

Scafworx Ltd – Terms and Conditions

- 1. Definitions**
- 1.1 "Scafworx" means Scafworx Ltd, its successors and assigns or any person acting on behalf of, and with the authority of, Scafworx Ltd.
- 1.2 "Client" means the person's hiring the Scaffolding, as specified in any quotation, invoice, order or other document as provided by Scafworx to the Client, and if there is more than one Client, is a reference to each Client jointly and severally.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Scafworx to provide the Scaffolding as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Scaffolding" means all Scaffolding supplied on hire to the Client by Scafworx, at the Client's request from time to time, and:
- (a) includes any erection, dismantling and transport of the Scaffolding ("Services"), any parts, accessories and/or consumables supplied by Scafworx to the Client, either separately or deposited incidentally by Scafworx in the course of it conducting, or supplying to the Client, the Scaffolding; and
- (b) where the context so permits the terms 'Scaffolding' or 'Services' shall be interchangeable for the other.
- 1.5 "Minimum Hire Period" means the Scaffolding shall be hired for a term of not less than one (1) week (or unless specified otherwise on the quotation, invoices, order or any other document as provided by Scafworx to the Client).
- 1.6 "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 information, know-how, 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 license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Scaffolding via the website.**
- 1.8 "Charges" means the price payable for the hire of the Scaffolding, as agreed between Scafworx and the Client in accordance with clause 5 below.
- 2. Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for Scaffolding, or accepts Delivery.
- 2.2 The obligations of Scafworx to supply Scaffolding to the Client under this contract shall be limited to those defined within these terms and conditions. All other conditions, warranties, stipulations and undertakings, whether expressed or implied by statute or common law, are excluded. Furthermore, these terms and conditions, unless amended with Scafworx's consent in writing, shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Scafworx.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Scaffolding on credit shall not take effect until the Client has completed a credit application with Scafworx and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Scaffolding request exceeds the Client's credit limit and/or the account exceeds the payment terms, Scafworx reserves the right to refuse Delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 3. Errors and Omissions**
- 3.1 The Client acknowledges and accepts that Scafworx shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Scafworx in the formation and/or administration of this Contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Scafworx in respect of the Scaffolding.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Scafworx, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4. Change in Control**
- 4.1 The Client shall give Scafworx not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Scafworx as a result of the Client's failure to comply with this clause.
- 5. Charges and Payment**
- 5.1 At Scafworx's sole discretion the Charges shall be either:
- (a) as indicated on invoices provided by Scafworx to the Client in respect of Scaffolding supplied; or
- (b) Scafworx's quoted Charges (subject to clause 5.2), which shall be binding upon Scafworx, provided that the Client shall accept Scafworx's quotation in writing within thirty (30) days, and based on normal working hours (Monday to Friday, 7:30am to 4:00pm), excluding Public Holidays. Additional Charges may be applied (as per clause 5.2) if Services are required outside these hours.
- 5.2 Scafworx reserves the right to change the Charges if a variation to Scafworx's quotation is requested. Any variation from the plan of scheduled Services and/or specifications of the Scaffolding (including, but not limited to, working drawings, preparation of information (such as calculations, computations and fees incurred for site inspections by engineers or inspectors), additional transport (including where required out of normal working hours, or where Delivery (including unloading and/or loading) exceeds the allowance thereof), any variation as a result of unforeseen circumstances, such as poor weather conditions, limitations to accessing the site and safety considerations (e.g. overhead hazards, etc.), prerequisite work by any third party not being completed, any relocation and/or alteration to working platforms and/or hop up brackets (or the Scaffolding entirely), or as a result of any increase to Scafworx in the cost of materials and labour, or any Government or regulatory body imposing or increasing fees, etc.) will be charged for on the basis of Scafworx's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 At Scafworx's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this contract, which shall be refunded to the Client within thirty (30) days of the return of the Equipment, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable Charges (and any additional charges payable by the Client under clause 9.2), and any outstanding balance thereof shall be due as per clause 5.4.
- 5.4 Time for payment for the Scaffolding being of the essence, the Charges will be payable by the Client on the date/s determined by Scafworx, which may be:
- (a) by way of instalments/progress payments in accordance with Scafworx's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any Scaffolding delivered to the site but not yet installed; or
- (b) twenty (20) days following the end of the month in which a statement is provided to the Client by Scafworx; or
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice provided to the Client by Scafworx.
- Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and Scafworx.
- Unless otherwise stated:
- (a) the Charges do not include GST. In addition to the Charges, the Client must pay to Scafworx an amount equal to any GST Scafworx must pay for any supply of Scaffolding by Scafworx under this contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Charges, except where they are expressly included in the Charges; and
- (b) invoices and statements will be sent by email to the Client's nominated email address (if provided to Scafworx), unless otherwise agreed between the parties.
