

1. Definitions

- 1.1 "TRS" means Technical Rigging Services NZ Ltd, its successors and assigns or any person acting on behalf of and with the authority of Technical Rigging Services NZ Ltd.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by TRS to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between TRS and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery.
- 2.2 These terms and conditions may only be amended with TRS' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and TRS.
- 2.3 These terms and conditions may be meant to be read in conjunction with TRS' Hire Form, and:
 - (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Change in Control

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

4. Price and Payment

- 4.1 At TRS' sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by TRS to the Customer; or
 - (b) TRS' quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of ninety (90) days.
- 4.2 TRS reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be provided (including any applicable plans or specifications) is requested; or
 - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured building defects, safety considerations (asbestos, etc.), prerequisite work by any third party not being completed, etc.) which are only discovered on Delivery; or
 - (c) in the event of increases to TRS in the cost of labour or materials, which are beyond TRS' control.
- 4.3 At TRS' sole discretion, a deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by TRS, which may be:
 - (a) on Delivery;
 - (b) by way of instalments in accordance with TRS' payment schedule;
 - (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by TRS.
- 4.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and TRS.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to TRS an amount equal to any GST TRS must pay for any supply by TRS under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4.7 Receipt by TRS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then TRS' ownership or rights in respect of the Goods, and this agreement, shall continue.

5. Delivery

- 5.1 Delivery of the Goods ("**Delivery**") is taken to occur at the time that:
 - (a) the Customer or the Customer's nominated carrier takes possession of the Goods at TRS' address; or
 - (b) TRS (or TRS' nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 5.2 At TRS' sole discretion, the cost of Delivery is included in the Price.
- 5.3 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery as arranged then TRS shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 TRS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by TRS to the Customer is an estimate only. The Customer must still accept Delivery even if late and TRS will not be liable for any loss or damage incurred by the Customer as a result of the Delivery being late.

6. Risk

- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, TRS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by TRS is sufficient evidence of TRS' rights to receive the insurance proceeds without the need for any person dealing with TRS to make further enquiries.
- 6.3 If the Customer requests TRS to leave Goods outside TRS' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 6.4 The Customer shall be liable for any loss or damage whatsoever caused in the event that the Goods are fitted, serviced or operated incorrectly, or adapted for use other than the purpose that the Goods were intended for, or any part thereof however arising.
- 6.5 The Customer warrants that all specifications, particulars, dimensions and other information submitted to TRS are accurate and sufficient to properly enable TRS to provide the quotation and/or provide supply the Goods. The Customer shall make available to TRS all information, documents and other particulars relating to the Customer's requirements as are requested by TRS. The Customer agrees to indemnify TRS from any loss or damage howsoever arising from the provision of incorrect data to TRS.
- 6.6 The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the descriptions applied to the Goods.
- 6.7 Any performance figures given by TRS are estimates only. TRS is under no liability for damages for failure of the goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.
- 6.8 The Customer acknowledges that TRS is only responsible for components that are supplied by TRS, and in the event that other parts or the overall goods, subsequently fail, the Customer agrees to indemnify TRS against any loss or damage to the goods, or caused by the goods, or any part thereof howsoever arising.
- 6.9 The Customer warrants that the structure of the premises or equipment in or upon which the Goods are to be installed or erected is:
- (a) sound and will sustain the installation and Services incidental thereto, and TRS shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation;
 - (b) constructed to the New Zealand Building Code and satisfies the relevant standards. It is TRS' responsibility to check for compliance, but the Customer's responsibility to have any non-compliance issues rectified at their own expense.
- 6.10 The Client acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. TRS will make every effort to match batches of Goods supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 6.11 Liability will not be accepted for accidents due to inappropriate selection or maintenance of the Goods, or carelessness thereof.
- 6.12 TRS warrants that the size of gutters and the number, size and position of downpipes on the project satisfy New Zealand standards. However, TRS does not warrant the condition of underground storm water pipes or existing blockage, which often results in gutter overflowing and back filling of downpipes. Repairs to these works are not TRS' responsibility.
- 6.13 Any advice, recommendation, information, assistance or service provided by TRS in relation to Goods is given in good faith, is based on TRS' own knowledge and experience and shall be accepted without liability on the part of TRS, and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods.
- 6.14 TRS, it's directors, employees and consultants, believe that the information provided to the Customer is correct and that any calculations, estimates, conclusions or recommendations contained in any quotation, estimate or similar document are reasonably held or made as at the time of compilation. However, no warranty is made as the accuracy or reliability of any calculations, estimates, conclusions or recommendation (which made change with notice) or other information contained therein and, to the maximum extent permitted by law, TRS disclaims all liability and responsibility for any direct or indirect loss or damage which may be suffered by any recipient through relying on anything contained therein or omitted therefrom.

7. Compliance with Laws

- 7.1 The Customer and TRS shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including any health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 7.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required.

