



Fahey Fence Hire Limited
 PO Box 9113, Tower Junction
 ADDINGTON 8024
 Phone: (03) 343 9960
 Email: accounts@faheyfencehire.co.nz
 Web: www.faheyfencehire.co.nz

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants – Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.
 This is a Credit Account Application Form under the Construction Contracts Act 2002. Please read clause 21 on the reverse.

Customer's Details: <input type="radio"/> Individual <input type="radio"/> Sole Trader <input type="radio"/> Trust <input type="radio"/> Partnership <input type="radio"/> Company <input type="radio"/> Other:				
Full or Legal Name:				
Trading Name: <i>(If different from above)</i>				
Physical Address:				Postcode:
Billing Address:				Postcode:
Email Address:				
Phone No:		Fax No:		Mobile No:
Personal Details: <i>(please complete if you are an Individual)</i>				
D.O.B.:			Driver's Licence No:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>				
Company Number:			Date Incorp. <i>(current owners)</i> :	
Nature of Business:				GST No: <i>(if applicable)</i>
Principal Place of Business is: <input type="radio"/> Rented <input type="radio"/> Owned				
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>				
(1) Full Name:			D.O.B.:	
Private Address:				Postcode:
Driver's Licence No:		Phone No:		Mobile No:
(2) Full Name:			D.O.B.:	
Private Address:				Postcode:
Driver's Licence No:		Phone No:		Mobile No:
Account Terms: <input type="radio"/> 20 Days <input type="radio"/> Other:				
Purchase Order Required? <input type="radio"/> YES <input type="radio"/> NO			Accounts to be emailed? <input type="radio"/> YES <input type="radio"/> NO	
Accounts Email Address:				
Accounts Contact:				Phone No:
Bank and Branch:				Account No:
Trade References: <i>(please provide companies that are willing to do trade references)</i>				
Name:		Address:		Phone / Fax / Email:
1.				
2.				
3.				

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of *Fahey Fence Hire Limited T/A Fahey Fence Hire or Fahey Skip & Waste which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. *I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.*

*(*The Supplier shall indicate the trading entity that the Client is contracting with by ticking one or more of the tick boxes below.)*

SIGNED (CUSTOMER): _____ SIGNED (SUPPLIER): _____

Name: _____ Name: _____

Position: _____ Position: _____

Date: _____ Date: _____

WITNESS TO CUSTOMER'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

Fahey Fence Hire Fahey Skip & Waste

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Fahey Fence Hire Limited T/A Fahey Skip & Waste and its successors and assigns ("the Supplier") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods, equipment and/or services to

[] ("the Customer") [Insert Company Name In Box Provided]

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

- GUARANTEE** the due and punctual payment to the Supplier of all monies which are now owing to the Supplier by the Customer and all further sums of money from time to time owing to the Supplier by the Customer in respect of goods, equipment and services supplied or to be supplied by the Supplier to the Customer or any other liability of the Customer to the Supplier, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Supplier, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to the Supplier the Guarantor will immediately on demand pay the relevant amount to the Supplier. In consideration of the Supplier agreeing to supply the Goods to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") and unequivocally consents to the Supplier registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints the Supplier and each director of the Supplier as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Supplier may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA or any other law; or
 - correct a defect in a statement referred to in clause 1(a) or 1(b).
- HOLD HARMLESS AND INDEMNIFY** the Supplier on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Supplier in connection with:
 - the supply of goods, equipment and/or services to the Customer; or
 - the recovery of monies owing to the Supplier by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Supplier's nominees' costs of collection and legal costs; or
 - monies paid by the Supplier with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Supplier, the Customer, and a third party or any combination thereof, over the supply of goods, equipment and/or services by the Supplier to the Customer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- I/We have received, read and understood the Supplier's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
- This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to the Supplier by the Customer and all obligations herein have been fully paid satisfied and performed.
- No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Supplier's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to the Supplier, each Guarantor shall be a principal debtor and liable to the Supplier accordingly.
- If any payment received or recovered by the Supplier is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Supplier shall each be restored to the position in which they would have been had no such payment been made.
- The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
- I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to the Supplier.**
- I/we irrevocably authorise the Supplier to obtain from any person or company any information which the Supplier may require for credit reference purposes. I/We further irrevocably authorise the Supplier to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Supplier as a result of this Guarantee and Indemnity being actioned by the Supplier.
- The above information is to be used by the Supplier for all purposes in connection with the Supplier considering this Guarantee and Indemnity and the subsequent enforcement of the same.

