

Scafif Ltd – Terms & Conditions of Hire

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 “Scafif” shall mean Scafif Ltd, its successors and assigns or any person acting on behalf of and with the authority of Scafif Ltd.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Scafif to provide the Scaffolding on hire as specified in any hire form, 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 “Scaffolding” means all Scaffolding, safety nets, shrink wrap, site fencing or other products (including any accessories) supplied on hire to the Client by Scafif, at the Client’s request from time to time, and:
- (a) includes any erection, dismantling and transport of the Scaffolding (“**Services**”), any parts, accessories and/or consumables supplied by Scafif to the Client, either separately or deposited incidentally by Scafif in the course of it conducting, or supplying to the Client, the Scaffolding; and
 - (b) where the context so permits the terms ‘Scaffolding’ or ‘Services’ shall be interchangeable for the other.
- 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 Scafif to the Client.
- 1.6 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email or social media details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 “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 ordering from the 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 ordering Scaffolding via the website.
- 1.8 “Charges” shall mean the charges payable for the Scaffolding hire (plus any Goods and Services Tax (“GST”) where applicable) as agreed between Scafif and the Client subject to clause 5 of this Contract.

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 any Scaffolding.
- 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 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.
- 2.5 The Client acknowledges:
- (a) that the supply of Scaffolding on credit shall not take effect until the Client has completed a credit application with Scafif and it has been approved with a credit limit established for the account; and
 - (b) In the event that the supply of Scaffolding request exceeds the Client’s credit limit and/or the account exceeds the payment terms, Scafif reserves the right to refuse Delivery; and
 - (c) accepts:
 - (i) the product supply of shrinkwrap offers a manufacturer’s guarantee of UV protection and can withstand up to the manufacturers specified tolerance and/or Bureau of Meteorology definition regarding gale force winds, being winds of up to sixty-one kilometres/per hour (61kph); and
 - (ii) that when the Contract period for hire is complete under this Contract and payment is not forthcoming when due and payable, then Scafif reserves the right at their discretion to leave the scaffolding erected until such time as payment is effected and the Client shall be liable for all loss of hire Charges in accordance with clause 14.2(e);
 - (iii) variations to the Contract requested by the Client that are subject to labour Charges, shall be at Scafif’s current hourly rate, unless otherwise stated at the time of the variation request.
- 2.6 In the event that Scafif is required to provide the Services urgently, that may require Scafif’s staff to work outside their normal business hours of Monday to Friday, 8am to 5pm (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then Scafif reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between Scafif and the Client.
- 2.7 Any advice, recommendation, information, assistance or service provided by Scafif in relation to Scaffolding supplied is given in good faith, is based on Scafif’s own knowledge and experience and shall be accepted without liability on the part of Scafif and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Scaffolding.

