

Waimea Scaffold – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 'Client' means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Waimea Scaffold to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.2 '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.</p> <p>1.3 '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 Client does not wish to allow Cookies to operate in the background when using Waimea Scaffold's 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 making enquiries via the website.</p> <p>1.4 'Equipment' means all Equipment (including any accessories) or Services supplied by Waimea Scaffold to the Client at the Client's request from time to time (where the context so permits the terms 'Equipment' or 'Services' shall be interchangeable for the other).</p> <p>1.5 'Minimum Hire Period' shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Waimea Scaffold to the Client.</p> <p>1.6 'Waimea Scaffold' means Waimea Scaffold Limited T/A Waimea Scaffold, its successors and assigns.</p> <p>1.7 'Price' means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Equipment as agreed 6.5 between Waimea Scaffold and the Client in accordance with clause 6 below.</p> <p>1.8 'Site' means the location/s at which the Equipment is to be delivered and Services supplied.</p>	<p>2. Acceptance</p> <p>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 Equipment.</p> <p>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.</p> <p>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.</p> <p>2.4 The Client acknowledges that the supply of Equipment on credit shall not take effect until the Client has completed a credit application with Waimea Scaffold and it has been approved with a credit limit established for the account.</p> <p>2.5 In the event that the supply of Equipment requested exceeds the Client's credit limit and/or the account exceeds the payment terms, Waimea Scaffold reserves the right to refuse delivery. The Client acknowledges and accepts:</p> <p>(a) the product supply of shrink wrap offers a manufacturer's guarantee of UV protection and can withstand up to the manufacturers specified tolerance and/or the MetService definition regarding gale force winds, being winds of up to 63-75kph;</p> <p>(b) that when the contract period for hire completes under this Contract and payment is not forthcoming when due and payable, then Waimea Scaffold reserves the right, at their discretion, to leave the scaffolding erected until such time as payment effected and the Client shall be liable for all loss hire charges in accordance with clause 16.5(e);</p> <p>(c) variations to the Contract requested by the Client that are subject to labour charges shall be at Waimea Scaffold's current hourly rate and any applicable Site allowances, unless otherwise stated at the time of the variation request.</p> <p>2.7 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.</p>	<p>3. Authorised Representatives</p> <p>3.1 Unless otherwise limited as per clause 3.2, the Client agrees that should the Client introduce any third party to Waimea Scaffold as their duly authorised representative, that once introduced, that person shall have the full authority of the Client to order any Equipment or Services, and/or to request any variation thereto, on the Client's behalf (such authority to continue until all requested Equipment has been returned to Waimea Scaffold, or 7.2 the Client otherwise notifies Waimea Scaffold in writing that said person is no longer the Client's duly authorised representative).</p> <p>3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise Waimea Scaffold in writing of the parameters of the limited authority granted to their representative.</p> <p>3.3 The Client specifically acknowledges and accepts that they will be solely liable to Waimea Scaffold for all additional costs incurred by Waimea Scaffold (including Waimea Scaffold's profit margin) in providing any Equipment or Services, or variations thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (f) 7.5 any)).</p>	<p>4. Errors and Omissions</p> <p>4.1 The Client acknowledges and accepts that Waimea Scaffold shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by Waimea Scaffold in the formation and/or administration of this Contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Waimea Scaffold in respect of the Services.</p> <p>4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of Waimea Scaffold, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.</p>	<p>5. Change in Control</p> <p>5.1 The Client shall give Waimea Scaffold 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 and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Waimea Scaffold as a result of the Client's failure to comply with this clause.</p>	<p>6. Price and Payment</p> <p>At Waimea Scaffold's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by Waimea Scaffold to the Client; or</p> <p>(b) Waimea Scaffold'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 thirty (30) days.</p> <p>Waimea Scaffold reserves the right to change the Price:</p> <p>(a) if a variation to the Equipment which is to be supplied is requested; or</p> <p>(b) if a variation to the Services originally scheduled (including any applicable plans, engineering certifications, scope of works or specifications) is requested; or</p> <p>(c) 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, any subsidence of ground conditions, availability of machinery, protruding or dismantled formwork, repositioning or adjusting the Equipment, additional site visits required, safety considerations, prerequisite work by any third party not being completed etc.) which are only discovered on commencement of the Services.