

A1 Motorcycles 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 "A1 Motorcycles" means A1 Motorcycles Limited, its successors and assigns or any person acting on behalf of and with the authority of A1 Motorcycles Limited.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting A1 MOTORCYCLES to provide the Works (Equipment for hire) as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by A1 Motorcycles to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.5 "Equipment" means all Equipment (including any erection, dismantling, parts, accessories and/or consumables) supplied on hire by A1 Motorcycles to the Client (and where the context so permits shall include any supply of Works). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by A1 Motorcycles to the Client.
- 1.6 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by A1 Motorcycles to the Client.
- 1.7 "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.
- 1.8 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Works via the website.**
- 1.9 "Price" means the Price payable (plus any Goods and Works Tax ("GST") where applicable) for the Works and/or Equipment a hire agreed between A1 Motorcycles and the Client in accordance with clause 6 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 any Works/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 Client acknowledges that:

- (a) the supply of Works on credit shall not take effect until the Client has completed a credit application with A1 MOTORCYCLES and it has been approved with a credit limit established for the account; and
- (b) in the event that the supply of Works request exceeds the Client's credit limit and/or the account exceeds the payment terms, A1 MOTORCYCLES reserves the right to refuse delivery; and
- (c) A1 MOTORCYCLES quotation is:
 - (i) subject to a site inspection; and
 - (ii) based on the provision that Works are provided during A1 MOTORCYCLES's normal working hours of Monday to Friday, 7:30am to 5:00pm and are uninterrupted. In the event A1 MOTORCYCLES is required to provide any Works outside these hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays), or the workflow is interrupted (for reasons that are beyond the reasonable control of A1 MOTORCYCLES, where the Works are required urgently, or due to the Client's failure to comply with the agreed work schedule), A1 MOTORCYCLES reserves the right to charge the Client additional labour costs (penalty rates will apply) unless agreed otherwise between A1 MOTORCYCLES and the Client;
- (d) any premium colours will incur additional costs; and
- (e) accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, A1 MOTORCYCLES reserves the right to vary the Price with alternative Materials (or components of the Materials) as per clause 6.2(c), subject to prior confirmation and agreement of both parties. A1 MOTORCYCLES also reserves the right to halt all Works until such time as A1 MOTORCYCLES and the Client agree to such changes. A1 MOTORCYCLES shall not be liable to the Client for any loss or damage the Client suffers due to A1 MOTORCYCLES exercising its rights under this clause.

- 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. Authorised Representatives

