

# Sound Services Masterworks Group Limited – Terms & Conditions of Trade

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 "Supplier" means Sound Services Masterworks Group Limited, its successors and assigns or any person acting on behalf of and with the authority of Sound Services Masterworks Group Limited.
  - 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
    - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
    - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
    - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; andand includes the Client's executors, administrators, successors and permitted assigns.
  - 1.4 "Goods" means all Goods or Services supplied by the Supplier to the Client at the Client'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 the Supplier to the Client (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 the Supplier to the Client.
  - 1.6 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client.
  - 1.7 "Dry Hire" means that the Equipment is supplied by the Supplier without an operator.
  - 1.8 "Wet Hire" means that the Equipment is supplied by the Supplier with an operator who shall at all times remain an employee or representative of the Supplier.
  - 1.9 "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.
  - 1.10 "Cookies" means small files which are stored on a user's computer. They are designed to hold a moderate 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 Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client 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.
  - 1.11 "Price" means the Price payable for the Goods/Equipment hire (plus any Goods and Services Tax ("GST") where applicable) as agreed between the Supplier and the Client in accordance with clause 5 below.
2. **Acceptance**
  - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for 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 Client acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Client has completed a credit application with the Supplier 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 Client's credit limit and/or the account exceeds the payment terms, the Supplier 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 Client acknowledges and accepts that the Supplier 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 the Supplier 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 the Supplier 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 the Supplier, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Change in Control**
  - 4.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.
5. **Price and Payment**
  - 5.1 At the Supplier's sole discretion the Price shall be either:
    - (a) as indicated on any invoice provided by the Supplier to the Client; or
    - (b) the Price as at the date of Delivery of the Goods/Equipment according to the Supplier's current price list; or
    - (c) the Supplier's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.The Supplier reserves the right to change the Price:
    - (a) if a variation to the Goods/Equipment which are to be supplied is requested; or
    - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
    - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, unfavourable weather conditions, limitations to accessing the site, latent site defects which require remedial work (such as boggy ground conditions), safety considerations, or prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services; or
    - (d) in the event of increases to the Supplier in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Supplier's control.
  - 5.2 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
  - 5.4 At the Supplier's sole discretion a non-refundable deposit may be required.
  - 5.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
    - (a) on Delivery of the Goods/Equipment;
    - (b) before Delivery of the Goods/Equipment;
    - (c) the date specified on any invoice or other form as being the date for payment; or
    - (d) in any other notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
  - 5.6 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 Services during which time all Services 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(a) to 18(f) of the Construction Contracts Act 2002.
  - 5.7 The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
  - 5.8 Payment may be made by cash, bank cheque, electronic on-line banking, or by any other method as agreed between the Client and the Supplier.
  - 5.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of
- any invoice because part of that invoice is in dispute unless the request for payment by the Supplier is a claim under the Construction Contracts Act 2002.
- 5.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
6. **Delivery**
  - 6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
    - (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at the Supplier's address; or
    - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
  - 6.2 At the Supplier's sole discretion the cost of Delivery is either included in the Price or to be added to the Price.
  - 6.3 Subject to clause 6.4 it is the Supplier's responsibility to ensure that the Services start as soon as it is reasonably possible.
  - 6.4 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Supplier delays an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Supplier's control, including but not limited to any failure by the Client to:
    - (a) make a selection; or
    - (b) have the site ready for the Services; or
    - (c) notify the Supplier that the site is ready.
  - 6.5 The Supplier 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.
  - 6.6 Any time specified by the Supplier for Delivery of the Goods/Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Client, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
7. **Risk to Goods**
  - 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
  - 7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
  - 7.3 If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
  - 7.4 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Services and/or Goods supplied in good faith, is based on the Supplier's best knowledge and experience and shall be accepted without liability on the part of the Supplier, and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services and/or Goods.
  - 7.5 Where the Client has supplied materials for the Supplier to complete the Services, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Supplier shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), however arising from the use of materials supplied by the Client.
  - 7.6 The Client acknowledges that:
    - (a) the Supplier is only responsible for parts that are replaced by the Supplier, and in the event that other parts/goods, subsequently fail, the Client agrees to indemnify the Supplier against any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising;
    - (b) all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in the Supplier's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information; and
    - (c) they shall not be entitled to withhold any payment due under this Contract because of any defect in the connection of, or the supply of electricity to the Goods by an electrical distributor or any other third party; and
    - (d) while the Supplier may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that the Supplier has given these in good faith and are estimates based on industry prescribed estimates.