</p> <p>Variations will be charged for on the basis of Waimea Scaffold's quotation, and will be detailed in writing, and shown as variations on Waimea Scaffold's invoice. The Client shall be required to respond to any variation submitted by Waimea Scaffold within ten (10) working days. Failure to do so will entitle Waimea Scaffold 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.</p> <p>At Waimea Scaffold's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this Contract, 9.2 which shall be refunded to the Client within thirty (30) days of the return of the Equipment, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable charges payable by the Client under clause 16.5, and any outstanding balance thereof shall be due as per clause 6.6.</p> <p>In accordance with clause 6.4, domestic Client's shall be required to pay a deposit of fifty percent (50%) on erection of the Equipment and the balance at the time of dismantling the Equipment, unless otherwise agreed by both parties.</p> <p>Time for payment for the Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Waimea Scaffold, which may be:</p> <p>(a) on or before delivery of the Equipment;</p> <p>(b) by way of instalments in accordance with Waimea Scaffold's payment schedule;</p> <p>(c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Waimea Scaffold.</p> <p>Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed between the Client and Waimea Scaffold.</p> <p>Waimea Scaffold may in its discretion allocate any payment received from the Client towards any invoice that Waimea Scaffold determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Waimea Scaffold may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Waimea Scaffold, payment will be deemed to be allocated in such manner as preserves the maximum value of Waimea Scaffold's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.</p> <p>Receipt by Waimea Scaffold 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.</p> <p>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 Waimea Scaffold nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Waimea Scaffold an amount equal to any GST Waimea Scaffold may pay for any supply by Waimea Scaffold under this or any other contract for the sale or 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.</p>	<p>8. Delivery of Equipment</p> <p>Delivery ('Delivery') of the Equipment is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Equipment at Waimea Scaffold's address; or</p> <p>(b) Waimea Scaffold (or Waimea Scaffold's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.</p> <p>At Waimea Scaffold's sole discretion the cost of Delivery is included in the Price.</p> <p>Waimea Scaffold may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. Both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that Waimea Scaffold is unable to supply the Equipment as agreed solely due to any action or inaction of the Client, then Waimea Scaffold shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>The Client acknowledges and accepts that Waimea Scaffold may delay erection of the Equipment where the Site is not suitably prepared and cleared of building materials.</p> <p>The Client shall clearly identify, demarcate, address and resolve (as applicable) all known hazards on the Site prior to Site mobilisation commences.</p>	<p>Waimea Scaffold unless prior arrangements have been with Waimea Scaffold.</p> <p>If during the course of the Client's work, the scaffold is modified or removed by the Client to the extent the scaffold is no longer compliant with the applicable legislative requirements, any rectification work performed by Waimea Scaffold will be at the Client's expense.</p> <p>The Client acknowledges and agrees that in the event Waimea Scaffold require access in order to erect, alter or dismantle the Equipment to an adjoining or adjacent property or land to the nominated Site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above mentioned property throughout the erection, alteration or dismantling of the Equipment. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by Waimea Scaffold in gaining permission to access and/or use the property through any legal process that may be deemed necessary.</p>
					<p>10. Risk</p> <p>Waimea Scaffold retains property in the Equipment nonetheless; all risk for the Equipment passes to the Client on Delivery.</p> <p>The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Waimea Scaffold 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.</p> <p>The Client will insure, or self-insure, Waimea Scaffold'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.</p> <p>The Client accepts full responsibility for and shall keep Waimea Scaffold indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.</p> <p>Any advice, recommendation, information, assistance or Services provided by Waimea Scaffold in relation to Equipment supplied is given in good faith, is based on Waimea Scaffold's own knowledge and experience and shall be accepted without liability on the part of Waimea Scaffold 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 Equipment.</p> <p>Waimea Scaffold shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client for the purposes of estimating quantities and type of Equipment required. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Waimea Scaffold accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.</p> <p>In the event of damage to a building as a result of any action by Waimea Scaffold's employees or contractors, Waimea Scaffold must be informed in order that Waimea Scaffold may inspect such damage before any agreement to rectification costs can be accepted.</p> <p>Any Equipment that is erected or dismantled by Waimea Scaffold's trained and licensed employees or contractors shall be as per the manufacturer's and New Zealand Codes of Practice requirements. The Client acknowledges and accepts that Waimea Scaffold shall not be liable in any way for any claim made in connection with the erection and dismantling of the Equipment by non-Waimea Scaffold employees or contractors.</p>		
