

## TERMS AND CONDITIONS OF TRADE

1. **DEFINITIONS 1.1** "TCNZ" means Tower Cranes NZ Limited or any of its agents or employees. **1.2** "Customer" means the Customer, any person acting on its behalf, or any person purchasing products and services from TCNZ. **1.3** "Goods" means all goods supplied (hired, sold or used in Services) by TCNZ to the Customer. **1.4** "Services" means all works, services and advice provided by TCNZ to the Customer. **1.5** "Business Day" means any day other than a Saturday, Sunday, any national public holiday and any public holiday in the province in which Services are being provided. **1.6** "Breakdown" means a breakdown including mechanical breakdown, and a breakdown due to a failure in or damage to electrical or control systems, or damage to coatings or other parts. **1.7** "Contract" has the definition in clause 2.1. **1.8** "Due Date" has the definition in clause 6.2. **1.9** "Hours of Work" means up to 10 hours maximum in the period 6am to 6pm on each Business Day, unless TCNZ in its sole discretion specifies different Hours of Work for a particular Good or Service. **1.10** "Loss" means loss, liability, damage, claims, expense or cost of any nature or kind and however arising, including legal costs on a solicitor-client basis and/or debt collection agency fees, and including direct, indirect, and consequential loss and damage. **1.11** "Price" means the cost of Goods and Services payable by the Customer to TCNZ, and disbursements, and may include charges for labour and associated allowances, hire charges, fuel, transport/mileage, insurance, and erection and dismantling fees. **1.12** "PPSA" means Personal Properties Securities Act 1999. **1.13** "Site" means the site at which Goods supplied by TCNZ will be used or held and/or where Services are being provided (but does not include TCNZ's own premises). **1.14** "TCNZ Workers" means any individual engaged by TCNZ who carries out work in connection with Goods and/or Services. **1.15** "Term" means, for each Good and Service, the agreed length of time for which that Good / Service is provided to the Customer, or, in the case of a sold Good, when title has passed to the Customer. The Term may be amended by agreement, or brought to an end early by termination.
2. **ACCEPTANCE AND CONTRACT 2.1** Any instructions received by TCNZ from the Customer for the supply of Goods and/or Services constitutes a binding contract only when TCNZ confirms in writing that it accepts the instructions (**Contract**), and the Customer is deemed to have accepted these terms and conditions contained which are incorporated into the Contract. **2.2** Where a Purchase Order / reference is required by the Customer, the onus is on the Customer to provide TCNZ with a Purchase Order / reference at the time of ordering the Goods and Services. If the Customer requires but fails to provide TCNZ with a Purchase Order / reference, the Customer remains at all times fully liable for all its obligations under the Contract. **2.3** The Contract shall supersede and replace all previous representations, warranties, understandings, agreements or undertakings, whether verbal or in writing, and shall take precedence over any other term, condition, agreement or other document, including any Purchase Order provided by the Customer to the extent of any inconsistency with the Contract, save in the case where the other written agreement between the parties, or additional terms applying, is a TCNZ standard form. **2.4** TCNZ reserves the right to amend these terms and conditions at any time, which will bind the Customer for future Contracts.
3. **COLLECTION AND USE OF INFORMATION 3.1** The Customer authorises TCNZ: **3.1.1** to collect, retain and use any information about the Customer, for assessing the Customer's credit worthiness, enforcing any rights under these terms and conditions, or marketing; and **3.1.1** to disclose any information obtained for the purposes in 3.1.1. **3.2** Where the Customer is a natural person the authorities in 3.1 are authorities or consents for the purposes of the Privacy Act 1993.
