

Motueka Farm Machinery Limited – Terms & Conditions of Trade

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 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting MFM 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.
- 1.3 **“Goods”** means all Goods (including parts, oils, fuels and consumables) or Services supplied by MFM to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 **“Equipment”** means all Equipment including any accessories supplied on hire by MFM 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 MFM to the Customer.
- 1.5 **“MFM”** means Motueka Farm Machinery Limited, its successors and assigns.
- 1.6 **“Price”** means the Price payable for the Goods/Equipment hire (plus any Goods and Services Tax (“GST”) where applicable) as agreed between MFM and the Customer in accordance with clause 7 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 Goods/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 and accepts that:
- (a) The supply of Goods/Equipment on credit shall not take effect until the Customer has completed a credit application with MFM and it has been approved with a credit limit established for the account; and
 - (b) In the event that the supply of Goods/Equipment requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, MFM reserves the right to refuse Delivery; and
 - (c) MFM will supply all relevant documentation (at the time of Delivery) pertaining to the Goods and the use thereof, including any manufacturer’s operating/safety guidelines. MFM accepts no responsibility for any loss, damage, injury or death which may be incurred as a result of the Customer’s failure to follow the safety/operating guidelines provided by MFM or manufacturer.
- 2.5 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 MFM 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 MFM 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 MFM 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 MFM; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Finance

- 4.1 If this Contract is conditional upon the Client obtaining capital funding from a financial institution then they shall provide MFM with written confirmation of the loan approval within five (5) working days of the date of signing this Contract.
- 4.2 In the event any such loan application is declined then the Client shall have the right to withdraw from this Contract subject to the Client providing MFM with written evidence within five (5) working days of the date of signing this contract that the loan was declined. Upon receipt of such evidence MFM shall refund the Client any deposit paid less any expenses incurred by MFM for any Services performed to date.

5. Trade-ins

- 5.1 In the event that MFM accepts a trade-in as part payment of purchase, Goods or machinery outright, then the Client acknowledges and warrants that he/she owns the said property and that it is not in any subject to any security, charge, lien or hire purchase agreement.
- 5.2 All trade-in items will be subject to a full inspection prior to a trade-in value being established.

6. Change in Control

- 6.1 The Customer shall give MFM 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 MFM as a result of the Customer’s failure to comply with this clause.

7. Price and Payment

- 7.1 At MFM’s sole discretion the Price shall be either:
- (a) As indicated on any invoice provided by MFM to the Customer; or
 - (b) MFM estimated Price (subject to clause 7.2) which shall not be deemed binding upon MFM as the actual Price can only be determined upon completion of the Services. MFM undertakes to keep the Customer informed should the actual Price look likely to exceed the original estimate; or