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- 2.8 None of the Scaffolding shall be sublet or cross-hired by the Client. The Client shall not assign or transfer its interest in the Contract, or part with possession of all, or any portion, of the Scaffolding, without the prior written consent of Scafit, which may be arbitrarily withheld.
- 3. Errors and Omissions**
- 3.1 The Client acknowledges and accepts that Scafit 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 Scafit 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 Scafit 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 Scafit; 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 Scafit 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 Scafit as a result of the Client's failure to comply with this clause.
- 5. Exclusions to the Quote**
- 5.1 Unless otherwise stated the following will be excluded from the quote:
- (a) any engineer's costs for calculations; and
 - (b) the costs of any work resulting from the engineer's requirements; and
 - (c) Traffic Pedestrian Management; and
 - (d) costs to make power lines safe; and
 - (e) any local authority consents.
- 6. Charges And Payment**
- 6.1 At Scafit's sole discretion the Charges shall be either;
- (a) as indicated on invoices provided by Scafit to the Client in respect of Scaffolding supplied; or
 - (b) Scafit's quoted Charges (subject to clause 6.2) which is subject to a site inspection, and shall be binding upon Scafit provided that the Client shall accept Scafit's quotation in writing within thirty (30) days.
- 6.2 Scafit reserves the right to change the hire Charges:
- (a) if a variation to the Scaffolding which is to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) if variations which are beyond Scafit's control occur (such as the cost of materials, labour, taxes, levies, duties, insurance and/or freight etc.); or
 - (d) 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 Scaffolding, due to sub-contractor's moving planks, additional site visits required, safety considerations (e.g. overhead hazards, etc.), any relocation and/or alteration to working platforms, ties and/or hop up brackets (or the Scaffolding entirely) or prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services.
- 6.3 Variations will be charged for on the basis of Scafit's quotation, and will be detailed in writing, and shown as variations on Scafit's invoice. The Client shall be required to respond to any variation submitted by Scafit within ten (10) working days. Failure to do so will entitle Scafit to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Scafit's sole discretion, a non-refundable deposit may be required upon request.
- 6.5 Time for payment for the hire of the Scaffolding being of the essence, the Charges will be payable by the Client on the date/s determined by Scafit, which may be:
- (a) on Delivery of the Scaffolding; or
 - (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 Scafit.
- 6.6 No allowance has been made in the Charges for the deduction of retentions. In the event that retentions are made, Scafit reserves the right to treat all retentions as placing the Client's account into default.
- 6.7 Scafit may in its discretion allocate any payment received from the Client towards any invoice that Scafit determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Scafit may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Scafit, payment will be deemed to be allocated in such manner as preserves the maximum value of Scafit's Purchase Money Security Interest (as defined in the PPSA) in the Scaffolding.
- 6.8 Payment will be made by cheque, bank cheque, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and Scafit.
- 6.9 The Client acknowledges and agrees that the Client's obligations to Scafit for the supply of Scaffolding on hire shall not cease until:
- (a) the Client has paid Scafit all amounts owing for the hire of the Scaffolding; and
 - (b) the Client has met all other obligations due by the Client to Scafit in respect of all contracts between Scafit and the Client.
- 6.10 Receipt by Scafit 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 and until then Scafit's ownership or rights in respect of this Contract shall continue.
- 6.11 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by Scafit nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by Scafit is a claim made under the Construction Contracts Act 2002.

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6.12 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Client must pay to Scafit an amount equal to any GST Scafit must pay for any supply by Scafit under this or any other agreement of the Scaffolding on hire. 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 Charges. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

7. Hire Period

7.1 Hire Charges shall commence from the time the scaffolding is erected and the Scaffolding Handover Certificate or green tag is first issued and/or from when the Scaffolding has started to be used legally and shall continue until the Client advises that the scaffold is "Off hired". In the case where the Client revokes the off-hire notice or has continued to use the Scaffolding after the off hiring period has occurred then the hire Charges shall continue without interruption until the actual end of the Hire Period or until the expiry of the Minimum Hire Period, whichever last occurs.

7.2 All hire Charges are for a minimum of seven (7) days hire and thereafter hire is calculated on a daily basis at the weekly hire rate divided by seven (7) days.

7.3 Returns:

- (a) The date upon which the Client advises of such shall in all cases be treated as a full day's hire;
- (b) The Client must provide Scafit with two (2) full working days' notice that the Scaffolding is available for collection;
- (c) The Return to Scafit's premises must be completed during normal business hours;
- (d) In the event the Scaffolding is not returned to Scafit by the end of the specified hire period, the Client will be charged at Scafit's then current daily rate until such time as the Scaffolding is returned;
- (e) The Client must not submit the Scaffolding for Return if it has not been cleaned (including all asbestos fibres and other hazardous particles or substances such as mortar, render, epoxy or other applied finishes, etc.).

7.4 No allowance whatever can be made for time during which the Scaffolding is not in use for any reason, unless Scafit confirms special prior arrangements in writing. In the event of Scaffolding breakdown provided the Client notifies Scafit immediately, hiring Charges will not be payable during the time the Scaffolding is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

7.5 Scafit shall inspect the Scaffolding on a weekly basis, post any storm and/or adverse weather event (where in Scafit's opinion an inspection is required) at a rate of fifty dollars (\$50) per visit (unless otherwise stated at a different rate) charged additionally to the Client. Notwithstanding this clause, Scafit retains the right at all times during the hire period to inspect the Scaffolding.

7.6 Where the Client request Scafit to inspect the Scaffolding other than the initial or weekly inspection, the Client acknowledges and agrees that all associated costs for such Services shall be charged additional to the Client.

8. Delivery

8.1 Delivery of the Scaffolding and/or Services ("**Delivery**") is taken to occur at the time that Scafit (or Scafit's nominated carrier) delivers the Scaffolding and/or Services (in the case of Scaffolding, where it is installed and hand-over certificate or green tag is issued) to the Client's nominated address, even if the Client is not present at the address. In the event the Client (or a representative thereof) is not present at the time of Delivery, Scafit's Delivery docket remains prima facie evidence of such.