4. **PRICE 4.1** Where no Price is stated in writing the Goods and Services are deemed to be sold, hired or otherwise provided at the current amount and/or rates as such Goods and Services are sold, hired or provided by TCNZ at the time of the Contract. **4.2** This Price may be increased by the amount of any reasonable increase in the cost of supply beyond the control of TCNZ between the date of the order and delivery of the Goods and Services. **4.3** Notwithstanding any other provision, save clause 9, if on a day any Goods or Services are to be supplied (save for where such Goods are being purchased by the Customer), and the Goods / Services cannot be supplied due to a cause outside TCNZ's reasonable control (including non-delivery of materials, weather, and/or Site access being impeded), the Customer will nevertheless pay TCNZ fees for that day, which will be charged at: **4.3.1** the daily cost for the Goods; and **4.3.2** for TCNZ Workers, either in accordance with 4.4, 4.5 or 4.6 as if Services had been provided (regardless of whether the Customer requests the TCNZ Workers to leave or not attend Site), or a full day if TCNZ Workers have been requested by the Customer to remain on standby. **4.4** For each Business Day on which Services are provided, TCNZ Workers will each be charged at a minimum of four hours (regardless that the time actually spent carrying out Services may be less). For the avoidance of doubt, this is the minimum amount only and the actual Hours of Work where more shall be charged. **4.5** If TCNZ agrees to provide Services outside the Hours of Work, the Customer will pay TCNZ at TCNZ's overtime rates. For any Services TCNZ agrees to provide on a Saturday or Sunday, TCNZ Workers will each be charged at a minimum of four hours for each of these days worked (regardless that time actually spent carrying out Services may be less). **4.6** If TCNZ agrees to provide Services on public holidays, TCNZ shall be entitled to the costs of TCNZ Workers to be charged at a minimum number of hours and at a higher than standard rate, to be agreed. **4.7** Save for those Goods purchased by the Customer, TCNZ is entitled to charge, and the Customer will pay, the relevant amounts / rates for Goods used on non-Business Days and/or outside the Hours of Work.
5. **DEPOSIT 5.1** TCNZ may require the Customer to pay a deposit prior to Goods and/or Services being provided. If prior to supply the Customer decides not to proceed (other than where the Customer has lawfully terminated the Contract because of a breach by TCNZ), or TCNZ lawfully terminates the Contract, then in addition to its other rights and remedies TCNZ is entitled to retain the deposit. The Customer acknowledges the deposit is retained to put towards the time and cost incurred by TCNZ in relation to the Customer's project, and towards the loss of profit that TCNZ may incur as a result of reserving the Good / Service for the Customer. But if the Contract remains on foot, the deposit will be credited against the first payment of fees due to TCNZ.
6. **PAYMENT 6.1** Fees will be invoiced by TCNZ as follows: **6.1.1** the cost of any Goods sold to the Customer, after the Goods are delivered; **6.1.2** the cost of any Goods hired, used in Services, or otherwise supplied to (but not purchased by) the Customer, and the cost of any Services, at TCNZ's sole discretion in advance, weekly, monthly, at the conclusion of the time for which the Goods / Services are supplied, or at any other time or frequency; and **6.1.3** any additional fees payable as determined by TCNZ in its sole discretion, including any additional charges for labour, hire-charges, fuel or transport/mileage. **6.2** Payment will be made in full on or before the 20<sup>th</sup> day of the month following the date of TCNZ's invoice (**Due Date**), unless otherwise stated in writing on the invoice. All payments made by the Customer must be, to the extent permitted by law, free of set-off, counterclaim or retention. **6.3** TCNZ may charge interest on any amount owing after the Due Date at the rate of 15% compounding monthly. **6.4** Any expenses, disbursements and legal costs incurred by TCNZ in the enforcement or attempted enforcement of any rights will be paid by the Customer, including any legal fees (on a solicitor-client basis) or actual debt collection agency fees. **6.5** Unless earlier agreed, payment to TCNZ must be by bank transfer or cash.
7. **AGENCY 7.1** The Customer authorises TCNZ to contract either as principal or agent on its behalf for Goods or Services ordered. Where TCNZ enters into such a contract as principal or undisclosed agent, it forms part of these terms and conditions and the Customer agrees to pay any amounts due under that contract and be otherwise responsible for performing all obligations under it.
8. **QUOTATION 8.1** Where a quotation is given by TCNZ, unless otherwise specified it shall be valid for 30 days from the date of issue and is exclusive of GST. **8.2** TCNZ reserves the right to alter the quotation because of circumstances beyond its control. **8.3** Where the Services include precast erection: **8.3.1** the quotation is conditional on the parties agreeing a programme for the works, and lead time is subject to confirmation by TCNZ if the quotation is accepted; **8.3.2** the quotation does not include the supply of panel props or shore loading, unless stated; and **8.3.3** the quotation is based upon a specified number of crane visits to Site and precast units. **8.4** The quotation may include special conditions which are incorporated into the Contract.