- 3.1 The Client acknowledges that A1 MOTORCYCLES shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to A1 MOTORCYCLES, that person shall have the full authority of the Client to order any Works, and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to A1 MOTORCYCLES for all additional costs incurred by A1 MOTORCYCLES (including A1 MOTORCYCLES's profit margin) in providing any Works, or variation/s requested thereto by the Client's duly authorised representative.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that A1 MOTORCYCLES 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 A1 MOTORCYCLES 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 A1 MOTORCYCLES in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of A1 MOTORCYCLES, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
5. **Change in Control**
- 5.1 The Client shall give A1 MOTORCYCLES 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by A1 MOTORCYCLES as a result of the Client's failure to comply with this clause.
6. **Price and Payment**
- 6.1 At A1 MOTORCYCLES's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by A1 MOTORCYCLES to the Client in respect of Works performed or Materials/Equipment supplied; or
 - (b) A1 MOTORCYCLES's Price at the date of delivery of the Works/Equipment according to A1 MOTORCYCLES's current pricelist; or
 - (c) A1 MOTORCYCLES's quoted Price (subject to clause 6.2) which shall be binding upon A1 MOTORCYCLES provided that the Client shall accept A1 MOTORCYCLES's quotation in writing within thirty (30) days.
- 6.2 A1 MOTORCYCLES reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested (including minimum order surcharges or non-standard primary colours, etc.); or
 - (b) if a variation to the Works/Equipment originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) if during the course of the Works the Materials are not or cease to be available from A1 MOTORCYCLES's third party suppliers, then A1 MOTORCYCLES reserves the right to provide alternative Materials; or
 - (d) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather/environmental conditions, limitations to accessing the site, changes to the site requirements or discrepancies discovered upon the site measure, any subsidence of ground conditions, availability of machinery, protruding or dismantled formwork, repositioning or adjusting the Equipment, due to sub-contractor's moving planks, additional site visits required, safety considerations (e.g. overhead hazards, etc.), any relocation and/or alteration to working platforms, ties and/or hop up brackets (or the Equipment entirely), prerequisite work by any third party not being completed, obscured building defects, replacement of existing timber or bracing which does not comply with current standards, or hidden services, etc.)
- which are only discovered on commencement of the Works; or
- (e) in the event of increases to A1 MOTORCYCLES in the cost of labour (including, in the event that A1 MOTORCYCLES's personnel are required to work outside of normal business hours, meal allowances will apply and such costs will be passed on to the Client) or materials which are beyond A1 MOTORCYCLES's control.
- 6.3 Variations will be charged for on the basis of A1 MOTORCYCLES's quotation, and will be detailed in writing, and shown as variations on A1 MOTORCYCLES's invoice. The Client shall be required to respond to any variation submitted by A1 MOTORCYCLES within ten (10) working days. Failure to do so will entitle A1 MOTORCYCLES 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.
- 6.4 At A1 MOTORCYCLES's sole discretion a deposit shall be required. Payment of a deposit by the Client and receipt of payment by A1 MOTORCYCLES is a precondition of A1 MOTORCYCLES to supply the Works which shall be due and payable prior to A1 MOTORCYCLES ordering the Materials. The deposit amount due will be stipulated at the time of the quotation. Subject to clause 21.3, in the event A1 MOTORCYCLES receives notice of cancellation by the Client prior the commencement of the Works, any deposit paid will be refunded less a management fee and the Client shall be liable for all costs incurred up to the time of cancellation (including but not limited to, any re-stocking fee imposed on A1 MOTORCYCLES by their supplier for non-stocklist and/or imported items).
- 6.5 Time for payment for the Works/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by A1 MOTORCYCLES, which may be:
- (a) on delivery of the Materials/Equipment; or
 - (b) on completion of the Works; or
 - (c) by way of progress payments in accordance with A1 MOTORCYCLES's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;
 - (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) 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 Client by A1 MOTORCYCLES.
- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with section 18(a) to 18(i) of the Construction Contracts Act 2002.
- 6.7 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and A1 MOTORCYCLES.
- 6.8 A1 MOTORCYCLES may in its discretion allocate any payment received from the Client towards any invoice that A1 MOTORCYCLES determines and may do so at the time of receipt or at any time afterwards. On any default by the Client A1 MOTORCYCLES may re-allocate any payments previously

