

**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 CARR New Zealand Limited, its successors and assigns.
- 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; and  
(d) 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 **“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 the Supplier’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.**
- 1.7 **“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 requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery.
- 2.6 None of the Supplier’s agents or representatives are authorised to make any representations, statements, conditions, or agreements not expressed by the manager of the Supplier in writing nor is the Supplier bound by any such unauthorised statements.
- 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.

**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 wilful 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 number/s, 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 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.
- 5.2 The Supplier reserves the right to change the Price if a variation to the Supplier’s quotation is requested. Any variation to the Supplier’s quotation, (including, but not limited to, any such variations that may occur in the cost to the Supplier of labour, freight, exchange rates, insurances, duties, landing charges, increased delivery cost) 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

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- 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.
- 5.3 At the Supplier's sole discretion, a deposit may be required.
- 5.4 Payment for Goods supplied on consignment shall be due to the Supplier thirty (30) days from the date of the previous months stocktake. In the event the Client returns any of the consigned Goods then payment shall only be due for the Goods supplied but not returned.
- 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) for certain approved Client's, 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;
  - (b) the date specified on any invoice or other form as being the date for payment; or
  - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 5.6 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.
- 5.7 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Supplier.
- 5.8 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.
- 5.9 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. 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 of Goods/Equipment**
- 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 is in addition to the Price.
- 6.3 The Client shall take Delivery of the Goods by receipt or collection of the Goods/Equipment whenever they are tendered for Delivery and notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 6.4 Any time specified by the Supplier for Delivery of the Goods/Equipment is an estimate only. The Supplier will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods/Equipment as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. Risk**
- 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.
- 8. Goods on Loan**
- 8.1 Goods supplied on loan shall at all times remain the property of the Supplier and are returnable on demand by the Supplier. In the event that the Goods are not returned to the Supplier in the condition in which it was delivered the Supplier retains the right to charge the Price of repair or replacement of the Goods.
- 8.2 The Supplier may (at its sole discretion) allow the Client temporarily possession of the Goods in order for the Client to determine whether the Goods are suitable for the intended environment or purpose, the period of which shall be three (3) business days, after which the Client must either make payment for the Goods in accordance with the Supplier's payment terms or return the Goods, at the Client's own expense, to the Supplier in their original condition.
- 8.3 The loan period shall commence from the time the Goods are collected by or delivered to the Client from the Supplier's premises and will continue until the return of the Goods to the Supplier's premises, and/or until the expiry of the loan period, whichever first occurs.
- 8.4 The Client shall:
- (a) keep the Goods in their own possession and control and shall not assign the benefit of the Goods nor be entitled to lien over the Goods;
  - (b) not alter or make any additions to the Goods including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Goods or in any other manner interfere with the Goods;
  - (c) keep the Goods, complete with all parts and accessories, clean and in good order as delivered.

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8.5 The Client accepts full responsibility for the safekeeping of the Goods and the Client agrees to insure, or self-insure, the Supplier's interest in the Goods and agrees to indemnify the Supplier against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Goods. Furthermore, the Client will not use the Goods nor permit it to be used in such a manner as would permit an insurer to decline any claim.

### 9. Consignment of Goods

9.1 Subject to the Supplier's prior written confirmation and agreement (including the Maximum Quantity of Goods ("MQG")), the Supplier agrees to consign to the Client the Goods specified by the Client in an order for consignment of Goods, provided that the number of Goods required by the Client in the order will not result in the Client having possession of more than the MQG.

9.2 For the avoidance of doubt, risk and title in the Goods supplied to the Client on a consignment basis passes to the Client in accordance with clause 7 and 16.

9.3 The Client must, in respect of Goods consigned to the Client by the Supplier:

- (a) hold the Goods on behalf of the Supplier;
- (b) store the Goods (at no cost to the Supplier) on the Client's premises separately from all other goods of the Client or any third party in such a way that they remain readily identifiable as the Supplier's property;
- (c) store each of the Goods to use according to the Good's labelling and other manufacturer conditions supplied with the Goods;
- (d) consume the Goods on a first expiring, first out basis for Goods that have an expiration date;
- (e) maintain the Goods in satisfactory condition;
- (f) at the end of each month the Client shall conduct a stocktake and shall within two (2) working days of each stocktake advise the Supplier in writing of all the Supplier's consignment goods sold during the month. The Supplier reserves the right to attend any monthly stocktake and/or to verify stock on hand at any point in time;
- (g) indemnify the Supplier for any loss or damage of the Goods while they are in possession of the consigned Goods.

