



Proquip Solutions Limited Terms and Conditions

To the extent permitted by law, all second hand plant is offered in an as is condition unless otherwise stated. Second hand or previously used equipment is offered for purchase based on the availability of such items at time of Proquip's purchase order confirmation.

The terms specified below apply to all contracts for the supply of goods and/or services between you and us.

1. THIS AGREEMENT

1.1. In these terms, unless less contrary to context:

- (a) **Agreement** means the agreement constituted by these terms, the Letter, Purchase Order accepted by PSL and which relates to the Letter, and any other document the parties agree in writing forms part of the agreement.
- (b) **Client** means the party specified in a Letter or in any of PSL's other form of proposal, quote or purchase order, as the buyer of PSL's products and services.
- (c) **Deposit** means the amount specified under the Letter, Purchase Order or other agreement with the Client as the deposit payable by the Client.
- (d) **Guarantor(s)** means the party specified in a Letter or in any of PSL's other form of proposal, quote or purchase order, as the guarantor of the Client's obligations under the Agreement.
- (e) **Letter** means PSL's letter of proposal for the sale of PSL products and services as described in that proposal document.
- (f) **Price** means the price for the Products and Services (as the case may be).
- (g) **Products** means the PSL products described in the Letter, to which a Purchase Order has been issued and accepted by PSL.
- (h) **PSL** means Proquip Solutions Ltd (CN 922066).
- (i) **Purchase Order** means PSL form of purchase order for the purchase of products and services under a Letter and signed by the Client.
- (j) **Services** means the PSL services described in the Letter to which a Purchase Order has been issued and accepted by PSL.

1.2. Any reference to:

- (a) "we", "our" or "us" or similar term, is a reference to PSL; and
- (b) "you" or "your" or similar term is a reference to the Client.

1.3. This Agreement sets out the terms on which we will provide Services to you. PSL will treat you as having accepted this Agreement, and you are deemed to have accepted it, if you:

- (a) continue to instruct us after you receive it; **or**
- (b) in relation to a Letter, provide to us a Purchase Order which we accept; **or**
- (c) pay PSL the Deposit for goods and services the subject of the relevant Letter, Purchase Order accepted by PSL or other written agreement accepted by PSL.

2. OUR SERVICES

- 2.1. We will provide to you the Products and the Services for the Price on the terms and condition set out in the Agreement.
- 2.2. We will use all reasonable efforts to complete the Services and provide the Products within any agreed time frame but you acknowledge and agree that:

- (a) time frames and delivery or performance schedules are approximate only and are not legally binding; and
- (b) PSL is not liable for any claim, loss, expense, cost or damage attributable to any delay to deliver Products or perform the Services..

3. WHAT YOU AGREE TO DO

3.1. You are responsible for:

- (a) determining that the Services and/or Products are adequate and fit for your particular purposes and needs;
- (b) providing us with all reasonable and necessary assistance so that we can provide the Services or Products to you, such as timely and reasonable and unobstructed access to your premises, facilities, networks, information and representatives;
- (c) designating one or more competent of your representatives who possess suitable skill, knowledge, and/or experience to oversee the provision of the Services and the delivery of the Products;
- (d) making timely decisions in connection with the Services and Products;
- (e) providing us with such of your material, plant or equipment that we require and accurate, up to date and complete information that we consider is necessary for us to provide the Services and supply the Products and otherwise perform our obligations under the Agreement; and
- (f) ensuring that you update us with changes to any of the information that have you provided to us.

4. YOU ACKNOWLEDGE THAT

- 4.1. Our ability to provide the Services and supply the Products depends on you meeting your responsibilities and performing your obligations under this Agreement.
- 4.2. We will rely on your information, the decisions you make and any approvals you give and you acknowledge and agree that we are under no obligation to make enquiries as to the accuracy and completeness of the information you provide or the reasons or rationale for any decisions you make or approvals you give.