8.2 Return of the Scaffolding ("**Return**") will be completed when the Scaffolding has been dismantled and accepted by Scafit, by their off-hire docket. Where the Scaffolding is returned by the Client's transport, the Scaffolding returned shall be counted in Scafit's yard and the off-hire docket issued to the Client shall be conclusive proof of the Return of the quantities of Scaffolding listed thereon, but not of its condition at the time of Return. If the Client collects the Scaffolding, it will be checked on arrival in Scafit's yard for quantity and condition. In both cases the check in Scafit's yard for quantity and condition will be the only legal proof of the quantity and condition of Scaffolding returned.

8.3 In the event that Scafit has received advise from the Client that the Scaffolding is ready for Return and upon arrival the Client still requires the Scaffolding which subsequently requires Scafit to return to collect the Scaffolding at a later date and time, then all hire Charges shall continue and additional the Client shall be charged for any associated cost incurred by Scafit (including but not limited to, travel, etc.) which shall be invoiced as a variation in accordance with clause 6.2.

8.4 At Scafit's sole discretion the cost of Delivery is either included in the Charges or is in addition to the Charges.

8.5 The Client must take Delivery by receipt or collection of the Scaffolding whenever it is tendered for Delivery. In the event that the Client is unable to take Delivery as arranged then Scafit shall be entitled to charge a reasonable fee for redelivery.

8.6 Scafit may deliver the Scaffolding in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

8.7 Any time specified by Scafit for Delivery is an estimate only and Scafit will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Scaffolding to be supplied at the time and place as was arranged between both parties. In the event that Scafit is unable to supply the Scaffolding as agreed solely due to any action or inaction of the Client then Scafit shall be entitled to charge a reasonable fee for re-supplying the Scaffolding at a later time and date.

9. Risk

9.1 Scafit retains property in the Scaffolding nonetheless; all risk for the Scaffolding passes to the Client on Delivery.

9.2 The Client accepts full responsibility for the safekeeping of the Scaffolding and indemnifies Scafit for all loss theft or damage to the Scaffolding 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.

9.3 The Client will insure, or self-insure, Scafit's interest in the Scaffolding 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 affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Scaffolding. Further the Client will not use the Scaffolding nor permit it to be used in such a manner as would permit an insurer to decline any claim.

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- 9.4 The Client accepts full responsibility for and shall keep Scafit indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Scaffolding during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 9.5 Scafit shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client for the purposes of estimating quantities and type of Scaffolding required. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Scafit accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.6 In the event of damage to a building as a result of any action by Scafit's employees or contractors, Scafit must be informed in order that Scafit may inspect such damage before any agreement to rectification costs can be accepted.
- 9.7 Any Scaffolding that is erected or dismantled by Scafit's trained and licensed employees or contractors shall be as per the manufacturers and New Zealand Codes of Practice requirements. The Client acknowledges and accepts that Scafit shall not be liable in any way for any claim made in connection with the erection and dismantling of the Scaffolding by non-Scafit employees or contractors.

