

1. Definitions

- 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.
- 1.2 **“Protrade”** means Protrade Group Limited, its successors and assigns or any person acting on behalf of and with the authority of Protrade Group Limited.
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Protrade to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 **“Services”** means all Services supplied by Protrade to the Customer at the Customer’s request from time to time.
- 1.5 **“Incidental Items”** means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by Protrade in the course of it conducting, or supplying to the Customer, any Services.
- 1.6 **“Equipment”** means all Equipment including any accessories supplied on hire by Protrade 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 Protrade to the Customer.
- 1.7 **“Minimum Hire Period”** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Protrade to the Customer.
- 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 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.
- 1.9 **“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 Protrade’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.**
- 1.10 **“Price”** means the Price payable for the Services and/or Equipment hire (plus any Goods and Services Tax (“GST”) where applicable) as agreed between Protrade and the Customer in accordance with clause 6 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Services/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Services/Equipment on credit shall not take effect until the Customer has completed a credit application with Protrade and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services/Equipment requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, Protrade reserves the right to refuse Delivery.
- 2.6 The Customer acknowledges that the rate schedule is available at Protrade’s premises where the hiring took place and that the Customer has had opportunity to check the rates applicable to the hire of the Equipment, whether or not the Customer has done so or not is at the Customer’s discretion.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Protrade 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 Protrade 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 Protrade in respect of the Services.
- 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 Protrade; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Customer agrees that should the Customer introduce any third party to Protrade as the Customer’s duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any materials or Services/Equipment on the Customer’s behalf and/or to request any variation to the Services on the Customer’s behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies Protrade in writing that said person is no longer the Customer’s duly authorised representative).
- 4.2 In the event that the Customer’s duly authorised representative as per clause 4.1 is to have only limited authority to act on the Customer’s behalf then the Customer must specifically and clearly advise Protrade in writing of the parameters of the limited authority granted to their representative.

- 4.3 The Customer specifically acknowledges and accepts that they will be solely liable to Protrade for all additional costs incurred by Protrade (including Protrade's profit margin) in providing any materials, Equipment, Services or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).
- 5. Change in Control**
- 5.1 The Customer shall give Protrade not less than fourteen (14) 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 or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Protrade as a result of the Customer's failure to comply with this clause.
- 6. Price and Payment**
- 6.1 At Protrade's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Protrade to the Customer; or
 - (b) Protrade'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) days.
- 6.2 Protrade reserves the right to change the Price if a variation to Protrade's quotation is requested. Variations will be charged for on the basis of Protrade's quotation, and will be detailed in writing, and shown as variations on Protrade's invoice. The Customer shall be required to respond to any variation submitted by Protrade within ten (10) working days. Failure to do so will entitle Protrade 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.
- 6.3 At Protrade's sole discretion a fifty (50) percent non-refundable deposit may be required.
- 6.4 Time for payment for the Services/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by Protrade, which may be:
- (a) before Delivery of the Services/Equipment;
 - (b) on Delivery of the Services/Equipment;
 - (c) on completion of the Services;
 - (d) 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;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Protrade.
- 6.5 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 Protrade.
- 6.6 Protrade may in its discretion allocate any payment received from the Customer towards any invoice that Protrade determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Protrade may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Protrade, payment will be deemed to be allocated in such manner as preserves the maximum value of Protrade's Purchase Money Security Interest (as defined in the PPSA) in the Services/Equipment.
- 6.7 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 Protrade nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by Protrade is a claim made under the Construction Contracts Act 2002.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Protrade an amount equal to any GST Protrade must pay for any supply by Protrade under this or any other agreement for providing the Services/hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, 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.
- 7. Delivery of Services/Equipment**
- 7.1 Delivery ("**Delivery**") of the Services/Equipment is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Equipment at Protrade's address; or
 - (b) Protrade (or Protrade's nominated carrier) delivers the Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 The delivery docket issued by Protrade shall be considered conclusive evidence that the Equipment delivered was in a good state of repair at the time of delivery.
- 7.3 At Protrade's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 7.4 The Customer must take delivery by receipt or collection of the Equipment whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Equipment as arranged then Protrade shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.5 Delivery of the Services/Equipment to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 7.6 The Customer shall be responsible for free access by Protrade to the site on which the Equipment is located. If there are any delays due to free access not being available then the Customer shall be responsible and shall reimburse Protrade for all lost hire fees associated with the Equipment being unavailable. The Customer shall also be responsible for all other expenses and costs incurred by Protrade due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by Protrade or returned to Protrade's premises.
- 7.7 Any time or date given by Protrade to the Customer is an estimate only. The Customer must still accept delivery of the Services/Equipment even if late and Protrade will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

