

## 1. Definitions

- 1.1 "BliXm" means BliXm Ltd, its successors and assigns or any person acting on behalf of and with the authority of BliXm Ltd.
- 1.2 "Client" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by BliXm to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by BliXm to the Client (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 BliXm to the Client.
- 1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by BliXm to the Client.
- 1.6 "Price" means the Price payable for the Goods/Equipment hire as agreed between BliXm 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 or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with BliXm's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and BliXm.
- 2.3 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. Authorised Representatives

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

## 4. Change in Control

- 4.1 The Client shall give BliXm 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 BliXm as a result of the Client's failure to comply with this clause.

## 5. Price and Payment

- 5.1 At BliXm's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by BliXm to the Client; or
  - (b) the Price as at the date of delivery of the Goods/Equipment according to BliXm's current price list; or
  - (c) BliXm's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
  - (d) the Price shall take into consideration any one-off or set-up costs associated with the Services; and
  - (e) BliXm shall reserve the right to implement a surcharge for alterations to specifications, or changes in design or Goods if such alterations or changes are requested by the Client after an order has already been placed with BliXm to provide the Services.
- 5.2 BliXm reserves the right to change the Price:
  - (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by a third party not being completed, steel price fluctuations, delays in delivery of raw materials, change of design, hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to BliXm in the cost of labour or Goods (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 BliXm's control.
- 5.3 At BliXm's sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by BliXm, which may be:
  - (a) on delivery of the Goods/Equipment;
  - (b) before delivery of the Goods/Equipment;
  - (c) by way of instalments/progress payments in accordance with BliXm's payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods ordered or delivered to the site but not yet installed or erected;
  - (d) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (e) failing any notice to the contrary, the date specified on any invoice or other form as being the date for payment.
- 5.5 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Client and BliXm.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to BliXm an amount

equal to any GST Blixm must pay for any supply by Blixm under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.

## 6. Delivery of Goods/Equipment

- 6.1 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at Blixm's address; or
  - (b) Blixm (or Blixm's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 6.2 At Blixm's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then Blixm shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.
- 6.4 Blixm may 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.
- 6.5 Any time specified by Blixm for Delivery, Return and any other Services are an estimate only and Blixm will not be liable for any loss or damage incurred by the Client as a result of any delay (including where due to inclement weather). However both parties agree that they shall make every endeavour to enable the Equipment and/or Services to be supplied at the time and place as was arranged between both parties. In the event that Blixm is unable to supply the Equipment and/or Services as agreed solely due to any action or inaction of the Client then Blixm shall be entitled to charge a reasonable fee for re-supplying the Equipment and/or Services at a later time and date.

## 7. Risk to Goods

- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Blixm is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Blixm is sufficient evidence of Blixm's rights to receive the insurance proceeds without the need for any person dealing with Blixm to make further enquiries.
- 7.3 If the Client requests Blixm to leave Goods outside Blixm's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 7.4 Where the Client has supplied materials for Blixm to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Blixm shall not be responsible for any defects in the materials, any loss or damage to the Services (or any part thereof), howsoever arising from the use of materials supplied by the Client.

## 8. Specifications

- 8.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in Blixm's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Blixm;
  - (b) while Blixm may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that Blixm has given these in good faith, and are estimates based on industry prescribed estimates.
- 8.2 The Client shall be responsible for ensuring that the Services ordered are suitable for their intended use.

## 9. Accuracy of Client's Plans and Measurements

- 9.1 Blixm shall be entitled to rely on the accuracy of any plans, specifications, electronic files, drawings and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Blixm accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 Blixm shall be entitled to rely on any electronic drawing files to be based on a 1:1 metric scale. Where the scale is not at this ratio, the Client must inform Blixm prior to the commencement of the Services.
- 9.3 In the event the Client gives information relating to measurements and quantities of Goods required in completing the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Blixm places an order based on these measurements and quantities. Blixm accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

## 10. Scrap Metal

- 10.1 Unless otherwise stated elsewhere in this agreement, any scrap or surplus metal shall remain the property of Blixm.