8. Title

- 8.1 TRS and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid TRS all amounts owing to TRS; and
 - (b) the Customer has met all of its other obligations to TRS.
- 8.2 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to TRS on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for TRS and must pay to TRS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for TRS and must pay or deliver the proceeds to TRS on demand.
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of TRS and must sell, dispose of or return the resulting product to TRS as it so directs.
 - (e) the Customer irrevocably authorises TRS to enter any premises where TRS believes the Goods are kept and recover possession of the Goods.
 - (f) TRS may recover possession of any Goods in transit whether or not delivery has occurred.

- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of TRS.
- (h) TRS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 9.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods previously supplied by TRS to the Customer (if any) and all Goods that will be supplied in the future by TRS to the Customer.
- 9.2 The Customer undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which TRS may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, TRS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of TRS; and
 - (d) immediately advise TRS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.3 TRS and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by TRS, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Customer shall unconditionally ratify any actions taken by TRS under clauses 9.1 to 9.5.

10. Security and Charge

- 10.1 In consideration of TRS agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Customer indemnifies TRS from and against all TRS’ costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TRS’ rights under this clause.
- 10.3 The Customer irrevocably appoints TRS and each director of TRS as the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer’s behalf.

11. Customer’s Disclaimer

- 11.1 The Customer hereby disclaims any right to rescind, or cancel any contract with TRS or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by TRS and the Customer acknowledges that the Goods are bought relying solely upon the Customer’s skill and judgment.

12. Defects

- 12.1 The Customer shall inspect the Goods on Delivery and shall within sixty (60) days of such time (being of the essence) notify TRS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford TRS an opportunity to inspect the Goods within a reasonable time following such notification if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which TRS has agreed in writing that the Customer is entitled to reject, TRS’ liability is limited to either (at TRS’ discretion) replacing the Goods or repairing the Goods.
- 12.2 Goods will not be accepted for return other than in accordance with 12.1 above.

13. Warranty

- 13.1 Subject to the conditions of warranty set out in clause 13.2, TRS warrants that if any defect in any workmanship of TRS becomes apparent and is reported to TRS within six (6) months of the date of Delivery (time being of the essence) then TRS will either (at TRS’ sole discretion) replace or remedy the workmanship.
- 13.2 The conditions applicable to the warranty given by clause 13.1 are:
 - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by TRS; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and TRS shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without TRS’ consent.
 - (c) in respect of all claims TRS shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer’s claim.
- 13.3 For Goods not manufactured by TRS, the warranty shall be the current warranty provided by the manufacturer of the Goods, and the conditions applicable to the warranty given on Goods supplied by TRS may be contained on a “Warranty Card” that will be supplied with the

Goods. TRS shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

- 13.4 In the case of second hand Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by TRS as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. TRS shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

14. Consumer Guarantees Act 1993

- 14.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by TRS to the Customer.

15. Intellectual Property

- 15.1 Where TRS has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of TRS.
- 15.2 The Customer warrants that all designs, specifications or instructions given to TRS will not cause TRS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify TRS against any action taken by a third party against TRS in respect of any such infringement.
- 15.3 The Customer agrees that TRS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which TRS has created for the Customer.

16. Default and Consequences of Default

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at TRS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Customer owes TRS any money the Customer shall indemnify TRS from and against all costs and disbursements incurred by TRS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, TRS' collection agency costs, and bank dishonour fees).
- 16.3 Without prejudice to any other remedies TRS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions TRS may suspend or terminate the supply of Goods to the Customer. TRS will not be liable to the Customer for any loss or damage the Customer suffers because TRS has exercised its rights under this clause.
- 16.4 Without prejudice to TRS' other remedies at law TRS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to TRS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to TRS becomes overdue, or in TRS' opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

17. Cancellation

- 17.1 TRS may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice TRS shall repay to the Customer any money paid by the Customer for the Goods. TRS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Customer cancels Delivery the Customer shall be liable for any and all loss incurred (whether direct or indirect) by TRS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

18. Privacy Act 1993

- 18.1 The Customer authorises TRS or TRS' agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by TRS from the Customer directly or obtained by TRS from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 18.2 Where the Customer is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Customer shall have the right to request TRS for a copy of the information about the Customer retained by TRS and the right to request TRS to correct any incorrect information about the Customer held by TRS.

19. General

- 19.1 The failure by TRS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect TRS' right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of the North Shore City area of Auckland, New Zealand.

Technical Rigging Services NZ Ltd – Terms & Conditions of Trade

- 19.3 TRS shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by TRS of these terms and conditions (alternatively TRS' liability shall be limited to damages which under no circumstances shall exceed the Price).
- 19.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by TRS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5 TRS may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.6 The Customer agrees that TRS may amend these terms and conditions at any time. If TRS makes a change to these terms and conditions, then that change will take effect from the date on which TRS notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for TRS to provide Goods to the Customer.
- 19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.