  - 7.7 The Supplier:
    - (a) shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information; and
    - (b) accepts no responsibility for:
      - (i) any damage or performance related problems with any Goods where they have not been used and/or maintained in accordance with the Supplier's and/or the manufacturers' recommendations;
      - (ii) any damage or defects in any Goods caused by movement and/or interference of the said Goods.
  - 7.8 Where the Supplier is only supplying the Goods and not installing the Goods, the Supplier shall not be liable for any loss or damage resulting from incorrect or faulty installation carried out by any other third party.
8. **Access and Installation**
  - 8.1 Where the Supplier is to install the Goods the Client:
    - (a) warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring), the Supplier reasonably forms the opinion that the Client's premises is not safe for the installation of Goods to proceed then the Supplier shall be entitled to delay installation of the Goods (in accordance with clause 6.4) until the Supplier is satisfied that it is safe for the installation to proceed;
    - (b) acknowledges that they shall:
      - (i) ensure that the Supplier has clear and free access to the site at all times to enable them to effect Delivery of the Goods and/or undertake the Services. The Supplier 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 the Supplier;
      - (ii) be responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable the Supplier to carry out the Services; and
      - (iii) provide and have erected scaffolding to enable the Services to be undertaken (where in the Supplier's opinion it is deemed necessary). Any scaffolding must comply with industry safety standards and any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection, and where necessary, shall hold a current certificate of competency and/or be fully licensed; and
      - (iv) remove any furniture or personal items from the vicinity of the Services, and agrees that the Supplier shall not be liable for any damage caused to those items through the Client's failure to comply with this clause; and
      - (v) provide all necessary services and amenities to enable the Supplier to provide the Services.
  - 8.2 The Supplier shall upon installation ensure that all Goods are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Goods to be installed in any way which goes against the Supplier's recommendations and/or falls below industry standards, a request detailing that requirement must be made in writing to the Supplier. Accordingly, the Supplier offers no warranty in regards to the aforementioned.
  - 8.3 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
  - 8.4 In the event that the electrical wiring is required to be re-positioned at the request of any third-party contracted by the Client then the Client agrees to notify the Supplier immediately upon any proposed changes. The Client agrees to indemnify the Supplier against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 5.2.
9. **Hidden Services**
  - 9.1 Prior to the Supplier commencing any work the Client must advise the Supplier of the precise location of all hidden services on the site and clearly mark the same (including but not limited to any mains/services in wall cavities). The mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
  - 9.2 Whilst the Supplier will take all care to avoid damage to any services the Client agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.
10. **Client Content**
  - 10.1 The Client warrants that all materials and content supplied to the Supplier to be used for the provision of the Services shall:
    - (a) be true and correct in every particular; and
    - (b) shall comply with clause 16.2; and
    - (c) not be, nor contain, anything that is defamatory of any person or is indecent or obscene; and
    - (d) not breach any advertising industry standards or guidelines; and
    - (e) not contain nor constitute a statement that is misleading or deceptive or likely to deceive or to mislead or which is otherwise in breach of a provision of any legislation.
  - 10.2 The Client shall indemnify and keep indemnified the Supplier at all times against all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against the Client or incurred or become payable by the Supplier resulting or arising from the Client being in breach of clause 10.1.
  - 10.3 The Supplier reserves the right to refuse to accept any material or content submitted by the Client that does not comply with clause 10.1.
11. **Compliance with Laws**
  - 11.1 The Client and the Supplier 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 to any other relevant safety standards or legislation pertaining to the Services.
  - 11.2 The Client shall ensure that the Services (if the expense of the Client) all licenses and approvals that may be required for the Goods/Equipment.
  - 11.3 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") the Supplier 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 worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.
12. **Title to Goods**
  - 12.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:
    - (a) the Client has paid the Supplier all amounts owing to the Supplier; and
    - (b) the Client has met all of its other obligations to the Supplier.
  - 12.2 Receipt by the Supplier 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. It is further agreed that:
    - (a) until ownership of the Goods passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;
    - (b) the Client shall be the beneficiary of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
    - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
    - (d) the Client should not convert or process the Goods or intermix them with other property of the Client but if it does so then the Client shall be deemed to hold the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
    - (e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
    - (f) the Supplier may recover possession of any Goods in transit whether or not Delivery has occurred;
    - (g) the Client 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 the Supplier;
    - (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
13. **Personal Property Securities Act 1999 ("PPSA")**
  - 13.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
    - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
    - (b) security interest is taken in all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.