					<p>11. Affixation of Equipment to Land or Buildings</p> <p>Further to clause 16.4(f) and 13, if the Equipment or any part thereof is affixed to any land or buildings pursuant to this Contract, and the land or buildings are or become the subject of a mortgage or charge whether under the PPSA or otherwise at law, then the Client shall, without first receiving any request from Waimea Scaffold, obtain the written acknowledgement of the mortgagee, administrator or liquidator (as the case may be) that:</p> <p>(a) the Equipment or any part thereof is not a fixture for the purposes of the mortgage or charge;</p> <p>(b) that the mortgagee, administrator or liquidator will not make any claim in relation to the Equipment or any part thereof; and</p> <p>(c) that the mortgagee, administrator or liquidator will permit Waimea Scaffold (whether or not there has been any default under the mortgage or charge) to enter upon the land or buildings and to remove the Equipment or part thereof.</p>		
					<p>12. Compliance with Laws</p> <p>The Client and Waimea Scaffold shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Equipment (including, but not limited to, the Good Practice Guidelines for scaffolding / edge fall protection / fall through protection) as outlined in the Scaffolding In New Zealand published by WorkSafe and any WorkSafe health and safety laws relating to any other relevant safety standards or legislation pertaining to the Equipment/Services.</p> <p>Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Waimea Scaffold agrees at all times comply with sections 29 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 Client who has engaged a third party head contractor.</p> <p>The Client shall obtain (at the expense of the Client) all engineering reports, certificates, and all licenses, permits and approvals that may be required for the supply of Equipment/Services (including, but not limited to, providing an engineer's certificate confirming that the structure is sound and designed for the shrink wrap system to withstand all environmental loads etc.).</p>		
					<p>13. Title</p> <p>The Equipment is and will at all time remain the absolute property of Waimea Scaffold.</p> <p>If the Client fails to return the Equipment to Waimea Scaffold then Waimea Scaffold or Waimea Scaffold'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.</p> <p>The Client is not authorised to pledge Waimea Scaffold's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.</p>		
					<p>14. Personal Property Securities Act 1999 ("PPSA")</p> <p>Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Equipment that have previously been supplied and that will be supplied in the future by Waimea Scaffold to the Client, and the proceeds from such Equipment.</p> <p>The Client undertakes to:</p> <p>(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 Waimea Scaffold may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;</p> <p>(b) indemnify, and upon demand reimburse, Waimea Scaffold for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Equipment charged thereby;</p> <p>(c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Equipment or the proceeds of such Equipment in favour of a third party without the prior written consent of Waimea Scaffold; and</p> <p>(d) immediately advise Waimea Scaffold of any material change in its business practices of selling the Equipment which would result in a change in the nature of proceeds derived from such sales.</p> <p>Waimea Scaffold and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.</p> <p>The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA. Unless otherwise agreed to in writing by Waimea Scaffold, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>The Client shall unconditionally ratify any actions taken by Waimea Scaffold under provisions 14.1 to 14.5.</p> <p>Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>Only to the extent that the hire of the Equipment exceeds a twelve (12) month hire period (or a six (6) month hire period with the right of renewal), shall clause 14 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 14 will apply generally for the purposes of the PPSA.</p>		
					<p>15. Security and Charge</p> <p>In consideration of Waimea Scaffold agreeing to supply the 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</p>		

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- the future, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 15.2 The Client indemnifies Waimea Scaffold from and against all Waimea Scaffold's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Waimea Scaffold's rights under this clause.
- 15.3 The Client irrevocably appoints Waimea Scaffold and each director of Waimea Scaffold as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.
- 16. Client's Responsibilities**
- 16.1 The Client warrants that any structures to which the Equipment is to be erected on is able to withstand all imposed loadings if for any reason that Waimea Scaffold, or employees of Waimea Scaffold, reasonably form the opinion that the Client's premises is not safe for the erection of the Equipment to proceed then Waimea Scaffold shall be entitled to delay erection of the Equipment until Waimea Scaffold is satisfied that it is safe for the erection to proceed.
- 16.2 It is the Client's responsibility to give due notice to all local and any other authorities of its intention to erect the Equipment and to gain any consent required as per clause 12.
- 16.3 Scaffold decks are to be cleared of all building materials and rubbish before planks are moved or dismantling can commence.