9. **CANCELLATION BY CUSTOMER 9.1** In addition to TCNZ's other rights and remedies, if after entering into a Contract, the Customer gives less than 24 hours' notice that it will not proceed (other than where the Contract has been lawfully terminated because of a breach by TCNZ), the Customer will pay to TCNZ on demand a percentage of the total remaining fees which would otherwise be payable under the Contract. Such percentage shall be determined in TCNZ's sole discretion, but shall be no greater than 50%. **9.2** The Customer acknowledges that this percentage payment is appropriate to put towards the time and cost incurred by TCNZ in relation to the Customer's project, and/or towards the loss of profit that TCNZ may incur as a result of reserving the Good and/or Services for the Customer, and (as relevant) towards any upstream costs that TCNZ may incur as a result of cancelling or amending any contract it has in place with a third party for the hire or lease of Goods. **9.3** Without limiting TCNZ's other rights and remedies, if after entering into a Contract, prior to supply of the Goods / Services under that Contract, the Customer gives TCNZ no less than 24 hours' notice that it wishes to cancel the Good or Services, the Good or Services shall not be provided and at TCNZ's sole discretion the Customer shall not be charged for the same.
10. **TIMESHEETS AND CUSTOMER'S ON-SITE REPRESENTATIVE 10.1** Subject to 4.3 to 4.7, the costs of the provision of a mobile crane by TCNZ, and Services nominated by TCNZ will be invoiced and paid by the Customer on the basis of timesheets maintained by TCNZ (**Timesheets**), the form of which will be at TCNZ's absolute discretion and may be subject to change. **10.2** During, or at the conclusion of the Hours of Work, TCNZ may request the Customer's on-site representative to sign the Timesheets (in writing or electronically). Such requests may be made at a frequency determined by TCNZ acting reasonably. **10.3** Subject to 4.3 to 4.7, each Timesheet will be deemed a true and accurate record of the hours in which the relevant Services have been provided. Those hours will include statutory rest and meal breaks taken by TCNZ Workers, each of no more than 15 minutes in length. **10.4** Each Timesheet will be signed by the Customer's on-site representative, but failure or refusal to sign for any reason (including the non-appointment of the Customer's on-site representative) will not invalidate the Timesheet and it will be deemed a true and accurate record of the hours in which the relevant Services have been performed (save for manifest error). **10.5** If the Customer disputes a Timesheet, payment for the hours recorded must still be made to TCNZ, without prejudice to the Customer's right to recover such payment following the dispute resolution provisions of these terms and conditions.
11. **TCNZ WORKERS 11.1** This clause 11 applies to the extent TCNZ Workers are carrying out Services on Site. **11.2** The Customer must provide and erect all facilities on Site reasonably requested by TCNZ, including lunchroom and toilet facilities, water access, (live) power sockets, and office space. **11.3** Where the Site is outside of Auckland, TCNZ may charge for overnight accommodation and meals for the TCNZ Workers.
12. **RISK, LOSS AND DELAY 12.1** Any Goods and Services held, stored, worked on or driven by the Customer are at the Customer's risk. **12.2** The Customer will be responsible for all Losses caused while Goods are entering, leaving, or on the Site, including Losses arising from any Breakdown, where such Breakdown or Loss is caused by any negligent act or omission or misdirection or misuse of the Goods by the Customer (or any person or entity for whom/which the Customer is as between Customer and TCNZ responsible). Further, save in the case where the Customer has purchased Goods but without limiting any other clause, the Customer will continue to pay to TCNZ fees for the Goods during the period the Goods are necessarily idle and for any Services TCNZ is consequentially unable to perform as a result of such negligent act, omission, misdirection or misuse. **12.3** The Customer is solely responsible for any damage to any property whatsoever caused by the Goods and/or Services. **12.4** The time agreed for the completion of Services or delivery of Goods / Services is not an essential term. **12.5** Without limitation, TCNZ is not liable for any: **12.5.1** delay or Loss if Goods or Services are unsuitable for intended work on Site, **12.5.2** delay or Loss arising out of the delayed or non-arrival of Goods, or delayed or non-provision of Services; **12.5.3** damage to goods or property being handled by the Goods or as part of the Services, or **12.5.4** damage or Loss to Goods or any other property arising out of any event, stoppage or delay due to a cause outside TCNZ's control including, but not limited to, weather conditions, ground conditions, or industrial disputes, even if TCNZ is advised in advance of the possibility of any such Loss or delay.