5. OUR RESPONSIBILITY TO YOU

- 5.1. To the extent permitted by law, PSL is not liable for any consequential or indirect loss or liability including loss of profit, loss of revenue, loss of savings, economic loss, loss of opportunity, damage to property, personal injury or death, whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from the Client's purchase, use or reliance of the Products or Services.
- 5.2. To the extent that PSL is liable to the Client for any reason for any loss suffered or liability incurred by the Client arising from any breach of the Agreement or for any other reason, PSL limits its liability to the amount paid by the Client in relation to the Products or Services the subject of the claim.

6. PERSONAL INFORMATION AND ELECTRONIC COMMUNICATION

- 6.1. We will collect, store, and disclose any Personal Information provided to us in connection with the Services and the Products in accordance with the Privacy Act 2020.
- 6.2. If you provide us with any personal information of a third party, you confirm that you have collected that personal information in accordance with the Privacy Act 2020 and the individual concerned has authorised the disclosure to and use of their personal information by us for the purpose for which you disclose it to us.
- 6.3. You indemnify us for loss, cost, expense or damage incurred by, or any claim or action brought against, us in connection with your disclosure to us of the personal information of any individual.

7. INTELLECTUAL PROPERTY

- 1. Unless we agree otherwise in writing, we will retain ownership of the intellectual property rights in our work undertaken in connection with the provision of the Service and supply of the Products, including work deliverables such as drawings, designs, operating manuals, technical documents, proposals, quotes, pricing and any material or documents. Except for reports on the relevant Products and Services, we have no obligation to provide any of our work to you or any other person.

8. HEALTH AND SAFETY

- 8.1. You agree to comply with the Health and Safety at Work Act 2015 and all regulations, rules, standards, approved codes of practice and any other applicable law relating to health and safety.
- 8.2. You agree to identify and advise us and our representatives of all hazards which arise in your workplace, or any other site where you direct us to perform the Services and/or deliver Products and which may present a risk to representatives when attending on your workplace or other site. You agree to manage those risks in accordance with all applicable law and, so far as is reasonably practicable, either eliminate or mitigate those risks.
- 8.3. You agree to notify WorkSafe New Zealand (or equivalent body) and us of any notifiable event (as defined in the Act) arising out of the conduct of your business which concerns any of our representative or other personnel.
- 8.4. We agree to consult, co-operate and co-ordinate activities where we share health and safety duties in relation to the same matters.

9. PRICE

- 9.1. The Client acknowledges and agrees that in relation to a quotation provided by PSL to the Client:
 - (a) the quotation is based on:
 - i the rates and conditions as at the date of the quotation; and
 - ii information received from the Client up to the date of the quotation;
 - (b) the quotation may change where circumstances occur outside of PSL's control or where information that the Client provides is incorrect or not complete;
 - (c) PSL reserves the right to change the quotation up to the date of delivery of the relevant Products or performance of the relevant Services:
 - i where PSL's cost of goods and services changes after the issue of the quotation due to the imposition of any new government surcharges
 - ii where there is a change in PSL's labour, materials, equipment and contractors costs, or a change in its supplier's costs;
 - iii where there is a variation to the Products' composition, or a change is required to be made to the manufacturing process or procedure of the relevant Products;
 - iv if there is a change to the rates of duty, charge, levy or tax set out in the quotation or applicable to the relevant Products and Services, arising as a result of a change in law or regulation or of any government direction or order;
 - v where a change is required to be made to any of the Products or spare parts, or in the performance of any Service, due to a change of or the introduction of any law, regulation, code or standard; or
 - vi if there is a variation in the rates of exchange on imported goods affecting the prices set out in the quotation.
 - (d) unless otherwise provided for in writing, quotations remain open for acceptance by the Client for a period of 30 days from the date of the Quotation; and
- 9.2. Despite clause 9.1(d), PSL may withdraw a quotation at any time prior to the Client's acceptance.
- 9.3. Subject to the terms of the relevant quotation, the Client may accept a quotation by:
 - (a) providing to PSL a signed Purchase Order before the expiry date for acceptance, or otherwise confirming its acceptance in writing; and
 - (b) making payment of the Deposit to PSL by its due date (if required),
provided that a quotation is not considered accepted, and a Purchase Order is not binding on PSL, until PSL accepts and approves the Purchase Order in writing.
- 9.4. In the absence of a quotation, PSL's goods and services will be priced at PSL's then current rates and as otherwise set out in its price list.

