

HI-TOP SCAFFOLDING LIMITED TERMS AND CONDITIONS OF HIRE

1. DEFINITIONS

- 1.1 "Contract" means the agreement between the Hirer and Hi-top, including these Terms, pursuant to which Hi-top agrees to provide Equipment and / or Services to the Hirer on these Terms.
- 1.2 "Equipment" is all chattels, machinery and plant including all fittings accessories tools and parts supplied to the Hirer by Hi-top pursuant to the Contract.
- 1.3 "Hirer" means the party to whom Hi-top provides Equipment or Services to pursuant to these Terms and includes their successors and assigns, and those claiming under, or authorised, by the Hirer.
- 1.4 "Minimum Hiring Period" is a period of one day commencing at the time the Equipment is collected or leaves Hi-top's premises (except where otherwise agreed by Hi-top in writing).
- 1.5 "PPSA" means the Personal Property Securities Act 1999.
- 1.6 "Services" means services in relation to the delivery, installation, dismantling and removal of Equipment provided by Hi-top Scaffolding.
- 1.7 "Terms" means these Terms and Conditions.
- 1.8 "Trade Customers" are only those Hirers who Hi-top has agreed in writing that they are entitled to trade credit terms.
- 1.9 "Hi-top" means Hi-top Scaffolding Limited and includes its successors and assigns.
- 1.10 "Guarantor" means the person named as Guarantor in the Contract.

2. HIRE PERIOD

- 2.1 Hiring charges shall commence from the time the Equipment is collected by the Hirer from Hi-top's premises and shall continue until the date of the return of the Equipment to Hi-top's premises, or until the expiry of the Minimum Hiring Period, whichever occurs last.
- 2.2 If Hi-top agrees with the Hirer to deliver and collect the Equipment, hire charges shall commence from the time the Equipment leaves Hi-top's premises and shall continue until the first working day from the date that Hi-top is notified by the Hirer that the Equipment is available for collection. Notification shall be given by the Hirer in time for the Equipment to be picked up and returned to Hi-top's premises by 5pm weekdays.

- 2.3 Notification is to be made by telephone or email when the Hirer has finished with the Equipment and not by prior arrangement. Required return times are no later than 5:00pm weekdays or such earlier time as the hire period may terminate. If insufficient notification is given Hi-top shall be entitled to charge another full day's hire at the then current rate.
- 2.4 Delivery and collection shall be to and from the front footpath.(e)No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless prior special arrangements are confirmed in writing by Hi-top. In the event of Equipment breakdown, provided that the Hirer notifies Hi-top 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 Hirer.\

3. HIRER'S RESPONSIBILITIES

3.1 The Hirer shall:

- 3.1.1 Determine the condition and suitability of the Equipment for the purpose required prior to, or at the time of collection or delivery. Subsequent exchange of Equipment shall be subject to additional charges. The Equipment does not purport to be new stock or equal to new, but all Equipment is warranted to be in good order for normal full load working at the stated capacity under ordinary conditions.
- 3.1.2 Notify Hi-top immediately by telephone of any mechanical breakdown or accident and the circumstances surrounding this. The Hirer is not absolved from the requirement to safeguard the Equipment by giving such notification.
- 3.1.3 Use the Equipment safely and properly and in accordance with any instructions supplied by Hi-top, acknowledging that Hi-top gives no warranty as to the Equipment's capacity.
- 3.1.4 Pay to Hi-top all hire and related charges and other costs, including delivery to and from Hi-top's premises if applicable.(e)Ensure only competent and qualified drivers, operators and erectors are given charge of the Equipment while in the Hirer's possession.

- 3.1.5 Be responsible for all cleaning, lubrication and operating adjustments and for any damage occurring due to overloading mistakes or neglect in handling operation, etc, during the hire period.
- 3.1.6 At its own expense, clean and keep the Equipment in good and substantial repair and condition and proper working order, and pay all costs for replacements or repair required due to fire, theft, accident, loss or otherwise during the hire period, provided the Hirer shall not undertake any repair or servicing and if any repair or servicing appears desirable shall notify Hi-top immediately.
- 3.1.7 Return the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear excepted, to Hi-top. The Hirer is not authorised to pledge Hi-top's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 3.1.8 Keep the Equipment in its own possession and control at all times during the hire period.
- 3.1.9 Accept full responsibility for the safekeeping of the Equipment and indemnify Hi-top 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 Hirer.
- 3.1.10 Insure the Equipment against loss and damage during the hire period, and provide evidence of such insurance to Hi-top upon request.
- 3.1.11 Accept full responsibility for and indemnify Hi-top against all claims 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, whether from the negligence of the Hirer or any other persons including, but without limitation, where the Equipment is being operated for any reason by Hi-top, its servants or agents.
- 3.1.12 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.