9.4 The Client may resell the Goods before title has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Client's business at arm's length; and
- (b) any such sale shall be a sale of the Supplier's property on the Client's own behalf and the Client shall hold the proceeds on account for the Supplier.

9.5 The Client acknowledges and accepts that any consignment Goods returned for credit that the Supplier has agreed on but later finds upon receipt of the said Goods that these Goods have been opened or partially used and not in their original packaging, then full payment shall be due and payable in accordance with clause 5.4 and 5.5.

### 10. Re-supply to a Third Party

10.1 The Client who re-supplies to a third party any Goods purchased under these terms and conditions shall ensure that such third party enjoys no better rights against the Supplier in respect of such Goods than would be enjoyed by a purchaser from the Supplier subject to these conditions of sale (including exclusion from the terms of the Consumer Guarantees Act of persons who are consumers under the Consumer Guarantees Act but are acquiring Goods for business purposes). The Client agrees to keep the Supplier indemnified accordingly.

### 11. Ceasing Supply

11.1 The Supplier may cease to supply Goods on a consignment or loan basis to the Client on fourteen (14) days' written notice.

11.2 Upon notification to cease supply of the Goods or termination of any continuing consignment or loan arrangements with the Supplier, the Client must:

- (a) in respect of Goods supplied to the Client under consignment arrangements with the Supplier, reconcile all stock units by using either or both of the following options:
  - (i) return consignment items: unopened and undamaged packages with original shipping units may be returned for reduction against the consignment stock level, with the freight costs for the return of the Goods being at the Client's cost; and/or
  - (ii) purchase consignment items: Orders must be issued for all unreturned Goods, including any lost, damaged, stolen, or missing Goods for which an order has not already been issued by the Client; and
- (b) in respect of Goods supplied to the Client under loan arrangements with the Supplier at the Supplier's election:
  - (i) return the Goods to the Supplier at the Client's cost; or
  - (ii) permit the Supplier to collect the Goods in the Client's possession or control.

11.3 The Client must use all reasonable endeavours to assist the Supplier to exercise its right under 11.2(b)(ii).

11.4 The Client may cease to receive Goods on a consignment basis from the Supplier on fourteen (14) days' written notice.

11.5 Upon termination by the Client of any continuing consignment arrangements with the Supplier, the Client must in respect of Goods supplied to the Client under consignment arrangements with the Supplier, reconcile all stock units by using either or both of the following options:

- (a) return consignment items: unopened and undamaged packages with original shipping units may be returned for reduction against the consignment stock level, with the freight costs associated with the return of the Goods being at the Client's cost; and/or
- (b) purchase consignment items. Orders must be issued for all unreturned Goods, including any lost, damaged, stolen, or missing Goods for which an order has not already been issued by the Client.

### 12. Storage, Handling and Use of Goods

12.1 It is the Client's responsibility:

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- (a) to ensure that all applicable health and safety regulations are observed, and other appropriate steps taken in relation to the storage, handling, sale, and the use of the Goods once they are delivered to the Client; and
  - (b) where information is supplied to the Client on potential hazards relating to the Goods, to bring such information to the attention of its personnel, sub-contractors, visitors, and customers.
- 12.2 Without prejudice to the foregoing, it is also the Client's responsibility to provide safe facilities for the reception of Goods into storage.
- 12.3 Where Goods are loaned or consigned pursuant to clauses 8 or 9, the Client grants to the Supplier an irrevocable license and authority (following reasonable notice) to enter the Client's premises to access the consignment or loaned inventory to inspect, count or scan the Goods in accordance with the Supplier's internal procedures and policy.

**13. Equipment Hire**

- 13.1 Equipment shall at all times remain the property of the Supplier and is returnable on demand by the Supplier. In the event that Equipment is not returned to the Supplier in the condition in which it was delivered the Supplier retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Supplier shall have right to charge the Client the full cost of replacing the Equipment.
- 13.2 The Client shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;
  - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
  - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Supplier to the Client.
- 13.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self-insure, the Supplier's interest in the Equipment and agrees to indemnify the Supplier against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the 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.
- 13.4 Notwithstanding the above clause, immediately on request by the Supplier the Client will pay:
- (a) any lost hire charges the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
  - (b) any insurance excess payable in relation to a claim made by either the Client or the Supplier 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 the Supplier's.
- 13.5 Return of the Equipment ("**Return**") will be completed when the:
- (a) Equipment is returned by the Client to the Supplier's place of business; or
  - (b) Supplier takes back possession of the Equipment once collection by the Supplier is affected.