10. CHANGE OF SPECIFICATION AND DRAWINGS

- 10.1. After receipt of a Purchase Order the PSL reserves the right, without notice or liability, to:

- (a) undertake such changes, as PSL may deem expedient or necessary for the improvement of machinery, equipment; and
- (b) substitute any equipment item for another equipment item if in PSL's opinion it does not reduce or detract from the quality, functionality and performance of the original equipment item.

10.2. The Client acknowledges and agrees that:

10.3. weights, dimensions, capacities, prices, technical and other data listed in catalogues and other printed matter constitutes an approximate guide and are not binding on PSL; and

10.4. drawings are supplied as guidelines only and are not binding on PSL nor are they to be used or relied on for any purpose, other than for information only purposes, including for building construction.

10.5. PSL retains all rights of ownership and title in all drawings, manuals, technical documents, proposals and any other documents, including all intellectual property rights in such documents, provided to the Client in connection with PSL's supply of the Products or performance of the Services under the Agreement.

10.6. Except as otherwise provided for in the Agreement, the Client is granted a non-exclusive, non-transferable royalty free license to use the documents referred to in clause 10.5 solely in connection with the Products provided or Services supplied under the Agreement.

11. LOCAL DUTIES AND TAXES

11.1. Unless otherwise agreed in writing, all prices quoted or submitted by PSL are exclusive of any customs charges, tariff duties, port charges, AQIS permits (Australia), location taxation or import levies VAT or GST and any other like duties, levies or taxes.

12. QUOTATION

12.1. In relation to quotations provided by PSL, the Client acknowledges and agrees that:

- (a) PSL provides work scope estimations relating to the Services;
- (b) PSL makes various assumptions which relate to the nature and type of Products and Services to be provided, including assumptions as to the condition, layout and state of the Client's site, equipment, plant and materials and the capability of the Client's personnel;
- (c) the quotation may provide an outline of the estimated prices or rates for each discrete item of work, goods or services,
- (d) with reference to the specific Products and Services to which they relate, and all other goods and services are expressly excluded,

as such the quotation should not be viewed, and PSL does not represent the quotation, as a complete and accurate description of the Products, Services, processes or solution or of the final price.

12.2. PSL is not obliged to consider nor agree to a Client's request to cancel or suspend the Agreement, a Purchase Order or the performance of Services or the provision of Products, The Client will indemnify PSL for all costs, damages, expenses or loss, including loss of profit, incurred by, or any demand or claim brought against PSL in connection with the cancellation or the Client's suspense of the Agreement, any Purchase Order or the performance of the Services or supply of the Products.

12.3. All second hand equipment is sold on an as is where is basis, and to the extent permitted by law PSL makes no representations regarding the operation, performance or use of the equipment.

13. DELIVERY, INSTALLATION AND COMMISSIONING

13.1. Dates for delivery, installation, commissioning, the performance of services or other performance schedules are approximate only and are subject to:

- (a) PSL having all necessary information, including Client information, to provide the Products, perform the Services or commence the works the subject of a Letter or Purchase Order;
- (b) PSL obtaining all appropriate consents, approvals or permissions in connection with commencing the relevant Letter or Purchase Order;
- (c) the availability of materials, equipment or other resources from PSL's suppliers or contractors; and

