

LAYHER LIMITED – GENERAL CONDITIONS OF SALE AND HIRE

PURPOSE AND APPLICATION

- 1 The purpose of these Conditions is to record the terms and conditions under which the Supplier will sell and/or hire Equipment to the Client, and these Conditions shall apply to all Sales and/or Hires made by the Supplier to the Client from time to time.
- 2 The Client warrants that they are 'in trade' within the meaning of the Consumer Guarantees Act 1993 and undertakes to use the Equipment solely for business and commercial purposes.
- 3 By signing these Conditions the Client agrees to be bound by the terms of these Conditions, acknowledges that their attention has been drawn to the Instructions for Assembly and Use provisions contained at clause 38 to 40 of these Conditions and agrees to comply with the relevant Safety Guidelines.

DEFINITIONS AND INTERPRETATION

- 4 In these Conditions:
 - "Client" means any person or entity who purchases and/or hires Equipment from the Supplier, and where applicable includes the employees, contractors, agents and subcontractors engaged by the Client to purchase and/or hire Equipment from the Supplier.
 - "Conditions" means these General Conditions of Sale and Hire.
 - "Contract Price" means the entire amount invoiced by the Supplier in respect of each separate and distinct hire or sale transaction.
 - "Equipment" means the scaffolding and other equipment the Supplier supplies to the Client, including Hire Equipment and Sales Equipment.
 - "GST" means goods and services tax under the Goods and Services Tax Act 1985.
 - "Hire Equipment" means Equipment hired by the Client under a contract for hire entered into between the Supplier and the Client.
 - "Hires" means all current and future hires of Hire Equipment from the Supplier to the Client, which must be for a term of at least twenty-four weeks unless agreed otherwise in writing between the parties.
 - "Invoices" means all invoices prepared by or on behalf of the Supplier which are issued to the Client from time to time.
 - "PPSA" means the Personal Property Securities Act 1999.
 - "Safety Guidelines" means all relevant safety guidelines applicable to the Equipment including any Safety Guidelines brought to the attention of the Client by the Supplier from time to time.
 - "Sales" means all current and future sales of Equipment from the Supplier to the Client.
 - "Sales Equipment" means Equipment purchased by the Client under a contract for sale entered into between the Supplier and the Client.
 - "Supplier" means Layher Limited trading from 93-95 Port Road, Seaview, Lower Hutt 5010 or any related company.
- 5 In these Conditions:
 - 5.1 clause headings are for reference only and do not affect interpretation;
 - 5.2 a reference to the Supplier includes its successors or permitted assigns;
 - 5.3 if the Client comprises more than one person, each person's liability will be joint and several; and
 - 5.4 references to the singular shall include the plural and vice versa.

CHARGES FOR HIRES AND/OR SALES

- 6 Subject always to clause 9, rental rates for Hires and/or prices for Sales are as set out in the Supplier's price list in force from time to time and reflected in Invoices delivered to the Client by the Supplier.
- 7 All rates for Hires and/or prices for Sales are ex works from the Supplier's Wellington depot unless otherwise agreed in writing and exclude the cost of transport which will be invoiced to the Client.
- 8 All Sales and Hire quotes are valid for 30 days but thereafter may be adjusted in accordance with the Supplier's price list in force from time to time.
- 9 The Supplier reserves the right to amend rental rates for Hires during the term of any contract for hire to which these Conditions relate by amending the Supplier's price list for Hires. In the event the Supplier increases the Hire rates the Client shall be entitled to terminate the contract for hire with immediate effect by notice in writing to the Supplier. If the Client does choose to terminate the contract for hire in accordance with this clause it will, for the avoidance of doubt, still be required to perform its obligations regarding the return of Equipment as contained in clauses 30, 31, 32 and 33 of these Conditions.
- 10 The Client agrees to pay the Supplier any GST and any other taxes, duties or other levies applicable in respect of the Equipment or other services provided by the Supplier. All GST shall be payable on the due dates for payments relating to any Equipment or services as set out in the relevant Invoice(s).
- 11 Charges for Hire Equipment are calculated daily, with a week being charged as seven days.
- 12 The day of delivery or collection of Hire Equipment and the day of return of Hire Equipment will both be charged as whole days. There will be no reduction to the charge for weekends, holidays, inclement weather or for any other reason beyond the Supplier's control including (without limitation) strikes, lockouts, cessation of labour, transport delays and Government interference or control.
- 13 If the Supplier delivers or collects the Equipment, then the Client will pay a delivery or collection charge at the Supplier's normal transport rates applicable at the date of delivery or collection as the case may be. This charge will include any other transport costs incurred by the Supplier in attempting reasonably to comply with the express or implied delivery requirements of the Client.
- 14 The Client is responsible for payment of all costs relating to freight of Hire Equipment and/or Sales Equipment unless otherwise agreed with the Supplier beforehand in writing. The Supplier may charge for any trip to collect any Hire Equipment that is overdue or due to be returned including trips where the Client subsequently advises the Supplier that the Hire Equipment is still required and collection does not occur.
- 15 The Client shall be liable for payment of all engineering reports and certification or other inspections required in the course of any contract undertaken by the Client.

