

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 **“Itus”** shall mean Itus New Zealand Limited, its successors and assigns or any person acting on behalf of and with the authority of Itus New Zealand Limited.
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Itus to provide the Equipment on hire as specified in any hire form, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 **“Equipment”** means all Equipment (including any accessories) supplied on hire to the Customer by Itus, at the Customer’s request from time to time, and:
(a) includes any erection, dismantling and transport of the Equipment (**“Services”**), any parts, accessories and/or consumables supplied by Itus to the Customer, either separately or deposited incidentally by Itus in the course of it conducting, or supplying to the Customer, the Equipment; and
(b) where the context so permits the terms ‘Equipment’ 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 Itus to the Customer.
- 1.6 **“Site”** means the address nominated by the Customer to which the Equipment is to be supplied, erected and/or dismantled by Itus.
- 1.7 **“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, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.8 **“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 Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.9 **“Price”** shall mean the cost for the hire of the Equipment (plus any Goods and Services Tax (“GST”) where applicable) as agreed between Itus and the Customer subject to clause 6 of this Contract.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of any Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 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 Customer acknowledges and accepts:
(a) the product supply of shrink-wrap offers a manufacturer’s guarantee of UV protection and can withstand up to the manufacturers specified tolerance and/or Bureau of Meteorology definition regarding gale force winds, being winds of up to sixty-three to seventy-five kilometres per hour (63-75kph); and
(b) that when the Contract period for hire is complete under this Contract and payment is not forthcoming when due and payable, then Itus reserves the right at their discretion to leave the Equipment erected until such time as payment is effected and the Customer shall be liable for all loss of hire Price in accordance with clause 15.2(f);
(c) no cantilever scaffolds are included in the Price, unless otherwise agreed;
(d) variations to the Contract requested by the Customer that are subject to labour Price, shall be at Itus’ current hourly rate, unless otherwise stated at the time of the variation request.
- 2.6 Itus shall only be responsible for their performance to the party that contracts them to undertake the Services and shall not be responsible to any third party irrespective of their relationship to the Customer.
- 2.7 Where the Customer requesting or organising Itus to provide the Services is acting with or on behalf of any third party and that third party is intended to be responsible for the payment (or any part thereof) of the Price then in the event that the third party does not pay for the Services when due, the Customer acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.
- 2.8 In the event that Itus is required to provide the Services urgently, that may require Itus’ staff to work outside their normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then Itus reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between Itus and the Customer.
- 2.9 Where Itus gives any advice, recommendation, information, assistance or service provided by Itus in relation to Equipment or Services supplied is given in good faith to the Customer, or the Customer’s agent and is based on Itus’ own knowledge and experience and shall be accepted without liability on the part of Itus. Where such advice or recommendations are not acted upon then Itus shall require the Customer or their agent to authorise commencement of the Services in writing. Itus shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.10 None of the Equipment shall be sublet or cross-hired by the Customer. The Customer shall not assign or transfer its interest in the Contract, or part with possession of all, or any portion, of the Equipment, without the prior written consent of Itus, which may be arbitrarily withheld.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Itus 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 Itus 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 Itus 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 Itus; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give Itus not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Itus as a result of the Customer'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.
- 5.2 In the event the Customer requires any of the above, the Price will be adjusted accordingly to include the relevant Services in accordance with clause 6.2.

