# PORTACOM NEW ZEALAND LIMITED
# TERMS AND CONDITIONS OF TRADE: SALE & HIRE

## PART A: GENERAL CONDITIONS

### 1. THE CONTRACT

1.1 These terms and conditions of trade (incorporating Parts B, C and A, in that order of precedence) and the Quotation form the Contract (the **Contract**) between the Customer and Portacom for the sale or hire, as the case may be, of the Goods.

1.2 The Quotation is valid and is only open for acceptance by the Customer for 30 days from its date of issue and may be withdrawn by Portacom before acceptance for any reason.

1.3 All orders are subject to acceptance by Portacom. The terms and conditions of this Contract will apply to any order issued by the Customer to Portacom and shall prevail against any other terms and conditions whatsoever, including any conflicting terms contained in the Customer's purchase order.

### 2. DEFINITIONS

The following terms shall have the following meaning unless the context requires otherwise:

**Act of God** means a flood, fire, cyclone, hurricane, hailstorm, or earthquake.

**Building Renter Protection** is as set out in clause 26.

**Building Renter Protection Excess** means $1,000 per damaged module.

**Building Renter Protection Fee** means the GST exclusive building renter protection fee specified in the relevant Quotation.

**Consequential Loss** means any indirect, economic, or consequential loss, including but not limited to loss of revenue, loss of profits, loss of production or service, loss or damage to reputation, loss of anticipated savings or benefits or any other consequential loss, whatsoever arising out of or in connection with the Contract.

**Contract** has the meaning given to that term in clause 1.1.

**Customer** means the person or entity that is purchaser or hirer of the Goods (as the case may be) as set out in the Quotation, its agents and employees, successors and assigns.

**Goods** means all goods, including all associated accessories, sold, or hired to the Customer by Portacom and all associated services provided by Portacom under this Contract, as set out in the Quotation.

**GST** means the tax imposed under the *Goods and Services Tax Act 1985 (NZ)* and any amendments thereof.

**Hire Period** means the meaning given to that term in clause 22.1.

**Minimum Hire Period** means minimum hire period, as set out in the Quotation.

**Price** means the amount payable by the Customer for the Goods supplied to the Customer by Portacom.

**Portacom** means Portacom New Zealand Limited trading as "Portacom Modular Buildings", "Portacom Building Solutions", "Portacom" or "Rhino Temporary Fencing" and includes Portacom's agents and subcontractors.

**PPSA** means the *Personal Property Securities Act 1999*.

**Quotation** means the written quotation, with all nominated attachments, prepared and submitted to the Customer by Portacom for the supply of the Goods, at a specified Price and on the terms of this Contract.

**Site** means the site where the Goods will be installed and used, as set out in the Quotation or such other location where the Goods are moved to under this Contract.

### 3. PRICE

3.1 The Price of the Goods is the price quoted in the Quotation. Unless otherwise expressly specified, all Prices are exclusive of GST. The Price includes an environmental levy in relation to the Goods as stated in the Quotation.

3.2 The Price does not include the cost of relocation or removal of the Goods. Unless stated in the Quotation, such costs will be provided to the Customer in writing by Portacom when removing or relocating the Goods.

3.3 Portacom reserves the right to adjust the Price by giving written notice to the Customer in case of any price or cost increases due to:

(a) any factor beyond the reasonable control of Portacom, including but not limited to, increases in labour costs or material costs;

(b) any changes in delivery dates, quantities or specifications requested by the Customer;

(c) any delay or expense caused by any instructions or lack of instructions from the Customer or the Customer not giving Portacom access to a Site in compliance with clause 5; or

(d) any unanticipated site conditions or access that makes the delivery, installation, relocation and/or removal of the Goods more complex than anticipated by Portacom, up to an additional 10% of the Price.