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- (c) MFM's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 MFM 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) If during the course of the Services, the Goods cease to be available from MFM's third party suppliers, then MFM reserves the right to provide alternative Goods; or
 - (d) Where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, obscured defects found on closer inspection, extra diagnostic tests required, etc.) which are only discovered on commencement of the Services; or
 - (e) In the event of increases to MFM in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond MFM's control.
- 7.3 Variations will be charged for on the basis of MFM's quotation, and will be detailed in writing, and shown as variations on MFM's invoice. The Customer shall be required to respond to any variation submitted by MFM within ten (10) working days. Failure to do so will entitle MFM 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.
- 7.4 At MFM's sole discretion a non-refundable deposit may be required.
- 7.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by MFM, which may be:
- (a) On, or before commencement of the Services and/or Delivery of the Goods/Equipment;
 - (b) By way of instalments/progress payments in accordance with MFM's payment schedule;
 - (c) Payment for approved Customer's shall be 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;
 - (d) The date specified on any invoice or other form as being the date for payment; or
 - (e) Failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by MFM.
- 7.6 MFM may in its discretion allocate any payment received from the Customer towards any invoice that MFM determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer MFM may re-allocate any payments previously received and allocated. In the absence of any payment allocation by MFM, payment will be deemed to be allocated in such manner as preserves the maximum value of MFM's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 7.7 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Customer and MFM.
- 7.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by MFM nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to MFM an amount equal to any GST MFM must pay for any supply by MFM under this or any other agreement for the sale of the Goods. 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.
- 8. Delivery of Goods/Equipment**
- 8.1 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that:
- (a) The Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at MFM's address; or
 - (b) MFM (or MFM's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 8.2 At MFM's sole discretion the cost of Delivery is included in the Price.
- 8.3 Any time specified by MFM for Delivery of the Goods/Equipment is an estimate only and MFM will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that MFM is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Customer, then MFM shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 9. Risk**
- 9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, MFM is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by MFM is sufficient evidence of MFM's rights to receive the insurance proceeds without the need for any person dealing with MFM to make further enquiries.
- 9.3 If the Customer requests MFM to leave Goods outside MFM's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 9.4 In the event the Customer requests MFM to work on a machine, and leaves the machine and/or the keys at MFM's premises whilst the site is unattended, then MFM shall not be responsible for the security of the machine or the keys, and shall not be held liable for any loss, damages or costs howsoever resulting.
- 9.5 The Customer acknowledges and agree that where MFM has performed temporary repairs on the machine that:
- (a) MFM offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) MFM will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
- 9.6 The Customer acknowledges that MFM is only responsible for parts that are replaced by MFM and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify MFM against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 9.7 The Customer acknowledges that it is their sole responsibility to ensure the machinery is insured adequately or at all.

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9.8 MFM shall not be liable for the loss of or damage to the machinery, its accessories or contents while garaged or being driven in connection with the work authorised unless caused by the negligence of MFM or MFM's employees.

10. Specifications

10.1 The Customer acknowledges that:

- (a) All descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in MFM's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer 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 MFM;
- (b) While MFM may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that MFM has given these in good faith, and are estimates based on being operated under optimal conditions.

11. Testing of Machinery

11.1 MFM or its employees may test drive or carry out tests on the machinery at MFM's discretion and may if requested by the Customer collect or re-deliver the machinery when nominated by the Customer. MFM will not be liable for (and the Customer indemnifies MFM against) any damages caused to, or by, the machinery during such tests, collecting or delivery unless it arises from the recklessness or wilful misconduct of MFM or its employees.

12. Title to Goods

12.1 MFM and the Customer agree that ownership of the Goods shall not pass until:

- (a) The Customer has paid MFM all amounts owing to MFM; and
- (b) The Customer has met all of its other obligations to MFM.

12.2 Receipt by MFM 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.

12.3 It is further agreed that:

- (a) Until ownership of the Goods passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Goods and must return the Goods to MFM on request;
- (b) The Customer holds the benefit of the Customer's insurance of the Goods on trust for MFM and must pay to MFM the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) The Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for MFM and must pay or deliver the proceeds to MFM on demand;
- (d) The Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of MFM and must sell, dispose of or return the resulting product to MFM as it so directs;
- (e) The Customer irrevocably authorises MFM to enter any premises where MFM believes the Goods are kept and recover possession of the Goods;
- (f) MFM may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) The Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of MFM; and
- (h) MFM may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

13.1 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 Goods/Equipment that have previously been supplied and that will be supplied in the future by MFM to the Customer, and the proceeds from such Goods/Equipment.

13.2 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 MFM may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) Indemnify, and upon demand reimburse, MFM 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/Equipment or the proceeds of such Goods/Equipment in favour of a third party without the prior written consent of MFM; and
- (d) Immediately advise MFM 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.

13.3 MFM and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

13.5 Unless otherwise agreed to in writing by MFM, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

13.6 The Customer shall unconditionally ratify any actions taken by MFM under clauses 13.1 to 13.5.

13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 13 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 13 will apply generally for the purposes of the PPSA.