- 16.4 The Client shall be solely responsible for and liable for the Equipment (and associated costs where applicable) and the manner of use and shall:
- (a) maintain the Equipment as is required by Waimea Scaffold;
 - (b) ensure scaffolding ties fixed by Waimea Scaffold are not removed or tampered with as the safety and stability of the scaffold depends on these ties;
 - (c) not move or relocate the Equipment or any part of the Equipment from the Site without Waimea Scaffold's prior written approval;
 - (d) ensure all overhead and underground services at the Site are located and identified or relocated, protected or temporarily shut down as necessary to ensure a safe working environment for the Equipment (including the Delivery, erection, installation and/or removal of the Equipment);
 - (e) notify Waimea Scaffold immediately by telephone of the full circumstances of any failure or accident in connection with the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (f) satisfy itself prior to taking Delivery of the Equipment that the Equipment is suitable for its purposes;
 - (g) use the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction and New Zealand Standards, whether supplied by Waimea Scaffold or posted on the Equipment;
 - (h) ensure that all persons erecting or using the Equipment are suitably instructed in its safe and proper use, and where necessary, hold a current certificate of competency and/or are fully licensed;
 - (i) ensure that the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (j) comply with all laws relating to the Equipment and its use (including, but not limited to health and Safety laws, the New Zealand Building and Industry Codes);
 - (k) keep the Equipment in their own possession and control, and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment without Waimea Scaffold's prior written approval; not alter or make any additions to the Equipment including, but without limitation defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (m) employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;
 - (n) ensure all overhead power likely to cause a hazard or adversely affect the installation of Equipment is turned off prior to the installation of the equipment;
 - (o) ensure that no digging or excavation work is performed near or under the Equipment during the installation or once the Equipment is installed;
 - (p) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (q) not use or carry any illegal, prohibited or dangerous substance on the Equipment;
 - (r) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
 - (s) on termination of the hire, deliver up the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to Waimea Scaffold.
- 16.5 Immediately on request by Waimea Scaffold the Client will pay:
- (a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to Waimea Scaffold;
 - (b) all costs incurred in clearing the Equipment;
 - (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment;
 - (ii) willful or negligent actions of the Client or the Client's employees;
 - (iii) vandalism, or (in Waimea Scaffold's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
 - (d) any costs incurred by Waimea Scaffold in dismantling the Equipment and returning it to Waimea Scaffold's premises if the Client does not return the Equipment to Waimea Scaffold's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;
 - (e) any lost hire fees Waimea Scaffold would have otherwise been entitled to for the Equipment, under this, or any other hire contract;
 - (f) any insurance excess payable in relation to a claim made by either the Client or Waimea Scaffold in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or Waimea Scaffold's.
- 17. Defects**
- 17.1 The Client shall inspect the Equipment on delivery and shall within forty-eight (48) hours notify Waimea Scaffold of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Waimea Scaffold an opportunity to inspect the Equipment within a reasonable time following delivery if the Client believes the Equipment is defective in any way. If the Client shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which Waimea Scaffold has agreed in writing that the Client is entitled to reject, Waimea Scaffold's liability is limited to replacing the Equipment.
- Warranty**
- No warranty is given by Waimea Scaffold as to the quality or suitability of the Equipment for any purpose and any implied warranty is expressly excluded. The Client shall indemnify and hold harmless Waimea Scaffold in respect of all claims arising out of the use of the Equipment.
- Consumer Guarantees Act 1993**
- If the Client is acquiring Equipment for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Equipment by Waimea Scaffold to the Client.
- Intellectual Property**
- Where Waimea Scaffold has designed, drawn or developed Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of Waimea Scaffold. Under no circumstances may such designs, drawings and documents be used without the express written approval of Waimea Scaffold.
- The Client warrants that all designs, specifications or instructions given to Waimea Scaffold will not cause Waimea Scaffold to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Waimea Scaffold against any action taken by a third party against Waimea Scaffold in respect of any such infringement.
- The Client agrees that Waimea Scaffold may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Equipment which Waimea Scaffold has created for the Client.
- Default and Consequences of Default**
- 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 Waimea Scaffold's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- If the Client owes Waimea Scaffold any money the Client shall indemnify Waimea Scaffold from and against all costs and disbursements incurred by Waimea Scaffold in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Waimea Scaffold's collection agency costs, and bank dishonour fees).
- Further to any other rights or remedies Waimea Scaffold may have under this Contract, if a Client has made payment to Waimea Scaffold, 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 Waimea Scaffold under this clause 21 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.
- Without prejudice to Waimea Scaffold's other remedies at law Waimea Scaffold shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Waimea Scaffold shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Waimea Scaffold becomes overdue, or in Waimea Scaffold'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 Waimea Scaffold;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with its 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.
