

1. **Definitions**
- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "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.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting TRS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "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).
- 1.5 "Equipment" means all Equipment including any accessories supplied on hire by TRS to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by TRS to the Customer.
- 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.8 "Price" means the Price payable for the Goods/Equipment hire (plus any Goods and Services Tax ("GST") where applicable) as agreed between TRS and the Customer in accordance with clause 6 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 of the Goods/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Customer has completed a credit application with TRS and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods/Equipment request exceeds the Customers credit limit and/or the account exceeds the payment terms, TRS reserves the right to refuse Delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Errors and Omissions**
- 3.1 The Customer acknowledges and accepts that TRS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by TRS in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by TRS in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of TRS, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 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 numbers, change of trustees, 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.
5. **Authorised Representatives**
- 5.1 The Customer acknowledges that TRS shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to TRS, that person shall have the full authority of the Customer to order any Services, Goods and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to TRS for all additional costs incurred by TRS (including TRS's profit margin) in providing any Services, Goods or variation/s requested thereto by the Customer's duly authorised representative.
6. **Price and Payment**
- 6.1 At TRS's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by TRS to the Customer; or
 - (b) TRS's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of ninety (90) days.
- 6.2 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.
- 6.3 At TRS's sole discretion a non-refundable deposit may be required.
- 6.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by TRS, which may be:
 - (a) for approved Customer's, 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;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) 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.
- 6.5 TRS may in its discretion allocate any payment received from the Customer towards any invoice that TRS determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer TRS may re-allocate any payments previously received and allocated. In the absence of any payment allocation by TRS, payment will be deemed to be allocated in such manner as preserves the maximum value of TRS's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 6.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and TRS.
- 6.8 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 unless the request for payment by TRS is a claim made under the Construction Contracts Act 2002.
- 6.9 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.
7. **Delivery of Goods/Equipment**
- 7.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
 - (a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at TRS's address; or
 - (b) TRS (or TRS's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 At TRS' sole discretion, the cost of Delivery is included in the Price.
- 7.3 At TRS's sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.
- 7.4 Any time specified by TRS for Delivery of the Goods/Equipment is an estimate only. The Customer must take Delivery by receipt or collection of the Goods/Equipment whenever they are tendered for Delivery. TRS will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods/Equipment as arranged then TRS shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.5 TRS may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
8. **Risk**
- 8.1 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.
- 8.2 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's rights to receive the insurance proceeds without the need for any person dealing with TRS to make further enquiries.
- 8.3 If the Customer requests TRS to leave Goods outside TRS's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 8.4 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.
- 8.5 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 whatsoever arising from the provision of incorrect data to TRS.
- 8.6 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.
- 8.7 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.
- 8.8 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 however arising.
- 8.9 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.
- 8.10 The Customer 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.
- 8.11 Liability will not be accepted for accidents due to inappropriate selection or maintenance of the Goods, or carelessness thereof.
- 8.12 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.
- 8.13 TRS, its 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.
9. **Accuracy of Customer's Plans and Measurements**
- 9.1 TRS shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, TRS accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 In the event the Customer gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or TRS places an order based on these measurements and quantities. TRS accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.
10. **Site Access and Condition**
- 10.1 It is the intention of TRS and agreed by the Customer that:
 - (a) the Customer shall ensure that TRS has clear and free access to the work site at all times to enable them to undertake the Services. TRS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of TRS; and
 - (b) the Customer agrees to remove any furniture or personal goods from the vicinity of the Services and agrees that TRS shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause;
 - (c) it is the Customer's responsibility to provide TRS, while at the Site, with adequate access to available water, electricity, toilet and washing facilities.
- 10.2 **Site Inductions**
 - (a) in the event the Customer requires an employee or sub-contractor of TRS to undertake a Site induction during working hours, the Customer will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Customer shall be liable to pay TRS's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where TRS is in control of the Site, the Customer and/or the Customers third party contractors must initially carry out TRS's Health & Safety induction course before access to the Site will be granted. Inspection of the Site during the course of the Services will be by appointment only and unless otherwise agreed, in such an event the Customer and/or third party acting on behalf of the Customer must at all times be accompanied by TRS.
- 10.3 In the event that TRS discovers asbestos/hazardous materials whilst undertaking the Services, TRS shall immediately advise the Customer of the same and shall be entitled to suspend the Services pending a risk assessment in relation to those materials. The Customer shall be liable for all additional costs incurred due to a stand-down (howsoever arising) incurred by TRS as a result of the discovery of asbestos/hazardous materials and/or any suspension of the Services in relation thereto (including, but not limited to, where TRS agrees to remove any asbestos/hazardous materials on the Customer's behalf).
11. **Compliance With Laws**
- 11.1 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 to the Services including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 11.3 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") TRS agrees at all times comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the site or where they may be acting as a subcontractor for the Customer who has engaged a third party head contractor.
12. **Title to Goods**
- 12.1 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.
- 12.2 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.
- 12.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Customer in accordance with clause 12.1 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.