8. Risk

- 8.1 Irrespective of whether Protrade retains ownership of any Incidental Items all risk for such items shall pass to the Customer as soon as such items are delivered to the Customer and shall remain with the Customer until such time as Protrade may repossess the Incidental Items. The Customer must insure all Incidental Items on or before delivery.
- 8.2 Protrade reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Customer's failure to insure in accordance with clause 8.1.
- 8.3 The Customer shall ensure that Protrade has clear and free access to the site where the Equipment is to be erected at all times to enable them to undertake any Services, Protrade shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Protrade.
- 8.4 The Customer shall ensure the foundations on the site on which the Equipment is to be erected is of sufficient strength and is otherwise suitable to carry the superimposed loads of the Equipment.

9. Compliance With Laws

- 9.1 The Customer and Protrade shall comply with the provisions of all statutes, regulations and bylaws of 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.
- 9.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 9.3 Notwithstanding clause 9.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Protrade agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety.

10. Title

- 10.1 Protrade and the Customer agree that where it is intended that the ownership of Incidental Items is to pass to the Customer that such ownership shall not pass until:
- (a) the Customer has paid Protrade all amounts owing for the Services; and
 - (b) the Customer has met all other obligations due by the Customer to Protrade in respect of all contracts between Protrade and the Customer.
- 10.2 Receipt by Protrade 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 Protrade's ownership or rights in respect of the Incidental Items shall continue.
- 10.3 It is further agreed that:
- (a) the Customer is only a bailee of the Incidental Items and must return the Incidental Items to Protrade immediately upon request by Protrade;
 - (b) the Customer holds the benefit of the Customer's insurance of the Incidental Items on trust for Protrade and must pay to Protrade the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Customer sells, disposes or parts with possession of the Incidental Items then the Customer must hold the proceeds of sale of the Incidental Items on trust for Protrade and must pay or deliver the proceeds to Protrade on demand;
 - (d) the Customer should not convert or process the Incidental Items 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 Protrade and must dispose of or return the resulting product to Protrade as Protrade so directs;
 - (e) the Customer shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of Protrade; and
 - (f) the Customer irrevocably authorises Protrade to enter any premises where Protrade believes the Incidental Items are kept and recover possession of the Incidental Items.

11. Personal Property Securities Act 1999 ("PPSA")

- 11.1 Upon assenting to these terms and conditions in writing the Customer 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 Incidental Items/Equipment and/or collateral (account) – being a monetary obligation of the Customer to Protrade for Services – that have previously been supplied and that will be supplied in the future by Protrade to the Customer.
- 11.2 The Customer 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 Protrade may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Protrade for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items/Equipment charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of Protrade; and
 - (d) immediately advise Protrade of any material change in its business practices of selling Incidental Items which would result in a change in the nature of proceeds derived from such sales.
- 11.3 Protrade and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 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.
- 11.5 Unless otherwise agreed to in writing by Protrade, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Customer shall unconditionally ratify any actions taken by Protrade under clauses 11.1 to 11.5.
- 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.