13. **HEALTH AND SAFETY 13.1** The Customer must notify TCNZ and all appropriate authorities (including WorkSafe NZ) immediately by telephone and email if any hired Goods are involved in any accident resulting in any significant injury to any person or damage to any property. **13.2** Without limiting 13.1, the Customer must promptly notify TCNZ of any incidents relating to hired Goods or Services, including where there has been any injury or any damage to property. **13.3** If required by TCNZ, the Customer: **13.3.1** prior to any Services or Goods being provided or used on Site, will give TCNZ a copy of its Site-specific safety plan; and **13.3.2** at its expense shall carry out a health and safety induction for each TCNZ Worker who is to work on Site (including paying for the cost of attendance on the basis that is part of the Services).
14. **HIRE OF GOODS 14.1** This clause 14 applies to the extent TCNZ is hiring a Good to the Customer. **14.2** Unless otherwise agreed the hire period commences when the Good leaves, and ends when the Good returns, to TCNZ's premises. **14.3** TCNZ may require the Customer to pay a bond. The

amount of the bond which exceeds the price for the hire of the Good shall be returned to the Customer when the Customer returns the Good to TCNZ's premises, subject to the Good being in the same good order and repair as at the start of the hire period. **14.4** The Customer is responsible for satisfying itself the Good is suitable, and warrants that the Good shall only be used in compliance with all relevant laws and regulations. The Customer indemnifies TCNZ against any claim by a third party in respect of any Loss arising from the hire of the Customer's use of the Good. **14.5** If the Good is damaged, lost, stolen, or involved in any incident, the Customer shall notify TCNZ immediately, and indemnify TCNZ for its Losses. **14.6** In the event of a Breakdown which does not arise due to an act or omission of the Customer (or a person for which the Customer is, as between the Customer and TCNZ, responsible), the Customer shall notify TCNZ immediately, and TCNZ in its sole election may provide a replacement Good or terminate the Contract without any liability arising from the Breakdown or termination. **14.7** The Customer grants TCNZ the right, at all reasonable times, on reasonable notice, to: **14.7.1** enter the Site; **14.7.2** inspect the Good; **14.7.3** carry out such tests on the Good as TCNZ may deem necessary; and **14.7.4** do anything which may be required to give effect to these terms and conditions or to protect TCNZ's rights.

- 15. INSURANCE 15.1** The Customer must not do or permit to be done anything in connection with hired Goods, or Goods or other property used in provision of the Services, whereby any policies of insurance effected in connection with those Goods or other property may become void or the premiums increased. **15.2** The Customer must arrange contract works insurance for the Site which provides a prudent and sufficient level of insurance to cover the use of Goods and Services on Site, and which is to the satisfaction of TCNZ. Such insurance must either include TCNZ as a joint insured, or in its terms include a waiver of subrogation as against TCNZ. The Customer must provide evidence of the contract works insurance in place and a copy of the policy if requested by TCNZ. Under no circumstances will TCNZ be liable for the deductible. **15.3** Where a claim is made under any TCNZ plant insurance policy due to an act or omission of the Customer (or a person or entity for whom/which the Customer is as between TCNZ and the Customer, responsible), the Customer must pay the deductible. **15.4** The Customer must indemnify TCNZ against all Loss which TCNZ may suffer or become liable for as a result of a counterclaim or denial of claim by the insurer which arises from a default, negligent, reckless or careless act or omission of the Customer, or person under the control of the Customer, or a third party for whom the Customer is as between the Customer and TCNZ, responsible.