- (d) the Client:
 - i performing its obligations to date and not being in breach of the Agreement, including making payment of the Deposit or any instalment or progress payment amount; and
 - ii providing to PSL by the due date or within the period stipulated by PSL any materials, documents, equipment or other items required PSL.
- 13.2. PSL is not liable for any delay to deliver the Products or perform the Services, including installation and commissioning, by the proposed date due to:
 - (a) PSL exercising its rights under clause 22.1 to suspend or defer delivery or performance;
 - (b) the requirements of clause 13.1 not being met or occurring (as the case may be); or
 - (c) any cause beyond PSL's reasonable control including any delay in PSL receiving materials, equipment or other goods from its suppliers or contractors.
- 13.3. Any delay in the delivery of the Products or the performance of the Services does not entitle the Client to:
 - (a) withhold payment of any invoice or make any deduction or set-off against it;
 - (b) terminate the Agreement, or the relevant Purchase Order; nor
 - (c) return any Products already delivered,and PSL is not liable to any person for, and the Client releases PSL from, any damage, cost, loss or expense suffered by, or any claim against, the Client in connection with any such delay in delivery or performance.
- 13.4. All Products to be supplied to the Client will be deemed to have been delivered on the date of delivery to the Client's premises or agreed delivery point.
- 13.5. The Client must make available reasonable and unobstructed access to the delivery point for prompt unloading. If for any reason the Client postpones or delays taking delivery or postpones scheduled Service performance dates, PSL:
 - (a) may retain the relevant Products entirely at the risk and expense of the Client; and
 - (b) PSL is entitled to levy the Client additional charges incurred due to the Client's postponement or delay.
- 13.6. Unless otherwise set out in a Letter, Purchase Order or in writing, PSL will arrange insurance to PSL's premises or port only for international freight. The Client assumes the risk in the goods and is responsible to insure the Products for transit from PSL's site or port to the Client's site or delivery point. The Client must promptly notify PSL and the freight forwarder if the Products are damaged or there are missing parts.
- 13.7. Unless otherwise stated, the Client is solely responsible for the unpacking and locating the relevant Products, goods or equipment to the areas where they will be in operation in the Client's premises.
- 13.8. The Client must provide to PSL at least four weeks' written notice for a commissioning date where the Client is installing PSL's plant and where PSL is undertaking commissioning.
- 13.9. Where the Quotation specifically states that commissioning on the Products is included, the Client will, at its cost, make available such raw ingredients as PSL determines necessary.
- 13.10. The Client is liable for, and must pay to PSL on demand, the specified daily charge for labour, transport and other costs, should the Client's site not be in a state of readiness, as determined by PSL, for any reason for the purpose of PSL undertaking installation and/or commissioning or other professional services.

14. WARRANTY

- 14.1. Warranty's do not apply to the sales of any second hand equipment.
- 14.2. PSL warrants and guarantees to the Client that the goods and services supplied by it to the Client under this Agreement will perform in accordance with the supplied specifications for a period of 12 months from the date of delivery ex works. The benefits conferred by the warranty are in addition to and not in derogation of all other rights and remedies in respect of the goods or services which the Client may have under law.