DELIVERY OF EQUIPMENT

- 16 All transport of Equipment to the Client is at the Client's own risk. Any loss occurring in transit which exceeds the hauler's insurance cover is at the Client's risk and the Client must ensure that it has sufficient insurance cover for any such excess and shall, if demanded by the Supplier, produce evidence of such insurance cover. Where the Supplier arranges for delivery on behalf of the Client, the Client is solely responsible for any transportation charge unless otherwise specifically agreed in writing by the Supplier. The Supplier accepts no responsibility or liability in respect of such transport arrangements which will be made purely to assist the Client. The Client is responsible for insuring Equipment during delivery and shall, if demanded by the Supplier, produce evidence of such insurance cover.
- 17 Delivery times are approximate and the Client is not entitled to cancel the Equipment order unless the delivery is more than two weeks late.
- 18 Unless written notice to the contrary is received by the Supplier within seven calendar days of delivery:

18.1 the Equipment delivered will be deemed to be in good condition; and

18.2 the quantities of Equipment delivered detailed by the Supplier in the relevant delivery advice or Invoice shall be deemed to be correct.

TITLE AND RISK

- 19 Title to all Hire Equipment remains at all times with the Supplier and the Client shall have no right, title or interest in any such Hire Equipment. The Client covenants and agrees not to assign, charge, encumber, mortgage, pledge, sell or otherwise dispose of the Hire Equipment or any part thereof unless authorised to do so in writing by the Supplier. Hire Equipment must not be shipped and/or used outside of New Zealand.
- 20 Title to all Sales Equipment remains with the Supplier (and the Client shall have no right, title or interest in any Sales Equipment) until all amounts owing in respect of the Sales Equipment have been paid in full. Until such time, the Client covenants and agrees not to assign, charge, encumber, mortgage, pledge, resell or otherwise dispose of the Sales Equipment or any part thereof without immediately accounting to the Supplier for such portion of the proceeds as remains owing to the Supplier.
- 21 The Client must at its own cost store the Hire Equipment and the Sales Equipment (until such time as all amounts owing in respect of all Sales Equipment have been paid in full) separately from other equipment in the possession of the Client and must clearly distinguish and identify the Hire Equipment and Sales Equipment as the Supplier's equipment.
- 22 Notwithstanding clauses 19 and 20 above, risk of any loss or damage to all Equipment (whether Hire Equipment or Sales Equipment) due to any cause whatsoever shall be borne by the Client from delivery or pick up as the case may be and, in the case of Hire Equipment, until it is returned to the Supplier's premises.

DURATION OF HIRE

- 23 The hire of Hire Equipment shall commence on the date of delivery or collection of the Hire Equipment and terminate on the date of return of the Hire Equipment in full to the Supplier's premises.
- 24 On the expiry of the initial term of a hire the hire shall continue on the same terms as applicable during the initial term, subject to the Supplier's ability to amend the rental rates applying to the Hire Equipment as provided for in clause 9, until either party gives the other a minimum of two months' notice in writing of termination of the hire, unless clause 48 applies or unless agreed otherwise in writing. Hire is for an agreed package of Equipment that must be taken and returned in its entirety.