- 16. TITLE AND SECURITY (PPSA) 16.1** Title in any Goods purchased by the Customer passes to the Customer only when the Customer has made payment in full of all other sums due to TCNZ by the Customer on any account whatsoever. Until all sums due to TCNZ by the Customer have been paid in full, the Customer acknowledges and agrees that for the purposes of the PPSA, TCNZ has a security interest in those purchased Goods. Moreover, the Customer acknowledges and agrees that for the purposes of the PPSA, TCNZ has a security interest in all Goods hired or otherwise supplied to the Customer. **16.2** Where Goods are supplied (but not sold) to the Customer and/or where property is used by TCNZ in the provision of Services to the Customer, at all times rights relating to ownership and possession of those Goods and other property remains with TCNZ, and at no stage does title pass to the Customer. However the Customer acknowledges and agrees that these terms and conditions create a security interest for the purpose of the PPSA in the Goods and other property. **16.3** The Customer will sign any documents required for TCNZ to perfect its security interest under the PPSA and authorises TCNZ to sign any such document as its attorney. **16.4** Save for the security interest and any lien rights in favour of TCNZ, the Customer will grant no security interest or lien over supplied Goods or other property used by TCNZ in carrying out Services. **16.5** In relation to the registration of financing statements on the Personal Property Securities Register (PPSR), the Customer undertakes to: **16.5.1** sign any further documents and/or provide any further information (which information the Customer warrants is complete, accurate and up-to-date in all respects) which TCNZ may reasonably require to enable registration of a financing statement or financing change statement on the PPSR (as those terms are defined in the PPSA); **16.5.2** not register a financing change statement or a change demand in respect of the Goods and Services without TCNZ's prior written consent; **16.5.3** give TCNZ not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in its details (including, but not limited to, changes in the Customer's address, facsimile number, trading name and/or business practice); and **16.5.4** give TCNZ full permission to a complete search of the register at any time about the Customer. **16.5.5** If Goods purchased from TCNZ are attached, fixed or incorporated into any property of the Customer, title in the Goods remains with TCNZ until the Customer has made payment for all Goods and Services and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods are deemed to be assigned to TCNZ as security for the full satisfaction by the Customer of the full amount owing between TCNZ and the Customer. The Customer has an obligation to not resell or part with possession of any Goods sold to it by TCNZ, or property of the Customer to which Goods have been attached, fixed, incorporated or otherwise mixed, until they have been paid for, unless with the prior written consent of TCNZ. **16.6** To the extent permitted by law, the Customer waives all its rights under Part 9 of the PPSA, including, without limitation, any rights it may have under ss 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA. The Customer further agrees that where TCNZ has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply. The Customer waives its right to receive a copy of any verification statement, financing statement or financing change statement (as those terms are defined in the PPSA).
- 17. DISPUTES 17.1** If any dispute whatsoever arises between the parties in connection with the Contract which cannot be resolved, either party may by notice in writing refer the dispute to arbitration before a sole arbitrator pursuant to the Arbitration Act 1996. If the parties cannot agree on the arbitrator, the arbitrator shall be nominated by the Registrar of the Building Disputes Tribunal (NZ) Limited. The Contract and any dispute will be governed by the laws of New Zealand. This clause does not affect the parties' rights under the Construction Contracts Act 2002, or the right to apply to the courts for interim or injunctive relief.
- 18. LIABILITY 18.1** Where the Customer is in trade, the Goods and/or Services are acquired in trade, and it is fair and reasonable pursuant to section 43 of the Consumer Guarantees Act 1993 and section 5D of the Fair Trading Act 1986, the parties agree that: **18.1.1** the provisions of the Consumer Guarantees Act 1993 will not apply; and **18.1.2** section 9 (misleading conduct), section 12A (unsubstantiated representations) and section 13 (false or misleading representations) of the Fair Trading Act 1986 will not apply to TCNZ's conduct or representations. The Customer acknowledges it does not rely on the representations or other conduct of TCNZ, whether during negotiations prior to its entry into these terms and conditions and/or its acquisition of Goods and/or Services, or at any subsequent time. **18.2** To the maximum extent permitted by law: **18.2.1** TCNZ is not liable for any Loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such Loss arises directly or indirectly from

Goods and Services provided by TCNZ to the Customer; and **18.2.2** the Customer indemnifies TCNZ against all claims and Loss however caused or arising and without limiting the generality of this clause whether caused or arising as a result of the negligence of TCNZ or otherwise brought by any person in connection with any matter, act, omission or error by TCNZ in connection with the Goods and Services.

- 19. WARRANTY 19.1** Where Goods are purchased by the Customer, or TCNZ is supplying repair Services, TCNZ will supply to the Customer any manufacturers' warranties which are made available by the manufacturer for those Goods and are able to be supplied by TCNZ to the Customer. The Customer acknowledges that: **19.1.1** TCNZ is not liable under any such manufacturers' warranties; and **19.1.2** such warranties may be voided by the unreasonable use, damage, misuse, and the like, of the Goods. **19.2** To the fullest extent permitted by law, no representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Goods and Services or Customer goods being repaired by TCNZ except where expressly stated in these terms and conditions.
- 20. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES 20.1** In addition to any requirements on the Credit Account Application form executed by the Customer, if the Customer is a company or trust, TCNZ may at any time require the Customer to procure, at the Customer's cost, a personal guarantee in such form as appended to these terms and conditions from guarantors to TCNZ's reasonable satisfaction. Without incurring any liability, TCNZ may suspend performance of any or all of its obligations under the Contract until such personal guarantee is provided to its reasonable satisfaction, and require the Customer to pay all Losses incurred by TCNZ as a result of such suspension.