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- 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.
- 12. Security and Charge**
- 12.1 In consideration of Protrade agreeing to supply the Services/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 its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Customer indemnifies Protrade from and against all Protrade's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising Protrade's rights under this clause.
- 12.3 The Customer irrevocably appoints Protrade and each director of Protrade as the Customer'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 Customer's behalf.
- 13. Consumer Guarantees Act 1993**
- 13.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 14. Defects**
- 14.1 The Customer shall inspect the Services/Equipment on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Protrade of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Protrade an opportunity to inspect the Services/Equipment within a reasonable time following Delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions the Services/Equipment shall be presumed to be free from any defect or damage. For defective Services/Equipment, which Protrade has agreed in writing that the Customer is entitled to reject, Protrade's liability is limited to either (at Protrade's discretion) replacing the Services/Equipment or repairing the Services/Equipment.
- 14.2 Equipment will not be accepted for return for any reason other than those specified in clause 14.1 above (or normal termination of Equipment hire in accordance with the full terms and conditions herein).
- 15. Default and Consequences of Default**
- 15.1 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 Protrade's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Customer owes Protrade any money the Customer shall indemnify Protrade from and against all costs and disbursements incurred by Protrade in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Protrade's collection agency costs, and bank dishonour fees).
- 15.3 Further to any other rights or remedies Protrade may have under this Contract, if a Customer has made payment to Protrade, 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 Protrade under this clause 15, 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.
- 15.4 Without prejudice to Protrade's other remedies at law Protrade shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Protrade shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Protrade becomes overdue, or in Protrade's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Protrade;
 - (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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 16. Cancellation**
- 16.1 Without prejudice to any other remedies Protrade may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Protrade may suspend or terminate the supply of Services/Equipment to the Customer. Protrade will not be liable to the Customer for any loss or damage the Customer suffers because Protrade has exercised its rights under this clause.
- 16.2 Protrade may cancel any contract to which these terms and conditions apply or cancel Delivery of Services/Equipment at any time before the Services/Equipment are delivered by giving written notice to the Customer. On giving such notice Protrade shall repay to the Customer any money paid by the Customer for the Services/Equipment. Protrade shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Customer cancels Delivery of Services/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Protrade as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17. Privacy Policy**
- 17.1 All emails, documents, images or other recorded information held or used by Protrade is Personal Information as defined and referred to in clause 17.3 and therefore considered confidential. Protrade 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" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Protrade acknowledges that in the

event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Protrade that may result in serious harm to the Customer, Protrade will notify the Customer 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 Customer by written consent, unless subject to an operation of law.

17.2 Notwithstanding clause 17.1, privacy limitations will extend to Protrade in respect of Cookies where the Customer utilises Protrade's website to make enquiries. Protrade 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 Customer's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to Protrade when Protrade sends an email to the Customer, so Protrade may collect and review that information ("collectively Personal Information")

If the Customer consents to Protrade's use of Cookies on Protrade's website and later wishes to withdraw that consent, the Customer may manage and control Protrade's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

17.3 The Customer authorises Protrade or Protrade's agent to:

- (a) access, collect, retain and use any information about the Customer;
 - (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 Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by Protrade from the Customer directly or obtained by Protrade 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 Customer.

17.4 Where the Customer is an individual the authorities under clause 17.3 are authorities or consents for the purposes of the Privacy Act 1993.

17.5 The Customer shall have the right to request Protrade for a copy of the Personal Information about the Customer retained by Protrade and the right to request Protrade to correct any incorrect Personal Information about the Customer held by Protrade.

18. Service of Notices

18.1 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.

18.2 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.

19. Trusts

19.1 If the Customer 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 Protrade may have notice of the Trust, the Customer covenants with Protrade as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (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 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 Customer will not without consent in writing of Protrade (Protrade will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer 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.

20. Suspension of Services

20.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Customer hereby expressly acknowledges that:

- (a) Protrade 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 Customer, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer; or
 - (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
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Protrade by a particular date; and
 - (iv) Protrade has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if Protrade 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 Customer or by any person claiming through the Customer; 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 Protrade exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to Protrade under the Contract and Commercial Law Act 2017; or
 - (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 Protrade suspending work under this provision;
- (d) due to any act or omission by the Customer, the Customer effectively precludes Protrade from continuing the Services or performing or complying with Protrade's obligations under this Contract, then without prejudice to Protrade's other rights and remedies, Protrade may suspend the Services immediately after serving on the Customer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by Protrade as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
- 20.2 If pursuant to any right conferred by this Contract, Protrade suspends the Services and the default that led to that suspension continues unremedied subject to clause 15.1 for at least ten (10) working days, Protrade shall be entitled to terminate the Contract, in accordance with clause 15.