- 14.3. In relation goods, parts and equipment that are not manufactured by PSL that form part of our supplies to the Client, to the extent that it is able to, PSL's warranty is limited to that granted to PSL by its supplier.
- 14.4. When second hand or reconditioned goods are supplied, any statement of capacities or performance figures are estimates only and are supplied in good faith on information provided and PSL accepts no liability for these.
- 14.5. PSL's warranty under clause 14.1 is voided and does not cover, and the Client assumes all responsibility for, all defects, losses and damages arising from or relating to:
- (a) the consequences of natural wear and tear;
 - (b) misuse, accident, negligent, inappropriate or improper operation, maintenance, installation, modification or adjustment by the Client or any other person;
 - (c) overloading of the goods by any person;
 - (d) use of inappropriate lubrication material contrary to PSL's instructions;
 - (e) inadequate tending or maintenance of the goods on the part of the Client;
 - (f) inadequate construction works;
 - (g) where the Client or user has performed the commissioning of the relevant good, plant or equipment;
 - (h) the effect of any chemical, electrical or other indirect influences on the goods.
 - (i) the use of any Client plant or equipment; or
 - (j) any work, including modification or repair work, undertaken on the relevant goods by third parties not approved by PSL.
- 14.6. PSL disclaims all liability, the Client releases PSL from any responsibility for any errors, defect or fault occurring as a result of any design or information provided by the Client.
- 14.7. To the fullest extent permitted by law, the client acknowledges and agrees, and it is expressly declared by PSL that:
- (a) all representations or terms (including any condition or warranty and whether expressed or implied by law or otherwise) not expressly included in these conditions are excluded;
 - (b) despite anything else in these terms, should PSL breach any statutorily implied warranty or guarantee, then to the extent permitted by law, PSL's liability for such breach is limited to, at its option:
 - i in the case of goods, either repairing or replacing the goods or the supply of equivalent goods or the payment of the cost of replacing or repairing the goods or of acquiring equivalent goods; and
 - ii in the case of services, the supply of the service again or the payment of the cost of having the services supplied again.
- 14.8. PSL will be under no liability whatsoever to the Purchaser for or in respect of any representations or terms not expressly set out in the Agreement

15. RISK AND OWNERSHIP

- 15.1. Risk in all goods supplied to the Client, including the Products, will pass to the Client immediately on delivery to Client's premises or the designated port and the Client is responsible for insuring the goods from this time.
- 15.2. In relation to second-hand goods:
- (a) PSL will obtain and maintain such insurances as it deems appropriate to cover for loss or damage;
 - (b) in the event of partial loss or damage PSL may, at its option, reimburse repair costs, including the second-hand cost of parts required.
 - (c) PSL's liability limit under this clause is the amount of the declared value of the relevant goods item.

- 15.3. Until title in the goods passes to the Client, the Client acknowledges that it holds the goods or any products, which incorporate the goods solely as bailee of PSL and in a fiduciary capacity and PSL may enter the Client's premises on which such goods are kept and retake possession of the relevant goods at any time without notice.
- 15.4. While title and property in the goods remains vested in PSL, the Client agrees:
 - 13.5.4 to insure the goods against all usual risks and for full replacement value and the Client will hold on trust for PSL any insurance monies received by the Client for the goods owned by PSL;
 - 13.5.5 to not dispose of the goods;
 - 13.5.6 that it has no right or claim to any interest in the goods to secure any debt or obligation that PSL owes to the Client;
 - 13.5.7 that it cannot claim any lien over the goods and will not pledge or allow any security interest or other interest to arise over the goods;
 - 13.5.8 to not create any absolute or defeasible interest in the goods in relation to any third party; and
 - 13.5.9 to provide PSL with access to the premises where the goods are kept to enable PSL to inspect and/or seize it.
- 15.5. Where the Client disposes of the goods before making payment to PSL of all amounts due to PSL, the Client does so as the PSL's fiduciary agent and the sale proceeds from such sale (or the portion of the proceeds of sale of any mixed goods), transfer or disposal are the property of PSL and the Client holds the proceeds on trust for PSL and will account to PSL on demand of such proceeds. Pending this accounting such proceeds must not be mingled with any other monies and will be held by the Client in a separate bank account on behalf of **PSL**.

16. INDEMNITY

- 16.1. The Client must indemnify and keep indemnified PSL against all cost, expense, loss or damage, incurred by, and all claims, actions or demands brought against, PSL directly or indirectly arising from or in connection with:
- 16.2. the use, operation or possession of the Products supplied under the Agreement, by the Client or by its officers, employees, agents or contractors;
- 16.3. any breach of this Agreement by the Client, including the costs of recovering or enforcing payment of all amounts due to PSL;
- 16.4. the Client's materials, equipment or information provided to PSL under the Agreement; or
- 16.5. any wrongful, wilful or negligent act or omission of the Client or any of its officers, employees, agents or contractors.