- Cancellation**
- Without prejudice to any other rights or remedies Waimea Scaffold 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 Waimea Scaffold may suspend the Services immediately. Waimea Scaffold will not be liable to the Client for any loss or damage the Client suffers because Waimea Scaffold has exercised its rights under this clause.
- Waimea Scaffold may cancel any contract to which these terms and conditions apply or cancel delivery of Equipment at any time before the Services are commenced (or the Equipment are due to be delivered) by giving written notice to the Client. On giving such notice Waimea Scaffold shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Waimea Scaffold for Services already performed or Equipment already provided. Waimea Scaffold shall not be liable for any loss or damage whatsoever arising from such cancellation.
- In the event that the Client cancels the delivery of Equipment or Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by Waimea Scaffold as a direct result of the cancellation (including, but not limited to, any loss of profits).
- Dispute Resolution**
- All disputes and differences between the Client and Waimea Scaffold touching and concerning this Contract shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.
- Privacy Policy**
- All emails, documents, images or other recorded information held or used by Waimea Scaffold is "Personal Information" as defined and referred to in clause 24.3 and therefore considered confidential. Waimea Scaffold 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 as set out in the Act. Waimea Scaffold acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Waimea Scaffold that may result in serious harm to the Client, Waimea Scaffold 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.
- Notwithstanding clause 24.1, privacy limitations will extend to Waimea Scaffold in respect of Cookies where the Client utilises Waimea Scaffold's website to make enquiries. Waimea Scaffold 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 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 Waimea Scaffold when Waimea Scaffold sends an email to the Client, so Waimea Scaffold may collect and review that information ("collectively 27.2 Personal Information")
- If the Client consents to Waimea Scaffold's use of Cookies on Waimea Scaffold's website and later wishes to withdraw that consent, the Client may manage and control Waimea Scaffold's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- The Client authorises Waimea Scaffold or Waimea Scaffold'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 Waimea Scaffold from the Client directly or obtained by Waimea Scaffold 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.
- Where the Client is an individual the authorities under clause 24.3 are the authorities or consents for the purposes of the Privacy Act 2020.
- The Client shall have the right to request (by e-mail) from Waimea Scaffold, a copy of the Personal Information about the Client related by Waimea Scaffold and the right to request that Waimea Scaffold delete any incorrect Personal Information. Waimea Scaffold 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.
- The Client can make a privacy complaint by contacting Waimea Scaffold via e-mail. Waimea Scaffold will respond to a complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- Wet Hire**
- "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of Waimea Scaffold.
- In the event of Wet Hire, the operator of the Equipment remains an employee of Waimea Scaffold and operates the Equipment in accordance with the Client's instructions. Waimea Scaffold shall not be liable for any actions of the operator in following the Client's instructions.
- Suspension of Works**
- Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) Waimea Scaffolding 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 6.6 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 Waimea Scaffolding by a particular date; and
 - (iv) Waimea Scaffolding has given written notice to the Client of its intention to suspend the carrying out of work under the Contract.
- (b) if Waimea Scaffolding 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 Waimea Scaffolding exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to Waimea Scaffolding 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 Waimea Scaffolding suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes Waimea Scaffolding from continuing the Services or performing or complying with Waimea Scaffolding's obligations under this Contract, then without prejudice to Waimea Scaffolding's other rights and remedies, Waimea Scaffolding 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 Waimea Scaffolding as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- If pursuant to any right conferred by this Contract, Waimea Scaffolding suspends the Services and the default that led to that suspension continues un-remedied subject to clause 22.1 for at least ten (10) working days, Waimea Scaffolding shall be entitled to terminate the Contract, in accordance with clause 22.
- Service of Notices**
- 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.
- 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.
- Trusts**
- 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 Waimea Scaffold may have notice of the Trust, the Client covenants with Waimea Scaffold 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 Waimea Scaffold (Waimea Scaffold 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.
- General**
- 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.
- 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 Nelson, New Zealand.
- Subject to the CGA, Waimea Scaffold 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 Waimea Scaffold of these terms and conditions (alternatively Waimea Scaffold's liability shall be limited to damages which under no circumstances shall exceed the Price of the Equipment).
- Waimea Scaffold may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- The Client cannot licence or assign without the written approval of Waimea Scaffold.
- Waimea Scaffold 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 Waimea Scaffold's sub-contractors without the authority of Waimea Scaffold.
- The Client agrees that Waimea Scaffold 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 Waimea Scaffold to provide Equipment to the Client.
- Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to Waimea Scaffold.
- 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.