6. Price And Payment

- 6.1 At Itus' sole discretion the Price shall be either;
- (a) as indicated on invoices provided by Itus to the Customer in respect of Equipment supplied; or
 - (b) Itus' quoted Price (subject to clause 6.2) which is subject to a Site inspection, and shall be binding upon Itus provided that the Customer shall accept Itus' quotation in writing within thirty (30) days.
- 6.2 Itus reserves the right to change the hire Price:
- (a) if a variation to the Equipment 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) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather/environmental conditions, limitations or obstructions 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, maintenance of the scaffold, safety considerations (e.g. overhead hazards, etc.), 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, etc.), which are only discovered on commencement of the Services; or
 - (d) if variations which are beyond Itus' control occur (such as the cost of materials, labour, taxes, levies, duties, insurance and/or freight etc.); or
- 6.3 Variations will be charged for on the basis of Itus' quotation, and will be detailed in writing, and shown as variations on Itus' invoice. The Customer shall be required to respond to any variation submitted by Itus within ten (10) working days. Failure to do so will entitle Itus to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Itus' sole discretion, a non-refundable deposit may be required.
- 6.5 Time for payment for the hire of the Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by Itus, which may be:
- (a) on, or before Delivery of the Equipment; or
 - (b) on completion of the Services; or
 - (c) by way of instalments in accordance with Itus' payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Equipment delivered to the Site but not yet installed;
 - (d) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is delivered to the Customer's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Itus.
- 6.6 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, Itus reserves the right to treat all retentions as placing the Customer's account into default.
- 6.7 Payment will be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Itus.
- 6.8 Itus may in its discretion allocate any payment received from the Customer towards any invoice that Itus determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Itus may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Itus, payment will be deemed to be allocated in such manner as preserves the maximum value of Itus' Purchase Money Security Interest (as defined in the PPSA) in the Equipment.
- 6.9 The Customer acknowledges and agrees that the Customer's obligations to Itus for the supply of Equipment on hire shall not cease until:
- (a) the Customer has paid Itus all amounts owing for the hire of the Equipment; and
 - (b) the Customer has met all other obligations due by the Customer to Itus in respect of all contracts between Itus and the Customer.
- 6.10 Receipt by Itus 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 Itus' ownership or rights in respect of this Contract shall continue.
- 6.11 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Itus nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by Itus is a claim made under the Construction Contracts Act 2002.

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- 6.12 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Itus an amount equal to any GST Itus must pay for any supply by Itus under this or any other agreement of the Equipment on hire. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. Hire Period**
- 7.1 Hire Price shall commence from the time the scaffolding is erected and the Scaffolding Handover Certificate is first issued and/or from when the Equipment has started to be used legally and shall continue until the return of the Equipment thereto, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 7.2 The minimum terms of hire will be based on the final quotation, and then weekly charges thereafter will apply, after the minimum hire period has past.
- 7.3 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless Itus confirms special prior arrangements in writing.
- 7.4 Off-hire receipts will only be issued when the Equipment has been either collected by Itus, or returned to Itus' premises.