PAYMENT TERMS AND CREDIT ARRANGEMENTS

- 25 The Client will pay for Sales Equipment purchased according to the payment terms specified by the Supplier and agreed by the Client at the time of sale as set out in the relevant Invoice.
- 26 The Client will pay all amounts relating to Hire Equipment by monthly automatic payments in advance as specified by the Supplier at the commencement of the initial term of the hire, unless otherwise specified in the relevant Invoice.
- 27 The Client agrees that if the Supplier holds an open cheque or a credit card voucher as security for payment in respect of any Equipment, immediately on invoicing the Client, the Supplier may complete and bank the cheque or credit card voucher.
- 28 The Client may not withhold any sum including "retentions" withheld by other parties from the Client from payment to the Supplier without the prior written consent of the Supplier.
- 29 The Supplier may decline or revoke any credit application at any time and for any reason, and may require any further security it deems necessary prior to the granting or reinstatement of any credit account or the supply of any Equipment including, where applicable, and without limitation, the provision of supporting guarantees, general security agreements, specific security agreements and/or performance bonds.

RETURN OF HIRE EQUIPMENT

- 30 The Client will be responsible for returning all Hire Equipment to the Supplier, and for providing the Supplier with a delivery note in which all Hire Equipment returned is itemised.
- 31 Returns of Hire Equipment must be made during the Supplier's normal business hours and to the Supplier's depot in Wellington unless prior arrangements have been agreed in writing with the Supplier.
- 32 If the Supplier collects the Hire Equipment, the Client will be responsible for, and will provide all assistance required by the Supplier (including the right of the Supplier to enter any premises or work site where the Hire Equipment may be located) to return all Hire Equipment to the Supplier.
- 33 Upon return of the Hire Equipment, whether by collection by the Supplier or delivery of the Hire Equipment by the Client to the premises of the Supplier, the Supplier will check the quantity and condition of the Hire Equipment at its premises. If the Supplier finds any discrepancy with the quantity and condition of the Hire Equipment advised by the Client when returning the Hire Equipment, it will arrange for an independent party to check the quantity and condition of the Hire Equipment. The independent party's count and assessment shall be deemed conclusive proof of the quantity of Hire Equipment returned and its condition at the time of return.

LOSS OR DAMAGE OF EQUIPMENT

- 34 Prior to taking delivery of any Hire Equipment and/or Sales Equipment (in the event that the Sales Equipment is delivered prior to the Client having paid the Supplier the Contract Price in full), the Client must, at its own cost, arrange insurance cover with a reputable insurer which provides for the full replacement value of the Hire Equipment and/or Sales Equipment. If requested by the Supplier, the Client shall immediately provide evidence of the existence of such insurance to the Supplier, noting the Supplier's interest as a secured party.
- 35 The Client is responsible for returning the Hire Equipment in a clean and usable condition.
- 36 When the client returns the Hire Equipment in a worse condition than can be accounted for by fair wear and tear, the Supplier may charge the Client for cleaning, reconditioning, renewing or replacing the Hire Equipment as it considers necessary in its sole discretion.
- 37 If the Client fails to return the Hire Equipment to the Supplier in accordance with these Conditions, or the Supplier receives notice that the Hire Equipment has been lost, or the Client is unable to produce any item after reasonable notice from the Supplier, the Hire Equipment will be treated as "Lost Equipment". The Supplier may, at its sole discretion, invoice the Client for any item of Lost Equipment for a sum equal to the standard sale price of the item of Lost Equipment at the time of preparation of the Invoice for Lost Equipment. The hire charge for that item of Lost Equipment will continue to accrue until the Client pays the charge for the item of Lost Equipment.