- received and allocated. In the absence of any payment allocation by A1 MOTORCYCLES, payment will be deemed to be allocated in such manner as preserves the maximum value of A1 MOTORCYCLES's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.9 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 A1 MOTORCYCLES nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by A1 MOTORCYCLES is a claim made under the Construction Contracts Act 2002.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to A1 MOTORCYCLES an amount equal to any GST A1 MOTORCYCLES must pay for any supply of Works/Equipment by A1 MOTORCYCLES under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the 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.
- 7. Delivery**
- 7.1 Subject to clause 7.2 it is A1 MOTORCYCLES's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that A1 MOTORCYCLES claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond A1 MOTORCYCLES's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify A1 MOTORCYCLES that the site is ready.
- 7.3 Delivery Materials/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Materials/Equipment at A1 MOTORCYCLES's address; or
 - (b) A1 MOTORCYCLES (or A1 MOTORCYCLES's nominated carrier) delivers the Materials/Equipment to the Client's nominated address even if the Client is not present at the address.
- 7.4 At A1 MOTORCYCLES's sole discretion, the cost of delivery is included in the Price.
- 7.5 A1 MOTORCYCLES may deliver the Works/Equipment by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time specified by A1 MOTORCYCLES for delivery of the Works/Equipment is an estimate only and A1 MOTORCYCLES will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works/Equipment to be supplied at the time and place as was arranged between both parties. In the event that A1 MOTORCYCLES is unable to supply the Works/Equipment as agreed solely due to any action or inaction of the Client, then A1 MOTORCYCLES shall be entitled to charge a reasonable fee for re-supplying the Works/Equipment at a later time and date, and/or for storage of the Equipment/Materials.
- 8. Risk**
- 8.1 If A1 MOTORCYCLES retains ownership of the Materials under clause 13 then:
- (a) where A1 MOTORCYCLES is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery.
 - (b) where A1 MOTORCYCLES is to both supply and install Materials then A1 MOTORCYCLES shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests A1 MOTORCYCLES to leave Materials outside A1 MOTORCYCLES's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 8.3 The Client warrants that the structure of the premises or equipment in or upon which the Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and A1 MOTORCYCLES shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 8.4 The Client acknowledges and accepts that:
- (a) in the event asbestos or any other toxic substances are discovered at the worksite that it is their responsibility to ensure the safe removal of the same. The Client further agrees to indemnify A1 MOTORCYCLES against any costs incurred by A1 MOTORCYCLES as a consequence of such discovery. Under no circumstances will A1 MOTORCYCLES handle removal of asbestos product, unless otherwise agreed between A1 MOTORCYCLES and the Client; and
 - (b) A1 MOTORCYCLES is not a hydraulic or structural engineer. A1 MOTORCYCLES strongly recommends that the Client obtain an independent report of compliance for the structure with the new capacities. A1 MOTORCYCLES cannot be held liable should the Client choose not to obtain an engineer's report; and
 - (c) A1 MOTORCYCLES's quotation for repairs to existing roofs shall be based only on the replacement of damaged roofing/cladding and/or any other roofing materials and shall not include the replacement of roofing/cladding and/or any other roofing materials with slight imperfections unless authorised by the Client prior to the commencement of the Works. If the Client requests the replacement of roofing/cladding and/or any other roofing materials that have slight imperfections but A1 MOTORCYCLES does not deem to be defective or affect the integrity of the roof then this shall be a variation to the original quotation and clause 6.2 will apply; and
 - (d) where the Client has supplied materials to complete the Works, or existing materials are in place, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. A1 MOTORCYCLES shall not be responsible for any defects in the Works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client; and
 - (e) A1 MOTORCYCLES is only responsible for parts that are replaced by A1 MOTORCYCLES and that in the event that other parts/goods, subsequently fail, the Client agrees to indemnify A1 MOTORCYCLES against any loss or damage

