



Standard Terms and Conditions of Trade

SERVICE

1. Application

1.1 These Terms and Conditions record the terms and conditions under which the Company will provide Services to the Customer, and shall apply to all agreements for Services made between the Company and the Customer from time to time.

2. Definitions and Interpretation

2.1 Definitions

“**Agreement**” means any Agreement entered into in relation to a Service and includes these Terms and Conditions;

“**Business Hours**” means 07:30 – 17:00 any day of the week other than a Saturday, Sunday, or Public Holiday.

“**Company**” means Brazier Scaffolding Limited;

“**Customer**” means any person or entity who requests Services from the Company and where applicable includes the employees, contractors, agents and subcontractors engaged by the Customer to request Services from the Company;

“**Default Event**” has the meaning given to it in clause 12.1;

“**Default Interest Rate**” means 10% per annum compounding monthly;

“**Delivery**” occurs when the Equipment either:

- (a) is collected from the Depot by the Customer; or
- (b) is collected by a carrier for the carriage at the direction of the Customer; or
- (c) where the Company has agreed to deliver the Equipment to the Customer, when the Equipment is offloaded at the address for delivery;

“**Depot**” means the Company’s premises as advised by the Company from time to time;

“**Due Date**” has the meaning given in clause 4.3;

“**Equipment**” includes scaffolding and any other equipment hired to the Customer under the Agreement;

“**Guarantor**” has the meaning given in clause 14;

“**GST**” means goods and services tax under the Goods and Services Tax Act 1985;

“**Hire Period**” has the meaning given in clause 6.1;

“**PPSA**” means the Personal Property Securities Act 1999;

“**Pricing**” means the Company’s current pricing for the Services [available on the Company’s website/available on request];

“**Services**” means any service provided by the Company to the Customer including, without limitation, the hire, the transportation, erection, installation, dismantling and removal of scaffolding and any other Equipment;

“**Service Charge**” means the charges for the Company’s Services as set out in the Pricing;

“**Terms and Conditions**” means the terms and conditions contained herein and subject to clause 27.2, includes any additional terms or variations contained in any Agreement, quotation, application for credit, order, invoice or other document or amendment expressed to be supplemental to the Terms and Conditions.

2.2 Interpretation

In these Terms and Conditions:

- (a) Clause headings are for reference only and do not affect interpretation;

- (b) A reference to the Company includes its successors or permitted assigns;
- (c) If the Customer comprises more than one person, each person’s liability will be joint and several; and
- (d) References to the singular shall include the plural and vice versa.

3. Charges

3.1 GST and all other taxes, duties or other applicable levies are payable in addition to the Service Charges, on the Due Dates for the Service Charges.

3.2 In relation to a quotation, the Customer shall be responsible for the accuracy of any information upon which the quotation is based. Any changes to specifications or requirements will be invoiced in accordance with the Company’s then relevant Pricing.

3.3 Unless otherwise agreed, any quotation given in relation to Services does not allow for subsequent visits to the site to adjust or alter the Equipment, and any additional rectification services will be charged as an extra.

3.4 All quotes are valid for 30 days for acceptance.

3.5 The Company may periodically adjust its Pricing at its sole discretion.

3.6 Service Charges are calculated weekly. There will be no reduction of the Service Charges for weekends, holidays, inclement weather or for any other reason beyond the Company’s control including (without limitation) strikes, lockouts, cessation of labour, transport delays and government interference or control or if the Equipment is returned prior to the expiry of the Hire Period.

3.7 The Company may vary the Service Charges:

- (a) if a variation to the Services originally scoped (including any applicable plans or specifications) is requested; or
- (b) if variations which are beyond the Company’s control occur (such as the cost of materials, labour, taxes, levies, duties, insurance and/or freight etc.); or
- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather/environmental conditions, limitations to accessing the site, any subsidence of ground conditions, availability of machinery, protruding or dismantled formwork, repositioning or adjusting the Equipment due to sub-contractor’s moving planks, additional site visits required, safety considerations, any relocation and/or alteration to working platforms, ties and/or hop up brackets (or the Equipment entirely) or prerequisite work by any third party not being completed) which are only discovered on commencement of the Services.