GUARANTOR-1

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this _____ day of _____ 20____

GUARANTOR-2

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this _____ day of _____ 20____

Note: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).

2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT

Fahey Fence Hire Limited – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.</p> <p>1.2 "Supplier" means Fahey Fence Hire Limited T/A Fahey Fence Hire or Gardie City Skips, its successors and assigns or any person acting on behalf of and with the authority of Fahey Fence Hire Limited T/A Fahey Fence Hire or Gardie City Skips.</p> <p>1.3 "Customer" means the person's, entities or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and</p> <p>(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Customer's executors, administrators, successors and permitted assigns.</p> <p>1.4 "Goods" means all Goods or Services supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).</p> <p>1.5 "Equipment" means all Equipment (including but not limited to, any accessories, temporary fencing, skip hire etc) supplied on hire by the Supplier to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Customer.</p> <p>1.6 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Customer.</p> <p>1.7 "Site" means the address nominated by the Customer at which the Services are to be undertaken (or where the Equipment is to be located) by the Supplier.</p> <p>1.8 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational methods, financial, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as name, address, D.O.B, occupation, driver's licence details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.</p> <p>1.9 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when using the Supplier's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.</p> <p>1.10 "Price" means the Price payable for the Goods/Equipment hire (plus any Goods and Services Tax ("GST") where applicable) as agreed between the Supplier and the Customer in accordance with clause 6 below.</p> <p>1.11 "Business Days" means Monday to Friday and shall not include Saturday or Sunday and/or a public holiday in the area of the Site or throughout New Zealand (whether a whole or part of a day).</p> <p>1.12 "Hire Days" means Monday to Sunday and includes all Public holidays.</p> <p>2. Acceptance</p> <p>2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions of the Contract, as set out in or by the Delivery of the Goods/Equipment. Unless otherwise agreed all orders will be confirmed by way of email. It shall be the Customer's responsibility to return the confirmation of the order within two (2) Business Days. Failure to return the confirmation of order within two (2) Business Days will be deemed that the Customer has accepted the terms of trade and Delivery of the Goods/Equipment, and this becomes binding.</p> <p>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.</p> <p>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.</p> <p>2.4 The Customer acknowledges and accepts that:</p> <p>(a) the supply of Goods/Equipment on credit shall not take effect until the Customer has completed a credit application with the Supplier and it has been approved with a credit limit established for the account;</p> <p>(b) in the event that the supply of Goods/Equipment requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse Delivery;</p> <p>(c) the Goods supplied offer a manufacturer's guarantee which can withstand a specified wind/weather tolerance. The Supplier shall not be held liable for any loss or damages to the Goods due to severe weather conditions in excess to the tolerance levels which are out of the Supplier's control;</p> <p>(d) in the event the Supplier requires access, in order to undertake the Services, to an adjoining or adjacent property owned to the nominated Site, that is not owned by the Customer, then it is the Customer's responsibility to gain permission from the land owner to use the above-mentioned property throughout the process or delivering the Services. In the event the land owner denies access or use of the land or property, the Customer shall be liable for all costs incurred by the Supplier in gaining permission to access and/or use the property through any legal process that may be deemed necessary; and</p> <p>(e) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Supplier reserves the right to vary the Price with alternative Goods as per clause 6.2.</p> <p>2.5 Where the Supplier gives any advice, recommendation, information, assistance or service provided by the Supplier in relation to Goods/Equipment or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier. Where such advice or recommendations are not acted upon then the Supplier shall require the Customer or their agent to authorise commencement of the Services in writing. The Supplier shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.</p> <p>2.6 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.</p> <p>3. Authorised Representatives</p> <p>3.1 The Customer acknowledges that the Supplier shall (for the duration of the Services) liaise directly with the authorised representatives, and that once these persons are introduced as such to the Supplier, that these persons shall have the full authority of the Customer to order any Goods/Equipment and/or Services and/or to request any variation thereto on the Customer's behalf. The Customer accepts that these designated persons will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Goods/Equipment and/or Services or variations requested thereto by the Customer's duly authorised representative.</p> <p>4. Errors and Omissions</p> <p>4.1 The Customer acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent error made by the Supplier in the formation and/or administration of this Contract; and</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.</p> <p>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 willful misconduct of the Supplier, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.</p> <p>5. Change in Control</p> <p>5.1 The Customer shall give the Supplier not less than fourteen (14) Business days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone, fax numbers, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.