- to the Works, or caused thereby, or any part thereof howsoever arising; and
- (f) no persons other than those authorised or employed by A1 MOTORCYCLES are to walk on the treated roof surface for a period of twenty-one (21) days after completion of the job and at no time are any persons permitted to be in the areas of the Works. A1 MOTORCYCLES shall not be liable for any loss, damages, injuries, or costs however arising resulting from the Client's failure to comply with this clause; and
- (g) A1 MOTORCYCLES accepts no liability for any subsequent loss or damage (including, but not limited to, internal water damage) to the Client's property which may occur during the cleaning process where such loss or damage is due to pre-existing faults or leaks; and
- (h) Materials (including but not limited to timber, steel, roofing/cladding, etc.) supplied are natural products and therefore may:
- (i) exhibit variations in shade, colour, texture, surface, markings, finish, and may contain natural fissures, occlusions, lines, indentations. A1 MOTORCYCLES will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
 - (ii) fade or change colour over time; and
 - (iii) contract or distort as a result of exposure to heat, cold, or weather; therefore A1 MOTORCYCLES will accept no responsibility for gaps that may appear in the timber materials during prolonged dry periods; and
 - (iv) mark or stain if exposed to certain substances; and
 - (v) be damaged or disfigured by impact or scratching.
- (i) it is the Client's responsibility to provide A1 MOTORCYCLES, whilst at the worksite, with adequate access to available water, electricity, toilet and washing facilities that may be required.
- 8.5 A1 MOTORCYCLES recommends the covering or removal of items in the direct workspace area (including, but not limited to drainage outlets, windowsills, windows, aerials and air conditioning units, etc.) to eliminate the risk of damage during the Works; and
- (a) A1 MOTORCYCLES will make every effort to protect and minimize damage to the surrounding area, however A1 MOTORCYCLES will not accept any responsibility for cleaning or repair costs attributed to damage caused by the Client failing to take precautions; and
- (b) If the Client requests A1 MOTORCYCLES to reinstate any aerials/satellite dishes, the Client acknowledges and accepts that A1 MOTORCYCLES will not accept any liability and the Client indemnifies A1 MOTORCYCLES from any costs involved where a third party technician may be required to rectify the Client's reception.
- 9. Access**
- 9.1 The Client shall ensure that A1 MOTORCYCLES has clear and free access to the worksite at all times to enable them to undertake the Works. A1 MOTORCYCLES 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 A1 MOTORCYCLES.
- 9.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify A1 MOTORCYCLES against all costs incurred by
- 9.3 A1 MOTORCYCLES in recovering such vehicles in the event they become bogged or otherwise immovable.
- If the Works are interrupted by the failure of the Client to adhere to the work schedule agreed to between A1 MOTORCYCLES and the Client, any additional costs will be invoiced to the Client as a variation in accordance with clause 6.2.
- 10. Plans and Specifications**
- 10.1 The Client acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in A1 MOTORCYCLES'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 A1 MOTORCYCLES.
- 10.2 A1 MOTORCYCLES shall be entitled to rely on the accuracy of any plans, specifications 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, A1 MOTORCYCLES accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 10.3 In the event the Client gives information relating to measurements and quantities of the Materials required to complete the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or A1 MOTORCYCLES places an order based on these measurements and quantities. A1 MOTORCYCLES accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
- 11. Service Locations**
- 11.1 Prior to A1 MOTORCYCLES commencing any Works the Client must advise A1 MOTORCYCLES of the precise location of all services on the site and clearly mark the same. The mains and 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.
- 11.2 Whilst A1 MOTORCYCLES will take all care to avoid damage to any services the Client agrees to indemnify A1 MOTORCYCLES 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 11.1.
- 12. Compliance with Laws**
- 12.1 The Client and A1 MOTORCYCLES shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works/Equipment (including but not limited to, the Best Practice Guidelines for scaffolding / edge fall protection / fall through protection) as outlined in the Scaffolding In New Zealand published by WorkSafe and any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Scaffolding/services.
- 12.2 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") A1 MOTORCYCLES agrees at all times comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the worksite or where they may be acting as a

- sub-contractor for the Client who has engaged a third party head contractor.
- 12.3 The Client shall obtain (at the expense of the Client) all engineering reports, certificates, and all licenses, permits and approvals that may be required for the supply of Works/Equipment.
13. **Title to Materials**
- 13.1 A1 MOTORCYCLES and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid A1 MOTORCYCLES all amounts owing to A1 MOTORCYCLES; and
 - (b) the Client has met all of its other obligations to A1 MOTORCYCLES.
- 13.2 Receipt by A1 MOTORCYCLES 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.
- 13.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to A1 MOTORCYCLES on request;
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for A1 MOTORCYCLES and must pay to A1 MOTORCYCLES the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by A1 MOTORCYCLES shall be sufficient evidence of A1 MOTORCYCLES's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with A1 MOTORCYCLES to make further enquiries;
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for A1 MOTORCYCLES and must pay or deliver the proceeds to A1 MOTORCYCLES on demand;
 - (e) the Client should not convert or process the Materials 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 A1 MOTORCYCLES and must sell, dispose of or return the resulting product to A1 MOTORCYCLES as it so directs;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises A1 MOTORCYCLES to enter any premises where A1 MOTORCYCLES believes the Materials are kept and recover possession of the Materials;
 - (g) A1 MOTORCYCLES may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of A1 MOTORCYCLES;
 - (i) A1 MOTORCYCLES may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
14. **Personal Property Securities Act 1999 ("PPSA")**
- 14.1 Upon assenting to these terms and conditions 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 Materials/Equipment and/or collateral (account) – being a monetary obligation of the Client to A1 MOTORCYCLES for Works – that have previously been supplied and that will be supplied in the future by A1 MOTORCYCLES to the Client.
- 14.2 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 A1 MOTORCYCLES may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, A1 MOTORCYCLES for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials/Equipment charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials/Equipment and/or collateral (account) in favour of a third party without the prior written consent of A1 MOTORCYCLES; and
 - (d) immediately advise A1 MOTORCYCLES of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 14.3 A1 MOTORCYCLES and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by A1 MOTORCYCLES, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by A1 MOTORCYCLES under clauses 14.1 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 14 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 14 will apply generally for the purposes of the PPSA.
15. **Security and Charge**
- 15.1 In consideration of A1 MOTORCYCLES agreeing to supply the Works/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).
- 15.2 The Client indemnifies A1 MOTORCYCLES from and against all A1 MOTORCYCLES's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising A1 MOTORCYCLES's rights under this clause.
- 15.3 The Client irrevocably appoints A1 MOTORCYCLES and each director of A1 MOTORCYCLES as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.
16. **Defects**