- 7.5 Where the Customer requests Itus to inspect the Equipment other than the initial inspection, the Customer acknowledges and agrees that all associated costs for such Services (including a call out fee and Itus' current hourly labour rate per person) shall be charged in addition to the Price.
- 8. Extension of the Hire Period**
- 8.1 If, and only if not later than seventy-two (72) hours before the expiry of the hire period, the Customer gives notice to Itus requesting an extension of the hire period, such extension is, if any, subject to Itus' agreement, the availability of the Equipment and the following conditions:
- (a) the Price and all other payments due under this Contract having been received by Itus in full as at the expiry of the hire period;
 - (b) there is no breach of the Customer's covenants, the hire period shall be extended for the period specified between the parties, commencing on the day following the date of expiration of the hire period and at the Price, as varied, on the same terms and conditions of this Contract, except for the insertion of the extended term.
- 9. Delivery**
- 9.1 Delivery of the Equipment and/or Services ("**Delivery**") is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Equipment at Itus' premises; or
 - (b) Itus (or Itus' nominated carrier) delivers the Equipment and/or Services (in the case of Equipment, where it is installed and hand-over certificate is issued) to the Customer's nominated address, even if the Customer is not present at the address. In the event the Customer (or a representative thereof) is not present at the time of Delivery, Itus' Delivery docket remains prima facie evidence of such.
- 9.2 At Itus' sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.
- 9.3 Return of the Equipment ("**Return**") will be completed when the Equipment has been dismantled and accepted by Itus, by their off-hire docket. Where the Equipment is returned by the Customer's transport, the Equipment returned shall be counted in Itus' yard and the off-hire docket issued to the Customer shall be conclusive proof of the Return of the quantities of Equipment listed thereon, but not of its condition at the time of Return. If the Customer collects the Equipment, it will be checked on arrival in Itus' yard for quantity and condition. In both cases the check in Itus' yard for quantity and condition will be the only legal proof of the quantity and condition of Equipment returned.
- 9.4 In the event that Itus has received advise from the Customer that the Equipment is ready for Return and upon arrival the Customer still requires the Equipment which subsequently requires Itus to return to collect the Equipment at a later date and time, then all hire Price shall continue and additional the Customer shall be charged for any associated cost incurred by Itus (including but not limited to, travel, etc.) which shall be invoiced as a variation in accordance with clause 6.2.
- 9.5 The Customer shall be responsible for providing free access by Itus to the Site on which the Equipment is located. If there are any delays due to free access not being available then the Customer shall be responsible and shall reimburse Itus for all lost hire fees associated with the Equipment being unavailable. The Customer shall also be responsible for all other expenses and costs incurred by Itus due to delays in access to the Equipment.
- 9.6 Itus may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 9.7 Any time specified by Itus for Delivery is an estimate only and Itus will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that Itus is unable to supply the Equipment as agreed solely due to any action or inaction of the Customer then Itus shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.
- 10. Risk**
- 10.1 Itus retains property in the Equipment nonetheless; all risk for the Equipment passes to the Customer on Delivery.
- 10.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Itus 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 Customer.
- 10.3 The Customer will insure, or self-insure, Itus' 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 affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 10.4 The Customer accepts full responsibility for and shall keep Itus indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Customer or any other persons.
- 10.5 Itus shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer for the purposes of estimating quantities and type of Equipment required. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Itus accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