</p> <p>6. Price and Payment</p> <p>6.1 At the Supplier's sole discretion, the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Supplier to the Customer; or</p> <p>(b) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) Business days.</p> <p>6.2 The Supplier reserves the right to change the Price:</p> <p>(a) if a variation to the Goods/Equipment which are to be supplied is requested; or</p> <p>(b) if during the term of the Services, the Goods cease to be available from the Supplier's third-party suppliers, then the Supplier reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or</p> <p>(c) where additional Services are required due to unforeseen circumstances (including but not limited to, poor weather conditions, limitations to accessing the Site, change in scope of work required, human tampering to the Equipment, in the event of the temporary fencing being blown down due to high winds and/or not weighted down correctly etc) which are only discovered on commencement of the Services.</p> <p>(d) in the event of increases to the Supplier in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Supplier's control.</p>	<p>6.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) Business days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.</p> <p>6.4 At the Supplier's sole discretion, a non-refundable deposit may be required.</p> <p>6.5 Time for payment for the Goods/Equipment will be the essence of the contract. Payment will be payable by the Customer on the date/s determined by the Supplier, which may be:</p> <p>(a) on Delivery of the Goods/Equipment;</p> <p>(b) by way of instalments/progress payments in accordance with the Supplier's payment schedule;</p> <p>(c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.</p> <p>6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and the Supplier.</p> <p>6.7 The Supplier may in its discretion allocate any payment received from the Customer towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocated by the Supplier, payment will be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.</p> <p>6.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by the Supplier is a claim for the Goods/Equipment under the contract of 2002. Nothing in this clause 5.9 prevents the Customer from the ability to dispute any invoice.</p> <p>6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods/shire of the Equipment. The Customer must pay GST, without deduction or set off of any other amount, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>7. Delivery and Return of Goods/Equipment</p> <p>7.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:</p> <p>(a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at the Supplier's address; or</p> <p>(b) the Supplier (or the Supplier's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address. In the event the Customer (or a representative thereof) is not present at the time of Delivery, the Supplier's delivery docket remains prima facie evidence of delivery.</p> <p>7.2 Unless otherwise agreed, any Goods and/or Equipment delivered or collected more than ten (10) metres from the Delivery Site and/or at multiple collection points will incur additional charges calculated at an hourly rate. The Supplier shall notify the Customer of such charges, prior to the Delivery and/or collection (including the installation and dismantling) of the Equipment which shall be either included or will be in addition to the Price.</p> <p>7.3 The Customer shall deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>7.4 Return of the Equipment ("Return") will be completed when the Equipment has been dismantled and accepted by the Supplier, by their off-hire docket, after an inspection has been undertaken to evaluate the quantity and condition of the Equipment. Where the Equipment is returned to the Customer's premises, the Equipment returned shall be counted in the Supplier's yard and the off-hire docket issued to the Customer shall be conclusive proof of the Return of the quantities of Equipment listed thereon, but not of its condition at the time of Return. In all cases the inspection in the Supplier's yard or on site will be deemed the only legal proof of the quantity and condition of the Equipment returned.</p> <p>7.5 The Customer shall be allowed forty eight (48) hours to raise any dispute with the Supplier with regard to the return of the Equipment to the Supplier's premises.</p> <p>7.6 Any time specified by the Supplier for Delivery of the Goods/Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>8. Risk of Goods</p> <p>8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer is insured for the Goods on or after that time.</p> <p>8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.</p> <p>8.3 The Customer shall be responsible for the Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.</p> <p>8.4 The Supplier shall be entitled to rely on the accuracy of any measurements, plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.</p> <p>8.5 The Customer acknowledges and accepts that:</p> <p>(a) the Goods supplied may:</p> <p>(i) exhibit variations in shade, colour, texture, surface, finish and may fade or change colour over time;</p> <p>(ii) be stained or discoloured or distorted as a result of exposure to heat, cold, weather;</p> <p>(iii) mark or stain if exposed to certain substances; and</p> <p>(iv) be damaged or disfigured by impact or scratching;</p> <p>(b) the Supplier shall not be held liable for any loss or damages to the Goods where the Goods have not been maintained and/or installed as per the Supplier's or manufacturer's recommendations.</p> <p>9. Fence Wrapping Risks</p> <p>9.1 The Customer acknowledges and accepts that all work carried out whether experimentally or otherwise at the Customer's request will be charged to the Customer.</p> <p>9.2 Unless otherwise agreed, the Customer shall bear the cost of fons, or colour proofs, or artwork, specially bought at its request for printing or carriage. The Equipment returned shall be under no liability whatever for any error or inaccuracy of the Customer in the final proof reading. Should the Customer's alterations require additional proofs this shall be invoiced as an extra.