A1 Motorcycles Limited – Terms & Conditions of Trade

- 16.1 The Client shall inspect the Materials/Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify A1 MOTORCYCLES of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford A1 MOTORCYCLES an opportunity to inspect the Materials/Equipment within a reasonable time following delivery if the Client believes the Materials/Equipment are defective in any way. If the Client shall fail to comply with these provisions the Materials/Equipment shall be presumed to be free from any defect or damage. For defective Materials/Equipment, which A1 MOTORCYCLES has agreed in writing that the Client is entitled to reject, A1 MOTORCYCLES's liability is limited to either (at A1 MOTORCYCLES's discretion) replacing the Materials/Equipment or repairing the Materials/Equipment.
- 16.2 Materials/Equipment will not be accepted for return for any reason other than those specified in clause 16.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).
- 16.3 Subject to clause 16.1, non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.

17. Warranties

- 17.1 Subject to the conditions of warranty set out in clause 17.2 A1 MOTORCYCLES warrants that if any defect in any workmanship of A1 MOTORCYCLES becomes apparent and is reported to A1 MOTORCYCLES within five (5) years of the date of delivery (time being of the essence) then A1 MOTORCYCLES will either (at A1 MOTORCYCLES's sole discretion) replace or remedy the workmanship.
- 17.2 The conditions applicable to the warranty given by clause 17.1 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 Client to properly maintain any Materials; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by A1 MOTORCYCLES; or
 - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Materials 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 A1 MOTORCYCLES shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship/Materials are repaired, altered or overhauled without A1 MOTORCYCLES's consent.
 - (c) in respect of all claims A1 MOTORCYCLES shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 17.3 For Materials not manufactured by A1 MOTORCYCLES, the warranty shall be the current warranty provided by the manufacturer of the Materials. A1 MOTORCYCLES 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 Materials.

18. Consumer Guarantees Act 1993

- 18.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the

Consumer Guarantees Act 1993 do not apply to the supply of Materials by A1 MOTORCYCLES to the Client.

19. Intellectual Property

- 19.1 Where A1 MOTORCYCLES has designed, drawn, written plans or a schedule of Works/Equipment, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in A1 MOTORCYCLES, and shall only be used by the Client at A1 MOTORCYCLES's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of A1 MOTORCYCLES.
- 19.2 The Client warrants that all designs, specifications or instructions given to A1 MOTORCYCLES will not cause A1 MOTORCYCLES to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify A1 MOTORCYCLES against any action taken by a third party against A1 MOTORCYCLES in respect of any such infringement.
- 19.3 The Client agrees that A1 MOTORCYCLES may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which A1 MOTORCYCLES has created for the Client.