### 4. PAYMENT

4.1 The Customer must pay the full Price, without set off, deduction or withholding, and all other sums owing under this Contract:

(a) in respect to the sale of Goods, upon delivery of the Goods; or

(b) in respect to the hire of Goods, on the first Business Day of each month during the Hire Period,

except where a Customer has an approved credit account with Portacom, then:

(c) the Price shall be paid in full on or before the 20th day of the month following the date of invoice; or

(d) otherwise as agreed to in writing by Portacom,

(each of the dates referred to in this clause 4.1 is a "Due Date" for clause 4.3 and 8.1(a)).

4.2 If the Customer disputes Portacom's invoice:

(a) the Customer must pay the undisputed amount (if any) and may dispute the balance; and

(b) the disputed amount will be resolved in accordance with the dispute resolution process under clause 17.

4.3 If the Customer fails to pay the Price (plus GST) or any other sum payable under this Contract by the Due Date, without prejudice to Portacom's other remedies under this Contract, at law or otherwise:

(a) Portacom may stop the further supply of any additional Goods;

(b) Portacom may terminate the hire of the Goods and repossess the Goods under this Contract;

(c) the Customer must pay to Portacom interest on any sum owing after the Due Date at the rate of 2.5% per month or part month from the Due Date until such time that it is paid in full; and

(d) the Customer will be liable for any expenses, disbursements and legal costs incurred by Portacom in the enforcement of any rights, or an attempted exercise of any of its rights in recovering any sum owing.

4.4 Payment of any amount payable under this Contract by way of a cheque, bill of exchange, or other negotiable instrument shall not be deemed paid until all cheques and other instruments are honoured or met in full.

### 5. SITE

5.1 The Customer must:

(a) on or by the agreed delivery date, make available to Portacom a clear, firm, level area free from impediment at the Site which is adequate for the Goods to be delivered and installed; and

(b) provide Portacom with uninterrupted access to the Site so that trucks and other delivery machinery and labour can deliver, install, move or remove the Goods at the Site.

5.2 The Customer warrants that it owns or has express legal authorisation to have the Goods installed or placed upon the Site and irrevocably authorises Portacom to access the Site for the purposes of this Contract.

5.3 Portacom recommends that the Customer conduct a site risk assessment before delivering the Goods to establish if the Goods provided by Portacom are to be secured firmly to fixed foundations or securely anchored by other means.

### 6. DELIVERY AND INSTALLATION OF THE GOODS

6.1 Delivery of the Goods is made by either:

(a) the Customer collecting the Goods at Portacom's premises once Portacom has notified the Customer that the Goods are ready for collection; or

(b) if some other place for delivery is specified in the Quotation or is otherwise agreed by Portacom, Portacom delivers the Goods to that place.

6.2 Any date quoted for delivery of the Goods is approximate only and given in good faith in the Quotation or otherwise. Portacom will use its reasonable endeavours to deliver the Goods on or before the delivery date, however delivery dates are not binding on Portacom.

6.3 Portacom may deliver the Goods in instalments. Partial delivery by Portacom does not entitle the Customer to end the Contract. The Customer stays liable to pay for the Goods so delivered.

6.4 Portacom is not liable for any delay, failure, or inability to deliver, howsoever caused, or any Consequential Loss of the Customer.

6.5 If the Customer fails, refuses, or says to Portacom that the Customer will fail or refuse to take or accept delivery, then the Goods shall be deemed to have been delivered when Portacom was willing to deliver them.

6.6 If the Customer does not:

(a) take delivery of the Goods;

(b) provide Portacom with satisfactory access to the Site, or provide a Site suitable for the delivery and installation of the Goods, by the date of delivery; or

(c) give Portacom adequate instructions (including any documents, licenses or authorisations required for the delivery of the Goods),

Portacom may charge the Customer for the reasonable costs associated with such failure and the storage and redelivery of the Goods.