</p> <p>9.3 All final proofs provided by the Supplier must be approved before final production of signage commences.</p> <p>9.4 The Supplier is under no obligation to provide samples of Goods ordered other than by virtual (computerised) means. Whilst the Supplier will be taken by the Supplier to match virtual colours with physical colours, the Supplier will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Customer's computer and/or the final product.</p> <p>9.5 Where every effort will be taken by the Supplier to match PMS colours, the Supplier will take no responsibility for any variation due to substrates, halftone and/or detailed graphics between sale samples (including but not limited to virtual or physical samples) and the final product.</p> <p>9.6 The Supplier shall not be held liable for inks wearing off through general wear and tear.</p> <p>9.7 The Customer acknowledges and agrees that any completed Goods left with the Supplier for more than two (2) weeks will incur a storage fee as determined by the Supplier.</p> <p>10. Title to Goods</p> <p>10.1 The Supplier and the Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid the Supplier all amounts owing to the Supplier; and</p> <p>(b) the Customer has met all of its other obligations to the Supplier.</p> <p>10.2 Receipt by the Supplier 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.</p> <p>10.3 It is further agreed that:</p> <p>(a) until ownership of the Goods passes to the Customer in accordance with clause 10.1 that the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request;</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;</p> <p>(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the</p>	<p>proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;</p> <p>(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;</p> <p>(e) the Supplier hereby authorises the Supplier to enter any premises where the Customer believes the Goods are kept and recover possession of the Goods;</p> <p>(f) the Supplier may recover possession of any Goods in transit whether or not Delivery has occurred;</p> <p>(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier;</p> <p>(h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.</p> <p>11. Personal Property Securities Act 1999 ("PPSA")</p> <p>11.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Customer to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.</p> <p>11.2 The Customer undertakes to:</p> <p>(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 the Supplier may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;</p> <p>(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;</p> <p>(c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Supplier; and</p> <p>(d) immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>11.3 The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.</p> <p>11.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.</p> <p>11.5 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>11.6 The Customer shall unconditionally ratify any actions taken by the Supplier under clause 11.1 to 11.5.</p> <p>11.7 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>11.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 11 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 11 will apply generally for the purposes of the PPSA.</p> <p>12. Security and Charge</p> <p>12.1 In consideration of the Supplier agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of any obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>12.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.</p> <p>12.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's sole and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.</p> <p>13. Consumer Guarantees Act 1993</p> <p>13.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Customer is contracting under the terms of a trade/business (which cases are specifically excluded).</p> <p>14. Defects</p> <p>14.1 The Customer shall inspect the Goods/Equipment on Delivery and shall within two (2) Business Days of Delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Goods/Equipment within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which the Customer has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.</p> <p>14.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 14.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).</p> <p>15. Returns of Goods</p> <p>15.1 Returns of Goods will only be accepted provided that:</p> <p>(a) the Customer has complied with the provisions of clause 14.1; and</p> <p>(b) the Supplier has agreed in writing to accept the return of the Goods; and</p> <p>(c) the Goods are returned at the Customer's cost within two (2) Business days.</p> <p>15.2 The Supplier will not be liable for Goods which have not been stored or used in a proper manner; and</p> <p>(e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.</p> <p>15.3 The Supplier may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight. Subject to clause 14.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.</p> <p>16. Warranty</p> <p>16.1 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.</p> <p>17. Intellectual Property</p> <p>17.1 Where the Supplier has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.</p> <p>17.2 The Customer warrants that all designs, specifications or instructions given to the Supplier will not infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.</p> <p>17.3 The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which the Supplier has created for the Customer.</p> <p>18. Default and Consequences of Default</p> <p>18.1 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 the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>18.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).</p> <p>18.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Customer has made payment to the Supplier, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 18, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.</p> <p>18.4 The Supplier and the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer has exceeded any applicable credit limit provided by the Supplier.</p>
--	--	---

