

## Panorama Access Hire & Sales Limited – Terms & Conditions of Hire

1. **Definitions**
- 1.1 "Supplier" shall mean Panorama Access Hire & Sales Limited, its successors and assigns or any person acting on behalf of and with the authority of Panorama Access Hire & Sales Limited.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Equipment" shall mean all Equipment (including any accessories) supplied on hire by the Supplier to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Supplier to the Client.
- 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 the Supplier to the Client.
- 1.6 "Price" shall mean the cost of the hire of the Equipment as agreed between the Supplier and the Client subject to clause 3 of this contract.
2. **Acceptance**
- 2.1 Any instructions received by the Supplier from the Client for the hiring of Equipment and/or the Client's acceptance of Equipment supplied on hire by the Supplier shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of the Supplier.
- 2.4 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, 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.
- 2.5 Equipment is supplied by the Supplier based only on the terms and conditions of hire and the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of hire.
- 2.6 Both parties acknowledge and agree that they shall at all times comply with the best practice guidelines for scaffolding as outlined in the Guidelines for the Provision of Facilities and General Safety in the Construction Industry Standards.
3. **Price And Payment**
- 3.1 At the Supplier's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by the Supplier to the Client in respect of Equipment supplied; or
  - (b) the Supplier's quoted Price (subject to clause 3.2) which shall be binding upon the Supplier provided that the Client shall accept the Supplier's quotation in writing within thirty (30) days.
- 3.2 The Supplier reserves the right to change the Price in the event of a variation to the Supplier's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or as a result of increases to the Supplier in the cost of materials and labour) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 The Supplier may submit detailed progress payment claims in accordance with the Supplier's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
- 3.4 At the Supplier's sole discretion a deposit may be required.
- 3.5 At the Supplier's sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to the Supplier.
- 3.6 At the Supplier's sole discretion payment shall be due before delivery of the Equipment.
- 3.7 Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be 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.
- 3.8 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed between the Client and the Supplier.
- 3.9 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.
- 3.10 All prices quoted are subject to GST at the current rate.
4. **Hire Period**
- 4.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.
- 4.2 Where the Equipment does not have a timing device installed hire Charges shall commence from the time the Equipment is collected by the Client from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 4.3 If the Supplier agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Client notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 4.4 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 4.5 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
5. **Delivery Of Equipment**
- 5.1 At the Supplier's sole discretion delivery of the Equipment shall take place when:
  - (a) the Client takes possession of the Equipment at the Supplier's address or
  - (b) the Client takes possession of the Equipment at the Client's nominated address (in the event that the Equipment is delivered by the Supplier or the Supplier's nominated carrier).
- 5.2 At the Supplier's sole discretion the costs of delivery are:
  - (a) included in the Price, or
  - (b) in addition to the Price, or
  - (c) for the Client's account.
- 5.3 The Client shall make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery. In the event that the Client is unable to take delivery of the Equipment as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Equipment to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.5 The failure of the Supplier to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 The Supplier shall not be liable for any loss or damage whatever due to failure by the Supplier to deliver the Equipment (or any part of the Equipment) promptly or at all.
6. **Risk**
- 6.1 The Supplier retains property in the Equipment nonetheless; all risk for the Equipment passes to the Client on delivery.
- 6.2 The Client accepts responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss, theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 6.3 The Client will insure, or self insure, the Supplier's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment or permit it to be used in such a manner as would render an insurer to decline any claim.
- 6.4 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.
7. **Title**
- 7.1 The Equipment is and will at all time remain the absolute property of the Supplier.
- 7.2 If the Client fails to return the Equipment to the Supplier then the Supplier or the Supplier's agent may (as the trustee of the Client) enter upon and into land and premises occupied, 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.
- 7.3 The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
8. **Defects**
- 8.1 The Client shall inspect the Equipment on delivery and shall within seven (7) days 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 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 the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to replacing the Equipment.
- 8.2 **Client's Responsibilities**
- 8.3 The Client shall:
  - (a) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident in connection with the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification.
  - (b) satisfy itself prior to taking delivery of the Equipment that the Equipment is suitable for its purposes;
  - (c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by the Supplier or posted on the Equipment;
  - (d) ensure that all persons operating or erecting 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;
  - (e) comply with all occupational health and safety laws relating to the Equipment and its operation;
  - (f) keep the Equipment in their own possession and control;
  - (g) 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;
  - (h) 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;
  - (i) not exceed the recommended or legal load and capacity limits of the Equipment;
  - (j) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
  - (k) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
  - (l) on termination of the hire, deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to the Supplier.
- 8.4 Immediately on request by the Supplier the Client will pay:
