
MOQ Limited T/A PVC Fencing by Mark of Quality – Terms & Conditions of Trade

1. Definitions

- 1.1 “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting MOQ to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.2 “**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.
- 1.3 “**Cookies**” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using MOQ’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.4 “**Equipment**” means all Equipment including any accessories supplied on hire by MOQ to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by MOQ to the Client.
- 1.5 “**Goods**” means all Goods or Services supplied by MOQ to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.6 “**Intended Use**” means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.7 “**MOQ**” means MOQ Limited T/A PVC Fencing by Mark of Quality, its successors and assigns.
- 1.8 “**Non-Conforming Product**” means products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.9 “**Price**” means the Price payable for the Goods/Equipment hire (plus any Goods and Services Tax (“GST”) where applicable) as agreed between MOQ and the Client in accordance with clause 7 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Client has completed a credit application with MOQ and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods/Equipment requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, MOQ reserves the right to refuse Delivery.
- 2.6 Any advice, recommendation, information, assistance, or service provided by MOQ in relation to Goods, Equipment or Services supplied is given in good faith to the Client, or the Client’s agent and is based on MOQ’s own knowledge and experience and shall be accepted without liability on the part of MOQ. Where such advice or recommendations are not acted upon then MOQ shall require the Client or their agent to authorise commencement of the Services in writing. MOQ shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 In accordance with clause 2.6, it shall be the Client’s responsibility to maintain any gate supplied and/or installed by MOQ in a secure and/or locked position. MOQ shall not be liable in any way whatsoever for any damages or losses that may occur from weather conditions including strong winds as a result of the Client failing to ensure that the gate is secure and/or in a locked position.
- 2.8 In the event that MOQ is required to provide the Services urgently, that may require MOQ’s staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then MOQ reserves the right to charge the Client a minimum **call out fee** based on MOQ’s standard hourly labour rate plus travel, plus Goods, unless otherwise agreed between MOQ and the Client.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that MOQ 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 MOQ 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 MOQ 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 MOQ; 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 MOQ 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

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of trustees, or business practice). The Client shall be liable for any loss incurred by MOQ as a result of the Client's failure to comply with this clause.

5. On-Line Ordering

- 5.1 The Client acknowledges and agrees that:
- (a) MOQ does not guarantee the website's performance;
 - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by MOQ;
 - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (d) there are inherent hazards in electronic distribution, and as such MOQ cannot warrant against delays or errors in transmitting data between the Client and MOQ including orders, and you agree that to the maximum extent permitted by law, MOQ will not be liable for any losses which the Client suffers as a result of online ordering not being available or for delays or errors in transmitting orders;
 - (e) when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by MOQ and/or displayed on the website. The encryption process ensures that the Client's information cannot be read by or altered by outside influences;
 - (f) if the Client is not the cardholder for any credit card being used to pay for the Goods, MOQ shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.
- 5.2 MOQ reserves the right to terminate the Client's order if it learns that you have provided false or misleading information, interfered with other users or the administration of MOQ's business, or violated these terms and conditions.

6. Credit Card Information

- 6.1 MOQ will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by MOQ;
 - (b) not disclose the Client's credit card details to any third party;
 - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Policy (clause 23) or where required by law.
- 6.2 The Client expressly agrees that, if pursuant to this Contract, there are:
- (a) any unpaid charges;
 - (b) other amounts due and outstanding by the Client;
 - (c) any Equipment (or any part of them) supplied on loan that are lost or damaged.
- 6.3 MOQ is entitled to immediately charge the Client's nominated credit card for these amounts and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer all amounts which may be due by the Client pursuant to the terms of this Contract.