Fahey Fence Hire Limited – Terms & Conditions of Trade

<p>(c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p>19. Cancellation</p> <p>19.1 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods/Equipment to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.</p> <p>19.2 The Supplier is not liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.</p> <p>19.3 In the event that the Customer cancels the Delivery of Goods/Equipment the Supplier shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>19.4 Cancellation of orders for Goods/Equipment made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>20. Privacy Policy</p> <p>20.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information as defined and referred to in clause 20.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR" (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Supplier that may result in serious harm to the Customer, the Supplier will notify the Customer and the relevant authorities. The Supplier's use of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.</p> <p>20.2 Notwithstanding clause 20.1, privacy limitations will extend to the Supplier in respect of Cookies where the Customer wishes the Supplier's website to make enquiries. The Supplier 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 Customers':</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to the Supplier when the Supplier sends an email to the Customer, so the Supplier may collect and review that information (collectively "Personal Information")</p> <p>If the Customer consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Customer may manage and control the Supplier's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser's cache and cookies.</p> <p>20.3 The Customer authorises the Supplier or the Supplier's agent to:</p> <p>(a) access, collect, retain and use any information about the Customer:</p> <p>(i) including name, address, D.O.B, occupation, drivers licence details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or</p> <p>(ii) for the purpose of marketing products and services to the Customer.</p> <p>(b) disclose information about the Customer, whether collected by the Supplier from the Customer directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference for the Customer or for any other purpose.</p> <p>20.4 Where the Customer is an individual the authorities under clause 20.3 are authorisations or consents for the purposes of the Privacy Act 2020.</p> <p>20.5 The Customer shall have the right to request (by e-mail) from the Supplier, a copy of the Personal Information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information.</p> <p>20.6 The Supplier will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is stored in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.</p> <p>20.7 The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at http://www.privacy.org.nz/comply/complain.html.</p> <p>21. Suspension of Services</p> <p>21.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:</p> <p>(a) the Supplier has the right to suspend work within five (5) Business days of written notice of its intent to do so if a payment claim is served on the Customer, and:</p> <p>(i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer; or</p> <p>(ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or</p> <p>(iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Supplier by a particular date; and</p> <p>(b) the Supplier has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.</p> <p>(b) if the Supplier suspends work, it:</p> <p>(i) is not in breach of Contract; and</p> <p>(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and</p> <p>(iii) is entitled to an extension of time to complete the Contract; and</p> <p>(b) 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.</p> <p>(c) if the Supplier exercises the right to suspend work, the exercise of that right does not:</p> <p>(i) affect any rights that would otherwise have been available to the Supplier under the Contract and Commercial Law Act 2017; or</p> <p>(ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Supplier suspending work under this provision;</p> <p>(d) due to any act or omission by the Customer, the Customer effectively precludes the Supplier from continuing the Services or performing or complying with the Supplier's obligations under this Contract, then the Supplier is not liable for any loss or damage the Supplier may suffer because the Supplier has exercised its rights under this clause.</p> <p>21.2 If pursuant to any right conferred by this Contract, the Supplier suspends the Services and the default that led to that suspension continues unremedied subject to clause 19.1 for at least ten (10) Business days, the Supplier shall be entitled to terminate the Contract, in accordance with clause 19.