted by these Terms;
  - iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
  - v) Any Loss arising out of damage to Our Equipment during the Hire Period (including any loss of or damage to property) except to the extent that such Loss is caused by Us;
  - vi) Any Loss (including personal injury or death) arising out of Your failure to safely use, supervise the use of or maintain Our Equipment during the Hire Period;

- vii) Any Loss (including personal injury or death) arising out of Your failure to provide a safe, suitable and compliant Site with the Health and Safety at Work Act 2015 (NZ);
- viii) Any Loss that We incur by relying on information that You provide which is inaccurate, incomplete or obsolete.
- (c) This indemnity will be proportionally reduced to the extent that We or any of Our representatives caused or contributed to the Loss.
- (d) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms.

## Ending Our Agreement

### 19. HIRE PURCHASE OPTION

- (a) Upon expiry of the Hire Period, You may request to acquire title to any item of Equipment by:
  - i) Giving us written notice within 60 days expiry of the Hire Period;
  - ii) Paying the residual value of the Equipment;
  - iii) Paying all fees and Additional Expenses due or accrued due under these Terms; and
  - iv) Fulfilling all other obligations You have under these Terms.
- (b) Upon receipt of Your written notice to exercise the hire-purchase option, We may decide to sell the Equipment to You in Our sole discretion. We are not obligated to sell any Equipment to You.
- (c) If We approve Your request to purchase Equipment, We will advise You of the total purchase price, including any residual hire fees and Additional Expenses due under these Terms together with the residual value of the Equipment (**Purchase Price**).
- (d) On receipt of the Purchase Price in cleared funds, We agree to do all things and sign all documents necessary to transfer title to the Equipment to You.
- (e) Title in the purchased Equipment will transfer on an 'as is, where is' basis. To the extent permitted by law, We warrant that any purchased Equipment will be free of security interests and encumbrances and We give no other express or implied warranties with the purchased Equipment.
- (f) We may charge, and You must pay, all hire fees and Additional Expenses for any Equipment that remains in Your possession between the expiry of the Hire Period and transfer of title to the Equipment (or otherwise returned to Our possession).
- (g) You are responsible for all Additional Expenses incurred for the transfer of purchased Equipment.
- (h) You acknowledge and agree that:
  - i) Any option to purchase Equipment is not binding on the parties unless and until We have agreed in writing to sell the Equipment, You have agreed in writing to purchase the Equipment for the Purchase Price, and We have received the Purchase Price in cleared funds without any set off or deduction; and
  - ii) Before the option to purchase Equipment is binding on the parties, nothing should be taken as granting You additional rights in respect of the Equipment whatsoever, including equitable rights over or in respect of the Equipment; and
  - iii) This option to purchase Equipment does not extend to hired Goods. We give no option to purchase hired Goods.

### 20. DISPUTE RESOLUTION

- (a) If the parties have a dispute in relation to the Goods and Services or these Terms, then the parties must follow this dispute resolution procedure:
  - i) The disputing party must give the other party written notification of the dispute;
  - ii) On receipt of a dispute notice issued in accordance with this section, the parties must:
    - 1. Refer the dispute to its respective senior management;
    - 2. Each party's senior management representatives must endeavour to resolve the dispute within 30 days of the date of the dispute notice (or such other period as agreed between the parties in writing);
- (b) If the dispute has not been resolved by senior management representatives of each party within 30 days of the dispute notice (or such other period as agreed in writing), then either party **may** (but is not required to) elect to resolve the dispute by mediation via the Arbitrators' and Mediators' Institute of New Zealand (AMINZ) before commencing arbitration or litigation. Any AMINZ mediation must be conducted in accordance with the AMINZ Mediation Protocol which operates at the time the matter is referred to AMINZ. The AMINZ Mediation Protocol sets out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;
- (c) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless and until the dispute has been referred for resolution under these Terms and to the extent that this dispute resolution procedure has been completed;
- (d) Either party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this section;
- (e) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists;
- (f) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