## 11. Access and Installation

- 11.1 The Client shall ensure that Blixm has clear and free access to the nominated delivery address to enable Blixm to install and/or dismantle the Equipment, and Blixm agrees at the time of completion thereof to carry out in a reasonable way the clean-up of the site where scaffolding was installed. Furthermore, it is acknowledged that it is unreasonable to expect the clean-up to restore the property to its pre-existing condition, especially in the event where existing grass has died off due to the covering of base blocks to establish foundation support for the Equipment, such damage will remain the Client's responsibility.
- 11.2 It shall be the Client's responsibility to ensure that where Equipment is installed on concreted areas, patios, driveways, timber decks, lower level roof areas or other structures that suitable coverings are put in place to help prevent any marking/staining of the finished product. Blixm shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways, lower level roofs, and concreted or paved or grassed areas) unless due to the negligence of Blixm.

- 11.3 The Client shall ensure that the nominated delivery address is cleared and ready for installation of the Equipment prior to delivery of the Equipment, and that the foundations upon which Blixm is to install the Equipment is sufficiently firm and otherwise suitable to safely carry the structure and the load to be put on it without subsidence. The Client will be liable to Blixm for any loss, costs or damages which Blixm may suffer or incur by reason of the Client's failure to carry out its obligations hereunder if Blixm is unable or unwilling to install the Equipment due to the site not being cleared and ready as aforesaid. Nevertheless, the Client shall be liable to pay the costs on the hire of the Equipment on the terms stated herein.
- 11.4 Where the Equipment is not installed by Blixm, the Client shall ensure that Equipment is erected and dismantled by qualified persons. A suitable qualified person shall be the holder of any certificate of competency or license that may be required by any legislation or local regulatory authority for the purpose of the erection or the dismantling of the Equipment.

## 12. Underground Locations

- 12.1 Prior to Blixm commencing any work the Client must advise Blixm of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 12.2 Whilst Blixm will take all care to avoid damage to any underground services the Client agrees to indemnify Blixm 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 clause 12.1.

## 13. Compliance with Laws

- 13.1 The Client and Blixm 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 occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 13.2 Blixm has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, Blixm shall not be the person who controls the place of work in terms of the HSW Act.
- 13.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

## 14. Title to Goods

- 14.1 Blixm and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Blixm all amounts owing to Blixm; and
  - (b) the Client has met all of its other obligations to Blixm.
- 14.2 Receipt by Blixm 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.
- 14.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Goods and must return the Goods to Blixm on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Blixm and must pay to Blixm the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Blixm and must pay or deliver the proceeds to Blixm on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Blixm and must sell, dispose of or return the resulting product to Blixm as it so directs.
  - (e) the Client irrevocably authorises Blixm to enter any premises where Blixm believes the Goods are kept and recover possession of the Goods.
  - (f) Blixm may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Client 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 Blixm.
  - (h) Blixm may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

## 15. Personal Property Securities Act 1999 ("PPSA")

- 15.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Client to Blixm for Services – that have previously been supplied and that will be supplied in the future by Blixm to the Client.
- 15.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Blixm may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Blixm for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Blixm; and
  - (d) immediately advise Blixm 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.
- 15.3 Blixm and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

15.5 Unless otherwise agreed to in writing by Blixm, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

15.6 The Client shall unconditionally ratify any actions taken by Blixm under clauses 15.1 to 15.5.

## 16. Security and Charge

16.1 In consideration of Blixm agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, 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).

16.2 The Client indemnifies Blixm from and against all Blixm's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Blixm's rights under this clause.

16.3 The Client irrevocably appoints Blixm and each director of Blixm as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

## 17. Defects

17.1 The Client shall inspect the Goods/Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify Blixm of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Blixm an opportunity to inspect the Goods/Equipment within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client 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 Blixm has agreed in writing that the Client is entitled to reject, Blixm's liability is limited to either (at Blixm's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.

## 18. Returns Of Goods

18.1 Returns of Goods will only be accepted provided that:

(a) the Client has complied with the provisions of clause 17.1; and

(b) Blixm has agreed in writing to accept the return of the Goods; and

(c) the Goods are returned at the Client's cost within forty-eight (48) hours of the delivery date; and

(d) Blixm will not be liable for Goods which have not been stored or used in a proper manner; and

(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.