7. Price and Payment

- 7.1 At MOQ's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by MOQ to the Client; or
 - (b) the Price as at the date of Delivery of the Goods/Equipment according to MOQ's current Price list; or
 - (c) MOQ's quoted Price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 MOQ reserves the right to change the Price:
- (a) if a variation to the Goods or Equipment which are to be supplied is requested; or
 - (b) if during the course of the Services, the Goods cease to be available from MOQ's third party suppliers, then MOQ reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
 - (c) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the worksite, obscured worksite defects, incorrect measurements provided by the Client, safety considerations, prerequisite work by any third party not being completed, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, ground conditions, worksite forms and gradients, hard rock barriers below the surface or iron reinforcing rods in concrete, etc.) which are only discovered on commencement of the Services; or
 - (e) in the event of increases to MOQ in the cost of labour or materials which are beyond MOQ's control.
- 7.3 Variations will be charged for on the basis of MOQ's quotation, and will be detailed in writing, and shown as variations on MOQ's invoice. The Client shall be required to respond to any variation submitted by MOQ within ten (10) working days. Failure to do so will entitle MOQ 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.
- 7.4 At MOQ's sole discretion:
- (a) fifty percent (50%) of the contract Price is payable up front and considered a non-refundable deposit; and
 - (b) the balance payable on completion of the project.
- 7.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by MOQ, which may be:
- (a) on or before collection or delivery of the Goods/Equipment; or
 - (b) on completion of the Services;
 - (c) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by MOQ.
- 7.6 Payment is required in full for any custom made items or Goods made to the Client's specifications when the order is placed.

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- 7.7 MOQ may in its discretion allocate any payment received from the Client towards any invoice that MOQ determines and may do so at the time of receipt or at any time afterwards. On any default by the Client MOQ may re-allocate any payments previously received and allocated. In the absence of any payment allocation by MOQ, payment will be deemed to be allocated in such manner as preserves the maximum value of MOQ's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 7.8 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed between the Client and MOQ.
- 7.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by MOQ nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to MOQ an amount equal to any GST MOQ must pay for any supply by MOQ under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 8. Provision of the Services**
- 8.1 Subject to clause 8.2 it is MOQ's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 8.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that MOQ claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond MOQ's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the worksite ready for the Services; or
 - (c) notify MOQ that the worksite is ready.
- 8.3 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at MOQ's address; or
 - (b) MOQ (or MOQ's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 8.4 At MOQ's sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.
- 8.5 MOQ may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.6 Any time specified by MOQ for Delivery of the Goods/Equipment is an estimate only. The Client must take Delivery by receipt or collection of the Goods/Equipment whenever they are tendered for Delivery. MOQ will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods/Equipment as arranged then MOQ shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 9. Dimensions, Plans and Specifications**
- 9.1 All customary building tolerances shall apply to the dimensions and measurements of the Goods unless MOQ and the Client agree otherwise in writing.
- 9.2 In the event the Client gives information relating to the Goods (including plans, specifications, CAD drawings, measurements, quantities, and other information provided by the Client):
- (a) that it is the Client's responsibility to verify the accuracy of the information before the Client or MOQ places an order based on the information. MOQ accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause; and
 - (b) MOQ shall be entitled to rely on the accuracy of such information. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, MOQ accepts no responsibility for any loss, damages, or costs however resulting therefrom, including any variation to the Goods required due to inaccurate plans provided by the Client, such additional Goods shall be charged in accordance with clause 7.2.
- 9.3 If the giving of an estimate or quotation for the supply of Goods involves MOQ estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of MOQ's estimated measurements and quantities before the Client places an order based on such estimate or accepts such quotation.
- 9.4 Should the Client require any changes to MOQ's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
- 10. Risk and Installation**
- 10.1 If MOQ retains ownership of the Goods under clause 14 then:
- (a) where MOQ is supplying Goods only, all risk for the Goods shall immediately pass to the Client on Delivery and the Client must insure the Goods on or before Delivery.
 - (b) where MOQ is to both supply and install Goods then MOQ shall maintain a Contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 10.2 Notwithstanding the provisions of clause 10.1 if the Client specifically requests MOQ to leave Goods outside MOQ's premises for collection or to deliver the Goods to an unattended location then such Goods shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.
- 10.3 Goods supplied may
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; or
 - (b) expand, contract, or distort as a result of exposure to heat, cold, weather; or
 - (c) mark or stain if exposed to certain substances; or