21. General

- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 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 Hastings Courts, New Zealand.
- 21.3 Protrade 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 arising out of a breach by Protrade of these terms and conditions (alternatively Protrade's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services/Equipment hire).
- 21.4 Protrade may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 21.5 The Customer cannot licence or assign without the written approval of Protrade.
- 21.6 Protrade may elect to subcontract out 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 Protrade's sub-contractors without the authority of Protrade.
- 21.7 The Customer agrees that Protrade 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 Protrade to provide Services/Equipment to the Customer.
- 21.8 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.
- 21.9 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.

Additional Terms & Conditions Applicable to Hire Only

22. Hire Period

- 22.1 The Equipment Hire Period operates on a per calendar day. All hire will be charged on a day-out to day-in basis. Hire charges shall commence from the time the Equipment is collected by the Customer from Protrade's premises and will continue until the return of the Equipment to Protrade's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 22.2 If Protrade agrees with the Customer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves Protrade's premises and continue until the Customer notifies Protrade on the day the hire ceases that the Equipment is available for collection. Notification is to be made by telephone to Protrade by the Customer when the Equipment is ready for collection. Return time is to be no later than 5 pm during weekdays or Protrade shall be entitled to charge another day's full hire at the current rate. Delivery and collection shall be to the front footpath of the Customer's premises.
- 22.3 The commencement of the Hire period shall be documented on the delivery docket issued by Protrade and the conclusion of the Hire period shall be documented on the return docket issued by Protrade.
- 22.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Protrade confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies Protrade immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.

23. Risk to Equipment

- 23.1 Protrade retains property in the Equipment nonetheless all risk for the Equipment passes to the Customer on Delivery.
- 23.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Protrade for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer.
- 23.3 The Customer will insure, or self insure, Protrade's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the 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.

23.4 The Customer accepts full responsibility for and shall keep Protrade 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 during the hire period however arising and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

24. Title to Equipment

24.1 The Equipment is and will at all times remain the absolute property of Protrade.

24.2 If the Customer fails to return the Equipment to Protrade then Protrade or Protrade's agent may (as the invitee 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.

24.3 The Customer is not authorised to pledge Protrade's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

25. Customer's Responsibilities

25.1 The Customer shall:

- (a) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (b) notify Protrade immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (c) maintain the Equipment as is required by Protrade (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);
- (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Protrade or posted on the Equipment;
- (e) ensure that:
 - (i) all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to Protrade upon request;
 - (ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (iii) all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use.
- (f) 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 Protrade relating to any such matters or occurrences.
- (g) comply with all workplace health and safety laws relating to the Equipment and its operation;
- (h) on 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 Protrade;
- (i) refuel the Equipment prior to its return from hire. In the event the Equipment needs to be refuelled upon its return from hire then the costs of refuelling shall be charged to the Customer in addition to the costs of the Equipment hire;
- (j) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
- (k) employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any other party for any other work;
- (l) indemnify and hold harmless Protrade in respect of all claims arising out of the Customer's use of the Equipment.

25.2 The Customer shall not:

- (a) alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (b) exceed the recommended or legal load and capacity limits of the Equipment;
- (c) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (d) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.

25.3 Immediately on request by Protrade the Customer will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Protrade;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment up to an amount equal to the new list price of the Equipment;
 - (ii) the negligence of the Customer or the Customer's agent;
 - (iii) vandalism, or (in Protrade's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer.
- (d) the cost of fuels and consumables provided by Protrade and used by the Customer;
- (e) any:
 - (i) lost hire fees Protrade would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (ii) costs incurred by Protrade in picking up and returning the Equipment to Protrade's premises if the Customer does not return the Equipment to Protrade's premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so;
 - (iii) insurance excess payable in relation to a claim made by either the Customer or Protrade in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or Protrade's.