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- 10.6 In the event of damage to a building as a result of any action by Itus' employees or contractors, Itus must be informed in order that Itus may inspect such damage before any agreement to rectification costs can be accepted.
- 10.7 Where Itus requires that packed Equipment is to be stored at the Site, the Customer shall supply Itus a safe area for storage and shall take all reasonable efforts to protect all items from possible tampering, destruction, theft or damage. In the event that any of the stored items:
- (a) are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility; or
 - (b) have been tampered with and require repacking, a repacking fee will be charged at Itus' current hourly rate.
- 11. Access and Installation**
- 11.1 The Customer shall ensure that Itus 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 Itus) to enable Itus to erect, install and/or dismantle the Equipment, and Itus agrees at the time of completion thereof to carry out in a reasonable way the clean-up of the Site where the Equipment 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 Equipment, such damage will remain the Customer's responsibility.
- 11.2 The Customer acknowledges and accepts that where the Equipment 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 Customer.
- 11.3 The quotation is based upon wire ties and/or bolted scaffold ties to secure the Equipment to the building and the construction procedures must allow for these ties to remain in position whilst the Equipment is in use.
- 11.4 It shall be the Customer's responsibility to ensure that where Equipment 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. Itus 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 Itus.
- 11.5 The Customer shall ensure that the nominated Delivery address is cleared, suitable prepared, and ready for installation of the Equipment prior to Delivery of the Equipment and the foundations upon which Itus is to install the Equipment is sufficiently firm and otherwise suitable to safely carry the structure and the load to be put on it without subsidence. The Customer will be liable to Itus for any loss, costs or damages which Itus may suffer or incur by reason of the Customer's failure to carry out its obligations hereunder if Itus is unable or unwilling to install the Equipment due to the Site not being cleared and ready as aforesaid. Nevertheless, the Customer shall be liable to pay the costs on the hire of the Equipment on the terms stated herein.
- 11.6 The Customer shall provide access at any time for Itus to be able to inspect the Equipment on the Site (or wherever the Equipment may be located).
- 11.7 The Customer acknowledges and agrees that:
- (a) Itus' erect and dismantle quotation, unless otherwise agreed, does not allow for subsequent visits to the Site to adjust or alter the Equipment, any additional rectification services will be charged as an extra; and
 - (b) any standing scaffold over five meters (5m) high or intended to extend over five meters (5m) high requires Itus and the people intending to use the scaffold to provide a notification to WorkSafe prior to any services commencing; and
 - (c) in the event Itus require access, in order to erect, alter or dismantle the Equipment, to an adjoining or adjacent property or land to the nominated Site, that is not owned by the Customer, then it is the Customer's responsibility to gain permission from the land owner to use the above mentioned property throughout the erection, alteration or dismantling of the Equipment. In the event the land owner denies access or use of the land or property, the Customer shall be liable for all costs incurred by Itus in gaining permission to access and/or use the property through any legal process that may be deemed necessary.
- 11.8 The Customer shall be responsible for:
- (a) confirming with the relevant authorities that all power cables are safe within four meters (4m) of the intended Equipment prior to the services commencing; and
 - (b) providing Itus, while at the Site, with adequate access to available water, electricity, toilet and washing facilities unless catered for within the Contract preliminary in general.
- 11.9 Any Equipment that is erected or dismantled by Itus' trained and licensed employees or contractors shall be as per the manufacturers and New Zealand Codes of Practice requirements, in accordance with any relevant Australian/New Zealand Standards and WorkSafe health and safety laws. The Customer acknowledges and accepts that Itus:
- (a) does not permit the Customer or any other third party contractors to alter the Equipment during or after the Equipment is erected on Site (which shall include adding any additional scaffold equipment to the Site); and
 - (b) shall not be liable in any way for any claim made in connection with:
 - (i) the erection and dismantling of the Equipment by any other third party; or
 - (ii) any alteration to Itus' installed Equipment made by the Customer or any other third party; or
 - (iii) where any additional equipment is installed at the Site by any other third party.
- 11.10 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 Itus will be at the Customer's expense.
- 11.11 Where the Equipment is not installed by Itus, the Customer shall ensure that Equipment is erected and dismantled by qualified persons. A suitable qualified person shall be the holder of any 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 Equipment.
- 12. Affixation of Equipment to Land or Buildings**
- 12.1 If the Equipment 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 Customer shall, without first receiving any request from Itus, obtain the written acknowledge of the mortgagee or chargeholder (as the case may be) that:
- (a) the Equipment 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 Equipment or any part thereof; and
 - (c) that the mortgagee or chargeholder will permit Itus (whether or not there has been any default under the mortgage or charge) to enter upon the land or buildings and to remove the Equipment or part thereof.