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- (d) be damaged or disfigured by impact or scratching.
- 10.4 While every effort will be taken by MOQ to match colour or grain of product, MOQ will take no responsibility for any variation of grain and other natural products between sale samples and the final product.
- 10.5 Where MOQ is providing installation Services, the Client acknowledges and agrees that:
- (a) in the event MOQ requires access, in order to undertake the Services, to an adjoining or adjacent property or land to the nominated worksite, 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 process or delivering the Services. 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 MOQ in gaining permission to access and/or use the property through any legal process that may be deemed necessary;
- (b) where the Goods and/or Services provided by MOQ are the subject to payment on behalf of the Client via a third party (including, but not limited to, multiple property owners and/or contributors to any driveway, fence, retaining wall). Irrespective of this clause, the Client acknowledges that at all times they will be responsible for the payment of any monies and agree to honour their obligation for payment in the event that the third party fails to make payment on behalf of the Client; and
- (c) it is the Client's responsibility to remove any existing fence (including existing footings), vegetation, obstructions, and other hindrances in order to allow MOQ clear access along the proposed fence line, prior to commencement of work by MOQ. The quoted Price does not allow for the clearing or grading along the fence line nor removal of soil, trees, dirt piles, rubbish, and rocks etc. from the worksite unless otherwise agreed by MOQ. Under no circumstances will MOQ handle removal of asbestos product.
- 10.6 The Client warrants that any structures or land (where applicable) to which the Goods are to be affixed are able to withstand the installation of the Goods once installed. If for any reason (including the discovery of asbestos, erosion, etc.) that MOQ, or employees of MOQ, reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then MOQ shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 8.2 above) until MOQ is satisfied that it is safe for the installation to proceed.
- 10.7 The Client shall, at the Client's own expense, ensure that all boundary and survey pegs are in the correct position. Furthermore, the Client must be on the worksite to supervise the marking out of the fence line, placement of boundary pegs, and during the installation of the fence. If the Client fails to comply with this clause, then MOQ accepts no responsibility for installation decisions that need to be made by MOQ in the Client's absence.
- 10.8 The Client acknowledges and accepts that:
- (a) the baseline of fencing or retaining walls shall be at MOQ's discretion, as a rule it will follow the land flow unless otherwise stated in the quotation. Where the Client has requested that gaps be covered or filled this will be invoiced as an extra;
- (b) the side which the palings face is at MOQ's discretion unless otherwise agreed. Should the Client choose to have the palings face the opposite way as to what MOQ deems most suitable, additional costs will be apply where additional Services are required;
- (c) where trees are causing an obstruction or interfering with the fence line and MOQ has had to execute a stop and start fence around the tree or cut palings to fit around the tree limbs an additional fee will apply and will be treated as a variation as per clause 7.2. It is further agreed that it is the Client's responsibility to arrange for the tree or tree stump to be removed unless otherwise agreed;
- (d) the re-attachment of intersecting fences or screens will incur an additional fee and shall be treated as a variation as per clause 7.2;
- (e) all fence heights shall be nominal (as fences are constructed from standard components). Where land undulations exist, fence heights along the fence line may vary and shall be measured from the bottom to the top of the fence. Whilst MOQ shall endeavour to eliminate gaps under the fence line, the Client accepts that such gaps may be apparent;
- (f) it is the Client's responsibility to:
- (i) remove any important objects (including but not limited to sprinkler systems, signs etc.) from the fence line where the Services are to be undertaken. Whilst MOQ will take all due care during installation MOQ will not accept any responsibility for tiles or pavers etc. damaged during installation; and
- (ii) secure the worksite from any pets, farm, and other animals. Whilst MOQ will endeavour to exercise due care, no responsibility will be accepted for any losses or for claims by third parties; and
- (g) the Client shall provide MOQ with a water supply and a suitable free power source during construction. In the event that the Client fails to comply with this clause, then the Client shall be liable for all additional costs incurred by MOQ as a result of the Client's failure to comply; MOQ reserves the right to touch-up all products supplied and installed on the Worksite to rectify minor blemishes or damage to paintwork.
- 10.9 Where fencing is installed on a retaining wall MOQ shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall.
- 10.10 MOQ may at its discretion notify the Client that it requires to store at the worksite plant and tools required for the Services, in which event the Client shall supply MOQ a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.

11. Access

- 11.1 The Client shall ensure that MOQ has always clear and free access to the worksite to enable them to undertake the Services or to deliver the Goods. MOQ shall not be liable for any loss or damage to the worksite (including, without limitation, damage to pathways, driveways, ornaments, ponds, pipes, fixtures, fittings, concreted, paved, or grassed areas, or any other infrastructure) unless due to the negligence of MOQ.