3.8 In the event that the Company is required to provide the Services urgently, that may require the Company’s staff to work outside the Business Hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then the Company may charge the Customer additional labour costs, unless otherwise agreed between the parties.

- 3.9 Unless otherwise agreed in writing, the Customer shall be liable for payment of any costs associated with engineering reports or other inspections required including any building or resource consents required by the local territorial authority in the course of any contract undertaken by the Customer.
- 3.10 The Company may require the Customer to pay a deposit prior to any provision of Services, being an advance payment.
- 4. Payment**
- 4.1 The Customer agrees to pay the Service Charges for the Services.
- 4.2 The Company will invoice the Customer for all Service Charges and all other amounts payable by the Customer in accordance with these Terms and Conditions on a monthly basis or otherwise periodically.
- 4.3 The Customer will:
- pay all undisputed amounts claimed and due under the Agreement; and
 - in respect of any disputed amounts, and irrespective of whether the invoice is a payment claim under the Construction Contracts Act 2002, provide details and reasons concerning the non-payment to the extent required for a payment schedule under section 21 of that Act, by the date which is the 20th of the month following the date of the invoice/payment claim ("**Due Date**"), without any other set off or deduction.
- 4.4 Without limiting clause 4.3, the Customer shall not withhold any sum including "retentions" without the Company's prior written consent.
- 4.5 If payment of any invoice is not made by the Due Date all other monies owing by the Customer shall become immediately due and payable.
- 4.6 Invoices in the form of payment claims under the Construction Contracts Act 2002 may be rendered by the Company at its discretion, in which event:
- Part 2 Subpart 3 (making and responding to payment claims) and Subpart 4 (suspension of work) of that Act will apply; and
 - The Company's rights in clause 13.2 to suspend performance of the Services will continue to apply.
- 5. Default Interest**
- 5.1 Without prejudice to the Company's other remedies under the Agreement, at law or otherwise, the Customer will pay interest at the Default Interest Rate on all amounts owing to the Company under the Agreement which remain outstanding after the Due Date, until all outstanding amounts have been paid in full.
- 6. Duration of Hire**
- 6.1 The Hire Period shall be for a term commencing on the date of Delivery of the Equipment and ending on the return date agreed by the Company.
- 7. Services**
- 7.1 The Customer must give the Company a minimum of 3 weeks prior notice for the date of performance of the Services unless otherwise agreed in writing by the parties.
- 7.2 The Customer shall ensure the Company has clear and free access to the nominated installation site at all times (and that such access is suitable to accept the weight of laden trucks or other heavy equipment as may be deemed necessary by the Company) to enable the Company to erect, install and/or dismantle and remove the Equipment. Where the Company requires access to an adjoining or adjacent property or land to the nominated site, then it is the Customer's responsibility to gain permission from the relevant land owner to use the above mentioned property.
- 7.3 Upon the expiry of the Hire Period, where the Company dismantles the Equipment, the Company agrees to carry out in a reasonable way the clean-up of the site where Equipment was installed but the Company is not required to restore the site to its pre-existing condition. Without limiting the foregoing the Company is not required to:
- reinstate grass which has died off due to the covering of base blocks to establish foundation support for the Equipment; or
 - repair holes and/or repaint where the Equipment is required to be secured to the building structure, with ties at each scaffold lift, using either bolts, pins or screw eyes, and such damage shall be the Customer's responsibility.
- 7.4 It shall be the Customer's responsibility to ensure that where the Equipment is installed on concreted areas, patios, driveways, timber decks, lower level roof areas or other structures that suitable coverings are put in place to help prevent any marking/staining of such areas.
- 7.5 The Company shall not be liable for any loss or damage to the site (including, without limitation, damage to lower level roofs, guttering, windows, cladding, pathways, driveways and concreted or paved tiled, or grassed areas) unless due to the negligence of the Company.
- 7.6 If during the course of the Customer's work, the Equipment is modified or removed by the Customer to the extent the Equipment is no longer compliant with the applicable legislative requirements, any rectification work performed by the Company will be at the Customer's expense.
- 7.7 The Customer acknowledges and agrees that any standing scaffold over five metres (5m) high or intended to extend over five metres (5m) high:
- may only be erected, altered or dismantled under the supervision of a scaffolder holding a certificate of competency or license that may be required by any legislation or local regulatory authority; and
 - requires the Company and the people intending to use the scaffold to provide a notification to WorkSafe prior to any Services commencing.
- 7.8 The Customer shall be responsible for:
- confirming with the relevant authorities that all power cables are safe within four metres (4m) of the intended Equipment prior to the Services commencing;
 - providing the Company, while at the site, with adequate access to available water, electricity, toilet and washing facilities unless otherwise agreed;
 - obtain all permits and licences and give all notices required under any statute regulation or bylaw in force, and obtain all necessary consents required from any local authority inspector or adjoining owners in respect of the Equipment and/or Services;
 - identifying the boundaries of the site prior to provision of the Services, if required by the Company.
- 7.9 The Customer shall at all times indemnify the Company from and against all loss, costs, claims, damages, expenses (including all legal costs and expenses incurred on a solicitor/own client basis) the Company incurs or suffers, and all claims and other proceedings made or brought against the Company, as a consequence of any breach of the Terms and Conditions by the Customer or failure to comply with its obligations in clauses 7.1 to 7.8 inclusive; or any representation made, or any act, omission, or negligence committed by the Customer or by those for whom the Customer is responsible; or any failure to install or use the Equipment in accordance with the recommended guidelines and specifications.