18.2 Blixm may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty-five percent (25%) of the value of the returned Goods plus any freight.

18.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

## 19. Warranty

19.1 For Goods not manufactured by Blixm, the warranty shall be the current warranty provided by the manufacturer of the Goods. Blixm shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

19.2 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Blixm as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Blixm shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

## 20. Intellectual Property

20.1 Where Blixm has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of Blixm.

20.2 The Client warrants that all designs, specifications or instructions given to Blixm will not cause Blixm to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Blixm against any action taken by a third party against Blixm in respect of any such infringement.

20.3 The Client agrees that Blixm may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which Blixm has created for the Client.

## 21. Default and Consequences of Default

21.1 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 Blixm's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

21.2 If the Client owes Blixm any money the Client shall indemnify Blixm from and against all costs and disbursements incurred by Blixm in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Blixm's collection agency costs, and bank dishonour fees).

21.3 Further to any other rights or remedies Blixm may have under this contract, if a Client has made payment to Blixm, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Blixm under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

21.4 Without prejudice to any other remedies Blixm may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Blixm may suspend or terminate the supply of Goods/Equipment to the Client. Blixm will not be liable to the Client for any loss or damage the Client suffers because Blixm has exercised its rights under this clause.

21.5 Without prejudice to Blixm's other remedies at law Blixm shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Blixm shall, whether or not due for payment, become immediately payable if:

(a) any money payable to Blixm becomes overdue, or in Blixm'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.

## 22. Cancellation

- 22.1 Blixm may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice Blixm shall repay to the Client any money paid by the Client for the Goods/Equipment. Blixm shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.2 In the event that the Client cancels delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by Blixm as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.3 If the Client cancels the Goods/Equipment for which Blixm is providing its Services then the Client shall be liable to Blixm for any losses or costs incurred by Blixm (including, but not limited to, any loss of profits) up to the time of, or as a result of the cancellation, notwithstanding that at Blixm's sole discretion:
  - (a) a minimum cancellation Fee of five hundred dollars (\$500.00) may be applicable; or
  - (b) if the Client cancels giving less than seven (7) days notices from the scheduled dismantling / part installation / part dismantling / alteration or any booked Service, a cancellation fee of up to thirty percent (30%) of the Price may be applicable.
- 22.4 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

## 23. Privacy Act 1993

- 23.1 The Client authorises Blixm or Blixm's agent to:
  - (a) access, collect, retain and use any information about the Client;
    - (i) (including 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 Blixm from the Client directly or obtained by Blixm 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.
- 23.2 Where the Client is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.3 The Client shall have the right to request Blixm for a copy of the information about the Client retained by Blixm and the right to request Blixm to correct any incorrect information about the Client held by Blixm.

## 24. Unpaid Seller's Rights

- 24.1 Where the Client has left any item with Blixm for repair, modification, exchange or for Blixm to perform any other service in relation to the item and Blixm has not received or been tendered the whole of any moneys owing to it by the Client, Blixm shall have, until all moneys owing to Blixm are paid:
  - (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 24.2 The lien of Blixm shall continue despite the commencement of proceedings, or judgment for any moneys owing to Blixm having been obtained against the Client.

## 25. Dispute Resolution

- 25.1 All disputes and differences between the Client and Blixm touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

## 26. Construction Contracts Act 2002

- 26.1 The Client hereby expressly acknowledges that:
  - (a) Blixm 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 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 Blixm by a particular date; and
    - (iv) Blixm has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
  - (b) if Blixm 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 Blixm exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to Blixm under the Contractual Remedies Act 1979; 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 Blixm suspending work under this provision.