12. Underground Locations

- 12.1 Prior to MOQ commencing any work the Client must advise MOQ of the precise location of all underground services on the worksite and clearly mark the same. The underground mains and services the Client 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 the worksite.
- 12.2 Whilst MOQ will take all care to avoid damage to any underground services the Client agrees to indemnify MOQ in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

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13. Compliance with Laws

- 13.1 The Client and MOQ shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 13.2 Both parties acknowledge and agree:
- (a) to comply with the Building Amendment Act 2013, in respect of all workmanship and products to be supplied during the course of the Services; and
- (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 13.3 Where the Client has supplied products for MOQ to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and are for their Intended Use and any faults inherent in those products. However, if in MOQ's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then MOQ shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 7.2.
- 13.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 13.5 MOQ shall comply with the terms and conditions of all such consents and approvals in so far as such consents and approvals relate to the carrying out of the Services.
- 13.6 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), MOQ agrees at all times to 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 third party head contractor.

14. Title to Goods

- 14.1 MOQ and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid MOQ all amounts owing to MOQ; and
- (b) the Client has met all of its other obligations to MOQ.
- 14.2 Receipt by MOQ 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.
- 14.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Goods and must return the Goods to MOQ on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for MOQ and must pay to MOQ the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for MOQ and must pay or deliver the proceeds to MOQ on demand;
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of MOQ and must sell, dispose of or return the resulting product to MOQ as it so directs;
- (e) the Client irrevocably authorises MOQ to enter any premises where MOQ believes the Goods are kept and recover possession of the Goods;
- (f) MOQ may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of MOQ; and
- (h) MOQ may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 15.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods/Equipment that have previously been supplied and that will be supplied in the future by MOQ to the Client, and the proceeds from such Goods/Equipment as listed by MOQ to the Client in invoices rendered from time to time.
- 15.2 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 MOQ may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, MOQ for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment or the proceeds of such Goods/Equipment in favour of a third party without the prior written consent of MOQ; and
- (d) immediately advise MOQ of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.3 MOQ and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by MOQ, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by MOQ under clauses 15.1 to 15.5.

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- 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 15 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 15 will apply generally for the purposes of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of MOQ agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 16.2 The Client indemnifies MOQ from and against all MOQ's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MOQ's rights under this clause.
- 16.3 The Client irrevocably appoints MOQ and each director of MOQ as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.
- 17. Defects**
- 17.1 The Client shall inspect the Goods/Equipment on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify MOQ of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford MOQ an opportunity to inspect the Goods/Equipment within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which MOQ has agreed in writing that the Client is entitled to reject, MOQ's liability is limited to either (at MOQ's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 17.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 17.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).
- 17.3 Subject to clause 17.1, non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
- 18. Warranty**
- 18.1 Subject to the conditions of warranty set out in Clause 18.2 MOQ warrants that if any defect in any workmanship provided by MOQ, which becomes apparent and is reported to MOQ within twelve (12) months of the date of Delivery (time being of the essence) then MOQ will either (at MOQ's sole discretion) replace or remedy the defect.
- 18.2 The conditions applicable to the warranty given by Clause 18.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Client to properly maintain any Goods or serviced item; or
- (ii) failure on the part of the Client to follow any instructions or guidelines provided by MOQ; or
- (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and MOQ shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without MOQ's consent.
- (c) in respect of all claims MOQ shall not be liable to compensate the Client for any delay in either replacing or remedying the defective Goods or serviced item or in properly assessing the Client's claim.
- 18.3 For Goods not manufactured by MOQ, the warranty shall be the current warranty provided by the manufacturer of the Goods. MOQ shall not be bound by nor be responsible for any term, condition, representation, or warranty other than that which is given by the manufacturer of the Goods.
- 19. Consumer Guarantees Act 1993**
- 19.1 This Contract is subject to the provisions the Consumer Guarantees Act 1993 ("CGA") in all cases except where the Client is not contracting as a consumer within the meaning of the CGA.
- 20. Intellectual Property**
- 20.1 Where MOQ has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of MOQ. Under no circumstances may such designs, drawings and documents be used without the express written approval of MOQ.
- 20.2 The Client warrants that all designs, specifications or instructions given to MOQ will not cause MOQ to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify MOQ against any action taken by a third party against MOQ in respect of any such infringement.
- 20.3 The Client agrees that MOQ may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which MOQ has created for the Client.