SAFETY GUIDELINES AND INSTRUCTION FOR ASSEMBLY AND USE

- 38 Copies of the Instructions for Assembly and Use ("Instructions") are provided to the Client with these Conditions. The Instructions are also available free of charge from the Supplier.
- 39 The Client acknowledges that it has been advised by the Supplier to refer to the Instructions before undertaking erection, dismantling and use of the Equipment. The Instructions are intended as a guide only and the Supplier does not accept any responsibility for any loss or damage that may occur in relation to the erection, dismantling or use of any Equipment at any site.
- 40 By signing these Conditions the Client acknowledges that it has been referred to the Instructions

and agrees to comply with their contents together with all other legal requirements relating to the safe erection, dismantling and use of the Equipment.

41 All details or representations made in the Instructions or other publications shall only apply to sole use of original Layher Equipment. The Equipment is designed, produced and configured for use with other original Layher products only and not for use with products of other manufacturers. Original Layher products differ in their structural design, material and production processes from the products of other manufacturers (including imitation products) and the Supplier accepts no liability for any loss, or damage suffered by the Client in the event the Client chooses to mix original Layher products with those of other manufacturers.

42 The Client must always erect, dismantle and use the Equipment in compliance with specific structural requirements, local circumstances and the specific requirements of public authorities or the law. It is the duty of the Client to be informed about all technical and statutory requirements for the structural design, structural stability, application or use of the Equipment.

43 The Client is responsible for the safe erection, modification, dismantling and stability of the Equipment, the selection, type, implementation and testing of the tying materials, compliance with the technical standards and technical regulations for scaffolding, the generally accepted engineering principles for the planning, erection and dismantling of scaffolding, and for compliance with all public authority regulations and statutory provisions.

GENERAL OBLIGATIONS

44 The Client may use the Layher name, logo, byline and other brand related items in its advertising and marketing materials or similar but only in strict accordance with the Supplier's and/or manufacturer's guidelines. This usage is valid so long as the Supplier supplies the Client. Should the Supplier cease to supply the Client, this right ceases automatically, and the Client must immediately cease any usage of the Layher name, logo, byline and other brand related items in all of its advertising and marketing materials or similar.

45 The Client will treat as confidential and will not use or disclose to any other person any information relating to quantities, price, or availability of any Equipment provided by the Supplier to the Client and these obligations shall survive any termination of the obligations contained in these Conditions or any other contractual arrangement entered into between the Client and the Supplier.

46 The Client agrees to use the Hire Equipment only together with other original Layher products and shall not mix any products supplied by the Supplier with products from other manufacturers or suppliers or with copies of Layher products.

47 A client who has hired Equipment from the Supplier shall be permitted to hire or lease that Equipment to a third party provided it first obtains the prior written consent of the Supplier. In the event that Hire Equipment is hired or leased to a third party, or Hire Equipment is moved to a site which is not under control of the Client, the Client must, on demand, notify the Supplier of the location and place of usage of the Hire Equipment and the contact details of the responsible site manager. In such cases, the Client shall also, if demanded by the Supplier, obtain express written confirmation from the responsible site manager that the Supplier is permitted to enter the premises for the purposes of inspection and/or repossession of the Hire Equipment in the event of non-payment by the Client or any other breach of these Conditions and must ensure that the Supplier has unimpeded access to any such site at any time on reasonable notice.

ENFORCEMENT

48 For the purposes of securing the performance by the Client of its obligations under these Conditions, the Client agrees that if any payment is in arrears for seven calendar days or more or the Client is in breach of any other provision of these Conditions, then without prejudice to any other rights or remedies available to the Supplier, the Supplier may terminate any supply and/or hire contracts then in force between the Supplier and the Client and recover or retake possession of the Hire Equipment and any Sales Equipment not then paid for in full without giving the Client notice in writing and without prejudice to any other monies which may become due to the Supplier. In such circumstances, the Client, at its own cost, will provide all assistance requested of it by the Supplier to return the Hire Equipment and any Sales Equipment not then paid for in full immediately to the Supplier including, but not limited to, facilitating the Supplier's access to any site on which the Hire Equipment hired and/or Sales Equipment not then paid for in full is located.