14. Security and Charge

- 14.1 In consideration of MFM agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 14.2 The Customer indemnifies MFM from and against all MFM's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MFM's rights under this clause.
- 14.3 The Customer irrevocably appoints MFM and each director of MFM as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.

15. Defects

- 15.1 The Customer shall inspect the Goods/Equipment on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify MFM of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford MFM an opportunity to inspect the Goods/Equipment within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which MFM has agreed in writing that the Customer is entitled to reject, MFM's liability is limited to either (at MFM's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 15.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 15.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).

16. Return of Goods

- 16.1 Returns of Goods will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 15.1; and
 - (b) MFM has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Customer's cost within fourteen (14) days of the Delivery date; and
 - (d) MFM 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.
- 16.2 MFM will not accept the return of Goods for credit. MFM may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.
- 16.3 Subject to clause 15.1, Goods made to special order, the Customer's specifications or procured overseas, or non-catalogue Goods are under no circumstances acceptable for credit or return.

17. Warranty

- 17.1 Subject to the conditions of warranty set out in clause 17.2, MFM warrants that from the date of Delivery and/or completion of the Services, if any defect in any Goods manufactured or Services provided by MFM becomes apparent and is reported to MFM (time being of the essence) within :
- (a) Twelve (12) months on all repair and maintenance Services; or
 - (b) Two (2) years or twenty thousand kilometres (20,000km), whichever occurs first, on all new Goods; or
 - (c) Four (4) years or forty thousand kilometres (40,000km), whichever occurs first, on all new Goods, where an extended warranty is taken; MFM will then either (at MFM's sole discretion) replace or remedy the workmanship. However, in respect of all claims, MFM shall not be liable to compensate the Customer for any **delay** in:
 - (a) either replacing or remedying the workmanship; or
 - (b) properly assessing the Customer's claim.
- 17.2 The conditions applicable to the warranty given by Clause **Error! Reference source not found.** are:
- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) Failure on the part of the Customer to properly maintain any Goods or serviced item; or
 - (ii) Failure on the part of the Customer to follow any instructions or guidelines provided by MFM; or
 - (iii) Any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
 - (iv) The continued use of any Goods or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) Fair wear and tear, any accident or act of God.
 - (b) The warranty shall cease and MFM shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without MFM's consent.
 - (c) In respect of all claims MFM shall not be liable to compensate the Customer for any delay in either replacing or remedying the defective Goods or serviced item or in properly assessing the Customer's claim.
- 17.3 For Goods not manufactured by MFM, the warranty shall be the current warranty provided by the manufacturer of the Goods. MFM 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.
- 17.4 The conditions applicable to any warranty given on Goods supplied by MFM are contained on the "Warranty Documentation" that will be supplied with the Goods.
- 17.5 In the case of second hand Goods, the Customer acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by MFM as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. MFM shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 17.6 Where MFM are acting on behalf of the legal owner of second hand Goods, such items are being sold free and clear of all claims and encumbrances, and that MFM has full right and authority to sell and transfer the same, and will protect and indemnify the Customer from all

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claims adverse thereto. Second hand Goods sold on behalf are being sold “as is” without any express or implied warranty as to the condition or working order.

18. Consumer Guarantees Act 1993

18.1 This Contract is subject to the provisions the Consumer Guarantees Act 1993 (“CGA”) in all cases except where the Customer is not contracting as a consumer within the meaning of the CGA.

19. Intellectual Property

- 19.1 Where MFM has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of MFM. Under no circumstances may such designs, drawings and documents be used without the express written approval of MFM.
- 19.2 The Customer warrants that all designs, specifications or instructions given to MFM will not cause MFM to infringe any patent, registered design or trademark in the execution of the Customer’s order and the Customer agrees to indemnify MFM against any action taken by a third party against MFM in respect of any such infringement.
- 19.3 The Customer agrees that MFM may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which MFM has created for the Customer.