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 A1 MOTORCYCLES's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes A1 MOTORCYCLES any money the Client shall indemnify A1 MOTORCYCLES from and against all costs and disbursements incurred by A1 MOTORCYCLES in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, A1 MOTORCYCLES's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies A1 MOTORCYCLES may have under this Contract, if a Client has made payment to A1 MOTORCYCLES, 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 A1 MOTORCYCLES under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 20.4 Without prejudice to A1 MOTORCYCLES's other remedies at law A1 MOTORCYCLES shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to A1 MOTORCYCLES shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to A1 MOTORCYCLES becomes overdue, or in A1 MOTORCYCLES's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by A1 MOTORCYCLES;
 - (c) the Client becomes insolvent or bankrupt, 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 Client or any asset of the Client.

21. Cancellation

- 21.1 Without prejudice to any other rights or remedies A1 MOTORCYCLES may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then A1 MOTORCYCLES may suspend the Works immediately. A1 MOTORCYCLES will not be liable to the Client for any loss or damage the Client suffers because A1 MOTORCYCLES has exercised its rights under this clause.
- 21.2 A1 MOTORCYCLES may cancel any contract to which these terms and conditions apply or cancel delivery of Works/Equipment at any time before the Works are commenced (or the Materials/Equipment are due to be delivered) by giving written notice to the Client. On giving such notice A1 MOTORCYCLES shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to A1 MOTORCYCLES for Works already performed or Materials/Equipment already provided. A1 MOTORCYCLES shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Client cancels the delivery of Works/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by A1 MOTORCYCLES as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 Cancellation of orders for Materials/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.
22. **Privacy Policy**
- 22.1 All emails, documents, images or other recorded information held or used by A1 MOTORCYCLES is Personal Information as defined and referred to in clause 22.3 and therefore considered confidential. A1 MOTORCYCLES acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). A1 MOTORCYCLES acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by A1 MOTORCYCLES that may result in serious harm to the Client, A1 MOTORCYCLES will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to A1 MOTORCYCLES in respect of Cookies where transactions for purchases/orders transpire directly from A1 MOTORCYCLES's website. A1 MOTORCYCLES agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to A1 MOTORCYCLES when A1 MOTORCYCLES sends an email to the Client, so A1 MOTORCYCLES may collect and review that information ("collectively Personal Information")
- 22.3 In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via A1 MOTORCYCLES's website.
- The Client authorises A1 MOTORCYCLES or A1 MOTORCYCLES's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by A1 MOTORCYCLES from the Client directly or obtained by A1 MOTORCYCLES 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.
- 22.4 Where the Client is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.5 The Client shall have the right to request A1 MOTORCYCLES for a copy of the Personal Information about the Client retained by A1 MOTORCYCLES and the right to request A1 MOTORCYCLES to correct any incorrect Personal Information about the Client held by A1 MOTORCYCLES.
23. **Suspension of Works**
- 23.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) A1 MOTORCYCLES has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.4 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to A1 MOTORCYCLES by a particular date; and
 - (iv) A1 MOTORCYCLES has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if A1 MOTORCYCLES 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 A1 MOTORCYCLES exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to A1 MOTORCYCLES under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of A1 MOTORCYCLES suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes A1 MOTORCYCLES from continuing the Works or performing or complying with A1 MOTORCYCLES's obligations under this Contract, then without prejudice to A1 MOTORCYCLES's other rights and remedies, A1 MOTORCYCLES may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by A1 MOTORCYCLES as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 23.2 If pursuant to any right conferred by this Contract, A1 MOTORCYCLES suspends the Works and the default that led to that suspension continues un-remedied subject to clause 21.1 for at least ten (10) working days, A1 MOTORCYCLES shall be entitled to terminate the Contract, in accordance with clause 21.
24. **Service of Notices**
- 24.1 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.
- 24.2 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.
25. **Trusts**
- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not A1 MOTORCYCLES may have notice of the Trust, the Client covenants with A1 MOTORCYCLES as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of A1 MOTORCYCLES (A1 MOTORCYCLES will not
- unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
26. **General**
- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 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.
- 26.3 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 Thames District Courts of New Zealand.
- 26.4 A1 MOTORCYCLES 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 A1 MOTORCYCLES of these terms and conditions (alternatively A1 MOTORCYCLES's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works/Equipment on hire).
- 26.5 A1 MOTORCYCLES may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of A1 MOTORCYCLES.
- 26.7 A1 MOTORCYCLES may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of A1 MOTORCYCLES's sub-contractors without the authority of A1 MOTORCYCLES.
- 26.8 The Client agrees that A1 MOTORCYCLES may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for A1 MOTORCYCLES to provide Works to the Client.
- 26.9 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.
- 26.10 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.
- Additional Terms & Conditions Applicable to Hire Only**
27. **Hire Period**