- 5.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Scafworx nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by Scafworx is a claim made under the Construction Contracts Amendment Act 2015.
- 5.6 Scafworx may in its discretion allocate any payment received from the Client towards any invoice that Scafworx determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Scafworx may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Scafworx, payment will be deemed to be allocated in such manner as preserves the maximum value of Scafworx's Purchase Money Security Interest (as defined in the PPSA) in the Services.
- 5.7 Receipt by Scafworx 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, and until then Scafworx's rights and ownership in relation to the Scaffolding, and this contract, shall continue.
- 6. Delivery**
- 6.1 Delivery of the Scaffolding ("Delivery") is taken to occur at the time that Scafworx delivers the Scaffolding to the Client's nominated address, even if the Client is not present at the address.
- 6.2 Any time specified by Scafworx for Delivery is an estimate only and Scafworx will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Scaffolding to be supplied at the time and place as was arranged between both parties. In the event that Scafworx is unable to supply the Scaffolding (including any installation and/or removal thereof) as agreed solely due to any action or inaction of the Client then Scafworx shall be entitled to charge a reasonable fee (to cover mileage and lost time hours) for re-supplying the Scaffolding at a later time and date and/or any lost Charges under clause 9.2(d).
- 6.3 The Client shall ensure that Scafworx has clear and free access to the nominated address at all times to enable them to make Delivery, and shall take all care while erecting and dismantling the Scaffolding on roof areas. However, Scafworx shall not be liable for any loss or damage to the property (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), and any incidental damage that may occur (i.e. cracks or leaks, etc.), unless due to the negligence of Scafworx.
- 7. Installation and/or Dismantle of the Scaffolding by Scafworx**
- Client's Responsibilities:*
- (a) The Client shall provide (free of charge) to Scafworx:
- (i) adequate foundations for the installation of the Scaffolding that will satisfactorily support the loads to be imposed;
- (ii) sufficient and suitable storage space adjacent to the nominated installation position to allow the depositing of the Scaffolding;
- (iii) suitable site access roads to allow fully laden trucks of the Scaffolding to be transported and positioned adjacent to the nominated installation position;
- (iv) adequate welfare facilities for Scafworx's employees (including, dressing, drying and toilet accommodation) within reasonable distance from the point of the installation position;
- (v) on-site plant and transport to move the Scaffolding between the various nominated installation positions as required;
- (vi) adequate safe storage for the Scaffolding's pallets and bins during the hire period;
- (vii) setting-out engineers, who shall be responsible for the correct location of the temporary structures, inspection and who will accept the handover of the completed Services or parts thereof;
- (viii) acknowledgement of the completion and handover of the Services or parts thereof by signing Scafworx's Handover Certificate, and such handover shall take place following a joint inspection of the Services or parts thereof by both parties.
- (b) The Client shall:
- (i) provide Scafworx a minimum of three (3) full working days' notice to arrange for the installation and/or dismantle of the Scaffolding. The Client will be charged for any dismantle or relocation of the Scaffolding by any other party;
- (ii) ensure all overhead power likely to cause a hazard or adversely affect the installation and removal of the Scaffolding is certified, sheathed or turned off by a registered linesman/electrician prior to commencement thereof;
- (iii) ensure that any temporary works erected by Scafworx are not tampered with, dismantled or subjected to damage through their actions or others for whom they are responsible. Any costs of rectification shall be at the Client's expense.
- Scafworx's Responsibilities:*
- 7.1 Scafworx shall:
- (a) provide all standard safety equipment, such as safety harnesses and other personal protection equipment, for the safe execution of the Services. It shall be the Client's responsibility to supply any special safety equipment that may be required;
- (b) prepare and provide all necessary method statements for the approval by the Client in advance of commencing the Services, or any part thereof;
- (c) provide the necessary contract management staff and site supervision to ensure the proper administration of this contract;
- (d) engage only suitably experienced labour-only subcontractors to undertake the Services under its direct supervision;
- (e) submit daily labour and plant returns as may be required by the Client;
- Limitation of Liability:*
- (a) Ties or fixing may be required to secure the Scaffolding to the building. The Client agrees to indemnify Scafworx against any remedial work required after ties or fixing are removed.