13. Service Locations

- 13.1 Prior to Itus supplying Equipment, the Customer must advise Itus of the precise location of all mains/services on the Site and clearly mark the same. The mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on Site.

14. Compliance with Laws

- 14.1 The Customer and Itus shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Equipment (including but not limited to, the Best Practice Guidelines for scaffolding / edge fall protection / fall through protection) as outlined in the Equipment 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 Equipment/services.
- 14.2 Notwithstanding clause 14.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Itus 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 Site or where they may be acting as a sub-contractor for the Customer who has engaged a thirty party head contractor.
- 14.3 The Customer shall obtain (at the expense of the Customer) all engineering reports, certificates, and all licenses, permits and approvals that may be required for the supply of Equipment/Services.

15. Customer's Responsibilities

- 15.1 The Customer shall:
- (a) maintain the Equipment as is required by Itus;
 - (b) provide Itus a minimum of three (3) working days' notice to arrange for the installation, dismantle or alteration of the Equipment;
 - (c) notify Itus immediately by telephone of the full circumstances of any damage or accident in connection with the Equipment. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification.
 - (d) satisfy itself prior to taking Delivery of the Equipment that the Equipment is suitable for its purposes;
 - (e) use the Equipment safely, strictly in accordance with the law (in full compliance with all WorkSafe health and safety laws relating to their use and any other relevant laws and regulations), only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by Itus or posted on the Equipment;
 - (f) ensure that:
 - (i) the security and safekeeping of the Equipment whilst being used, and that all persons who use the Equipment are competent and qualified and where necessary hold a current Certificate of Competency and shall provide evidence of the same to Itus upon request;
 - (ii) all overhead power likely to cause a hazard or adversely affect the installation of Equipment is turned off prior to the installation of the Equipment;
 - (iii) no digging or excavation work is performed near or under the Equipment during the installation or once the Equipment is installed;
 - (iv) the Equipment is cleared of all building materials and rubbish prior to any alteration and/or dismantle of the Equipment.
 - (g) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to take a lien, or grant any encumbrance over the Equipment;
 - (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:
 - (i) move, alter or make any additions to the Equipment including but without limitation defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (ii) exceed the recommended or legal load and capacity limits of the Equipment;
 - (iii) use or carry any illegal, prohibited or dangerous substance on the Equipment;
 - (iv) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
 - (j) on termination of the hire, deliver up the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to Itus.
- 15.2 Immediately on request by Itus the Customer will pay:
- (a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to Itus;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment;
 - (ii) wilful or negligent actions of the Customer or the Customer's employees;
 - (iii) vandalism, or (in Itus' reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer;
 - (d) the cost of any consumables provided by Itus and used by the Customer;
 - (e) any costs incurred by Itus in dismantling the Equipment and returning it to Itus' premises if the Customer does not Return the Equipment to Itus premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so;
 - (f) any lost hire fees Itus would have otherwise been entitled to for the Equipment, under this, or any other hire Contract;
 - (g) any insurance excess payable in relation to a claim made by either the Customer or Itus in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or Itus'.

16. Title

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

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

- 17.1 Upon assenting to these terms and conditions in writing the Customer 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 and/or collateral (account) – being a monetary obligation of the Customer to Itus for Services – that have previously been supplied and that will be supplied in the future by Itus to the Customer.
- 17.2 The Customer 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 Itus may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Itus for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Equipment charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of Itus.
- 17.3 Itus and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 17.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 17.5 Unless otherwise agreed to in writing by Itus, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 17.6 The Customer shall unconditionally ratify any actions taken by Itus under clauses 17.1 to 17.5.
- 17.7 Subject to any express provisions to the contrary (including those contained in this clause 17), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 17.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 17 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 17 will apply generally for the purposes of the PPSA.

18. Security and Charge

- 18.1 In consideration of Itus agreeing to supply the Equipment, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 18.2 The Customer indemnifies Itus from and against all Itus’ costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Itus’ rights under this clause.
- 18.3 The Customer irrevocably appoints Itus and each director of Itus as the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18.1 including, but not limited to, signing any document on the Customer’s behalf.

19. Defects and Warranty

- 19.1 The Customer shall inspect the Equipment on Delivery and shall, prior to signing the Handover Certificate, notify Itus of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Itus an opportunity to inspect the Equipment within a reasonable time following Delivery if the Customer believes the Equipment is defective in any way. If the Customer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which Itus has agreed in writing that the Customer is entitled to reject, Itus’ liability is limited to replacing the Equipment.
- 19.2 The warranty shall be the current warranty provided by the manufacturer of the Equipment. Itus 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 Equipment.

20. Intellectual Property

- 20.1 Where Itus has designed, drawn, written plans or a schedule of Services, or created any Equipment for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and Equipment shall remain vested in Itus, and shall only be used by the Customer at Itus’ discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Itus.
- 20.2 The Customer warrants that all designs, specifications or instructions given to Itus will not cause Itus to infringe any patent, registered design or trademark in the execution of the Customer’s order and the Customer agrees to indemnify Itus against any action taken by a third party against Itus in respect of any such infringement.
- 20.3 The Customer agrees that Itus may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Equipment (or any digital media thereof) which Itus has created for the Customer.

21. Default and Consequences of Default

- 21.1 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 Itus’ sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Customer owes Itus any money the Customer shall indemnify Itus from and against all costs and disbursements incurred by Itus in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Itus’ collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies Itus may have under this Contract, if a Customer has made payment to Itus, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Itus under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer’s obligations under this Contract.
- 21.4 Without prejudice to Itus’ other remedies at law Itus shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Itus shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Itus becomes overdue, or in Itus’ opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Itus;
 - (c) the Customer 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 Customer or any asset of the Customer.