</p> <p>22. Service of Notices</p> <p>22.1 Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(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;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>22.2 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.</p> <p>23. Trusts</p> <p>23.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Customer covenants with the Supplier as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will</p>	<p>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.</p> <p>(c) the Customer will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Customer as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p>24. Compliance with Laws</p> <p>24.1 The Supplier and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of the Government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services (including but not limited to, the disposal of contaminated waste etc).</p> <p>24.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.</p> <p>25. General</p> <p>25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.</p> <p>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 be subrogated, void, illegal or voidable, or to enforce the validity, effect and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>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 Christchurch courts of New Zealand.</p> <p>25.4 The Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer as a result of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).</p> <p>25.5 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.</p> <p>25.6 The Customer cannot sue or assign without the written approval of the Supplier.</p> <p>25.7 The Supplier may elect to subcontract any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.</p> <p>25.8 The Customer agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Goods/Equipment to the Customer.</p> <p>25.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, riot, 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.</p> <p>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.</p>	<p>(b) inspect the state of repair or condition of the Equipment; and/or</p> <p>(c) carry out any such tests on the Equipment as may be reasonably necessary including but not limited to, health and safety tests or inspections; and/or</p> <p>(d) observe the use of the Equipment by the Customer; and/or</p> <p>(e) do any act, matter or thing which may be required at law or to otherwise protect the Supplier's rights or interests in the Equipment.</p> <p>29. Risk to Equipment</p> <p>29.1 The Supplier retains property in the Equipment nonetheless all risk for the Equipment passes to the Customer on Delivery.</p> <p>29.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss, theft, or damage to the Equipment whatsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer.</p> <p>29.3 The Customer will insure, or self-insure, the Supplier'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 affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.</p> <p>29.4 The Customer accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment, including but not limited to, the perils of accident, fire, theft and burglary, not arising from any negligence, failure or omission of the Customer or any other persons.</p> <p>29.5 If the Supplier believes the Equipment is at risk for any reason whatsoever (including but not limited to, the manner of its use by the Customer or that the Customer is unable or might be unable to pay any hire charges, the Supplier, at their sole discretion, take any action as necessary to take possession of the Equipment in accordance with clause 32. Accordingly the Customer grants the Supplier an irrevocable right and authority to enter the Site at any time as to where the Equipment is located to remove the Equipment.</p> <p>30. Contaminated/Dangerous Waste</p> <p>30.1 The Customer shall not use the Equipment to store or dispose of any explosive, flammable or otherwise dangerous goods, furthermore the Customer agrees to indemnify the Supplier against all costs, loss or damage which the Supplier might incur or claims of any nature made against the Supplier as a result of the Customer's failure to comply with this clause.</p> <p>30.2 The Customer acknowledges and agrees that:</p> <p>(a) the Equipment shall not be used to dispose asbestos, car batteries, gas bottles, bullets, fuel cans containing fuel, toxic chemicals or liquids;</p> <p>(b) we paint is under no circumstances accepted for disposal. Paint tins must be empty and dry before being placed in the Equipment; and</p> <p>(c) household waste must be placed in garbage bags prior to being stored in the Equipment, under no circumstances may food scraps be disposed of in the Equipment.