49 In the event of any non-payment or other breach of these Conditions, the Client will pay all of the actual costs of any debt collection incurred by the Supplier and interest at the rate of 2.5% per month on all overdue amounts including all costs of recovery or costs incurred by the Supplier in enforcement or attempted enforcement of these Conditions and, in the event of legal action, will pay continuing interest at that rate after judgment until full payment has been received by the Supplier. In the event of any non-payment or other breach of these Conditions, the Supplier also reserves the right to cease supplying Equipment on credit and to refuse any further credit applications from the Client, such that the Supplier may continue to supply Equipment to the Client only where it has received payment in full for such Equipment in advance.

50 For the purposes of clauses 19, 20 and 48 above, the Client grants a security interest (as defined in the PPSA) in favour of the Supplier in all Hire Equipment and any Sales Equipment not paid for in full, including all such present and after acquired Equipment (as defined in the PPSA) and all proceeds arising from such Equipment. The Client acknowledges that the granting of the security interest gives rise to remedies of repossession, retention and/or sale of the goods in accordance with the PPSA or otherwise where the Supplier seeks to enforce the security interest.

PERSONAL PROPERTY SECURITIES ACT

51 The Client acknowledges that clauses 19, 20 and 50 create a security interest (as defined in the PPSA) in all Hire Equipment and any Sales Equipment not paid for in full. The Client will, at the Supplier's request, promptly execute any documents, provide all necessary information and do anything else required by the Supplier to ensure that the security interest is perfected in accordance with the PPSA with such priority as the Supplier requires, including executing any variations to these Conditions.

52 The Client waives its rights under the PPSA to receive a copy of any verification statement otherwise required by the PPSA. If applicable, so far as permitted by section 107 of the PPSA the Client will have no rights under sections 114, 120 and 133 of the PPSA, including the right to receive any notices. The Client agrees if applicable that the Supplier may exercise its rights under sections 109 and 120 concurrently, and that repossession and retention of goods under sections 120 – 123 will immediately extinguish any rights and/or interests the Client may have in the goods and that the Supplier may allocate any monies it receives to debts, charges and expenses in any priority it determines.

53 The Client agrees that the Client's account may be debited with the costs of registration of a financing statement and all other costs associated with the perfection and enforcement of the security interest (including full client/solicitor costs).

54 The Client shall ensure that all third parties who may from time to time hire or lease any of the Hire Equipment or Sales Equipment (when sold on credit and not paid for in full) from the Client are advised of the Supplier's security interest in such Equipment.

LIMITATION OF THE SUPPLIER'S LIABILITY

55 The Supplier accepts no responsibility for:

55.1 any loss or damage that may occur in relation to the effect of wind forces and other forces of nature on the Equipment;

55.2 any loss or damage arising directly or indirectly from the erection, dismantling or use of the Equipment by the Client;

55.3 any loss or damage arising directly or indirectly from any use of the Equipment in conjunction with any other manufacturer's scaffolding systems.

56 The Client will indemnify the Supplier for all claims for injury to persons and/or damage to property caused by, or in connection with or arising out of, the use of the Equipment and for all costs and charges in connection with such claims whether arising under statute or common law.

57 Any drawings, designs or specifications which the Supplier provides to the Client in connection with the Equipment do not constitute a warranty or guarantee on the practicability, efficacy or safety of that Equipment. The Supplier will not be responsible for the cost of any additional work caused by defects in such drawings, designs or specifications.

58 The Supplier will not be liable for failure to deliver the Equipment on a specific date or within a specified time from receipt of the order.

59 The Supplier will not be liable for any consequential loss or damage caused directly or indirectly by the Equipment or any defects in any drawings, designs or specifications which the Supplier provides with the Equipment.

60 The Supplier is not liable for any damage or loss whatsoever arising directly or indirectly from the unauthorised on-supply of Equipment to third parties and the Client shall indemnify the Supplier in respect of any such claim.