10. Access and Installation

- 10.1 The Client shall ensure that Scafit has clear and free access to the nominated Delivery address 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 Scafit) to enable Scafit to erect, install and/or dismantle the Scaffolding, and Scafit agrees at the time of completion thereof to carry out in a reasonable way the clean-up of the site where scaffolding was installed. Furthermore, it is acknowledged that it is unreasonable to expect the clean-up to restore the property to its pre-existing condition, especially in the event where existing grass has died off due to the covering of base blocks to establish foundation support for the Scaffolding, such damage will remain the Client's responsibility.
- 10.2 The Client acknowledges and accepts that where the Scaffolding is required to be tied to the building structure, with ties at each scaffold lift, using either bolts, pins or screw eyes, the subsequent repairs of these holes and/or repainting shall be the responsibility of the Client.
- 10.3 The quotation is based upon wire ties and/or bolted scaffold ties to secure the Scaffolding to the building and the construction procedures must allow for these ties to remain in position whilst the Scaffolding is in use.
- 10.4 It shall be the Client's responsibility to ensure that where Scaffolding is installed on concreted areas, patios, driveways or timber decks, lower level roofs areas or other structures that suitable coverings are put in place to help prevent any marking/staining of the finished product. Scafit 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 Scafit.
- 10.5 The Client shall ensure that the nominated delivery address is cleared and ready for installation of the Scaffolding prior to delivery of the Scaffolding, and that the foundations upon which Scafit is to install the Scaffolding is sufficiently firm and otherwise suitable to safely carry the structure and the load to be put on it without subsidence. The Client will be liable to Scafit for any loss, costs or damages which Scafit may suffer or incur by reason of the Client's failure to carry out its obligations hereunder if Scafit is unable or unwilling to install the Scaffolding due to the site not being cleared and ready as aforesaid. Nevertheless, the Client shall be liable to pay the costs on the hire of the Scaffolding on the terms stated herein.
- 10.6 The Client shall provide access at any time for Scafit to be able to inspect the Scaffolding on the site (or wherever the Scaffolding may be located).
- 10.7 Any Scaffolding above 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 for the purpose of the erection or the dismantling of the Scaffolding or Scafit.
- 10.8 If during the course of the Client's work, the Scaffolding is modified or removed by the Client to the extent the Scaffolding is no longer compliant with the applicable legislative requirements, any rectification work performed by Scafit will be at the Client's expense.
- 10.9 The Client acknowledges and agrees that:
- (a) Scafit's erect and dismantle quotation, unless otherwise agreed, does not allow for subsequent visits to the site to adjust or alter the Scaffolding, any additional rectification services will be charged as an extra; and
 - (b) any standing scaffold over five metres (5m) high or intended to extend over five metres (5m) high requires Scafit and the people intending to use the scaffold to provide a notification to WorkSafe prior to any services commencing; and
 - (c) in the event Scafit require access, in order to erect, alter or dismantle the Scaffolding, to an adjoining or adjacent property or land to the nominated site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above mentioned property throughout the erection, alteration or dismantling of the Scaffolding. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by Scafit in gaining permission to access and/or use the property through any legal process that may be deemed necessary.
- 10.10 The Client shall be responsible for:
- (a) confirming with the relevant authorities that all power cables are safe within four metres (4m) of the intended Scaffolding prior to the services commencing; and
 - (b) providing Scafit, while at the site, with adequate access to available water, electricity, toilet and washing facilities unless catered for within the Contract preliminary in general.

11. Affixation of Scaffolding to Land or Buildings

- 11.1 If the Scaffolding or any part thereof is affixed to any land or buildings pursuant to this agreement, and the land or buildings are or become the subject of a mortgage or charge whether under the PPSA or otherwise at law, then the Client shall, without first receiving any request from Scafit, obtain the written acknowledge of the mortgagee or chargeholder (as the case may be) that:
- (a) the Scaffolding or any part thereof is not a fixture for the purposes of the mortgage or charge;
 - (b) that the mortgagee or chargeholder will not make any claim in relation to the Scaffolding or any part therefore; and
 - (c) that the mortgagee or chargeholder will permit Scafit (whether or not there has been any default under the mortgage or charge) to enter upon the land or buildings and to remove the Scaffolding or part thereof.

12. Title

- 12.1 The Scaffolding is and will at all time remain the absolute property of Scafif.
- 12.2 If the Client fails to Return the Scaffolding to Scafif then Scafif or Scafif's representative may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Scaffolding is situated and take possession of the Scaffolding, without being responsible for any damage thereby caused.
- 12.3 The Client is not authorised to pledge Scafif's credit for repairs to the Scaffolding or to create a lien over the Scaffolding in respect of any repairs.

13. Defects

- 13.1 The Client shall inspect the Scaffolding on Delivery and shall, prior to signing the Handover Certificate, notify Scafif of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Scafif an opportunity to inspect the Scaffolding within a reasonable time following Delivery if the Client believes the Scaffolding is defective in any way. If the Client shall fail to comply with these provisions the Scaffolding shall be presumed to be free from any defect or damage. For defective Scaffolding, which Scafif has agreed in writing that the Client is entitled to reject, Scafif's liability is limited to replacing the Scaffolding.