8. Obligations

- 8.1 The Customer acknowledges that:
- The Company does not warrant or represent the suitability of any Service for the Customer's use;
 - If any recommendation or advice has been given by Company, the Company will not be responsible for the actual implementation of the recommendation or the advice or actions or performance of the Customer;
 - The Customer shall cooperate and coordinate with the Company in a timely manner with regard to all health and safety matters which may concern or affect the Company.
- 8.2 At all times upon the request of the Company the Customer shall advise the Company of the whereabouts of the Equipment and allow the Company access to inspect the Equipment.
- 8.3 Should any health and safety risk arise in relation to the Company or its workers (as that term is defined in the Health and Safety at Work Act 2015), the Company will be entitled without penalty to suspend immediately the performance of any part or all of the Services for such period as it considers necessary and until the Customer has remedied such health and safety risk.

9. Company's Undertakings

- 9.1 The Company will ensure that the Equipment is installed at the commencement date of the Hire Period in operational order and with all necessary permits, certificates and licences.

10. Delay

- 10.1 Where any delay to the performance of the Services arise through no fault of the Company, the Customer shall be liable to the Company for any additional costs and expenses including loss of profit and consequential loss arising from such delay.

11. Retention of Title

- 11.1 Title to all Equipment hired by the Customer remains with the Company and the Customer may not resell or otherwise dispose of the Equipment.
- 11.2 Risk of any loss or damage to all Equipment due to any cause whatsoever shall be borne by the Customer from the time Delivery occurs until all Equipment is returned to the Company and accounted for. The Customer shall indemnify the Company for the cost of replacement or repair of damaged or lost Equipment.