20. Default and Consequences of Default

- 20.1 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 MFM’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Customer owes MFM any money the Customer shall indemnify MFM from and against all costs and disbursements incurred by MFM in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MFM’s collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies MFM may have under this Contract, if a Customer has made payment to MFM, 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 MFM under this clause 20, 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.
- 20.4 Without prejudice to MFM’s other remedies at law MFM shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to MFM shall, whether or not due for payment, become immediately payable if:
- (a) Any money payable to MFM becomes overdue, or in MFM’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 MFM;
 - (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.

21. Cancellation

- 21.1 Without prejudice to any other remedies MFM may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions MFM may suspend or terminate the supply of Goods/Equipment to the Customer. MFM will not be liable to the Customer for any loss or damage the Customer suffers because MFM has exercised its rights under this clause.
- 21.2 MFM 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 due to be delivered by giving written notice to the Customer. On giving such notice MFM shall repay to the Customer any money paid by the Customer for the Goods/Equipment. MFM shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Customer cancels Delivery of the Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by MFM as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 Cancellation of orders for Goods will definitely not be accepted once a sales order contract has been signed by the Customer except at the express written approval of MFM, or as required by section 345(1)(i) of the Contract and Commercial Law Act 2017 (2017 No 5). Where it is agreed that an order may be cancelled then the Customer shall become liable for any loss incurred by MFM as a direct result of the cancellation.
- 21.5 Cancellation of orders for Goods made to the Customer’s specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Privacy Policy

- 22.1 All emails, documents, images or other recorded information held or used by MFM is “Personal Information” as defined and referred to in clause 22.3 and therefore considered confidential. MFM acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 (“the Act”) including Part II of the OECD Guidelines and as set out in the Act. MFM acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer’s Personal Information, held by MFM that may result in serious harm to the Customer, MFM will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to MFM in respect of cookies where the Customer utilises MFM’s website to make enquiries. MFM 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

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- (c) Reports are available to MFM when MFM sends an email to the Customer, so MFM may collect and review that information (“collectively Personal Information”)
- If the Customer consents to MFM’s use of cookies on MFM’s website and later wishes to withdraw that consent, the Customer may manage and control MFM’s privacy controls via the Customer’s web browser, including removing cookies by deleting them from the browser history when exiting the site.
- 22.3 The Customer authorises MFM or MFM’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 MFM from the Customer directly or obtained by MFM 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.
- 22.4 Where the Customer is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 22.5 The Customer shall have the right to request (by e-mail) from MFM, a copy of the Personal Information about the Customer retained by MFM and the right to request that MFM correct any incorrect Personal Information.
- 22.6 MFM will destroy Personal Information upon the Customer’s request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 22.7 The Customer can make a privacy complaint by contacting MFM via e-mail. MFM will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 23. Service of Notices**
- 23.1 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.
- 23.2 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.
- 24. General**
- 24.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator’s fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 24.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party’s right to 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.
- 24.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Nelson Courts of New Zealand.
- 24.4 Subject to the CGA, MFM 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 MFM of these terms and conditions (alternatively MFM’s liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 24.5 MFM may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer’s consent.
- 24.6 The Customer cannot licence or assign without the written approval of MFM.
- 24.7 MFM 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 MFM’s subcontractors without the authority of MFM.
- 24.8 The Customer agrees that MFM 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 MFM to provide Goods/Equipment to the Customer.
- 24.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, (“Force Majeure”) or other event beyond the reasonable control of either party.
- 24.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 24.11 This Contract and any subsequent hire agreement between MFM and the Customer constitutes as the entire agreement (that forms part thereof, the main Contract between MFM and the Customer. The Customer hereby acknowledges that no reliance is placed on any representation made by MFM that is not embodied in this Contract.
- 24.12 The rights and obligations of the parties will not merge on completion of any transaction under this Contract and they will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction under this Contract