6.7 Where installation is included in the Quotation, as soon as is practical after the Goods are delivered to the Site, Portacom will cause installation of the Goods to be carried out:

(a) in an orderly, professional workmanlike manner;

(b) following all relevant laws and approvals;

(c) following the agreed specifications set out in the Quotation; and

(d) to practical completion by the date specified in the Quotation (if any).

### 7. ACCEPTANCE OF THE GOODS

7.1 Within 3 days of delivery of the Goods, the Customer must let Portacom know in writing of any missing Goods, or defect, or error which are or should have been apparent from a reasonable inspection of the Goods at the time of delivery.

7.2 If the Customer does not notify Portacom in accordance with clause 7.1, the Customer is deemed to have accepted the Goods in the condition in which they were delivered and will be liable to pay the full Price without limitation.

7.3 If the Customer makes a valid claim following clause 7.1 which is accepted by Portacom, then Portacom may at its sole discretion chose to do any of the following:

(a) replace the Goods or re-perform the associated services (or the part in question) at its own cost; or

(b) refund part or all of any of the Price paid.

**8. CUSTOMER'S OBLIGATIONS AND WARRANTIES**

8.1 The Customer acknowledges and agrees that it is their responsibility to ensure that the Goods bought or hired are appropriate for the particular purpose. Portacom makes no representations to the Customer about the suitability for any Goods for any particular purpose.

8.2 The Customer warrants that:

(a) it has and shall continue to provide Portacom with all information and assistance relevant to the carrying out of the supply of the Goods;

(b) it has obtained all necessary resource consents and/or licences from the relevant local authority or other competent authority for the installation and use of the Goods and has informed Portacom of all matters relating to such consents;

(c) before commencement of any supply it shall mark all boundaries of the Site where work is to proceed and shall inform Portacom and all delivery and installation personnel and, if any soil is to be removed from Site, the place where it is to be deposited;

(d) the Customer has located, marked and advised Portacom of all gas pipes, water pipes, sewage lines, drainage lines, telephone cabling, and other utilities that are on, near, or adjacent to the Site before the supply of the Goods;

(e) all Goods will be firmly fixed to foundations or securely anchored to the ground at all times and where portable modular buildings are to be placed on a concrete floor, such floor shall have a smooth trowelled concrete finish and be level to within 3mm in no less than 3,000mm and within 5mm at any point in the floor; and

(f) it has informed Portacom of any possibility of or knowledge of any subsidence, slip, erosion, flooding, or any other thing which might constitute a hazard on the Site.

**9. TITLE AND RISK**

9.1 Title in the Goods shall:

(a) in respect to the purchase of Goods, not pass to the Customer until Portacom receives full payment for the Goods (and any other goods or services); and

(b) in respect to the hire of Goods, always remain with Portacom and the Customer shall have no right, title or interest in the Goods other than as the hirer.

9.2 The Customer must not charge the Goods in any way, nor sub-hire, part with possession, grant or otherwise give any interest in the Goods or in any way prejudice or endanger Portacom's ownership or rights in the Goods while the legal and equitable title remains with Portacom, without Portacom's prior written consent.

9.3 Risk of damage to or loss of the Goods will pass to the Customer, in the case of the Goods to be delivered at Portacom's premises, at the time that Portacom notifies the Customer that the Goods are available for collection. Where the Goods are to be delivered other than at Portacom's premises, at the time of delivery or, if the Customer wrongfully does not take delivery of the Goods, at the time when Portacom has tendered delivery of the Goods.

**10. PPSA**

10.1 Notwithstanding clause 9, the Customer acknowledges that:

(a) these terms create a security interest (as defined under the PPSA) in favour of Portacom in Goods:

(i) sold to the Customer by Portacom and that the Goods bought from Portacom remain the property of Portacom until paid for in full; or

(ii) hired to the Customer by Portacom for a term of more than 1 year and that the title, to the Goods, remains with Portacom at all times;

(b) the Customer shall act at once when requested by Portacom to do such acts and provide such information as in Portacom's opinion may be necessary or desirable to enable Portacom to perfect any security interest created or provided for by these terms, in the Goods or their proceeds with first priority; and

(c) to the fullest extent permitted by law, the Customer waives any rights it may have now or in the future to receive a copy of any verification statement or other confirmation related to any security interest created or provided for by or perfected in the manner contemplated by these terms.