3.1.13 Upon request by Hi-top advise Hi-top of the whereabouts of the Equipment and allow Hi-top, its agents or servants, reasonable time to inspect and test the Equipment. For such purposes the Hirer hereby gives irrevocable leave and licence to Hi-top, its agents and servants to take possession and remove the Equipment and to enter upon any premises of the Hirer and as the agent of the Hirer enter upon any premises where the Equipment or any of the same or any part thereof may be.

3.1.14 Employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any other party for any other work.

4. HIRE RATES AND PAYMENTS

4.1 The Equipment is hired at the rates shown on Hi-top's current rate schedule, unless agreed to between Hi-top and the Hirer. Cartage and all saleable and consumable items are extra and not included in the hire rate.

4.2 The Hirer acknowledges that the rate schedule is available at Hi-top's premises where the hiring process commenced and that the Hirer has had every opportunity to check the rates applicable and whether or not the Hirer has done so is at the Hirer's discretion.

4.3 Payment of hire and other charges by Trade Customers shall be made calendar monthly by the 20th day of each month following invoice, in respect of hire or other charges during the preceding month.

4.4 All Hiring to non-Trade Customers shall pay in cash, unless otherwise previously agreed in writing by Hi-top. Payment shall be made on the date when the Equipment is returned or within seven (7) days of the commencement of the hire period, whichever is the earlier.

4.5 Where the hire period is or is extended to more than seven days then the hire charge shall be payable at the end of each seven-day period in respect of the prior seven days and at the end of the term of hire in respect of the hire period not previously paid for.

- 4.6 Unless otherwise provided all hire rates are GST exclusive, and GST will be paid by the Hirer in addition to hire or other charges and at the time for payment of the hire or other charges.
- 4.7 Hi-top reserves the right to revise its hire rates and related charges at any time by giving written notice to the Hirer.
- 4.8 A deposit and/or bond shall be paid or given at commencement of the hire period and such deposit or bond, as required at Hi-top's discretion, shall be specified in the Contract.
- 4.9 In the event of default by the Hirer in the payment of any amount due, the Hirer shall be liable for interest at a rate of 2% per month from the date on which payment is due until the date on which payment in full is received. The Hirer shall be liable for all legal and enforcement costs incurred in recovering any outstanding debt from the Hirer or in the recovery of the Equipment.
- 4.10 No claims for credits will be recognised after seven days from the date of invoice.
- 4.11 Payment claims are made under the Construction Contracts Act 2002.

5. 5. TITLE

- 5.1 For avoidance of doubt, the Equipment remains at all times the property of Hi-top.
- 5.2 The Hirer grants a security interest over the Equipment while in its possession and the proceeds as security for payment of the hire rates for the Equipment and Services.

6. 6.HI-TOP'S RIGHT TO TERMINATE

- 6.1 Without prejudice to any other remedies available to Hi-top and notwithstanding any hire period specified, Hi-top may terminate the Contract immediately if:
- 6.1.1 the Hirer commits any breach of these Terms;
 - 6.1.2 the Hirer commits any act of bankruptcy;

- 6.1.3 the Hirer, being a company, has an application made or a resolution is passed for its winding up or being a company a receiver of its assets or any of them is appointed;
- 6.1.4 if any execution or distress shall be levied upon the Equipment;
- 6.1.5 any judgment against the Hirer remains unsatisfied for seven (7) days or more;
- 6.1.6 if the Hirer makes an assignment or compromise for the benefit of its creditors;
- 6.1.7 the Hirer, being a company is placed under statutory management or ceases to carry on business.

6.2 Upon termination of the Contract, the Equipment must be returned to Hi-top immediately, and if it is not, Hi-Top shall be entitled to take immediate possession of the Equipment and for this purpose the Hirer irrevocably appoints Hi-Top its agent and authorises Hi-top to enter on any land or premises owned by or under the control of the Hirer upon which the Equipment is then situated and agrees to indemnify Hi-Top in respect of any claims, damages or expenses arising out of any action taken under this condition.

7. LIABILITY OF HI-TOP

Hi-top shall not be liable:

- 7.1 For any loss or damage or claim howsoever arising as a result of hiring the Equipment;
- 7.2 For any delay accident or loss suffered by the Hirer or liability incurred by the Hirer direct or indirect as a result of defects or breakdowns of the Equipment;
- 7.3 To the Hirer or any third party for any damage (to persons or property) that may be caused by Hi-top providing the Services.

8. DELEGATION OF AUTHORITY BY HIRER

- 8.1 Where the person signing the Contract signs for and on behalf of another person or entity as Hirer the person signing covenants with Hi-top that he or she has the authority of the Hirer to make this Contract on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to the obligations under these Terms and, without limiting the foregoing, hereby indemnifies Hi-top against all losses and costs incurred by Hi-top arising out of the person signing this Contract failing to have such power and/or authority.