12. Personal Properties Security Act 1999

- 12.1 The Customer acknowledges that the Agreement creates a security interest (as defined in the PPSA) in the Equipment and the proceeds of such Equipment together with any equipment owned by the Customer which is identical in description to any of the Equipment. The Customer will, at the Company's request, promptly execute any documents, provide all necessary information and do anything else required to ensure that the security interest is perfected in accordance with the PPSA with such priority as the Company requires.
- 12.2 The Customer shall not grant any other security interest or lien over the Equipment.
- 12.3 The Customer waives any rights the Customer may have under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133, and 148 of the PPSA.
- 12.4 The Customer waives its right to receive a copy of any verification statement or financing change statement and will give the Company prior written notice of a proposed change of Customer's name or address.

- 12.5 The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of clause 12.1 including, but not limited to, signing any document on the Customer's behalf.

13. Enforcement

- 13.1 The security interests created by these Terms and Conditions become enforceable if any of the following events occur ("Default Events"):
- The Customer fails to pay any money owing on the Due Date;
 - The Company reasonably believes the Customer has committed or will commit an act of bankruptcy, has had or is about to have a receiver or liquidator appointed, or are declared insolvent;
 - The Customer neglects or fails to carry on its business to the Company's reasonable satisfaction, or if there is a significant deterioration in the Customer's trading or asset position;
 - The Customer is otherwise in breach of its obligations under these Terms and Conditions.
- 13.2 If any of the Default Events occur, in addition to any remedies the Company may have at law, the Company may do one or more of the following:
- suspend the performance of the Services;
 - charge Default Interest in accordance with clause 5;
 - enter on to the Customer's premises and repossess any Equipment which have not been paid for in full;
 - immediately terminate the Agreement by notice in writing to the Customer.
- 13.3 Upon termination of its agreement with the Customer the Company shall be entitled to take possession of the Equipment. For this purpose the Customer irrevocably appoints the Company its agent and authorises the Company to enter on any land or premises owned by or under the control of the Customer upon which the Equipment is then situated.
- 13.4 Notwithstanding that the Company may have cancelled the Agreement, the Customer shall indemnify the Company against any cost, claim, damage, expense or liability suffered or incurred by the Company whether arising directly or indirectly from the Company exercising its rights under this clause or otherwise acting to recover any Equipment hired or monies payable by the Customer under the Terms and Conditions.
- 13.5 The Company will not be liable to the Customer or any other persons for any loss suffered or liability incurred arising from cancellation of the Agreement or repossession of the Equipment.
- 13.6 Except as is otherwise provided in the Agreement termination or expiry of the Agreement will not affect:
- any rights and remedies available to a party under the Agreement which have accrued up to and including the date of termination or expiry; and
 - the provisions of the Agreement which expressly, or by their nature, survive termination or expiry, including clause 12 (Enforcement), clause 14 (Limitation of Liability), clause 14 (Personal Guarantee), clause 15 (Dispute Resolution), clause 18 (Confidentiality) and clause 25 (Miscellaneous).

14. Limitation of Liability

- 14.1 The CGA, the Fair Trading Act 1986 ("FTA"), and other statutes may impose warranties, conditions or obligations upon the parties which cannot by law (or which can only to a limited extent by law) be excluded. The parties exclude all such imposed warranties, conditions or obligations to the

- extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 14.2 Where the Customer receives the Services for the purposes of a business:
- (a) the parties acknowledge and agree that:
 - (i) the Customer is receiving the Services covered by the Agreement for the purposes of a business in terms of sections 2 and 43(2) of the CGA;
 - (ii) the Services are provided and accepted in trade for the purposes of the FTA and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and
 - (b) that it is fair and reasonable that the parties are bound by this clause and clause 13.1.
- 14.3 The Company will not be liable for any consequential loss or damage or any loss of profit or loss of revenue caused directly or indirectly by the provision of the Services or any defects in the drawings, designs or specifications which the Company provides with the Services. The exclusion of liability contained in this clause shall apply irrespective of how liability arises, whether in contract, equity, tort (including negligence), breach of statutory duty or otherwise.
- 15. Personal Guarantee**
- 15.1 Where the Customer is a company, in consideration for the Company agreeing to supply Equipment and granting credit to the Customer at its request the signatories to the Agreement are signing the Agreement in their personal capacity and jointly and severally personally undertake as principal debtors to the Company for the payment of any and all moneys now or hereafter owed by the Customer to the Company ("Guarantors"). The Guarantor(s) and Customer are jointly and severally liable to perform these conditions and to make payment of all sums due hereunder.
- 16. Dispute Resolution**
- 16.1 Any dispute arising out of, or in connection with, the Agreement or any Agreement will be resolved in accordance with the following dispute resolution procedure. However, nothing in this clause 16 prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.
- 16.2 If direct discussion and negotiation between the parties fails to resolve the dispute within 1 month of the dispute arising then the parties will, where the dispute is within its jurisdiction, apply to the Disputes Tribunal at Invercargill for resolution of the dispute. The parties hereby agree that the jurisdiction of the Disputes Tribunal to determine the dispute is extended to the maximum extent permitted by law.
- 16.3 If the dispute is outside the jurisdiction of the Disputes Tribunal, then the dispute shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 17. Construction Contracts Act 2002**
- 17.1 The Agreement is a "construction contract" under the Construction Contracts Act 2002 unless section 11 of the Act applies. Nothing in the Agreement will be construed as negating the rights, obligations and requirements of that Act. Accordingly, the dispute resolution procedures in the Agreement will be in addition to (and not in substitution for) those provided in the Act but specific provisions in the Agreement will prevail over default provisions in the Act where the Act so allows.
- 18. Privacy Act**
- 18.1 The Customer authorises the Company to collect, retain and use personal information about the Customer including the information contained in the Agreement, for the purpose of assessing the Customer's creditworthiness and to disclose information about the Customer:
- (a) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Customer's obligations to the Company;
 - (b) to such persons as may be necessary or desirable to enable the Company to exercise any power or enforce or attempt to enforce any of the Company's rights, remedies and powers under the Agreement.
- 18.2 The Customer acknowledges that the authorisations set out above are irrevocable.
- 19. Confidentiality**
- 19.1 The Customer will treat as confidential and will not use or disclose to any other person any information relating to quantities, price, or availability of any Equipment provided by the Company to the Customer and these obligations shall survive termination of the Agreement.
- 20. No Waiver**
- 20.1 No failure or delay of either party to enforce any provision of the Agreement at any time shall be a waiver of the provision. No waiver shall be effective unless in writing. No waiver of any breach of the Agreement shall be deemed to be a waiver of any other or any subsequent breach.
- 21. No Assignment**
- 21.1 The Customer must not assign or transfer all or any part of its rights or obligations under the Agreement without the prior written consent of the Company.
- 22. Amendments**
- 22.1 The Company may amend these Terms and Conditions from time to time. Any amendments will be effective upon the amended terms and conditions being published on the Company's website, provided that the amended terms and conditions will not apply to any Agreement between the Company and Customer that is still being performed at the time of such publication.
- 23. Force Majeure**
- 23.1 The Company shall not be liable for delay or failure to perform its obligations under the Agreement if the cause of delay or failure is beyond the Company's reasonable control.
- 24. Costs**
- 24.1 The Customer must pay the Company's costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Company's rights, remedies and powers under the Agreement.
- 25. Severance**
- 25.1 Any clause of the Agreement which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other clause(s) which shall remain in full force and effect.

26. **Acknowledgement**

26.1 The Customer acknowledges that where the Customer requests the Services the Customer is bound by these Terms and Conditions notwithstanding the fact that the Customer may not have requested and/or received a quotation from the Company.

27. **Miscellaneous**

27.1 The Agreement is governed by New Zealand law.

27.2 These Terms and Conditions, together with the relevant Agreement, quotation, specifications, payment and Equipment details contained in any invoice(s) constitute the entire agreement between the parties relating to the Equipment to the exclusion of all and any other terms put by or on behalf of the Customer as part of an order, unless the Company agrees to vary the Agreement in writing.