10.2 In addition to the security interest referred to in clause 10.1, the Customer also grants a security interest in all present and after acquired goods as security for all moneys now and in the future owing by the Customer to Portacom.

10.3 The Customer agrees (to the extent allowed under the PPSA) that the Customer shall have no rights under Part 9 (Enforcement) of the PPSA.

**11. DEFAULT AND TERMINATION**

11.1 A "**Default Event**" will occur if the Customer:

(a) fails to pay any amount due to Portacom under the Contract or under any other agreement with Portacom by its Due Date;

(b) breaches any other provision of the Contract;

(c) wrongfully refuses the delivery of the Goods;

(d) purports to terminate the Contract or returns the Goods prior to the end of a Minimum Rental Period;

(e) makes or threatens to make any voluntary or involuntary arrangement with its creditors or becomes subject to any external administration;

(f) enters or threatens to enter into liquidation, receivership, administration or bankruptcy;

(g) is subject to any measure by a receiver or administrator in respect of the whole or any part of its assets or if any distress or execution is levied on its assets; or

(h) ceases, or threatens to cease, to carry on business.

11.2 If a Default Event occurs, Portacom may, without incurring any liability to the Customer, at once take any of the following actions:

(a) suspend any further deliveries to the Customer under the Contract;

(b) terminate the Contract by notice in writing; or

(c) declare all amounts due by the Customer to Portacom under this Contract to be due and payable.

11.3 If a Default Event occurs, all Goods where legal and equitable title is held by Portacom must be returned to Portacom immediately upon request from Portacom. The Customer must provide all necessary help to Portacom or its agents in the recovery of the Goods and will pay all fees and costs (including reasonable solicitor fees) associated with the recovery of the Goods. Failure to follow this clause constitutes a material breach of the Contract by the Customer.

**12. INDEMNIFICATION**

12.1 The Customer indemnifies and keeps indemnified Portacom against any claim, actual or potential, that may be made against Portacom or any liability, cost, loss or expense Portacom which it may incur (including but not limited to reasonable solicitor fees) that arises out of or in connection with a breach by the Customer of any of its obligations under the Contract.

12.2 The indemnification in clause 12.1 will be interpreted and applied to the fullest extent allowed by law.

**13. LIMITATION OF LIABILITY**

13.1 Portacom, its employees, or agents will not be liable for any loss or damage to the Client of any kind whatsoever arising out of or in connection with the Contract, except if such loss or damage is due to the negligence of Portacom, its employees, or agents.

13.2 Notwithstanding anything to the contrary in the Contract:

(a) Portacom's total aggregate liability under the Contract is limited to the amount paid by the Customer for the relevant Goods or in the case of rental, the rental value for six months for the relevant Goods; and

(b) Portacom shall not be liable for any indirect, economic or Consequential Loss whatsoever arising out of or in connection with the Contract.

**14. SAFETY**

The Customer must comply with all instructions and statutory provisions regarding the use of the Goods, including provisions on health and safety in the workplace being applicable at the time of use.

**15. CONFIDENTIALITY**

15.1 The Customer agrees to treat as confidential any information (whether written or oral) concerning pricing, trade secrets, intellectual property and other proprietary information, and any technical, business, financial or marketing information disclosed by Portacom in relation to the Contract.

15.2 The Customer agrees to be responsible for any breach of this clause 15 by its representatives or any party acting on its behalf.