- (b) Scafworx shall exercise reasonable skill and care to ensure that the execution of the Services satisfies the Client's requirements, however Scafworx shall have no liability for any alleged failure to execute the Services arising out of or in connection with:
- (i) any inaccurate, incomplete, conflicting or ambiguous information, drawing, design or specification supplied by the Client and used by Scafworx as the basis for Services to be executed;
- (ii) wilful damage, unless caused by Scafworx;
- (iii) negligence, save for Scafworx's negligence;
- (iv) abnormal working conditions;
- (v) failure of the Client to follow Scafworx's instructions, whether oral or in writing;
- (vi) misuse or alteration or repair of the Scaffolding supplied under this contract without Scafworx's approval; or
- (vii) parts, materials or equipment not being supplied by the Client to Scafworx where the Services are contingent on such supply thereof by the Client.
- (c) The Client shall indemnify and insure Scafworx for:
- (i) any expense, liability, loss, claim or proceedings whatsoever arising under statute or at common law in respect of personal injury to, disease or death caused to the employees of Scafworx or anyone engaged by Scafworx to carry out the Services due to any act or neglect of the Client or the Client's principal, servants, agents or any person for whom the Client is responsible;
- (ii) any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property other than the Services in so far as such injury or damage arises out of or in the course of or by reason of carrying out the Services due to any negligence, act, omission or default of the Client or the Client's principal, servants, agents or any person for whom the Client is responsible.
- (iii) Scafworx in respect of Scafworx's obligations to reinstate loss or damage to the Services, temporary works, materials, equipment (including Scaffolding supplied hereunder) or other property for use in connection therewith for their full reinstatement value from leaving Scafworx's premises until the return of the said Scaffolding and materials and other property to Scafworx's premises.
- 8. Hire Period**
- 8.1 The hire period shall:
- (a) commence from the time the Scaffolding departs from Scafworx's premises, and will continue until the Client phones or emails (to accounts@scafworx.co.nz) Scafworx to confirm that they no longer require the Scaffolding, and/or until the expiry of the Minimum Hire Period, whichever last occurs. Additional charges will apply in the event that the Client requests an extension of the hire period;
- (b) be based on a weekly (being seven (7) days) or monthly (calendar month) cycle.
- 8.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 8.3 No allowance whatever can be made for time during which the Scaffolding is not in use for any reason, unless Scafworx confirms special prior arrangements in writing. In the event of any mechanical malfunction of the Scaffolding, provided the Client notifies Scafworx immediately, Charges will not be payable during the time the Scaffolding is not functional, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
- 9. Client's Obligations:**
- 9.1 The Client shall:
- (a) satisfy itself on Delivery that the Scaffolding is suitable for its purposes;
- (b) inspect the Scaffolding every seven (7) days, and immediately after severe storms or other adverse conditions;
- (c) maintain the Scaffolding as is required by Scafworx;
- (d) notify Scafworx immediately by telephone of the full circumstances of any mechanical malfunction, damage, loss, destruction or accident in connection with the Scaffolding. The Client is not absolved from the requirements to safeguard the Scaffolding by giving such notification;
- (e) use the Scaffolding safely, strictly in accordance with the law (in full compliance with all health and safety regulations relating to their use and any other relevant laws and regulations), only for their intended use, and in accordance with any manufacturer's instruction, whether supplied by Scafworx or posted on the Scaffolding;
- (f) ensure the security and safekeeping of the Scaffolding whilst being used, and that all persons who use the Scaffolding are competent and qualified to use the Scaffolding as required by current Occupational Safety and Health Guidelines;
- (g) keep the Scaffolding in their own possession and control and shall not assign the benefit of this contract nor be entitled to take a lien, or grant any encumbrance over the Scaffolding. This does not prevent the employees of the Client using the Scaffolding;
- (h) not alter or make any additions to the Scaffolding (including, but without limitation, altering, make any additions to, defacing or erasing any identifying mark, plate or number on the Scaffolding), or in any other manner interfere with the Scaffolding, as doing so may undermine the structure and safety of the Scaffolding;
- (i) where wooden planks are used, ensure that no person shall cut, nail or drill into the planks, as in doing so will weaken them and shorten their life;
- (j) ensure that no digging or excavation work is performed near or under the Scaffolding during the erection, or once the Scaffolding is erected;
- (k) employ the Scaffolding solely in their own work and not permit the Scaffolding (or any part thereof) to be used by any other party for any other work;
- (l) not exceed the recommended or legal load and capacity limits of the Scaffolding;
- (m) not use or place any illegal, prohibited or dangerous substance on the Scaffolding;
- (n) not fix the Scaffolding (or any part thereof) in such a manner as to make them legal fixtures forming part of any freehold;
- (o) on termination of the hire, deliver up the Scaffolding, complete with all parts and accessories, clean and in good order, as delivered, fair wear and tear accepted, to Scafworx.