- 21. DEFAULT 21.1** The Customer will be in default if any one or more of the following events occur: **21.1.1** after the parties enter into a Contract, the Customer gives notice it will not proceed with that particular Good and/or Services (unless notice has been given under 9.3 and accepted by TCNZ or the Contract has otherwise been lawfully terminated); **21.1.2** it becomes bankrupt, goes into liquidation, or has a receiver, voluntary administrator, or statutory manager appointed; **21.1.3** any material adverse change occurs in the financial position of the Customer; **21.1.4** it is unable to arrange or maintain insurance required by the Contract; **21.1.5** it abandons the Site or does or causes to be done or permits or suffers any act or thing which prejudices or endangers the safety or condition of Goods supplied or TCNZ's rights in those Goods; **21.1.6** any Goods in the possession of the Customer are materially damaged due to an act or omission of the Customer (or any person or entity for whom/which the Customer is as between the Customer and TCNZ responsible) and, in the case where such Goods have been purchased by the Customer, while any sum due from the Customer to TCNZ remains unpaid; **21.1.7** any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods; **21.1.8** the Customer, in writing or by conduct, informs TCNZ, or TCNZ reasonably concludes from the Customer's conduct, that the Customer no longer intends to be bound by the Contract; **21.1.9** the Customer, being a natural person, is incapacitated or dies; **21.1.9** it does not pay, or intimates that it will not pay, any sum by the Due Date.
- 22. BREACH AND TERMINATION 22.1** TCNZ may terminate the Contract immediately upon written notice if the Customer is in default. **22.2** Termination by TCNZ does not release the Customer from any liability for any breach, non-observance or non-performance of any of its obligations or covenants contained or implied in the Contract. **22.3** In the event that TCNZ terminates the Contract, then without limiting any of TCNZ's other rights and remedies, the Customer gives irrevocable authority to TCNZ to enter any premises occupied by the Customer or on which any Goods for which title has not transferred to the Customer are situated to remove and repossess those Goods and any other property which has been supplied by TCNZ. TCNZ is not liable for any Loss incurred by the Customer or any third party as a result of this action, or in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Without limitation, for repossessed Goods which TCNZ had sold to the Customer, TCNZ may either resell those repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain those repossessed Goods and credit the Customer's account with the invoice value less such sum as TCNZ reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs. **22.4** The Customer will indemnify TCNZ on demand for any Loss arising by TCNZ exercising its rights under clause 22. **22.5** The Contract shall terminate at the end of the Term, unless it is terminated earlier under the Contract. **22.6** Any of these terms and conditions that are expressed to take effect in whole or in part on or after termination, or are capable of having effect after termination, shall remain in full force and effect despite termination.
- 23. RETURN OF GOODS 23.1** This clause applies to Goods which have been purchased from TCNZ by the Customer. **23.2** Only stock items will be accepted for credit provided that they are returned complete, unused and in original undamaged packaging within 14 days of delivery. Such returns must be accompanied by full documentation stating the reason(s) for return and reference to TCNZ's packing slip or invoice number on which the Goods were originally supplied. **23.3** TCNZ may in its sole discretion accept returned Goods for credit but this will incur a restocking fee of 15% of the value of the Goods plus any freight. **23.4** TCNZ will not credit any delivery or return charges. **23.5** Goods specifically indented, manufactured or modified to order will not be accepted for credit. **23.6** Goods that have been supplied incorrectly due to TCNZ error or are faulty will be replaced or credited in full when returned in accordance with all of the above conditions.
- 24. VARIATIONS 24.1** The Customer and TCNZ may agree to vary the Contract, and the additional fees payable by the Customer as a result. Any such variation must be both in writing and signed by each party. **24.2** Without limitation, where a crane (that the Customer wishes to change) is the subject of a hire or lease agreement between TCNZ and a third party, the Customer will pay TCNZ for all termination, break, or other upstream Losses if as a consequence of the change in crane, TCNZ needs to terminate or amend that hire or lease agreement.
- 25. MISCELLANEOUS 25.1** TCNZ shall not be considered to have waived or released any of its rights under the Contract except by agreement in writing. **25.2** If any provisions of these terms and conditions are held to be invalid, void, illegal or unenforceable the remaining provisions will not be affected, prejudiced or impaired. **25.3** The Customer may not assign the Contract or any interest in it without TCNZ's express prior written consent. **25.4** At any time during or before the hire of a Good or its use in Services, TCNZ has the right, in its sole and absolute discretion, to substitute a Good of the same nature and characteristics.