17. PAYMENT

- 17.1. Except as otherwise provided for under the Letter or Purchase Order, PSL will issue to the Client invoices based on monthly progress claims which will be payable the 20th following the invoice date.
- 17.2. All agreed variations to the goods or services under the Letter or Purchase Order are to be paid on completion of the relevant works or services being carried out, or goods provided.
- 17.3. If, in PSL's opinion, the variation work is substantial then PSL will require the Client to make payment of a deposit amount in advance for the variation work before it is carried out. If the Client does not pay PSL the amount requested, PSL is under no obligation to undertake the variation work or any part of it.
- 17.4. Unless otherwise agreed and without prejudice to PSL's rights and remedies, default, interest may be charged at a rate of 15% per annum by PSL on any account unpaid on a daily basis from the due date until actual payment. The Client acknowledges that the interest amount payable by the Client under this clause is a genuine pre-estimate of the loss suffered by the Client as result of the Client's failure to make payment of the overdue amount by the due date.
- 17.5. The Client must pay to PSL all GST payable in respect of any taxable supplies made to the Client by PSL under the Agreement.

18. ARBITRATION

- 18.1. In the event of any dispute of difference arising between the parties or concerning the Agreement PSL may refer such dispute to arbitration in accordance with the Arbitration Act 1996.
- 18.2. The arbitration will be commenced by either party giving to the other written notice stating the subject matter of the dispute and that party's desire to have the matter referred to arbitration
- 18.3. The arbitration will be by a single arbitrator to be agreed upon by the parties or, failing agreement within 10 working days of delivery of the notice to be appointed by the Executive Director of the Arbitrators and Mediators Institute of New Zealand Incorporated
- 18.4. The party who receives any notice under clause 18.1 may, within five working days of receiving such notice, give a written notice to the other requesting the dispute to be resolved by way of mediation. If such a request is made, then the parties will use their reasonable endeavours to agree upon mediation.
- 18.5. If the parties fail to agree upon a mediator within 10 working days of the delivery of the request for mediation, then at the request of either party, the mediator will be appointed by the President of the District Law Society or his or her nominee. All discussions in mediation will be without prejudice. All costs of mediation are to be shared equally.
- 18.6. If no agreement has been reached in mediation within 10 working days of the appointment of a mediator, then the matter in dispute will be referred to arbitration in accordance with clause 18.3
- 18.7. Where a dispute goes to arbitration, which has previously been referred to mediation the mediator, will not be called by either party as a witness and no reference shall be made to discussions held in mediation
- 18.8. The award in the arbitration shall be final and binding on the parties
- 18.9. All provisions contained in the Second Schedule to the Arbitration Act 1996 will apply to the arbitration.