- Immediately on request by Scafworx the Client will pay:
- (a) the new list price of any Scaffolding (or any part thereof) that are, for whatever reason, destroyed, irrecoverable, or not returned to Scafworx;
- (b) all costs incurred in cleaning the Scaffolding (including removing plaster, mortar, cement and/or concrete from the Scaffolding) if the Scaffolding is deemed by Scafworx (at their sole discretion) to be excessively dirty;
- (c) all costs of repairing any damage to the Scaffolding caused by:
- (i) the ordinary use of the Scaffolding up to an amount equal to ten percent (10%) of the new list price of the Scaffolding;
- (ii) caused by the negligence of the Client or the Client's agent;

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- (iii) shall be kept by vandalism, or (in Scafworx's reasonable opinion) in any way whatsoever other than by the ordinary use of the Scaffolding by the Client;
- (d) any lost Charges Scafworx would have otherwise been entitled to for the Scaffolding, under this, or any other hire contract;
- (e) the cost of fuels and consumables provided by Scafworx and used by the Client.
- 10. Title**
- 10.1 The Scaffolding is, and will at all times remain, the absolute property of Scafworx, however the Client accepts full responsibility for:
- (a) the safekeeping of the Scaffolding, and indemnifies Scafworx for all loss, theft, or damage to the Scaffolding, howsoever caused, and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client; and
- (b) shall keep Scafworx indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Scaffolding during the hire period, and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 10.2 The Client will insure, or self-insure, Scafworx's interest in the Scaffolding against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Scaffolding. Further the Client will not use the Scaffolding, nor permit it to be used, in such a manner as would permit an insurer to decline any claim.
- 10.3 The Client is not authorised to pledge Scafworx's credit for repairs to the Scaffolding, or to create a lien over the Scaffolding, in respect of any repairs.
- 10.4 If the Client fails to return the Scaffolding to Scafworx, then Scafworx or Scafworx's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Scaffolding is situated and take possession of the Scaffolding, without being responsible for any damage thereby caused.
- 11. Personal Property Securities Act 1999 ("PPSA")**
- 11.1 Only to the extent that the hire of the Scaffolding exceeds a twelve (12) month hire period (or a six (6) month hire period with the right of renewal) shall clause 11 apply, and this contract a security agreement for the purposes of PPSA generally, and in particular Section 36.
- 11.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all:
- (i) Scaffolding previously supplied, or that will be supplied in the future, by Scafworx to the Client; and
- (ii) the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to Scafworx for Services – that have previously been provided and that will be provided in the future by Scafworx to the Client.
- 11.3 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Scafworx may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Scafworx for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Scaffolding in favour of a third party without the prior written consent of Scafworx.
- 11.4 Scafworx and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.5 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 11.6 Unless otherwise agreed to in writing by Scafworx, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.7 The Client shall unconditionally ratify any actions taken by Scafworx under clauses 11.1 to 11.6.
- 12. Security and Charge**
- 12.1 In consideration of Scafworx agreeing to supply Scaffolding, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Client indemnifies Scafworx from and against all Scafworx's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Scafworx's rights under this clause.
- 12.3 The Client irrevocably appoints Scafworx and each director of Scafworx as the Client's true and lawful attorney/s 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 Client's behalf.
- 13. Defects**
- 13.1 The Client shall inspect the Scaffolding on Delivery and shall within forty-eight (48) hours of such time (being of the essence) notify Scafworx of any alleged defect, shortage in quantity, damage or failure to comply with the description or quotation. The Client shall afford Scafworx an opportunity to inspect the Scaffolding within a reasonable time following such notification if the Client believes the Scaffolding is defective in any way. If the Client shall fail to comply with these provisions the Scaffolding shall be presumed to be free from any defect or damage. For defective Scaffolding, which Scafworx has agreed in writing that the Client is entitled to reject, Scafworx's liability is limited to either (at Scafworx's discretion) replacing the Scaffolding or repairing the Scaffolding.
- 13.2 No warranty is given by Scafworx as to the quality or suitability of the Scaffolding for any purpose, and any implied warranty is expressly excluded. The Client shall indemnify and hold harmless Scafworx in respect of all claims arising out of the use of the Scaffolding.
- 14. Consumer Guarantees Act 1993**
- 14.1 If the Client is acquiring Scaffolding for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Scaffolding by Scafworx to the Client.
- 15. Intellectual Property**
- 15.1 The Client agrees that Scafworx may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Scaffolding (or digital media thereof) which Scafworx has created for, or supplied to, the Client.
