

1. Definitions

- 1.1 **“BASO”** shall mean Baso Safety Solutions Limited, its successors and assigns.
- 1.2 **“Charges”** shall mean the cost of the hire (including any Goods and Services Tax (GST) where applicable) of the Equipment as agreed between BASO and the Client subject to clause 6 of this Contract.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting BASO 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.
- 1.4 **“Contract”** means the terms and conditions contained herein, together with any quotation, hire form, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **“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 BASO'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.**
- 1.6 **“Equipment”** shall mean all Equipment supplied either by sale or by hire to the Client by BASO at the Client's request from time to time, and:
(a) includes any erection and/or dismantle of the Equipment, any parts, accessories and/or consumables supplied by BASO to the Client, either separately or deposited incidentally by BASO in the course of it conducting, or supplying to the Client, the Equipment; and
(b) where the context so permits the terms 'Equipment' or 'Services' shall be interchangeable for the other. The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by BASO to the Client.
- 1.7 **“Hire Period”** shall mean the Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by BASO to the Client.
- 1.8 **“Site”** means the location/s at which the Equipment is to be operated.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Equipment/Services.
- 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 and accepts that:
(a) the supply of Equipment on credit shall not take effect until the Client has completed a credit application with BASO and it has been approved with a credit limit established for the account. In the event that the supply of Equipment requested exceeds the Client's credit limit and/or the account exceeds the payment terms, BASO reserves the right to refuse delivery;
(b) 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 63-75kph;
(c) following the handover of the certified Equipment to the Client, it shall be the Client's responsibility to check the Equipment before each use. If the Equipment is deemed to be damaged, altered or appears unsafe it should not be used, and BASO is to be notified;
(d) BASO reserves the right to remove the Equipment without prejudice should the Equipment be considered unsafe due to washout and/or erosion, upon such action this shall not be deemed to be a breach of Contract. BASO will not accept any claim for in respect of any consequential loss to the Client that may result from such an event; and
(e) when the Contract period for hire completes under this Contract and payment is not forthcoming when due and payable, then BASO reserves the right at their discretion to leave the scaffolding erected until such time as payment effected and the Client shall be liable for all loss hire charges in accordance with clause 13.3(e)(ii).
- 2.5 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. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2, the Client agrees that should the Client introduce any third party to BASO as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Equipment, and/or to request any variation thereto, on the Client's behalf (such authority to continue until all requested Equipment has been returned to BASO, or the Client otherwise notifies BASO in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise BASO in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to BASO for all additional costs incurred by BASO (including BASO's profit margin) in providing any Equipment, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that BASO 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 BASO 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 BASO in respect of the Equipment hire and/or/Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of BASO; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

5.1 The Client shall give BASO not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by BASO as a result of the Client's failure to comply with this clause.

6. Charges and Payment

6.1 At BASO's sole discretion the Charges shall be either:
(a) as indicated on invoices provided by BASO to the Client in respect of Equipment supplied; or
(b) BASO's quoted price (subject to clause 6.2) which shall be binding upon BASO provided that the Client shall accept BASO's quotation in writing within thirty (30) days.

6.2 BASO reserves the right to change the Charges:
(a) if a variation to the Equipment which is to be supplied is requested (including, but not limited to, if the returned quantities is less than the quantities originally supplied, etc.); or
(b) if a variation to the Services originally scheduled (including any applicable plans, erection and dismantle charges, Site requirements or specifications) is requested; or
(c) if variations which are beyond BASO's control occur (such as the cost of materials, labour, taxes, levies, duties, fluctuations in currency exchange rates, insurance and/or freight or any Government or regulatory body imposing or increasing fees etc.); or
(d) where additional Equipment or Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather or environmental conditions, limitations to accessing the Site, any subsidence of ground conditions, availability of machinery, protruding or dismantled formwork, repositioning or adjusting the Equipment due to sub contractor's moving planks, any relocation and/or alteration to working platforms and/or hop up brackets (or the Equipment entirely), additional Site visits required, safety considerations (e.g. overhead hazards, etc.), prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services.

