

Taupo Rigging Ltd T/A Terrain – Terms & Conditions of Trade

1.	Definitions	7.	Personal Property Securities Act 1999 ("PPSA")	
1.1	"Seller" shall mean Taupo Rigging Ltd T/A Terrain its successors and assigns or any person acting on behalf of and with the authority of Taupo Rigging Ltd T/A Terrain.	7.1	Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:	to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.
1.2	"Buyer" shall mean the Buyer (or any person acting on behalf of and with the authority of the Buyer) as described on any quotation, work authorisation or other form as provided by the Seller to the Buyer.	(a)	these terms and conditions constitute a security agreement for the purposes of the PPSA; and	14.4
1.3	"Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.	(b)	a security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer.	14.5
1.4	"Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Seller to the Buyer.	7.2	The Buyer undertakes to:	Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
1.5	"Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).	(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 the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;	(a)
1.6	"Price" shall mean the price payable for the Goods as agreed between the Seller and the Buyer in accordance with clause 3 of this contract.	(b)	not register a financing change statement or a change demand without the prior written consent of the Seller; and immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.	(b)
2.	Acceptance	(c)	The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.	(c)
2.1	Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.	(d)	The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.	15.
2.2	Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.	7.3	Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.	15.1
2.3	Upon acceptance of these terms and conditions by the Buyer the terms and conditions are binding and can only be amended with the written consent of the Seller.	7.4	The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 7.1 to 7.5.	Security And Charge
2.4	The Buyer undertakes to give the Seller at least fourteen (14) days notice of any change in the Buyer's name, address and/or any other change in the Buyer's details.	7.5	The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.	Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
3.	Price And Payment	7.6	The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.	(a)
3.1	The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied.	8.	Buyer's Disclaimer	where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
3.2	At the Seller's sole discretion a deposit may be required.	8.1	The Buyer hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer by the Seller and the Buyer acknowledges that the Goods are bought relying solely upon the Buyer's skill and judgement.	(b)
3.3	At the Seller's sole discretion;	9.	Defects	(b) the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
(a)	payment shall be due on delivery of the Goods, or	9.1	The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.	(c)
(b)	payment shall be due before delivery of the Goods, or	10.	Returns	16.
(c)	payment for approved Buyers shall be made by instalments in accordance with the Seller's payment schedule; or	10.1	Returns will only be accepted provided that:	16.1
(d)	payment for approved Buyer's shall be due twenty (20) days following the end of the month in which a statement is posted to the Buyer's address or address for notices.	10.1	(a) the Buyer has complied with the provisions of clause 9.1; and	The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
3.4	Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.	10.2	(b) the Seller has agreed in writing to accept the return of the Goods; and	In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
3.5	Payment will be made by cash, or by cheque, or by credit card (excluding Amex, Diners, Farmlands, Wrightsons), or by direct credit, or by any other method as agreed to between the Buyer and the Seller.	11.	(c) the Goods are returned at the Buyer's cost within fourteen (14) days of the delivery date; and	Privacy Act 1993
3.6	GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.	11.1	(d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and	17.1
4.	Delivery Of Goods	11.2	(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.	The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to:
4.1	At the Seller's sole discretion delivery of the Goods shall take place when;	11.3	The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of 15% of the value of the returned Goods plus any freight.	(a) collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness or marketing products and services to the Buyer; and
(a)	the Buyer takes possession of the Goods at the Seller's address; or	11.4	Warranty	(b) disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller 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 Buyer.
(b)	the Buyer takes possession of the Goods at the Buyer's address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or	11.5	Subject to the conditions of warranty set out in Clause 11.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within one (1) month of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship.	Where the Buyer and/or Guarantors are an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.
(c)	the Buyer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Buyer's agent.	11.6	The conditions applicable to the warranty given by Clause 11.1 are:	17.3
4.2	At the Seller's sole discretion the costs of delivery are;	11.7	(a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:	The Buyer and/or Guarantors shall have the right to request the Seller for a copy of the information about the Buyer and/or Guarantors retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer and/or Guarantors held by the Seller.
(a)	in addition to the Price, or	(i)	Failure on the part of the Buyer to properly maintain any Goods; or	18.
(b)	for the Buyer's account.	(ii)	Failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or	18.1
4.3	The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.	(iii)	Any use of any Goods otherwise than for any application specified on a quote or order form; or	Unpaid Seller's Rights
4.4	Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.	(iv)	The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or	18.1
4.5	The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.	(v)	Fair wear and tear, any accident or act of God.	Where the Buyer has left any item with Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
4.6	The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.	(b)	The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.	(a) a lien on the item;
4.7	The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.	(c)	In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or remedying the workmanship or in properly assessing the Buyer's claim.	(b) the right to retain the item for the Price while the Seller is in possession of the item;
5.	Risk	12.	Consumer Guarantees Act 1993	(c) a right to sell the item,
5.1	If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.	12.1	If the Buyer is acquiring Goods for the purposes of a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Buyer.	18.2
5.2	If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.	13.	Intellectual Property	The lien of the Seller shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.
6.	Title	13.1	Where the Seller has designed, drawn or written Goods for the Buyer, then the copyright in those designs and drawings and documents shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.	General
6.1	The Seller and Buyer agree that ownership of the Goods shall not pass until:	13.2	The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.	19.1
(a)	the Buyer has paid the Seller all amounts owing for the particular Goods, and	13.3	Default & Consequences Of Default	19.2
(b)	the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer.	14.	Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.	These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
6.2	Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.	14.1	If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.	The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
6.3	It is further agreed that:	14.2	Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating	19.3
(a)	where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Buyer are met; and	14.3	to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.	19.4
(b)	until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice being given the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease; and	14.4	If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.	19.5
(c)	the Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller, and	14.5	Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating	19.6
(d)	until such time that ownership in the Goods passes to the Buyer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products; and	14.6	to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.	19.7
(e)	if the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises where the Goods are situated as the invitee of the Buyer and take possession of the Goods, and the Seller will not be liable for any reasonable loss or damage suffered as a result of any action by the Seller under this clause.	14.7	Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating	19.8
				19.9
				19.10