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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 MOQ's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes MOQ any money the Client shall indemnify MOQ from and against all costs and disbursements incurred by MOQ in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MOQ's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies MOQ may have under this Contract, if a Client has made payment to MOQ, 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 MOQ under this clause 21, 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.
- 21.4 Without prejudice to MOQ's other remedies at law MOQ shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to MOQ shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to MOQ becomes overdue, or in MOQ'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 MOQ;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

22. Cancellation

- 22.1 Without prejudice to any other remedies MOQ may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions MOQ may suspend or terminate the supply of Goods/Equipment to the Client. MOQ will not be liable to the Client for any loss or damage the Client suffers because MOQ has exercised its rights under this clause.
- 22.2 MOQ may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice MOQ shall repay to the Client any money paid by the Client for the Goods/Equipment. MOQ shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Client cancels Delivery of the Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by MOQ as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

23. Privacy Policy

- 23.1 All emails, documents, images or other recorded information held or used by MOQ is "**Personal Information**" as defined and referred to in clause 23.3 and therefore considered confidential. MOQ acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. MOQ acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by MOQ that may result in serious harm to the Client, MOQ will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to MOQ in respect of Cookies where the Client utilises MOQ's website to make enquiries. MOQ 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 MOQ when MOQ sends an email to the Client, so MOQ may collect and review that information ("collectively Personal Information")
- If the Client consents to MOQ's use of Cookies on MOQ's website and later wishes to withdraw that consent, the Client may manage and control MOQ's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Client authorises MOQ or MOQ'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 MOQ from the Client directly or obtained by MOQ 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.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 23.5 The Client shall have the right to request (by e-mail) from the Seller, a copy of the Personal Information about the Client retained by MOQ and the right to request that MOQ correct any incorrect Personal Information.
- 23.6 MOQ will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 23.7 The Client can make a privacy complaint by contacting MOQ via e-mail. MOQ will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

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24. Hire Period

- 24.1 Hire charges shall commence from the time the Equipment leaves MOQ's premises and continue until the Client notifies MOQ that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 24.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 24.3 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason unless MOQ confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies MOQ immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

25. Equipment Hire

- 25.1 Equipment shall at all times remain the property of MOQ and is returnable on demand by MOQ. In the event that Equipment is not returned to MOQ in the condition in which it was delivered MOQ retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all MOQ shall have right to charge the Client the full cost of replacing the Equipment.
- 25.2 The Client shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by MOQ to the Client.
- 25.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, MOQ's interest in the Equipment and agrees to indemnify MOQ against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 25.4 Notwithstanding the above clause, immediately on request by MOQ the Client will pay:
- (a) the new list Price of any Equipment that is for whatever reason destroyed, written off or not returned to MOQ;
 - (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) the negligence of the Client or the Client's agent;
 - (iii) vandalism, or (in MOQ's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
 - (d) any:
 - (i) lost hire fees MOQ would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (ii) costs incurred by MOQ in picking up and returning the Equipment to MOQ's premises if the Client does not return the Equipment to MOQ's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;
 - (iii) insurance excess payable in relation to a claim made by either the Client or MOQ in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or MOQ's.
- 25.5 Return of the Equipment ("**Return**") will be completed when the:
- (a) Equipment is returned by the Client to MOQ's place of business; or
 - (b) MOQ takes back possession of the Equipment once collection by MOQ is affected.

26. Suspension of Services

- 26.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) MOQ 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 7.4(a) 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 MOQ by a particular date; and
 - (iv) MOQ has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if MOQ suspends work, it:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if MOQ exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to MOQ 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 MOQ suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes MOQ from continuing the Services or performing or complying with MOQ's obligations under this Contract, then without prejudice to MOQ's other rights and remedies, MOQ 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

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suspension of the Services is based. All costs and expenses incurred by MOQ as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

26.2 If pursuant to any right conferred by this Contract, MOQ suspends the Services and the default that led to that suspension continues unremedied subject to clause 22.1 for at least ten (10) working days, MOQ shall be entitled to terminate the Contract, in accordance with clause 22.

27. Service of Notices

27.1 Any written notice given under this Contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

27.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

28. Trusts

28.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not MOQ may have notice of the Trust, the Client covenants with MOQ 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 MOQ (MOQ 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.

29. General

29.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.

29.2 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.

29.3 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 courts of Auckland, New Zealand.

29.4 Subject to the CGA, MOQ 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 MOQ of these terms and conditions (alternatively MOQ's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).

29.5 MOQ may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

29.6 The Client cannot licence or assign without the written approval of MOQ.

29.7 MOQ 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 MOQ's sub-contractors without the authority of MOQ.

29.8 The Client agrees that MOQ 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 MOQ to provide Goods/Equipment to the Client.

29.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party.

29.10 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.