6.3 Variations will be charged for on the basis of BASO's quotation, and will be detailed in writing, and shown as variations on BASO's invoice. The Client shall be required to respond to any variation submitted by BASO within ten (10) working days. Failure to do so will entitle BASO to add the cost of the variation to the Charges.

6.4 At BASO's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this Contract, which shall be refunded to the Client by within thirty (30) days of the return of the Equipment, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable Charges payable by the Client under clause 13.3, and any outstanding balance thereof shall be due as per clause 6.5.

6.5 Time for payment for the Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by BASO, which may be:
(a) on or before delivery of the Equipment; or
(b) by way of progress payments in accordance with BASO's specified progress 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; or
(c) payment for approved Clients shall be 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 BASO.

6.6 BASO may in its discretion allocate any payment received from the Client towards any invoice that BASO determines and may do so at the time of receipt or at any time afterwards. On any default by the Client BASO may re-allocate any payments previously received and allocated. In the absence of any payment allocation by BASO, payment will be deemed to be allocated in such manner as preserves the maximum value of BASO's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.

6.7 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and BASO.

6.8 The Client acknowledges and agrees that the Client's obligations to BASO for the supply of Equipment on hire shall not cease until:

- (a) the Client has paid BASO all amounts owing for the install/dismantle and hire of the Equipment; and
- (b) the Client has met all other obligations due by the Client to BASO in respect of all contracts between BASO and the Client.

6.9 Receipt by BASO 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.

6.10 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by BASO nor to withhold payment of any invoice because part of that invoice is in dispute.

6.11 Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Client must pay to BASO an amount equal to any GST BASO must pay for any supply by BASO under this or any other agreement for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

7. Hire Period

7.1 Hire Charges shall commence from the time the Equipment is delivered to the Client or collected from BASO's premises and will continue until the Equipment is collected by BASO or returned to BASO's premises, and/or until the expiry of the Hire Period, whichever last occurs. Additional charges will apply in the event that the Client requests an extension of the Hire Period.

7.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.

7.3 No allowance whatever can be made for time during which the Equipment is not in use for any reason unless BASO confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies BASO 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.

7.4 Off-hire receipts will only be issued when the Equipment has been either collected by BASO or returned to BASO's premises.

8. Delivery

8.1 Delivery ("**Delivery**") of the Equipment is taken to occur at the time that BASO (or BASO's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.

8.2 At BASO's sole discretion, the cost of Delivery is in addition to the Charges.

8.3 BASO may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

8.4 Any time specified by BASO for Delivery of the Equipment is an estimate only and BASO will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that BASO is unable to supply the Equipment as agreed solely due to any action or inaction of the Client, then BASO 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.

9. Risk

9.1 BASO retains ownership of the Equipment nonetheless; all risk for the Equipment passes to the Client on Delivery.

9.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies BASO 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 Client.

9.3 The Client will insure, or self insure, BASO's 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 effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out 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.

9.4 The Client accepts full responsibility for and shall keep BASO 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 Client or any other persons.

10. Access and Installation

10.1 The Client shall ensure that BASO has clear and free access to the nominated delivery address to enable BASO to install and/or dismantle the Equipment.

10.2 It shall be the Client's responsibility to ensure that where Equipment is installed on concreted areas, patios, driveways, timber decks, lower-level roof areas or other structures that suitable coverings are put in place to help prevent any marking/staining of the finished product. BASO shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways, lower-level roofs, and concreted or paved or grassed areas) unless due to the negligence of BASO.

10.3 The Client shall ensure that the nominated delivery address is cleared and ready for installation of the Equipment prior to delivery of the Equipment, and that the foundations upon which BASO 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 Client will be liable to BASO for any loss, costs, or damages which BASO may suffer or incur by reason of the Client's failure to carry out its obligations hereunder if BASO is unable or unwilling to install the Equipment due to the Site not being cleared and ready as a foresaid. Nevertheless, the Client shall be liable to pay the costs on the hire of the Equipment on the terms stated herein.