13. **Personal Property Securities Act 1999 ("PPSA")**
- 13.1 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/Equipment and/or collateral (account) – being a monetary obligation of the Customer to TRS for Services – that have previously been supplied and that will be supplied in the future by TRS to the Customer.
- 13.2 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/Equipment charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of TRS; and
 - (d) immediately advise TRS of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3 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.

- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by TRS, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by TRS under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 13 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 13 will apply generally for the purposes of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of TRS agreeing to supply the Goods/Equipment, 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).
- 14.2 The Customer indemnifies TRS from and against all TRS's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TRS's rights under this clause.
- 14.3 The Customer irrevocably appoints TRS and each director of TRS as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 15. Defects & Returns**
- 15.1 The Customer shall inspect the Goods/Equipment on Delivery and shall within seven (7) days of Delivery (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/Equipment within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which TRS has agreed in writing that the Customer is entitled to reject, TRS's liability is limited to either (at TRS's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 15.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 15.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).
- 15.3 Returns of Goods will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 15.1; and
 - (b) TRS has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Customer's cost within seven (7) days of the Delivery date; and
 - (d) TRS will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 15.4 TRS may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 15.5 Subject to clause 15.1, non-stockist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 16. Warranty**
- 16.1 Subject to the conditions of warranty set out in Clause 16.2 TRS warrants that if any defect in any workmanship of TRS becomes apparent and is reported to TRS within twelve (12) months of the date of Delivery (time being of the essence) then TRS will either (at TRS's sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by Clause 16.1 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's 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.
- 16.3 For Goods not manufactured by TRS, the warranty shall be the current warranty provided by the manufacturer of 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.
- 17. Consumer Guarantees Act 1993**
- 17.1 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.
- 18. Intellectual Property**
- 18.1 Where TRS has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of TRS. Under no circumstances may such designs, drawings and documents be used without the express written approval of TRS.
- 18.2 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.
- 18.3 The Customer agrees that TRS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, photographs or Goods which TRS has created for the Customer.
- 19. Default and Consequences of Default**
- 19.1 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's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 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's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies TRS may have under this Contract, if a Customer has made payment to TRS, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by TRS under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 19.4 Without prejudice to TRS's 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's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by TRS;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 20. Cancellation**
- 20.1 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/Equipment 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.
- 20.2 TRS may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are due to be 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/Equipment. TRS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Customer cancels Delivery of the Goods/Equipment 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).
- 20.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 21. Privacy Policy**
- 21.1 All emails, documents, images or other recorded information held or used by TRS is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. TRS acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). TRS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by TRS that may result in serious harm to the Customer, TRS will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to TRS in respect of Cookies where transactions for purchases/orders transpire directly from TRS's website. TRS agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to TRS when TRS sends an email to the Customer, so TRS may collect and review that information ("collectively Personal Information").
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via TRS's website.
- 21.3 The Customer authorises TRS or TRS's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the 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.
- 21.4 Where the Customer is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.5 The Customer shall have the right to request TRS for a copy of the Personal Information about the Customer retained by TRS and the right to request TRS to correct any incorrect Personal Information about the Customer held by TRS.
- 22. Suspension of Works**
- 22.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) TRS has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.4 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to TRS by a particular date; and
 - (iv) TRS has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if TRS suspends work, it:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract, and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if TRS exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to TRS under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of TRS suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes TRS from continuing the Works or performing or complying with TRS's obligations under this Contract, then without prejudice to TRS's other rights and remedies, TRS may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by TRS as a result of such suspension and commencement shall be payable by the Client as if they were a variation.
- 22.2 If pursuant to any right conferred by this Contract, TRS suspends the Works and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, TRS shall be entitled to terminate the Contract, in accordance with clause 20.
- 23. Equipment Hire**
- 23.1 All Customers using the Equipment are required to have current minimum training of **NZQA 15757 and 2329**.
- 23.2 Equipment shall at all times remain the property of TRS and is returnable on demand by TRS. In the event that Equipment is not returned to TRS in the condition in which it was delivered TRS retains the right to charge the Customer the full cost of either repairing or replacing the Equipment. In the event that Equipment is not returned at all TRS shall have right to charge the Customer the full cost of replacing the Equipment.
- 23.3 The Customer shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by TRS to the Customer.
- 23.4 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, TRS's interest in the Equipment and agrees to indemnify TRS against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 23.5 Notwithstanding the above clauses, immediately on request by TRS the Customer shall pay:
- (a) any lost hire charges TRS would have otherwise been entitled to for the Equipment, under this, or any other hire Contract; and
 - (b) any insurance excess payable in relation to a claim made by either the Customer or TRS in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or TRS.
- 24. Service of Notices**
- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 25. Trusts**
- 25.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not TRS may have notice of the Trust, the Customer covenants with TRS as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Customer will not without consent in writing of TRS (TRS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 26. General**
- 26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.2 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 Auckland.
- 26.3 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's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 26.4 TRS may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 26.5 The Customer cannot licence or assign without the written approval of TRS.
- 26.6 TRS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of TRS's sub-contractors without the authority of TRS.
- 26.7 The Customer agrees that TRS may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for TRS to provide Goods/Equipment to the Customer.
- 26.8 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.
- 26.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.