9. PPSA

- 9.1 The Hirer will provide such information and do such acts and execute such further documents as in the opinion of Hi-top may be necessary or desirable to enable Hi-top to perfect under the PPSA the security interest created by these Terms.
- 9.2 Hi-top may do all things which it thinks desirable to remedy any default by the Hirer or otherwise protect the Equipment or the Security Interest created by these Terms.
- 9.3 The Hirer irrevocably appoints Hi-top to be the Hirer's attorney to do anything which the Hirer agrees to do under these Terms and anything which the attorney thinks desirable to protect Hi-top's interests under these Terms and the Hirer ratifies anything done by an attorney under this clause. The Hirer agrees sections 114(1)(a), 133 and 134 of the PPSA shall not apply to these terms or the security under these Terms.
- 9.4 The Hirer waives the Hirer's right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these Terms.
- 9.5 The Hirer agrees that none of the Hirer's rights as debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall apply to these Terms.
- 9.6 The Hirer also agrees, where the Hirer has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 9.7 The Hirer must not change the Hirer's name without first notifying Hi-top of the new name not less than 7 days before the change takes effect.
- 9.8 The Hirer must not allow or permit the creation of a lien over any of the Equipment.

10. COLLECTION, STORAGE AND USE OF INFORMATION

- 10.1 The Hirer authorises Hi-top to collect, store and use information about the Hirer for the purposes related to the provision of Services (including whether to allow credit on the Hirer's account) reporting information to any credit agency, marketing Hi-top's Goods and Services, and enforcing any rights under these Terms and any other terms or conditions relating to the provision of goods and/or services from Hi-top to the Hirer.

- 10.2 The Hirer expressly consents to receiving commercial electronic messages from Hi-Top and its agents for the purposes of the Unsolicited Electronic Messages Act 2007. The Hirer may withdraw its consent at any time by notifying Hi-top in writing.
- 10.3 Where personal information is collected stored or used by Hi-top it will be dealt with in accordance with the Privacy Act 1993. In particular, any individual may access personal information held about them (subject to the permissible limitations contained in the Privacy Act 1993), and may request correction of that personal information. Further information about the handling of personal information including requests for access to personal information may be obtained from upon request.

11. GENERAL

- 11.1 Unless agreed in writing to the contrary the acceptance by the Hirer of any Equipment on hire from Hi-Top shall in itself constitute an acceptance of these Terms and of the charges stated on the Contract, or invoice provided to the Hirer by Hi-Top.
- 11.2 The Hirer may not assign its rights or obligations under these Terms without the consent of Hi-Top. Hi-Top may assign its rights under these Terms.
- 11.3 Any time or other indulgence granted by Hi-Top shall not prejudice the strict rights of Hi-Top under these Terms.
- 11.4 Where the Consumer Guarantees Act 1993 ("CGA") applies, the Hirer shall have the benefit of all the guarantees and rights and remedies provided under the CGA, but no others. Where the Hirer acquires, or holds themselves out as acquiring, the goods for business purposes, the CGA shall not apply.
- 11.5 New Zealand law governs these Terms and New Zealand Courts have non-exclusive jurisdiction

12. PERSONAL GUARANTEE

- 12.1 In consideration for Hi-top agreeing to supply the Hirer with the Equipment pursuant to the terms of the Contract:
- 12.1.1 The Guarantor unconditionally guarantees to Hi-top the due and punctual payment by the Hirer of all monies as and when the same shall become due

and payable by the Hirer to Hi-top in respect of the purchase price of the goods and the due observance and performance by the Hirer of all its obligations in respect of the Contract; and

12.1.2 The Guarantor agrees that its liability under this guarantee shall not be discharged, abrogated, prejudiced or affected by any of the following:

- (a) the granting of time, credit or any indulgence or other concession to the Hirer;
- (b) by the release, abandonment, waiver, variation, relinquishment of any securities or any rights that Hi-top may have against the Hirer;
- (c) any alteration, modification, variation or addition to the Contract;
- (d) any other act, event or omission which but for this clause might operate to discharge, impair or otherwise affect this guarantee and my obligations contained in this guarantee or any of the rights, powers or remedies conferred upon Hi-top by this guarantee or by law.

12.1.3 This guarantee shall be a continuing guarantee and shall remain in full force and effect until the Hirer has paid Hi-top all monies due in respect of the Contract.

12.1.4 The Guarantor agrees to waive any rights of subrogation in respect of any security held by Hi-top in respect of the Hirer's obligations to Hi-top until the Hirer has paid all monies due to Hi-top in respect of the goods.