</p> <p>30.3 The Supplier operates within the guidelines as set down in the Environmental Protection Interim Regulation Act 1998 (including but not limited to, the correct disposal of dangerous goods, asbestos, car waste, and/or vehicle tyres). The Customer agrees to indemnify the Supplier against all additional costs for disposal and/or fines that the Supplier may incur in the event that the Customer fails to notify the Supplier of any such items, or substances and that the Equipment supplied are then used to dispose of.</p> <p>30.4 Special Equipment to dispose of contaminated waste is available on request and the Customer acknowledges that such Equipment is subject to additional costs.</p> <p>30.5 In the event that the Equipment is found to contain asbestos mixed with other rubbish, the Customer will be charged as if the whole load within the Equipment was asbestos (due to contamination). The Customer agrees to indemnify the Supplier for all costs associated with the handling and preparation of the rubbish materials and the disposal of same in a legal manner. Handling fees will be applicable as determined by the Supplier and any associated Council costs of disposal.</p> <p>31. Overloading</p> <p>31.1 In the event that the Supplier arrives to collect the Equipment to facilitate the disposal of its contents, and finds that the Equipment is overloaded, then the Supplier shall (at its sole discretion) either:</p> <p>(a) refuse the carriage of the Equipment until the Customer has reduced the load to an acceptable level;</p> <p>(b) leave behind the overloaded portion; or</p> <p>(c) provide the Services in which case, the Customer shall be liable to the Supplier for all additional costs then incurred by the Supplier (including, but not limited to, any fines, penalties, or additional dumping fees).</p> <p>31.2 The Customer agrees to pay any extra costs that may arise as a result of overloading or incorrect loading of the Equipment by the Customer, the Customer's agent and/or other person.</p> <p>32. Title to Equipment</p> <p>32.1 The Equipment is and will at all times remain the absolute property of the Supplier.</p> <p>32.2 If the Customer fails to return the Equipment to the Supplier then the Supplier or the Supplier's agent may (as the trustee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.</p> <p>32.3 The Customer is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.</p> <p>33. Customer's Responsibilities</p> <p>33.1 The Customer shall:</p> <p>(a) satisfy itself at commencement that the Equipment is suitable for its purposes;</p> <p>(b) notify the Supplier immediately by telephone of the full circumstances of any major breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;</p> <p>(c) operate the Equipment safely, strictly in accordance with the law (including but not limited to, the Health and Safety Employment Act 1992 and any future amendments thereto), only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Equipment;</p> <p>(d) ensure that all reasonable care is taken in handling the Equipment and that the Equipment is securely stored when not in use;</p> <p>(e) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or the Supplier relating to any such matters or occurrences;</p> <p>(f) comply with all workplace health and safety laws relating to the Equipment and its operation;</p> <p>(g) within two (2) Business Days of the termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Supplier;</p> <p>(h) keep the Equipment in their own possession and control and shall not assign the benefit of the hire. The Contract nor be entitled to lien over the Equipment;</p> <p>(i) 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; and</p> <p>(j) indemnify and hold harmless the Supplier in respect of all claims arising out of the Customer's use of the Equipment.</p> <p>33.2 The Customer shall not:</p> <p>(a) alter, modify or add 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;</p> <p>(b) exceed the recommended or legal load and capacity limits of the Equipment;</p> <p>(c) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;</p> <p>(d) fix any of the Equipment in such a manner as to make it a legally a fixture forming part of any real estate.</p> <p>33.3 Immediately on request by the Supplier the Customer will pay:</p> <p>(a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Supplier;</p> <p>(b) all costs incurred in cleaning the Equipment;</p> <p>(c) all costs of repairing any damage caused by the Customer or any other person using the Equipment;</p> <p>(d) the negligence of the Customer or the Customer's agent;</p> <p>(e) vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer.</p> <p>33.4 (a) any lost hire fees the Supplier would have otherwise been entitled to for the Equipment under this, or any other hire agreement;</p> <p>(b) costs incurred by the Supplier in picking up and returning the Equipment to the Supplier's premises if the Customer does not return the Equipment to the Supplier's premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so.</p>
--	--	--