  - 13.2 The Client 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 the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
    - (b) indemnify, and upon demand reimburse, the Supplier 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 and/or collateral (account) in favour of a third party without the prior written consent of the Supplier; and
    - (d) immediately advise the Supplier 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 The Client and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
  - 13.4 The Client 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 the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
  - 13.6 The Client shall unconditionally ratify any actions taken by the Supplier 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 continuing 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 the Supplier agreeing to supply the Goods/Equipment, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
  - 14.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
  - 14.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s 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 Client's behalf.
15. **Consumer Guarantees Act 1993**
  - 15.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Hirer is contracting within the terms of a trade/business (which cases are specifically excluded).
16. **Defects and Returns**
  - 16.1 The Client shall inspect the Goods/Equipment on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the

# Sound Services Masterworks Group Limited – Terms & Conditions of Trade

- Goods/Equipment within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client 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 the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 16.2 Returns of Goods will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
  - (b) the Supplier has agreed in writing to accept the return of the Goods; and
  - (c) the Goods are returned at the Client's cost within seven (7) days of the Delivery date; and
  - (d) the Supplier 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.
- 16.3 The Supplier may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.
- 16.4 Non-stockist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
17. **Warranty**
- 17.1 Subject to the conditions of warranty set out in Clause 17.2 the Supplier warrants that if any defect in any workmanship of the Supplier becomes apparent and is reported to the Supplier within twelve (12) months of the date of Delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the workmanship.
- 17.2 The conditions applicable to the warranty given by Clause 17.1 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 Client to properly maintain any Goods; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Supplier; 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 the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.
  - (c) in respect of all claims the Supplier shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 17.3 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier 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.
18. **Intellectual Property**
- 18.1 Where the Supplier has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- 18.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 18.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which the Supplier has created for the Client.
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 the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by the Supplier;
  - (c) the Client 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 Client or any asset of the Client.
20. **Cancellation / Termination**
- 20.1 Without prejudice to any other rights or remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice(s) then the Supplier may suspend the Services immediately. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 20.2 Either party may terminate this Contract, or otherwise the Delivery of Goods/Equipment by providing the other party with the appropriate notice of such in writing, subject to:
- (a) where the Supplier cancels any contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are delivered, then upon giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods/Equipment. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation;
  - (b) where the Client cancels Delivery of Goods/Equipment, then the Client shall be liable to the Supplier for any losses or costs incurred (whether direct or indirect) by the Supplier (including, but not limited to, any loss of profits) up to the time of, or as a result of the cancellation, notwithstanding that at the Supplier sole discretion:
    - (i) a minimum cancellation fee of five hundred dollars (\$500.00) may be applicable; or
    - (ii) if the Client cancels giving less than:
      - (A) seven (7) working days from the Delivery/commencement date, a cancellation fee of up to twenty-five percent (25%) of the Price may be applicable;
      - (B) two (2) working days' notice from the Delivery/commencement date, a cancellation fee of up to fifty percent (50%) of the Price may be applicable; or
      - (C) twenty-four (24) hours' notice from the Delivery/commencement date, a cancellation fee equal to any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire contract will apply; and
      - (D) any cancellation requests must be submitted in writing giving at least seven (7) days prior notice to the event before any form of refund will be considered. Allowance will be made, whenever possible to reschedule the cancelled or postponed hire period subject to availability.
  - (c) in the event of premature termination of the hire period the Client shall be responsible for the immediate payment of the following sums:
    - (i) all current invoices due and payable up to the date of termination, noting applicable rates may change if the hire term is shorter than that noted in the Quotation; and
    - (ii) all other sums owing by the Client under this Contract (or any other Contract with the Supplier) as a result of the Default and termination of this Contract, including consequential damages and all losses, costs, charges and
- expenses incurred by the Supplier in connection with (and resulting from) the premature termination of this Contract.
- 20.3 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
21. **Suspension of Services**
- 21.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) the Supplier 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 5.5 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 the Supplier by a particular date; and
  - (b) the Supplier has given notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
  - (c) if the Supplier 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.