14. Client's Responsibilities

- 14.1 The Client shall:
 - (a) maintain the Scaffolding as is required by Scafif
 - (b) notify Scafif immediately by telephone of the full circumstances of any damage or accident in connection with the Scaffolding. The Client is not absolved from the requirements to safeguard the Scaffolding by giving such notification.
 - (c) satisfy itself prior to taking Delivery of the Scaffolding that the Scaffolding is suitable for its purposes;
 - (d) use the Scaffolding safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by Scafif or posted on the Scaffolding;
 - (e) ensure that all persons erecting or using the Scaffolding are suitably instructed in its safe and proper use, and where necessary, hold a current certificate of competency and/or are fully licensed;
 - (f) comply with all occupational health and safety laws relating to the Equipment and its use;
 - (g) keep the Scaffolding in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to take a lien, or grant any encumbrance over the Scaffolding;
 - (h) not move, alter or make any additions to the Scaffolding including but without limitation defacing or erasing any identifying mark, plate or number on or in the Scaffolding or in any other manner interfere with the Scaffolding;
 - (i) employ the Scaffolding solely in its own work and not permit the Scaffolding of any part thereof to be used by any other party for any other work;
 - (j) ensure all overhead power likely to cause a hazard or adversely affect the installation of Scaffolding is turned off prior to the installation of the Scaffolding
 - (k) ensure that no digging or excavation work is performed near or under the Scaffolding during the installation or once the Scaffolding is installed
 - (l) not exceed the recommended or legal load and capacity limits of the Scaffolding;
 - (m) not use or carry any illegal, prohibited or dangerous substance on the Scaffolding;
 - (n) not fix any of the Scaffolding in such a manner as to make it legally a fixture forming part of any freehold;
 - (o) on termination of the hire, deliver up the Scaffolding complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to Scafif.
 - 14.2 Immediately on request by Scafif the Client will pay:
 - (a) the new list price of any Scaffolding, accessories or consumables that are for whatever reason destroyed, written off or not returned to Scafif;
 - (b) all costs incurred in cleaning the Scaffolding;
 - (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Scaffolding up to an amount equal to ten percent (10%) of the new list price of the Scaffolding;
 - (ii) wilful or negligent actions of the Client or the Client's employees;
 - (iii) vandalism, or (in Scafif's reasonable opinion) in any way whatsoever other than by the ordinary use of the Scaffolding by the Client;
 - (d) any costs incurred by Scafif in dismantling the Scaffolding and returning it to Scafif's premises if the Client does not Return the Scaffolding to Scafif's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;
 - (e) any lost hire fees Scafif would have otherwise been entitled to for the Scaffolding, under this, or any other hire Contract;
 - (f) any insurance excess payable in relation to a claim made by either the Client or Scafif in relation to any damage caused by, or to, the hire Scaffolding whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or Scafif's.
 - 14.3 Only to the extent that the hire of the Scaffolding exceeds a twelve (12) month hire period (or a six (6) month hire period with the right of renewal) shall clause 18 apply and will constitute a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters clause 18 will apply generally for the purposes of the PPSA. The Client agrees that Scafif may register a security interest as a Purchase Money Security Interest ("PMSI") for the purposes of the PPSA in favour of Scafif over the Scaffolding supplied.
- 15. Warranty**
- 15.1 No warranty is given by Scafif as to the quality or suitability of the Scaffolding for any purpose and any implied warranty is expressly excluded. The Client shall indemnify and hold harmless Scafif in respect of all claims arising out of the use of the Scaffolding.
 - 15.2 For Scaffolding not manufactured by Scafif, the warranty shall be the current warranty provided by the manufacturer of the Scaffolding. Scafif 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 Scaffolding.

16. Consumer Guarantees Act 1993

16.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).

17. Default and Consequences of Default

17.1 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 Scafit's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2 If the Client owes Scafit any money the Client shall indemnify Scafit from and against all costs and disbursements incurred by Scafit in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Scafit's collection agency costs, and bank dishonour fees).

17.3 Further to any other rights or remedies Scafit may have under this Contract, if a Client has made payment to Scafit, 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 Scafit under this clause 16, 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.

17.4 Without prejudice to Scafit's other remedies at law Scafit shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Scafit shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Scafit becomes overdue, or in Scafit'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 Scafit;
- (c) the Client becomes insolvent or bankrupt, 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.

18. Personal Property Securities Act 1999 ("PPSA")

18.1 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 Scaffolding and/or collateral (account) – being a monetary obligation of the Client to Scafit for Services – that have previously been supplied and that will be supplied in the future by Scafit to the Client.

18.2 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 Scafit may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Scafit for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Scaffolding charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Scaffolding and/or collateral (account) in favour of a third party without the prior written consent of Scafit.