- 27.1 If A1 MOTORCYCLES agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves A1 MOTORCYCLES's premises and continue until the Client notifies A1 MOTORCYCLES that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 27.2 Hire charges shall commence from the time the Equipment is delivered by A1 MOTORCYCLES or A1 MOTORCYCLES nominated carrier to the work site either partly or in its entirety ready for erecting and shall continue until the Return of the Equipment to A1 MOTORCYCLES premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs. Where the Client is not present at time of initial handover, the senior scaffolder shall be responsible for any signing off as the Equipment being fit for purpose, and any additional work requested by the Client shall be deemed to be a variation and will be charged for as per clause 6.2.
- 27.3 In the event the Client (or a representative thereof) is not present at the time of delivery, A1 MOTORCYCLES's delivery docket remains prima facie evidence of such.
- Returns**
- 27.4 The Client shall notify A1 MOTORCYCLES by either phone or preferably email, as to the date from which Equipment is no longer required. The conclusion of the Hire period shall be documented on the return documentation issued by A1 MOTORCYCLES. The date upon which the Client advises of such shall in all cases be treated as a full day's hire.
- 27.5 Return of the Equipment ("**Return**") will be completed when the Equipment has been dismantled and accepted by A1 MOTORCYCLES, by their off-hire docket. Where the Equipment is returned by the Client's transport, the Equipment returned shall be counted in A1 MOTORCYCLES's yard and the off-hire docket issued to the Client shall be conclusive proof of the Return of the quantities of Equipment listed thereon, but not of its condition at the time of Return. If the Client collects the Equipment, it will be checked on arrival in A1 MOTORCYCLES's yard for quantity and condition. In both cases the check in A1 MOTORCYCLES's yard for quantity and condition will be the only legal proof of the quantity and condition of Equipment returned.
- 27.6 In the event the Equipment is not returned to A1 MOTORCYCLES by the end of the specified hire period, the Client will be charged at A1 MOTORCYCLES's current rate until such time as the Equipment is returned;
- 27.7 The Client must not submit the Equipment for Return if it has not been cleaned (including all asbestos fibres and other hazardous particles or substances such as mortar, render, epoxy or other applied finishes, etc.).
- 27.8 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless A1 MOTORCYCLES confirms special prior arrangements in writing. In the event of a fault in the Equipment provided the Client notifies A1 MOTORCYCLES immediately, hiring charges will not be payable during the time the faulty Equipment is suitable to be used, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
28. **Risk to Equipment**
- 28.1 A1 MOTORCYCLES retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.
- 28.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies A1 MOTORCYCLES 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.
- 28.3 The Client will insure, or self insure, A1 MOTORCYCLES'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.
- 28.4 The Client accepts full responsibility for and shall keep A1 MOTORCYCLES 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 Client or any other persons.
29. **Title to Equipment**
- 29.1 The Equipment is and will at all times remain the absolute property of A1 MOTORCYCLES.
- 29.2 If the Client fails to return the Equipment to A1 MOTORCYCLES then A1 MOTORCYCLES or A1 MOTORCYCLES'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.
- 29.3 The Client is not authorised to pledge A1 MOTORCYCLES's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
30. **Access and Installation of Equipment**
- 30.1 The Client shall ensure that A1 MOTORCYCLES has clear and free access to the nominated delivery address to enable A1 MOTORCYCLES to install and/or dismantle the Equipment, and A1 MOTORCYCLES 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.
- 30.2 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. A1 MOTORCYCLES 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 A1 MOTORCYCLES.
- 30.3 The Client shall ensure that:
- (a) the nominated delivery address is cleared and ready for installation of the Equipment prior to delivery of the Equipment (including where practicable, clear the surrounding area where the Equipment is to be erected, a minimum of two meters (2m) and trim any tress or plants as necessary); and
- (b) the foundations upon which A1 MOTORCYCLES 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; and
- (c) any nearing power lines are disconnected or isolated; and