  - (d) if the Supplier exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to the Supplier 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 the Supplier suspending work under this provision;
  - (e) due to any act or omission by the Client, the Client effectively precludes the Supplier from continuing the Services or performing or complying with the Supplier's obligations under this Contract, then without prejudice to the Supplier's other rights and remedies, the Supplier may suspend the Services 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 Services is based. All costs and expenses incurred by the Supplier as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 21.2 If pursuant to any right conferred by this Contract, the Supplier suspends the Services and the default that led to that suspension continues unremedied subject to clause 20.1 for at least ten (10) working days, the Supplier shall be entitled to terminate the Contract, in accordance with clause 20.
22. **Privacy Policy**
- 22.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information as defined and referred to in clause 22.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in clause 5A of the Act. The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to the Supplier in respect of Cookies where transactions for purchases/orders transpire directly from the Supplier's website. The Supplier agrees to display/refer 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 Client's:
  - (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")In order to enable / disable the collection of Personal Information by way of Cookies, the Client 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 the Supplier's website.
- 22.3 The Client authorises the Supplier or the Supplier's agent to:
  - (a) access, collect, retain and use any information about the Client;
    - (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 Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by the Supplier from the Client directly or obtained by the Supplier 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 Client.
- 22.4 Where the Client is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 22.5 The Client shall have the right to request the Supplier for a copy of the Personal Information about the Client retained by the Supplier and the right to request the Supplier to correct any incorrect Personal Information about the Client held by the Supplier.
- 22.6 The Contractor will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 22.7
23. **Service of Notices**
- 23.1 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) 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.
- 23.2 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.
24. **Trusts**
- 24.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
  - (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client 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 Client against the Trust or the trust fund. The Client 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 Client will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client 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.
25. **General**
- 25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 25.2 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.
- 25.3 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 Porirua District Courts of New Zealand.
- 25.4 The Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 25.5 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.6 The Client cannot licence or assign without the written approval of the Supplier.
- 25.7 The Supplier 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 Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 25.8 The Client agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods/Equipment to the Client.
- 25.9 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.
- 25.10 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.
- Additional Terms & Conditions Applicable to Hire Only**
26. **Hire Period**
- 26.1 If the Supplier agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Client notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 26.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 26.3 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
27. **Risk to Equipment**
- 27.1 The Supplier retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.
- 27.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 27.3 The Client will insure, or self insure, the Supplier's interest in the Equipment 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 arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 27.4 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses incurred in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.
28. **Title to Equipment**
- 28.1 The Equipment is and will at all times remain the absolute property of the Supplier.
- 28.2 If the Client fails to return the Equipment to the Supplier then the Supplier or the Supplier's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 28.3 The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
29. **Dry Hire**
- 29.1 The Client shall:
  - (a) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - (b) satisfy itself at commencement that the Equipment is suitable for its purposes;
  - (c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Equipment;
  - (d) ensure that the Equipment is operated by a properly experienced and qualified person in accordance with the Supplier's and manufacturer's requirements and/or recommendations;
  - (e) comply with all workplace health and safety laws relating to the Equipment and its operation;
  - (f) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Supplier;
  - (g) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
  - (h) 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;
  - (i) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
  - (j) not exceed the recommended or legal capacity limits of the Equipment;
  - (k) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
  - (l) indemnify and hold harmless the Supplier in respect of all claims arising out of the Client's use of the Equipment;
- 29.2 Immediately on request by the Supplier the Client will pay:
  - (a) the new list price of any Equipment that is for whatever reason destroyed beyond repair (including but not limited to, damage caused by an extreme weather event etc.) or returned to the Supplier;
  - (b) all costs incurred in cleaning the Equipment;
  - (c) all costs of repairing any damage to the Equipment caused by:
    - (i) the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
    - (ii) the negligence of the Client or the Client's agent;
    - (iii) vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
  - (d) any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire contract.
30. **Wet Hire**
- 30.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of the Supplier and operates the Equipment in accordance with the Client's instructions. As such the Supplier shall not be liable for any actions of the operator in following the Client's instructions.
31. **The Supplier's Employees**
- 31.1 The Client agrees to employ, contract, subcontract or utilise in any way an employee or past employee of the Supplier's (other than through the Supplier) for a period of no less than twelve (12) months after that employee's last employment with the Supplier.
- 31.2 The Client agrees that if clause 31.1 is contravened the Supplier will be able to invoice the Client at its current hourly rate the hours that the employee has been employed, contracted, subcontracted or utilised in any way by the Client and agrees to pay said invoice in accordance with the standard payment terms contained in this Contract.