DISPUTE RESOLUTION

61 The Supplier and the Client agree that any dispute arising out of, or in connection with, these Conditions will be resolved in accordance with the following dispute resolution procedure.

62 If direct discussion and negotiation between the parties fails to resolve the dispute then the parties will, where the dispute is within its jurisdiction, apply to the Disputes Tribunal at the Lower Hutt District Court for resolution of the dispute. The parties hereby agree that the jurisdiction of the Disputes Tribunal to determine the dispute is extended to the maximum extent permitted by law.

63 If the dispute is outside the jurisdiction of the Disputes Tribunal then the dispute will be resolved by arbitration under the Arbitration Act 1996 by a single arbitrator agreed by the parties. If the parties cannot agree on an arbitrator then the arbitrator will be a person nominated by the President of the Wellington District Law Society, having regard to the nature of the dispute. The arbitrator will make every effort to minimise the costs and the formalities of the arbitration. Arbitration hearings will be held at the premises of the Supplier unless an alternative venue is agreed by the parties. Irrespective of the outcome of the dispute, the parties must pay their own costs incurred in preparing for and attending the arbitration, including the costs of witnesses and representation, and will equally share the other arbitration costs including the costs of the arbitrator.

64 Nothing in clauses 61 to 63 shall preclude or prevent the Supplier from taking immediate steps to seek urgent injunctive relief before an appropriate Court.

NO WAIVER

65 No failure or delay of either party to enforce any provision of these Conditions at any time shall be a waiver of the provision. No waiver shall be effective unless it is in writing. No waiver of any breach of these Conditions shall be deemed to be a waiver of any other or any subsequent breach.

NO ASSIGNMENT

66 The Client must not assign or transfer all or any part of its rights or obligations under these Conditions without the prior written consent of the Supplier. In particular, the Client cannot, on a sale of its company or business, assign or transfer any rights or obligations under these Conditions without the prior written consent of the Supplier. This consent will not be unreasonably withheld in the case of a financially sound assignee, provided that replacement guarantees are obtained where the assignor has previously guaranteed the obligations of the Client to the Supplier.

SEVERANCE

67 Any clause of these Conditions which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other clause(s) which shall remain in full force and effect.

VARIATION OF TERMS

68 The Supplier may from time to time vary the terms of these Conditions by notice in writing to the Client ("Notice"). Any such variation shall take effect from acceptance of the first order for sale and/or Hire of Equipment by the Client following the date of Notice being sent to them. The Supplier's current Conditions are available for viewing at www.layher.co.nz.

PRIVACY ACT

69 The Client authorises the Supplier to collect, retain and use personal information about the Client (the "Information") including the information contained in these Conditions for the following purposes:

69.1 assessing the Client's credit worthiness;

69.2 administering the financing, whether directly or indirectly, of the Client's contract(s) and enforcing the Supplier's rights;

69.3 marketing the goods and services provided by the Supplier.

70 The Client also authorises the Supplier to provide the information:

70.1 to any person for the purposes set out above;

70.2 to credit agencies for the purposes of maintaining effective credit records.

71 The Client acknowledges:

71.1 that the information shall be deemed to be held by the Supplier at the Supplier's address, notwithstanding that it may be provided to other persons for the purposes described above;

71.2 that where information can be readily retrieved the Client shall have access to it, the right to request correction and the right to be notified of action taken in response to any such request, subject to the payment of a reasonable charge;

71.3 that the authorisations set out above are irrevocable;

71.4 that for purposes of the preceding clauses the term the "Supplier" means Layher Limited and includes any financier or discounter of the Supplier's contract(s) or any related company of the Supplier.

MISCELLANEOUS

72 These Conditions are governed by New Zealand law.

73 Where the Client acquires any Equipment for the purposes of a business, or holds itself out as acquiring it for the purposes of a business, the Client agrees that the Consumer Guarantees Act 1993 shall not apply.

74 These Conditions, together with the payment and Equipment details contained in any Invoice(s), sales or hire contract or order form constitute the entire agreement between the parties relating to the Equipment.