**14. Access**

- 14.1 The Client shall ensure that the Supplier has safe, clear, and free access to the site at all times to enable them to deliver the Goods. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.
- 14.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify the Supplier against all costs incurred by the Supplier in recovering such vehicles in the event they become bogged or otherwise immovable.

**15. Compliance with Laws**

- 15.1 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.
- 15.2 The Client agrees that the site will comply with any WorkSafe health and safety laws relating to the Goods and/or storage of the Goods and any other relevant safety standards or legislation.

**16. Title to Goods**

- 16.1 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.
- 16.2 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.
- 16.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 16.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;
  - (b) the Client holds the benefit 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;

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- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds 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; and
- (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.

### 17. Personal Property Securities Act 1999 (“PPSA”)

- 17.1 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) a security interest is taken in all Goods/Equipment that have previously been supplied and that will be supplied in the future by the Supplier to the Client, and the proceeds from such Goods/Equipment as listed by the Supplier to the Client in invoices rendered from time to time.
- 17.2 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/Equipment or the proceeds of such Goods/Equipment 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.
- 17.3 The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 17.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 17.5 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.
- 17.6 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 17.1 to 17.5.
- 17.7 Subject to any express provisions to the contrary (including those contained in this clause 17), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 17.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 17 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 17 will apply generally for the purposes of the PPSA.

### 18. Security and Charge

- 18.1 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, 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.
- 18.2 The Client indemnifies the Supplier from and against all the Supplier’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier’s rights under this clause.
- 18.3 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 18 including, but not limited to, signing any document on the Client’s behalf.

### 19. Defects

- 19.1 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 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.

### 20. Return of Goods

- 20.1 Returns of Goods will only be accepted provided that:
  - (a) the Client has complied with the provisions of clause 19.1; 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

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- (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.
- 20.2 Returned goods may (at the Supplier's sole discretion), incur restocking and handling fees.
- 20.3 Subject to clause 19.1, non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
- 21. Warranty**
- 21.1 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.
- 21.2 To the extent permitted by statute, no warranty is given by the Supplier as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Supplier shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 22. Consumer Guarantees Act 1993**
- 22.1 This Contract is subject to the provisions the Consumer Guarantees Act 1993 ("**CGA**") in all cases except where the Client is not contracting as a consumer within the meaning of the CGA.
- 23. Intellectual Property**
- 23.1 Where the Supplier has designed, drawn or developed Goods 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.
- 23.2 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.
- 23.3 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 which the Supplier has created for the Client.
- 24. Default and Consequences of Default**
- 24.1 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.
- 24.2 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).
- 24.3 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 24, 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.
- 24.4 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 if:
- (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.
- 25. Cancellation**
- 25.1 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods/Equipment to the Client. 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.
- 25.2 The Supplier may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On 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.
- 25.3 In the event that the Client cancels Delivery of the Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 25.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

Client's Initials: \_\_\_\_\_

Date: \_\_\_\_\_

**26. Privacy Policy**

- 26.1 All emails, documents, images or other recorded information held or used by the Supplier is “**Personal Information**” as defined and referred to in clause 26.3 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 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.
- 26.2 Notwithstanding clause 26.1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier’s website to make enquiries. The Supplier 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 the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information (“collectively Personal Information”)
- If the Client consents to the Supplier’s use of Cookies on the Supplier’s website and later wishes to withdraw that consent, the Client may manage and control the Supplier’s privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 26.3 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.
- 26.4 Where the Client is an individual the authorities under clause 26.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 26.5 The Client shall have the right to request (by e-mail) from the Seller, a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information.
- 26.6 The Supplier 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.
- 26.7 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that 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>.

**27. Service of Notices**

- 27.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party’s last known email address.
- 27.2 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.

**28. Trusts**

- 28.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (“Trust”) then whether or not 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.

Client’s Initials: \_\_\_\_\_

Date: \_\_\_\_\_

**29. General**

- 29.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 29.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 29.3 Subject to the CGA, 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).
- 29.4 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.
- 29.5 The Client cannot licence or assign without the written approval of the Supplier.
- 29.6 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.
- 29.7 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.
- 29.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, 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.
- 29.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

Client's Initials: \_\_\_\_\_

Date: \_\_\_\_\_