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## **27. General**

- 27.1 The failure by Blixm to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Blixm'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.
- 27.2 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 courts of Tauranga, New Zealand.
- 27.3 Blixm shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Blixm of these terms and conditions (alternatively Blixm's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 27.4 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 Blixm nor to withhold payment of any invoice because part of that invoice is in dispute.
- 27.5 The Client hereby disclaims any right to rescind, or cancel any contract with Blixm or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Blixm and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
- 27.6 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 27.7 Blixm may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 27.8 The Client agrees that Blixm may amend these terms and conditions at any time. If Blixm makes a change to these terms and conditions, then that change will take effect from the date on which Blixm notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Blixm to provide Goods/Equipment to the Client.
- 27.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.10 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

## **Additional Terms & Conditions Applicable to Hire Only**

### **28. Hire Period**

- 28.1 Hire Charges shall:
- (a) commence from the time the Equipment is delivered to the Client or collected from Blixm's premises, and will continue until the Equipment is collected by Blixm or returned to Blixm's premises, 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; and
- (b) be based on a weekly (seven (7) days or less) or monthly (calendar month) cycle.
- 28.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 28.3 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless Blixm confirms special prior arrangements in writing. In the event of Equipment breakdown, provided the Client notifies Blixm immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

### **29. Risk to Equipment**

- 29.1 Blixm retains property in the Equipment nonetheless; all risk for the Equipment passes to the Client on Delivery.
- 29.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Blixm for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 29.3 The Client will insure, or self-insure, Blixm's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 29.4 The Client accepts full responsibility for and shall keep Blixm indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 29.5 Any advice, recommendation, information, assistance or service provided by Blixm in relation to Equipment supplied is given in good faith, is based on Blixm's own knowledge and experience and shall be accepted without liability on the part of Blixm and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Equipment.

### **30. Title to Equipment**

- 30.1 The Equipment is and will at all times remain the absolute property of Blixm.
- 30.2 If the Client fails to return the Equipment to Blixm, or in the event of any circumstances that may arise which (in the opinion of Blixm) may be prejudicial to their interests, or where Blixm believes that the Equipment is at risk for any reason (including the manner of use by the Client, weather conditions, etc.), then Blixm, or Blixm's agent, may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 30.3 The Client is not authorised to pledge Blixm's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

## 31. Client's Responsibilities

- 31.1 The Client shall:
- (a) satisfy itself prior to taking possession of the Equipment that the Equipment is suitable for its purposes;
  - (b) ensure adequate foundations for the erection of the Equipment that will satisfactorily support the loads to be imposed;
  - (c) maintain the Equipment as is required by Blixm (including, but not limited to, ensuring that the Equipment is not loaded with materials or equipment which exceeds the load rating of the Equipment, or damaged by materials such as cement, plaster, or chemicals);
  - (d) inspect the Equipment every seven (7) days, and immediately after severe storms or other adverse conditions;
  - (e) notify Blixm immediately by telephone of the full circumstances of any mechanical breakdown or accident in connection with the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - (f) use the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by Blixm or posted on the Equipment;
  - (g) not alter or modify the Equipment in any way;
  - (h) 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;
  - (i) ensure that 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 relevant scaffolding training certification;
  - (j) comply with all occupational health and safety laws relating to the Equipment and its operation;
  - (k) keep the Equipment in their own possession and control;
  - (l) not 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;
  - (m) employ the Equipment solely in its own work and not permit the Equipment or any part thereof to be used by any other party for any other work;
  - (n) not exceed the recommended or legal load and capacity limits of the Equipment;
  - (o) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
  - (p) on termination of the hire, deliver (or make available for collection by Blixm in accordance with their pre-arrangements) the Equipment, complete with all parts and accessories clean, oiled and in a condition at least equal to when it was dispatched from Blixm's premises, fair wear and tear excepted, the assessment of which condition shall be made solely by Blixm.
- 31.2 Immediately on request by Blixm the Client will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off, or not returned to Blixm;
  - (b) all costs incurred in cleaning the Equipment (including removing plaster, mortar, cement and/or concrete from the Equipment) if the Equipment is deemed by Blixm (at their sole discretion) to be excessively dirty;
  - (c) all costs of repairing any damage to the Equipment caused by:
    - (i) the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
    - (ii) caused by the negligence of the Client or the Client's agent;
    - (iii) caused by vandalism, or (in Blixm's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
  - (d) any lost Hire Charges Blixm would have otherwise been entitled to for the Equipment, under this, or any other agreement;
  - (e) the cost of fuels and consumables provided by Blixm and used by the Client.
- 31.3 In the event that Blixm or Blixm's employee is installing the Equipment, Blixm shall not be liable for any actions of the installer in following the Client's instructions.