

TERMS OF TRADE

These Terms govern the rental of the Equipment and provision of the Services from SWL to the Customer. The acceptance by the Customer of the Equipment and the Services indicates the Customer's acceptance of these Terms.

1. Definitions

- 1.1 "Customer" includes any agent of the Customer.
- 1.2 "Equipment" means all equipment including, but not limited to, scaffolding, machinery, plant, fittings, accessories and parts supplied by SWL to the Customer pursuant to these Terms.
- 1.3 "SWL" means SCAFFRITE WAIKTO LIMITED 4539739.
- 1.4 "Insolvency Event" means becomes insolvent, enters into a composition with creditors, is declared bankrupt, goes into liquidation, a receiver or administrator is appointed to any or all of its assets or undertakings, or ceases to carry on business, or an event analogous to or having a substantially similar effect to any of the events specified in this definition.
- 1.5 "Rental Fee" means the rental fee as provided in SWL's estimate or invoice, and in the event that the Equipment is required for a longer period than the Rental Period as provided in SWL's estimate and/or further services are required by the Customer, the Customer will be the additional rental fee as calculated by SWL.
- 1.6 "Rental Period" means the period commencing at the time at which the Equipment leaves SWL's premises and terminating at the time at which the Equipment arrives back at SWL's premises.
- 1.7 "Services" means the services provided by SWL to the Customer in relation to the installation, modification and dismantling of the Equipment.
- 1.8 "Terms" means these terms of trade.

2. Rental of Equipment

- 2.1 The Customer agrees to rent from SWL and SWL agrees to rent to the Customer the Equipment for the Rental Period pursuant to these Terms.
- 2.2 The Rental Fee for the Rental Period is calculated on a weekly basis.
- 2.3 Unless otherwise agreed in writing, the Customer must give SWL a minimum of four days' notice prior of their required pick up time. Notification of less than four days may result in an additional Rental Fee being charged.
- 2.4 SWL will make every effort to ensure that the Equipment is delivered on time but assumes no responsibility for loss or damage arising from a delay in delivery.
- 2.5 The Customer must notify SWL within 24 hours of the Equipment being delivered if any of the Equipment is missing or damaged on delivery, otherwise the Equipment will be deemed to be delivered in good condition.
- 2.6 Should there be any failure, breakage or breakdown of the Equipment, the Customer must immediately notify SWL. SWL will use its best endeavours to replace or substitute the affected Equipment as soon as possible if the failure etc. resulted from the proper use of the Equipment in accordance with these Terms but will not be liable for loss or damage arising from failure, breakage or breakdown of the Equipment.

3. Provision of Services

- 3.1 The Customer wishes SWL to provide the Services and SWL agrees to provide such Services pursuant to these Terms.

- 3.2 The Customer will pay all fees in relation to the Services.

4. Risk and Insurance

- 4.1 The Equipment remains the sole property of SWL at all times.
- 4.2 Notwithstanding clause 4.1, the Customer is responsible for the insurance of and risk in the Equipment during the Rental Period.
- 4.3 The Customer agrees to obtain at its own cost, keep current and not act so as to void insurance cover in respect of its potential liability under these Terms. Any insurance monies pursuant to the above mentioned policy, shall be first applied to the indemnification of SWL.

5. Payment Terms

- 5.1 Unless otherwise agreed in writing, 50% of the Rental Fee must be paid on or before the commencement of the Rental Period and the remaining 50% must be paid within seven days of the end of the Rental Period. Payment must be made by direct credit to the account specified in SWL's invoice unless otherwise consented to by SWL.
- 5.2 Failure to pay the Rental Fee by the due date will incur interest from day to day at the annual rate of 12% per month until payment is received in full (including down to date of judgment,). The Customer shall be liable for all costs incurred in the recovery of any overdue amount owing by the Customer to SWL (including but not limited to legal costs on a solicitor-client basis).
- 5.3 Where these Terms form a 'construction contract' in terms of the Construction Contracts Act 2002 there shall be no progress payments and the Rental Fee shall be paid for in one sum on the due date.

6. Obligations of the Customer

- 6.1 The Customer:
 - (a) Agrees that it is responsible for ensuring that the Equipment which is rented is suitable for purpose. The Customer understands that should the Customer need to change the Equipment, additional charges may be payable.
 - (b) Must use the Equipment in a proper manner and in accordance SWL's instructions at handover and the instructions on the scaffold tags. In no circumstances will the Customer use the Equipment for a purpose for which it was not designed.
 - (c) Is responsible for complying with all health and safety legislation and all codes of practice in relation to the use of the Equipment, including but not limited to the OSH approved Code of Practice for scaffolding.
 - (d) Must ensure that only competent and qualified tradespeople use the Equipment.
 - (e) Must take care of the Equipment and ensure that the Equipment is available for pickup in a clean and proper condition and in working order. The Customer agrees to pay any and all costs relating to any damage to or loss of the Equipment, and any cleaning costs incurred in the event that the Equipment is not returned in a clean condition.