19. **TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)**

- 19.1. For the purposes of this clause:
 - (a) PPSA means the Personal Property Securities Act 1999;
 - (b) all capitalised terms have the meaning given in the PPSA and section references will be to sections of the PPSA; and
 - (c) the Client acknowledges that the Agreement, the Letter and each Purchase Order accepted by PSL and/or other agreements with the Client, constitutes a Security Agreement for the purposes of the PPSA.
- 19.2. This clause 19 creates a security interest in goods PSL supplies to the Client under the Agreement including the Products.
- 19.3. The Client must not grant any other security interest or any lien over goods that PSL has a security interest in.
- 19.4. At PSL's request, the Client must promptly sign any documents and do anything else required by PSL to ensure that PSL's security interest constitutes a first ranking perfected security interest in the goods.
- 19.5. PSL may at any time enter the premises and properties of the Client to uplift goods that PSL has a security interest in, and the following will apply:
 - (a) PSL will not be liable for any costs, damages, expenses or losses incurred by the Client or any third party as a result of PSL's entry onto the Client's property or premises;
 - (b) the Client indemnifies PSL in respect of any cost, expenses and claims resulting from PSL entering onto the premises;
 - (c) PSL may either:
 - i resell any repossessed goods and credit the Client's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or
 - ii retain any repossessed goods and credit the Client's account with the invoice value less such sum as PSL reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 19.6. If goods that PSL has a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods, PSL's security interest will continue in the whole in which they are included.
- 19.7. The Client must not grant any other security interest or any lien in either the goods or in the whole.
- 19.8. PSL may exercise its rights and enforce its security interest created by the Agreement if any of the following events occur:
- (a) the Client fails to remedy any breach of the Agreement within the period required by PSL including any failure to pay an invoiced amount by its due date;
 - (b) the Client deals with or disposes of any of the goods before making payment in full of all amounts owed by the Client to PSL;
 - (c) PSL is of the view that:
 - 17.1.1.1 the Client is, or may be, the subject of, an event of insolvency including the appointment of any receiver or liquidator over it or any of its assets;
 - 17.1.1.2 the goods in the possession of the Client are damaged or are at risk of being damaged, disposed of or dealt with while any amount is owing to PSL;
 - 17.1.1.3 a material adverse change has occurred in relation to the Client's financial or trading position or its capacity to perform its obligations under the Agreement,
 - (d) in PSL's opinion, PSL's security interest in the goods is at risk; or
 - (e) any of the goods are repossessed by any other creditor of the Client or any other creditor intimates that it intends to repossess goods.
- 19.9. The Client waives:
- (a) any rights they may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA;
 - (b) the right to receive a copy of any verification statement (as that term is defined in the PPSA); and
 - (c) will give PSL prior written notice of a proposed change of name or address.

20. **GUARANTOR (IF APPLICABLE)**

- 20.1. In consideration of PSL, at the request of the Client and the Guarantor, entering into this Agreement and to induce PSL to enter into this Agreement, the Guarantor guarantees to PSL the due and punctual performance and observance by the Client of its obligations under this Agreement.
- 20.2. As a separate and primary liability, the Guarantor irrevocably and unconditionally indemnifies PSL against any loss or damage suffered or incurred by PSL arising out of the Client's failure to comply with this Agreement.
- 20.3. The Guarantor acknowledges giving the guarantee and indemnity described in clauses 20.1 and 20.2 and incurring obligations and granting rights under this Agreement for valuable consideration received from PSL.
- 20.4. The guarantee and indemnity described in clauses 20.1 and 20.2 is a continuing security despite termination by PSL, settlement of account, intervening payment, express or implied revocation or other matter whatsoever, until PSL provides to the Guarantor a final discharge of the guarantee and indemnity.
- 20.5. The Guarantor confirms that:
- (a) it has not entered into this Agreement in reliance on, or as a result of a statement or conduct of or on behalf of PSL; and
 - (b) PSL is not obliged to do anything (including disclosing anything or giving advice), except as expressly set out in this Agreement.

21. **CREDIT APPLICATION**

- 21.1. The Client:
- (a) warrants that all details provided to PSL in or accompanying any credit account application are complete, true and accurate and not misleading or deceptive;

- (b) acknowledges that PSL may in its absolute discretion accept or reject the credit account application and is not obliged to furnish reasons for its decision;
- (c) acknowledges and agrees that PSL may terminate its provision of credit to the Client at any time without notice for any reason;
- (d) warrants that any Equipment hired from PSL will only be used for commercial purposes and not for any domestic or household purposes; and
- (e) warrants that the credit account application is not an application for consumer credit.

22. TERMINATION

22.1. PSL may:

- (a) terminate the Agreement;
- (b) cancel a Purchase Order;
- (c) suspend the provision of the Products and Services;
- (d) restrict the Client's use of the Products; or
- (e) require the immediate payment under a Letter or Purchase Order despite the agreed payment terms,

if the Client:

- (f) fails to remedy a breach of the Agreement within 30 days of being notified in writing of the breach; or
- (g) commits or has taken against it an act of insolvency, bankruptcy, winding up, official management, administration, receivership or liquidation or calls a meeting of its creditors, there occurs a transfer of ownership or control of the Client.