### 21. TERMINATION

- (a) By giving You written notice, We can:
  - i) Suspend or cancel supply of Goods and Services (including a current Order);
  - ii) Suspend or terminate Your Credit Account, if You have one;
  - iii) Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired;
  - iv) Register a default credit reporting agency, where applicable;
  - v) Suspend or terminate the contract created by these Terms (collectively "**Our Termination Rights**").
- (b) We can exercise Our Termination Rights immediately when:
  - i) You have not paid Our invoice (including any Additional Expenses) by the Due Date;
  - ii) You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the

PPSA;

- iii) You engage in illegal activity related to the Goods and Services;
- iv) You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation;
- v) An Insolvency Event occurs.
- (c) In all other situations, either party may terminate these Terms:
  - i) Immediately by written notice if the other party is in breach of a material clause of these Terms and the breach is not rectified within 15 days of the termination notice;
  - ii) If there is no minimum Hire Period or the minimum Hire Period has expired, by giving 7 days' written notice to the other party; or
  - iii) If a minimum Hire Period applies, by giving the other party at least 30 days' written notice
  - iv) Without cause by giving the other party at least 30 days' written notice.
- (d) The parties agree that termination notices in accordance with this section may be sent by email to a director or other authorised officer of the party (including senior manager, company secretary, partner, principal).
- (e) When these Terms are terminated:
  - i) You must return any Equipment to Us within 7 days of the termination;
  - ii) We may exercise Our repossession rights for all unpaid Goods and Equipment stipulated by these Terms;
  - iii) We may recover from You, and You must pay, all outstanding amounts for Goods, Services and Additional Expenses imposed by these Terms (including any minimum Hire Period or any amount of Loss that We sustain as a consequence of terminating the contract before expiry of a minimum Hire Period, such as the balance of any unpaid minimum Hire Period and associated Additional Expenses); and
  - iv) Either party may pursue any additional or alternative remedies provided by law.

## Other Information

### 22. PRIVACY

- (a) We may collect personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with the At-Pac New Zealand Limited Privacy Policy, the *Privacy Act* 2020 (NZ), and the Information Privacy Principles. You consent to that information being collected. You can obtain a copy of the At-Pac New Zealand Limited Privacy Policy on request or by visiting Our Website.
- (b) You consent to Us obtaining a credit report from a credit reporting agency containing personal credit information about You in relation to credit provided by Us and assessing any application for a Credit Account.
- (c) You agree that We may exchange information about You with credit reporting agencies and others (e.g. trade references provided by You or named in a consumer credit report issued by a credit reporting agency) for the following purposes:
  - i) Obtaining a credit report about You;
  - ii) Assessing Your creditworthiness and any application for a Credit Account;
  - iii) Notifying other credit providers of a default by You;
  - iv) Exchanging information with other credit providers as to the status of Your Credit Account if You are in default with other credit providers; and
  - v) Allowing credit reporting agencies to create and maintain a credit information file about You.
- (d) You consent to Us being given a consumer credit report to collect overdue payment on Your Credit Account.

### 23. GENERAL

- (a) Any clauses which are expressed to be, or are by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any part of these Terms becomes void or unenforceable for any reason, then that part will be severed and, to the extent possible, all remaining parts continue with full force and effect without being affected by the severance of any other parts.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) You agree to accept service of notices via email pursuant to the *Construction Contracts Act* 2002 (NZ) as amended from time to time, or any like or similar legislation that may be applicable (in addition to any and all other forms of service authorised by the legislation and its regulations).
- (g) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.
- (h) You agree to receive invoices via email.
- (i) You agree that email communications from Us to You constitute an "electronic communication" within the meaning of Part 4 of the *Contract and Commercial Law Act* 2017 (NZ) ("CCLA").
- (j) You agree that the receipt and service of notices via email is "an information system for the purpose of receiving electronic communications" within the meaning of the CCLA.
- (k) You agree that evidence of the "dispatch" (within the meaning of the CCLA) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the CCLA. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

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