22. Cancellation

22.1 Without prejudice to any other rights or remedies Itus may have, if at any time the Customer 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 Customer of such notice/s) then Itus may suspend the Services immediately. Itus will not be liable to the Customer for any loss or damage the Customer suffers because Itus has exercised its rights under this clause.

22.2 Itus reserves the absolute right to:

- (a) cancel, terminate, or determine this Contract; and
- (b) immediately repossess the Equipment;

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 Itus may have against the Customer. Itus or its agents may enter any property or premises as per clause 16.2 where the Equipment may be kept, for this purpose.

22.3 In addition to clause 22.1 in these terms and conditions, Itus shall be entitled to cancel the Contract if:

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

22.4 In the event that the Customer wishes to cancel this Contract then the Customer agrees to provide a minimum of seventy-two (72) hours' notice of termination of hire by either telephone or email. The Customer shall remain liable for all hire Price due up to the time of cancellation until such notice is given.

23. Suspension of Services

23.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Customer hereby expressly acknowledges that:

(a) Itus 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 Customer, 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 Customer; or
- (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
- (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Itus by a particular date; and
- (iv) Itus has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.

(b) if Itus 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 Customer or by any person claiming through the Customer; 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 Itus exercises the right to suspend work, the exercise of that right does not:

- (i) affect any rights that would otherwise have been available to Itus under the Contract and Commercial Law Act 2017; or
- (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of Itus suspending work under this provision;

(d) due to any act or omission by the Customer, the Customer effectively precludes Itus from continuing the Services or performing or complying with Itus' obligations under this Contract, then without prejudice to Itus' other rights and remedies, Itus may suspend the Services immediately after serving on the Customer 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 Itus as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.

23.2 If pursuant to any right conferred by this Contract, Itus suspends the Services and the default that led to that suspension continues un-remedied subject to clause 22.1 for at least ten (10) working days, Itus shall be entitled to terminate the Contract, in accordance with clause 20.

24. Privacy Policy

24.1 All emails, documents, images or other recorded information held or used by Itus is Personal Information as defined and referred to in clause 24.3 and therefore considered confidential. Itus 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"). Itus acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Itus that may result in serious harm to the Customer, Itus will notify the Customer 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 Customer by written consent, unless subject to an operation of law.

24.2 Notwithstanding clause 24.1, privacy limitations will extend to Itus in respect of Cookies where transactions for purchases/orders transpire directly from Itus' website. Itus 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 Customer's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to Itus when Itus sends an email to the Customer, so Itus may collect and review that information ("collectively Personal Information")

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If the Customer consents to Itus' use of Cookies on Itus' website and later wishes to withdraw that consent, the Customer may manage and control Itus' privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

- 24.3 The Customer authorises Itus or Itus' agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (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 Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by Itus from the Customer directly or obtained by Itus 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 Customer.
- 24.4 Where the Customer is an individual the authorities under clause 24.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 24.5 The Customer shall have the right to request Itus for a copy of the Personal Information about the Customer retained by Itus and the right to request Itus to correct any incorrect Personal Information about the Customer held by Itus.

25. Service of Notices

- 25.1 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.
- 25.2 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.

26. Trusts

- 26.1 If the Customer 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 Itus may have notice of the Trust, the Customer covenants with Itus as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of Itus (Itus will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer 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.

27. General

- 27.1 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 section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 27.2 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 27.3 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.
- 27.4 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 Pukekohe District Court of New Zealand.
- 27.5 Itus shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Itus of these terms and conditions (alternatively Itus' liability shall be limited to damages which under no circumstances shall exceed the Price of the Equipment hire).
- 27.6 Itus may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 27.7 The Customer cannot licence or assign without the written approval of Itus.
- 27.8 Itus 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 Customer agrees and understands that they have no authority to give any instruction to any of Itus' sub-contractors without the authority of Itus.
- 27.9 The Customer agrees that Itus may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Itus to provide Equipment to the Customer.
- 27.10 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.
- 27.11 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.