22.2. If PSL suspends the provision of Products or the performance of a Service, PSL may resume provision or performance upon it being satisfied that the Client has remedied the breach which gave rise to the suspension.

22.3. Termination or suspension is without prejudice to any other rights or remedies available to PSL at law.

22.4. On termination of the Agreement:

- (a) where the relevant Letter, Purchase Order or other written agreement between the parties expressly stipulates that the Deposit is non-refundable, then without limiting its rights under clause 22.3, PSL will retain absolutely the Deposit;
- (b) subject to clause 22.4(a) and without limiting its rights under clause 22.3, PSL will refund to the Client the Deposit net of the costs referred to in clause 22.4(c) and
- (c) the Client must pay to PSL all payments then due, and all other actual, reasonable, documented costs and expenses incurred by PSL in performing the Agreement and/or resulting from termination, including the cost of labour, any ordered goods or services PSL is required to pay, and the loss of anticipated profits.

23. FORCE MAJEURE

23.1. For the purposes of this clause, **Force Majeure Event** means the occurrence of any event outside the reasonable control of a party and includes the following events or circumstances:

- (a) hurricane, typhoon, earthquake, flood, landslide or other natural disaster, or fire;
- (b) civil riot, insurrection, revolution, terrorism, war or other like hostilities;
- (c) any disease, pandemic or epidemic;
- (d) strike, lockout or industrial disturbances;
- (e) act of any governmental or public authority including any law, order or direction promulgated by a government authority in response to the outbreak or containment of Coronavirus pandemic; or
- (f) delay in the delivery or transportation of materials or the unavailability or shortage of suitable materials.

- 23.2. If a party is affected by a Force Majeure Event which prevents it from carrying out its obligations under the Agreement (other than to make a payment when due), that affected party must promptly notify the other party of the nature and extent of the circumstance, the likely duration and the impact on the affected party's obligations under the Agreement.
- 23.3. Notwithstanding any other provision of the Agreement neither party will be deemed to be in breach or otherwise be liable to the other for any delay in the performance or the non-performance of any of its obligations under the Agreement, to the extent that the delay or non-performance is due to any Force Majeure Event of which it has notified the other party, and the time for performance of that obligation will be extended accordingly.
- 23.4. Where the affected party is PSL, PSL is not liable or obliged to provide any financial relief to the Client as a result of the Force Majeure Event.
- 23.5. If a Force Majeure Event subsists so that the affected party is unable to perform all or a material part of its obligations under the Agreement for three consecutive months or six months in the aggregate as a consequence of a Force Majeure Event, either party may terminate this Agreement with immediate effect by notice to the other party. Upon issue of such notice, clause 22.4 will apply.

24. GENERAL

- 24.1. No waiver of any breach of this Agreement will be effective unless the waiver is in writing and signed by the party against whom the waiver is claimed.
- 24.2. The Agreement including these terms and conditions is governed by the laws of New Zealand and each party submits to the non-exclusive jurisdiction of its courts.
- 24.3. The Client must not assign its rights or interests or delegate its duties under this Agreement without PSL's prior written consent.
- 24.4. The Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Agreement and has no further effect.
- 24.5. Any provision of the Agreement which is illegal, void or unenforceable will be severed without prejudice to the balance of the provisions of the Agreement.
- 24.6. The Client must at all times treat as confidential all information and material provided by PSL and designed by it as being of a confidential or commercial sensitive nature, and the Client must not disclose, publish or use such information without PSL's prior written consent.
- 24.7. The Agreement cannot be varied except by the written agreement between the parties.
- 24.8. Any notice to be given to one party by another under the Agreement must be in legible writing and in English addressed to the relevant party at the address stated in the Agreement, Letter, Purchase Order or other form of contract between the parties (as the case may be).