**16. INTELLECTUAL PROPERTY**

16.1 Unless otherwise specifically agreed to in writing by Portacom, all rights in the Goods, all information, solutions, samples, drawings, illustrations, descriptions, specifications or in any intellectual property issued to the Customer or published by Portacom (including any descriptions or illustrations) remains the property of Portacom.

16.2 Nothing in the Contract purports to grant or transfer Portacom's intellectual property rights to the Customer.

**17. DISPUTE RESOLUTION**

17.1 If a difference or dispute between the parties arises in connection with the Contract (a **Dispute**), either party shall give the other party a written notice of dispute identifying and providing details of the dispute.

17.2 Notwithstanding the existence of a Dispute, subject to clause 11, the parties agree that during any period of such dispute both parties will continue to perform its obligations under the Contract as if no such dispute exists between the parties.

17.3 Within 14 days after receiving a notice of dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or method and all discussions will be on a without prejudice basis.

17.4 If the dispute has not been resolved within 28 days of service of the notice of dispute, that dispute shall be referred to a single arbitrator to be mutually agreed upon, or failing such agreement, as nominated upon the request of either party by the President for the time being of the Master Builders Association of New Zealand or his appointee and any determination shall be final and binding on the parties.

17.5 Nothing in this clause 17 shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.

**18. TERMS TO SURVIVE THE CONTRACT**

The following clauses survive the expiry or termination of the Contract: clauses 3, 4, 8, 9, 10, 12, 13, 15, 16, 17, 20 and 21.

**19. ASSIGNMENT AND SUBCONTRACTING**

19.1 The Customer may not transfer any of its rights and obligations under the Contract to any other person without Portacom's prior written consent.

19.2 Portacom may on written notice to the Customer transfer any or all its rights or obligations under the Contract to any other person.

19.3 Portacom may sub-contract any of its obligations under the Contract.

**20. GENERAL**

20.1 The failure or delay by Portacom to exercise any of its rights under the Contract will not waive or vary that or any other right and any partial exercise of any right will not prevent Portacom from exercising that or any other right.

20.2 Each right or remedy of Portacom under the Contract is without prejudice to any other right or remedy of Portacom whether under the Contract or at law.

20.3 Any part hereof being a whole part of a clause shall be capable of severance without affecting any other part of the Contract.

20.4 The Contract may be amended in writing by mutual agreement of the parties.

20.5 The parties irrevocably agree to be governed by the laws of New Zealand and the courts of New Zealand will have jurisdiction.

20.6 Nothing in the Contract shall be considered to constitute a partnership between the parties or constitute any party the agent of the other party for any purpose or entitle any party to commit or bind the other party in any manner or give rise to fiduciary duties by one party in favour of any other.

## PART B: CONDITIONS OF SALE

In addition to the provisions contained in Part A of this Contract, the provision in this Part B will apply to all Contracts relating to the sale of Goods.

**21. WARRANTIES**

21.1 Portacom warrants that the Goods will correspond to their specification at the time of delivery and free from defects in material and workmanship.

21.2 The warranty in clause 21.1 does not extend to parts, materials or equipment not manufactured by Portacom. Portacom's only liability in respect of such parts, materials or equipment shall be to transfer to the Customer on the written request of the Customer, such rights as Portacom has and is entitled to transfer under any warranty or guarantee given by the manufacturer in respect of such parts, materials, or equipment.

21.3 Portacom's standard warranty will not apply:

(a) if the Customer has not notified the defects or errors in accordance with the Contract;

(b) if the Customer (or any other person) makes any use of the Goods after the Customer has given Portacom notice of any defect in the Goods;

(c) in respect of any defect in the Goods arising from any drawing, design, specification or instruction supplied by the Customer;

(d) in respect of any defect arising from the Goods being used or maintained in a manner other than its intended use, or from failure to follow other instructions from Portacom (whether oral or in writing);

(e) to defects arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse, alteration, or repair of the Goods without Portacom's approval; or

(f) if the Customer does not pay the price on its Due Date.