- (d) in the event neighbouring properties shall be affected by the installation of the Equipment, it shall be the responsibility of the Client to obtain consent from the owners of such properties.
- 30.4 The Client will be liable to A1 MOTORCYCLES for any loss, costs or damages which A1 MOTORCYCLES may suffer or incur by reason of the Client's failure to carry out its obligations listed in clause 30.3, if A1 MOTORCYCLES 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.
- 30.5 The Client shall not allow any notifiable or non-notifiable scaffold to be erected, dismantled or altered in any way by any person/s other than an A1 MOTORCYCLES representative or a scaffolder holding a current Certificate of Competency that is approved by A1 MOTORCYCLES.
31. **Client's Responsibilities**
- 31.1 The Client shall:
- (a) ensure any other construction Works to be carried out at the site that the Equipment is to be erected is scheduled to commence after the Equipment has been erected;
 - (b) be responsible for the supply and/or disconnection of power and water to the worksite if required by A1 MOTORCYCLES;
 - (c) provide allowance for A1 MOTORCYCLES to locate tying positions for the erection of the Equipment, and ensure that no such ties are removed by any person other than A1 MOTORCYCLES;
 - (d) ensure that no digging or excavation work is performed near or under the Equipment during the installation or once the Equipment is installed;
 - (e) notify A1 MOTORCYCLES immediately by telephone of the full circumstances of any damage or accident in connection with the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (f) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (g) 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 A1 MOTORCYCLES or posted on the Equipment;
 - (h) ensure that all persons 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 and shall provide evidence of the same to A1 MOTORCYCLES upon request;
 - (i) comply with all workplace health and safety laws relating to the Equipment and its operation;
 - (j) notify the Ministry of Building Innovation & Employment of their use of the Equipment that is five metres (5) or more in height;
 - (k) 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 A1 MOTORCYCLES;
 - (l) 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;
 - (m) 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;
- (n) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- (o) not exceed the recommended or legal load and capacity limits of the Equipment;
- (p) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (q) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
- (r) indemnify and hold harmless A1 MOTORCYCLES in respect of all claims arising out of the Client's use of the Equipment;
- (s) ensure that no other scaffold components will be allowed on the site;
- (t) make available and cover the cost of cranes should A1 MOTORCYCLES deem it necessary to do so.
- 31.2 Immediately on request by A1 MOTORCYCLES the Client will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to A1 MOTORCYCLES;
 - (b) all costs incurred in removing and cleaning excessive debris (paint, plaster, concrete, etc.) on the Equipment, over and above fair wear and tear;
 - (c) all costs of repairing any damage caused by the:
 - (i) ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
 - (ii) the negligence of the Client or the Client's agent;
 - (iii) vandalism, or (in A1 MOTORCYCLES's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
 - (d) any costs incurred by A1 MOTORCYCLES in dismantling the Equipment and returning it to A1 MOTORCYCLES's premises if the Client does not Return the Scaffolding to A1 MOTORCYCLES's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;
 - (e) any lost hire fees A1 MOTORCYCLES would have otherwise been entitled to for the Equipment, under this, or any other hire Contract;
 - (f) any costs incurred by A1 MOTORCYCLES in the reinstatement of scaffolding that has been altered by any unauthorised person or contractor to the Client.
32. **Wet Hire**
- 32.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of A1 MOTORCYCLES and operates the Equipment in accordance with the Client's instructions. As such A1 MOTORCYCLES shall not be liable for any actions of the operator in following the Client's instructions.