10.4 Where the Equipment is not installed by BASO, the Client 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.

11. Service Locations

11.1 Prior to BASO supplying Equipment, the Client must advise BASO of the precise location of all mains/services on the Site and clearly mark the same. The 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 Site.

12. Compliance with Laws

12.1 The Client and BASO 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 as outlined in the Guidelines for the Provision of Facilities and General Safety in the Construction Industry Standards and/or any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Equipment/Services.

12.2 BASO has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, BASO shall not be the person who controls the place of work in terms of the HSW Act.

12.3 The Client shall obtain (at the expense of the Client) all engineering reports, certificates, and all licenses, permits and approvals that may be required for the supply of Equipment/Services.

13. Client's Responsibilities

13.1 The Client shall:

(a) maintain the Equipment as is required by BASO;

(b) inspect the Equipment every seven (7) days, and immediately after severe storms or other adverse conditions;

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- (c) use the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by BASO or posted on the Equipment;
 - (d) notify BASO immediately by telephone of the full circumstances of any breakdown/malfunction/damage etc. or accident in connection with the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (e) ensure that:
 - (i) all persons using or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed;
 - (ii) the user of any Equipment is not under the influence of alcohol or any drug that may impair their ability to use the Equipment;
 - (f) 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;
 - (g) no digging or excavation work is performed near or under the Equipment during the installation or once the Equipment is installed;
 - (h) ensure adequate foundations for the erection of the Equipment that will satisfactorily support the loads to be imposed;
 - (i) maintain the Equipment as is required by BASO (including, but not limited to, ensuring that the Equipment is not loaded with materials or equipment which exceeds the load rating of the Equipment, or damaged by materials such as cement, plaster, or chemicals);
 - (j) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
 - (k) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
 - (l) indemnify and hold harmless BASO in respect of all claims arising out of the Client's use of the Equipment;
 - (m) on termination of the hire, deliver (or make available for collection by BASO in accordance with their pre-arrangements) the Equipment, complete with all parts and accessories clean, oiled and in a condition at least equal to when it was dispatched from the BASO's premises, fair wear and tear excepted, the assessment of which condition shall be made solely by BASO.
- 13.2 The Client shall not:
- (a) alter, modify 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;
 - (b) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - (c) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- 13.3 Immediately on request by BASO the Client will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to BASO;
 - (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 BASO's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
 - (d) the cost of fuels and consumables provided by BASO and used by the Client;
 - (e) any:
 - (i) costs incurred by BASO in dismantling the Equipment and returning it to BASO's premises if the Client does not return the Equipment to BASO's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;
 - (ii) lost hire fees BASO would have otherwise been entitled to for the Equipment, under this, or any other install/dismantle and hire agreement;
 - (iii) insurance excess payable in relation to a claim made by either the Client or BASO 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 BASO's.
- 13.4 In the event that BASO or BASO's employee is installing the Equipment, BASO shall not be liable for any actions of the installer in following the Client's instructions.
- 14. Title**
- 14.1 The Equipment is and will at all time remain the absolute property of BASO.
- 14.2 If the Client fails to return the Equipment to BASO then BASO or BASO's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 14.3 The Client is not authorised to pledge BASO's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 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 Equipment that have previously been supplied and that will be supplied in the future by BASO to the Client, and the proceeds from such Equipment as listed by BASO 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 BASO may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, BASO 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 or the proceeds of such Equipment in favour of a third party without the prior written consent of BASO.
- 15.3 BASO and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