Additional Terms & Conditions Applicable to Hire Only

<p>26. Hire Period</p> <p>26.1 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Customer from the Supplier's premises or is delivered to the agreed site address which is determined at the time of ordering, and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>26.2 If the Supplier agrees with the Customer to deliver, install, collect and/or dismantle the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Customer notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>26.3 The Customer shall give a minimum of forty eight (48) hours notice prior to either partial or full collection of the Equipment.</p> <p>26.4 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.</p> <p>26.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies the Supplier immediately, hiring charges shall not be payable during the breakdown. The Equipment is not working unless the condition is due to negligence or misuse on the part of or attributable to the Customer.</p> <p>26.6 In the event that the Customer is in breach of these Terms and Conditions, the Supplier may issue a notice to the Customer requiring the Customer to remedy the breach within three (3) Business days of the date of the notice. If the Customer fails to remedy the breach within three (3) Business days period, the Supplier may cancel the Contract by further notice in writing to the Customer in accordance with clause 19.1.</p> <p>27. Access and Installation/Dismantling</p> <p>27.1 The placement, filling and pick-up of the Equipment are under the direct orders and control of the Customer and the Customer indemnifies the Supplier against any loss, damage, or injury as a result of the function performed.</p> <p>27.2 In the event that the Customer shall ensure that:</p> <p>(a) the Supplier has clear and free access to the Site at all times to deliver, install and/or dismantle the Equipment in accordance with clause 7.2. The Customer will be liable to the Supplier for any loss, costs or damages which the Supplier may suffer or incur by reason of the Customer's failure to carry out its obligations hereunder if the Supplier is unable or unwilling to install the Equipment due to the Site not being cleared and ready as agreed. Nevertheless the Customer shall be liable to pay the costs of the hire of the Equipment on the terms stated herein;</p> <p>(b) access is suitable to accept the weight of laden trucks as may be deemed necessary by the Supplier. The Supplier shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to negligence of the Supplier;</p> <p>(c) the Supplier is advised of the precise location of all underground services on the Site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Site. Whilst the Supplier will take all care to avoid damage to any underground services the Customer agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per this clause (c); and</p> <p>(d) prior to the Delivery of the Equipment, that all approvals from any local authority have been obtained where that the Equipment is to be located on the roadside or any other public place.</p> <p>27.3 Unless the Customer instructs/directs otherwise, the Supplier shall place the Equipment at the nominated Site at the nearest clear area to the roadside. The Supplier shall not be liable for any damages incurred by the Customer or any third party (including damage to property) in following any instructions/directions of the Customer to deliver the Equipment elsewhere at the Site. In all cases, the Customer agrees to indemnify the Supplier against any claims whatsoever made against the Supplier that arise out of the placement and/or re-positioning of the Equipment (including but not limited to any re-positioning of the Equipment for safety requirements where such has been installed by any other third party).</p> <p>27.4 Notwithstanding clause 27.3, where the Equipment is hired with an operator this person shall at all times remain an employee of the Supplier. The operator of the Equipment remains an employee of the Supplier and operates the Equipment in accordance with the Customer's instructions. As such the Supplier shall not be liable for any actions of the operator in following the Customer's instructions.</p> <p>27.5 The Customer acknowledges and agrees that the Customer shall not move the Equipment once placed in position by the Supplier, except with the express approval of the Supplier.</p> <p>27.6 In the event that either party to this Contract is ordered to remove the Equipment by any statutory authority, they shall immediately notify the other party of the requirement to do so and organise the removal of the Equipment. The Customer agrees to indemnify the Supplier against all additional costs incurred by the Supplier in complying with any such order, or through the Customer's failure to comply with any such order, or through the Customer's failure to comply with the provisions of this clause.</p> <p>28. Inspection of Equipment</p> <p>28.1 The Customer hereby grants the Supplier (including its employees, duly authorised agents or representatives) the right, at all times, upon the Supplier giving to the Customer reasonable notice and without undue interfering with the Customer's business or operations, to:</p> <p>(a) enter onto the Site(s) where the Equipment or any part thereof may be located; and</p>
--

Customer's Initials: _____

Date: _____