- 16. Compliance With Laws**
- 16.1 The Client and Scafworx shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to Scaffolding including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Scaffolding.
- 16.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Scaffolding.
- 16.3 Notwithstanding clause 16.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Scafworx agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety.
- 17. Default and Consequences of Default**
- 17.1 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 Scafworx's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes Scafworx any money the Client shall indemnify Scafworx from and against all costs and disbursements incurred by Scafworx in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Scafworx's collection agency costs, and bank dishonour fees).
- 17.3 Without prejudice to any other remedies Scafworx may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Scafworx may suspend or terminate the supply of Scaffolding to the Client (including repossessing the Scaffolding as per clause 10.4). Scafworx will not be liable to the Client for any loss or damage the Client suffers because Scafworx has exercised its rights under this clause.
- 17.4 Without prejudice to Scafworx's other remedies at law Scafworx shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Scafworx shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Scafworx becomes overdue, or in Scafworx's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 18. Cancellation**
- 18.1 Scafworx may cancel any contract to which these terms and conditions apply, or cancel Delivery at any time before the Scaffolding is delivered, by giving written notice to the Client. On giving such notice Scafworx shall repay to the Client any money paid by the Client for the hire of the Scaffolding. Scafworx shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Client cancels this contract, or Delivery, the Client shall be liable for any and all loss incurred (whether direct or indirect) by Scafworx as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19. Privacy Policy**
- 19.1 All emails, documents, images or other recorded information held or used by Scafworx is Personal Information as defined and referred to in clause 19.3 and therefore considered confidential. Scafworx acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("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" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Scafworx acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Scafworx that may result in serious harm to the Client, Scafworx will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to Scafworx in respect of Cookies where transactions for purchases/orders transpire directly from Scafworx's website. Scafworx agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to Scafworx when Scafworx sends an email to the Client, so Scafworx may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Scafworx's website.
- 19.3 The Client authorises Scafworx or Scafworx's agent to:
- (a) access, collect, retain and use any information about the Client;
- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by Scafworx from the Client directly or obtained by Scafworx from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 19.4 Where the Client is an individual the authorities under clause 19.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.5 The Client shall have the right to request Scafworx for a copy of the Personal Information about the Client retained by Scafworx and the right to request Scafworx to correct any incorrect Personal Information about the Client held by Scafworx.
- 20. Suspension of Services**
- 20.1 Where the Contract is subject to Section 24A Construction Contracts Amendment Act 2015, the Client hereby expressly acknowledges that:
- (a) Scafworx has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client; and
- (i) the payment is not paid in full by the due date for payment in accordance with clause 5.4 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
- (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
- (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Scafworx by a particular date; and
- (iv) Scafworx has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) If Scafworx suspends work, it:
- (i) is not in breach of Contract; and
- (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
- (iii) is entitled to an extension of time to complete the Contract; and
- (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) If Scafworx exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to Scafworx under the Contract and Commercial Law Act 2017; or
- (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Scafworx suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes Scafworx from continuing the Scaffolding or performing or complying with Scafworx's obligations under this Contract, then without prejudice to Scafworx's other rights and remedies, Scafworx may suspend the Scaffolding immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Scaffolding is based. All costs and expenses incurred by Scafworx as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 20.2 If pursuant to any right conferred by this Contract, Scafworx suspends the Scaffolding and the default that led to that suspension continues un-remedied subject to clause 18.1 for at least ten (10) working days, Scafworx shall be entitled to terminate the Contract, in accordance with clause 18.
- 21. Service of Notices**
- 21.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 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.
- 22. Trusts**
- 22.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Scafworx may have notice of the Trust, the Client covenants with Scafworx as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of Scafworx (Scafworx will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 23. General**
- 23.1 The failure by Scafworx to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Scafworx's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 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 Lower Hutt Court of New Zealand.
- 23.3 Scafworx shall be under no liability whatsoever to the Client for any damage to property of any kind, or any economic, indirect and/or consequential loss and/or expense (including loss of profits, business, production and goodwill, etc.) suffered by the Client arising out of a breach by Scafworx of these terms and conditions (alternatively Scafworx's liability to the Client pursuant to these terms and conditions shall be limited to that proportion of the Client's losses which it would be just and equitable to require Scafworx to pay, having regard to the extent of Scafworx's liability of the same. Without prejudice to the aforementioned liability limitations, Scafworx's maximum overall liability under or in connection with this contract shall be limited to a maximum of ten percent (10%) of the total Charges).
- 23.4 Scafworx may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of Scafworx.
- 23.6 Scafworx may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 23.7 The Client cannot licence or assign without the written approval of Scafworx.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.9 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.