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- 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 BASO, 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 BASO under clauses 15.1 to 15.5.
- 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 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 BASO agreeing to supply the 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 BASO from and against all BASO's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising BASO's rights under this clause.
- 16.3 The Client irrevocably appoints BASO and each director of BASO 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 and Warranty**
- 17.1 The Client shall inspect the Equipment on delivery and shall, prior to signing the Handover Certificate (or otherwise at the earliest opportunity, but no more than twenty-four (24) hours following Delivery) notify BASO of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote. The Client shall afford BASO an opportunity to inspect the Equipment within a reasonable time following delivery if the Client believes the Equipment is defective in any way. If the Client shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which BASO has agreed in writing that the Client is entitled to reject, BASO's liability is limited to replacing the Equipment.
- 17.2 The warranty shall be the current warranty provided by the manufacturer of the Equipment. BASO 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.
- 18. Consumer Guarantees Act 1993**
- 18.1 This Contract is subject to the provisions of 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.
- 19. Default and Consequences of Default**
- 19.1 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 BASO's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes BASO any money the Client shall indemnify BASO from and against all costs and disbursements incurred by BASO in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, BASO's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies BASO may have under this Contract, if the Client has made payment to BASO, 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 BASO under this clause 19 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.
- 19.4 Without prejudice to BASO's other remedies at law BASO shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to BASO shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to BASO becomes overdue, or in BASO'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 BASO;
 - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 20. Cancellation**
- 20.1 Without prejudice to any other remedies BASO may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions BASO may suspend or terminate the supply of Equipment to the Client. BASO will not be liable to the Client for any loss or damage the Client suffers because BASO has exercised its rights under this clause.
- 20.2 BASO may cancel these terms and conditions or cancel Delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice BASO shall repay to the Client any sums paid in respect of the Charges. BASO shall not be liable for any loss or damage whatever arising from such cancellation.
- 20.3 In the event that the Client wishes to cancel Delivery of the Equipment then the Client shall be liable for any loss incurred by BASO (including, but not limited to, any loss of profits) up to the time of cancellation or a direct result of the cancellation.
- 20.4 Cancellation of orders for Equipment 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.

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by BASO is “**Personal Information**” as defined and referred to in clause 21.3 and therefore considered confidential. BASO 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 as set out in the Act. BASO acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by BASO that may result in serious harm to the Client, BASO 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.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to BASO in respect of Cookies where the Client utilises BASO’s website to make enquiries. BASO 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 BASO when BASO sends an email to the Client, so BASO may collect and review that information (“collectively Personal Information”)
- If the Client consents to BASO’s use of Cookies on BASO’s website and later wishes to withdraw that consent, the Client may manage and control BASO’s privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Client authorises BASO or BASO’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 BASO from the Client directly or obtained by BASO from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 21.5 The Client shall have the right to request (by e-mail) from BASO, a copy of the Personal Information about the Client retained by BASO and the right to request that BASO correct any incorrect Personal Information.
- 21.6 BASO 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.
- 21.7 The Client can make a privacy complaint by contacting BASO via e-mail. BASO 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>.

22. Suspension of Services

- 22.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) BASO has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator’s notice that the Client must pay an amount to BASO by a particular date; and
 - (iv) BASO has given written notice to the Client of its intention to suspend the carrying out of work under the construction Contract.
 - (b) if BASO 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 BASO exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to BASO 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 BASO suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes BASO from continuing the Services or performing or complying with BASO’s obligations under this Contract, then without prejudice to BASO’s other rights and remedies, BASO may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by BASO as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 22.2 If pursuant to any right conferred by this Contract, BASO suspends the Services and the default that led to that suspension continues unremedied subject to clause 20.1 for at least ten (10) working days, BASO shall be entitled to terminate the Contract, in accordance with clause 20.

23. Service of Notices

- 23.1 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.
- 23.2 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.

24. Trusts

- 24.1 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 BASO may have notice of the Trust, the Client covenants with BASO 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 BASO (BASO 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.

25. General

- 25.1 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).
- 25.2 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.
- 25.3 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 Rotorua, New Zealand.
- 25.4 Subject to the CGA, BASO shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by BASO of these terms and conditions (alternatively BASO's liability shall be limited to damages which under no circumstances shall exceed the Charges).
- 25.5 BASO may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.6 The Client cannot assign or licence without the written approval of BASO.
- 25.7 BASO may elect to subcontract out any part of the provision 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 BASO's sub-contractors without the authority of BASO.
- 25.8 The Client agrees that BASO 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 BASO to provide Equipment to the Client.
- 25.9 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.
- 25.10 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.