  - (a) the new list price of any Equipment that is for whatever reason destroyed, written off, or not returned to Supplier;
  - (b) all costs incurred in cleaning the Equipment;
  - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
  - (d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
  - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
  - (f) the cost of fuels and consumables provided by the Supplier and used by the Client.
9. **Warranty**
- 9.1 No warranty is given by the Supplier 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 the Supplier in respect of all claims arising out of the use of the Equipment.
10. **Consumer Guarantees Act 1993**
- 10.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993, in so far as they apply to the goods and services provided under this agreement of a trade/business (which cases are specifically excluded).
11. **Default & Consequences of Default**
- 11.1 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.
- 11.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Supplier.
- 11.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in pursuing the debt including legal costs on a solicitor and own client basis and the Supplier's collection agency costs.
- 11.4 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) the Supplier may repossess the Equipment as per clause 7.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. 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.
- 11.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.6 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 unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
12. **Security And Charge**
- 12.1 Despite anything to the contrary contained herein or any other rights which the Supplier may have howsoever:
  - (a) where the Client and/or the Guarantor (if any) is the Supplier of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - (b) should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Supplier (or the Supplier's nominee) as the
13. **Cancellation**
- 13.1 The Supplier may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Client wishes to cancel this agreement then the Client shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation or a direct result of the cancellation.
14. **Privacy Act 1993**
- 14.1 The Client and the Guarantor/s (if separate to the Client) authorise the Supplier to:
  - (a) collect, retain and use any information about the Client and/or the Guarantor/s, for the purpose of assessing the Client's and/or the Guarantor/s creditworthiness or marketing products and services to the Client and/or the Guarantor/s; and
  - (b) to disclose information about the Client and/or the Guarantor/s, whether collected by the Supplier from the Client and/or the Guarantor/s 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 and/or the Guarantor/s.
- 14.2 Where the Client and/or the Guarantor/s are an individual the authorities under (clause 14.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 14.3 The Client and/or the Guarantor/s shall have the right to request the Supplier for a copy of the information about the Client and/or the Guarantor/s retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Client and/or the Guarantor/s held by the Supplier.
15. **Wet Hire**
- 15.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of the Supplier.
- 15.2 In the event that Wet Hire of the Equipment the operator of the Equipment remains an employee of the Supplier and operates the equipment in accordance with the Client's instructions. The Supplier shall not be liable for any actions of the operator in following the Client's instructions.
16. **Personal Property Securities Act 1999 ("PPSA")**
- 16.1 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 Equipment previously supplied by the Supplier to the Client (if any) and all Equipment that will be supplied in the future by the Supplier to the Client.
- 16.2 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 charge 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 charge statement on the Personal Property Securities Register or releasing any Equipment charged thereby;
  - (c) not register a financing charge statement or a change demand without the prior written consent of the Supplier.
- 16.3 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.
- 16.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 16.5 Unless otherwise stated in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 16.6 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 16.1 to 16.5.
17. **Construction Contract Act 2002**
- 17.1 The Client hereby expressly acknowledges that:
  - (a) the Supplier has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
    - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Supplier by a particular date; and
  - (b) if the Supplier suspends work, it:
    - (i) is not in breach of contract; and
    - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
    - (iii) is entitled to an extension of time to complete the contract; and
    - (iv) keeps its rights under the contract including the right to terminate the contract and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
  - (c) if the Supplier exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to the Supplier under the Contractual Remedies Act 1979; or
    - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Supplier suspending work under this provision.
18. **General**
- 18.1 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.
- 18.2 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.
- 18.3 The Supplier shall be under no liability whatever to the Client for any indirect 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.
- 18.4 In the event of any breach of this contract by the Supplier the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Supplier exceed the Price of the Equipment.
- 18.5 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.
- 18.6 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.7 The Client reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 18.9 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
- 18.10 Erection and dismantling will be carried out during normal working hours 7.30am to 5.00pm on weekdays, excluding statutory holidays unless by prior arrangement. All work required outside these hours will require a variation order. Extras to the quotation or contract will be charged at \$46.00 per man hour during normal working hours and \$55.00 per Site Foreman per hour and will require a variation order to cover the additional work.
- 18.11 All scaffolds including special duty scaffolds will be maintained under the ACIO safety registration system which will require weekly inspections on our part while the scaffold is in use and monthly while not in use. The charge for this is extra to the contract price and will be charged at \$60.00 per man per hour plus \$60.00 transport per inspection.

Please note that a larger print version of these terms and conditions is available from the Supplier on request.