- (f) Shall deliver up the Equipment prior to the expiration of the Rental Period on demand in a good condition to SWL if required by SWL for any reason.
 - (g) Shall not allow any third party to have possession or use of the Equipment for any amount of time and shall not represent to any third party that the Equipment is owned by the Customer or any third party.
 - (h) Shall not alter or make any additions to the Equipment.
 - (i) Agrees that the Customer is responsible for any loss of or damage to of the Equipment during the Rental Period.
- 7. PPSR**
- 7.1 Notwithstanding clause 4.1, the Customer grants to SWL a security interest in the Equipment that SWL supplies to the Customer. Such security interest includes the Equipment and proceeds of the Equipment, including those relating to Equipment which has become an accession to other goods, processed or comingled or mixed with other goods.
- 7.2 The Customer agrees to supply and, where relevant, update all necessary details required for SWL to register a financing statement in relation to the Equipment, and do all acts necessary to facilitate the same.
- 7.3 The Customer waives all rights to receive a copy of any verification statement relating to a financing statement.
- 7.4 The Customer authorises SWL to:
- (a) Request any information from any secured party relating to any of the Customer's security interests; and
 - (b) Search the Personal Property Securities Register at any time for information relating to the Customer or the Customer's related entities.
- 7.5 The Customer will be responsible for all reasonable costs relating to the discharge or amendment of a financing statement by SWL.
- 8. Termination**
- 8.1 SWL may terminate supply of the Equipment or the Services to the Customer pursuant to these Terms without payment of compensation:
- (a) At any time on two hours' notice to the Customer.
 - (b) Without notice in the event that:
 - (i) The Customer breaches these Terms;
 - (ii) The Customer suffers an Insolvency Event; or
 - (iii) SWL believes the Equipment to be at risk for any reason whatsoever.
- 8.2 On termination or expiration of the supply of the Equipment, SWL is entitled to immediately take possession of the Equipment and the Customer irrevocably appoints SWL its agent for this purpose and authorises SWL to enter onto any land or premises owned by or under the control of the Customer, upon which the Equipment is situated, and agrees to indemnify SWL in respect to any claims, damages or expenses arising under this clause.
- 9. Indemnity**
- 9.1 The Customer agrees to indemnify and keep indemnified SWL from and against any and all

loss, damage or liability suffered (including legal fees and costs incurred on a solicitor/client basis) by SWL or any third party resulting from:

- (a) Any act, neglect or default of the Customer or its agents, employees or licensees; or
- (b) A breach of these Terms by the Customer.

10. Liability

10.1 To the extent permitted by law, SWL shall not be liable for any loss, damage or claim pursuant to the rental of the Equipment or pursuant to these Terms.

10.2 Notwithstanding clause 10.1 above, in the event that SWL is found liable under these Terms to any extent at law, SWL's liability shall be limited to the Rental Fee and SWL's directors, employees, contractors and agents, shall not be liable to the Customer for loss or damage of any kind, however that loss or damage is caused. This limitation of liability includes, but is not limited to, costs (including costs on a solicitor-client basis) indirect or inconsequential loss, loss of profits, negligence, faulty specifications and design, or faulty materials or components.

11. Privacy

11.1 The Customer consents to SWL collecting, storing and using information about the Customer for the following purposes:

- (a) Provision of the Equipment and Services under these Terms;
- (b) Undertaking enquiries with any credit agency in relation to the creditworthiness of the Customer;
- (c) Marketing SWL's goods and services; and
- (d) Enforcing SWL's rights against the Customer.

11.2 Where the Customer is an individual, the provisions of the Privacy Act 1993 apply, including the right for the Customer to access their personal information held by SWL, and request a correction of any such information held. Any queries should be directed to SWL's Privacy Officer at SWL's address.

11.3 The Customer consents to receiving commercial electronic messages from SWL for the purposes of the Unsolicited Electronic Messages Act 2007.

12. Guarantee

12.1 In consideration of SWL supplying the Equipment and the Services to the Customer, the Guarantor unconditionally and irrevocably guarantees:

- (a) The payment by the Customer of all money payable to SWL pursuant to these Terms; and
- (b) The performance of all of the Customer's obligations under these Terms.

12.2 The Guarantor agrees that the guarantee set out in clause 12.1 above shall remain in full force and effect until all monies due by the Customer to SWL pursuant to these Terms are paid in full.

13. General

13.1 No failure or delay by any party to enforcing a provision of these Terms at any time shall be a waiver of that provision. No waiver shall be effective unless it is in writing. No waiver of any

- breach of these Terms shall be deemed to be a waiver of any other or any subsequent breach.
- 13.2 Any clause of these Terms which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other clause(s) which shall remain in full force and effect.
- 13.3 No variation to these Terms shall be valid or binding unless recorded in writing and signed by both parties.
- 13.4 The Customer may not assign or transfer all or any part of its rights or obligations under these Terms without the prior written consent of SWL.
- 13.5 Where the Customer acquires the Equipment for the purposes of a business, or if the Customer holds itself out as acquiring it for the purposes of a business, the Customer agrees that the Consumer Guarantees Act 1993 shall not apply.
- 13.6 These Terms are made in New Zealand and its construction, validity, and performance shall be determined under New Zealand law. The parties

- submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 13.7 All notices must be in writing and must be served by one of the following means and in respect of each is deemed to have been served as described:
- (a) By person or delivery, when received by the addressee; or
 - (b) By posting by registered or ordinary mail, on the second working day following the date of posting to the addressee's last known address for correspondence;
 - (c) By email when acknowledged by the addressee by returned email or otherwise in writing;
 - (d) By facsimile transmission, when sent to the addressee's facsimile number (with transmission confirmation).

GUARANTOR (PLEASE COMPLETE)

Name: _____ (“Guarantor”)

Address: _____

Telephone: _____

Email: _____

Fax: _____

The Guarantor guarantees the payment of the Rental Fee and any other costs and the performance of the Customer's obligations under these Terms as set out at clause 12.

In addition to the obligations in clause 12, I acknowledge:

- That this guarantee will not be affected or discharged if the Customer is granted any time, credit, waiver or indulgence, or by the release of any security or winding up or bankruptcy of the Customer;
- That I shall make payment of all sums due by the Customer within 3 working days of receiving a notice in writing of a Customer default;
- That SWL shall be under no obligation to take proceedings against the Customer before taking proceedings against the me;
- That this guarantee is given freely and that I am aware of my right to obtain independent legal advice before signing.

Signed by the Guarantor: _____

Signature: _____

Date: _____