18.3 Scafit and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

18.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

18.5 Unless otherwise agreed to in writing by Scafit, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

18.6 The Client shall unconditionally ratify any actions taken by Scafit under clauses 18.1 to 18.5.

18.7 Subject to any express provisions to the contrary (including those contained in this clause 18), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

19. Security and Charge

19.1 In consideration of Scafit agreeing to supply the Scaffolding, 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, 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).

19.2 The Client indemnifies Scafit from and against all Scafit's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Scafit's rights under this clause.

19.3 The Client irrevocably appoints Scafit and each director of Scafit as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 19.1 including, but not limited to, signing any document on the Client's behalf.

20. Cancellation

20.1 Without prejudice to any other rights or remedies Scafit may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then Scafit may suspend the Services immediately. Scafit will not be liable to the Client for any loss or damage the Client suffers because Scafit has exercised its rights under this clause.

20.2 Scafit reserves the absolute right to:

- (a) cancel, terminate, or determine this Contract;
 - (b) immediately repossess the Scaffolding;
- at any time before or during the hire period, without reason, without prior notice, without payment of compensation and without prejudice to any other rights which Scafit may have against the Client. Scafit or its agents may enter any property or premises as per clause 12.2 where the Scaffolding may be kept, for this purpose.

20.3 In addition to clause 20.1 in these terms and conditions, Scafit shall be entitled to cancel the Contract if:

- (a) Scafit reasonably believes that a third party may attempt to take possession of the Scaffolding; or
- (b) the Scaffolding is at risk.

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- 20.4 In the event that the Client wishes to cancel this Contract then the Client agrees to provide a minimum of seventy-two (72) hours' notice of termination of hire by either telephone or email. The Client shall remain liable for all hire Charges due up to the time of cancellation until such notice is given.
- 21. Privacy Policy**
- 21.1 All emails, documents, images or other recorded information held or used by Scafif is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. Scafif acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Scafif acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Scafif that may result in serious harm to the Client, Scafif will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to Scafif in respect of Cookies where transactions for purchases/orders transpire directly from Scafif's website. Scafif 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 Scafif when Scafif sends an email to the Client, so Scafif may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via Scafif's website.
- 21.3 The Client authorises Scafif or Scafif'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 Scafif from the Client directly or obtained by Scafif 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.
- 21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.5 The Client shall have the right to request Scafif for a copy of the Personal Information about the Client retained by Scafif and the right to request Scafif to correct any incorrect Personal Information about the Client held by Scafif.
- 22. Compliance with Laws**
- 22.1 The Client and Scafif shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Scaffolding (including but not limited to, the Best Practice Guidelines for scaffolding / edge fall protection / fall through protection) as outlined in the Scaffolding In New Zealand published by WorkSafe and any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Scaffolding/services.
- 22.2 Notwithstanding clause 22.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Scafif agrees at all times comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the worksite or where they may be acting as a sub-contractor for the Client who has engaged a thirty party head contractor.
- 22.3 The Client shall obtain (at the expense of the Client) all engineering reports, certificates, and all licenses, permits and approvals that may be required for the supply of Scaffolding/services.
- 23. Suspension of Services**
- 23.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) Scafif has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Scafif by a particular date; and
 - (iv) Scafif has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if Scafif 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.

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- (c) if Scafif exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Scafif under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Scafif suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes Scafif from continuing the Services or performing or complying with Scafif's obligations under this Contract, then without prejudice to Scafif's other rights and remedies, Scafif may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by Scafif as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 23.2 If pursuant to any right conferred by this Contract, Scafif suspends the Services and the default that led to that suspension continues unremedied subject to clause 20.1 for at least ten (10) working days, Scafif shall be entitled to terminate the Contract, in accordance with clause 20.

24. Service of Notices

- 24.1 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.
- 24.2 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.

25. Trusts

- 25.1 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 Scafif may have notice of the Trust, the Client covenants with Scafif 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 Scafif (Scafif 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.

26. General

- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, 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).
- 26.2 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.
- 26.3 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 Palmerston North Courts of New Zealand.
- 26.4 Scafif 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 Scafif of these terms and conditions (alternatively Scafif's liability shall be limited to damages which under no circumstances shall exceed the Charges of the Scaffolding hire).
- 26.5 Scafif may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of Scafif.
- 26.7 Scafif 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 Scafif's sub-contractors without the authority of Scafif.
- 26.8 The Client agrees that Scafif 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 Scafif to provide Scaffolding to the Client.
- 26.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.10 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.