21.4 If Portacom is liable under a warranty claim, Portacom's liability will be limited to repairing or replacing the Goods or the defective part or, at Portacom's discretion, refunding to the Customer the price of the defective Goods (or a proportionate part of the price). This will be the sole and exclusive remedy for the breach of any warranties.

21.5 Any Goods replaced will belong to Portacom. Any repaired or replacement Goods will have the same warranties on the terms set out in this clause 21 save that the applicable warranty period will be calculated from the date of delivery of the original Good.

21.6 Any Good which is sold as a "used Good" is sold "as is" with no warranties whatsoever, either express or implied.

21.7 Portacom provides no other express or implied warranties other than what is stated in this Contract and, to the extent permitted by law, all other warranties (express or implied), including any warranty of merchantability or fitness for any particular purpose, are hereby excluded.

## PART C: CONDITIONS OF HIRE

In addition to the provisions contained in Part A of the Contract, the provision in Part C will apply to all Contracts relating to the lease, hire or rental of Goods.

**22. HIRE TERMS**

22.1 The Hire Term begins on the day the Goods are delivered to the Customer or collected from Portacom and ends upon its return to the Portacom premises from which it was released or collected, whichever is the later (**Hire Period**).

22.2 A Minimum Hire Period for the Goods may apply and shall be stated in Portacom's Quotation.

22.3 The Hire Term will cease when the Goods are returned to Portacom (either on the date and time specified on the Delivery/Pick up Docket), on Portacom repossessing the Goods by its rights under the Contract or the Customer returning the Goods prior to the end of the Minimum Hire Period for whatever reason (**Early Termination**).

22.4 Early Termination of a hire Contract, whether by the Customer for whatever reason, or through the exercise of Portacom's rights under the Contract, will not entitle the Customer to any refund or credit for the rest of the Minimum Hire Period.

22.5 Hire charges are calculated daily based on a 7-day week, will be based on a 24-hour period or part thereof and will continue to accrue over weekends and public holidays.

**23. USE OF THE GOODS**

23.1 If the Goods to be hired are used Goods, the Customer is not entitled to demand new Goods.

23.2 The Customer must ensure that:

(a) the Goods are at all times in its care, custody and control and are not moved from Site without Portacom's prior written consent;

(b) all necessary permits are obtained before it begins using the Goods;

(c) the Goods are only used for their normal and obvious purpose and in a manner which will not invalidate any insurance;

(d) adequate and proper measures are taken to protect the Goods from theft, damage vandalism and other risks and the Goods are kept clean and in good condition;

(e) the Goods are not exposed to contaminants including, but not limited to, chemicals, corrosive agents or other hazardous substances or to radiation;

(f) subject to clause 23.3, no repairs, maintenance, adjustments, alterations or additions to the Goods are made without Portacom's prior written consent;

(g) the Goods stay chattels and are at no time annexed to any land; and

(h) numbers, distinguishing marks, or notices on the Goods are not removed, altered, defaced, or otherwise tampered with.

23.3 The Customer must pay all costs related to the general use and maintenance of the Goods (including but not limited to the costs of electricity supply, fuel, light bulbs, or other consumables).

**24. HIRE CHARGES**

24.1 The Customer must pay the hire charges in accordance with the Quotation and clause 4.

24.2 Notwithstanding any other terms of this Contract, all outstanding fees and charges payable by the Customer must be paid in full upon termination or expiry of the Hire Term.

**25. INSURANCE**

25.1 The Customer must before the commencement of the Hire Term, take out insurance policies that follow the following requirements:

(a) broad form public liability insurance for at least $10million per occurrence;

(b) if the Customer does not elect to take out Building Renter Protection, property insurance for the full replacement value of the Goods;

(c) the policies be extended to protect the interests of Portacom for any vicarious liability arising out of the Customer's activities under this Contract;

(d) all insurance to be underwritten by an insurer approved by Portacom; and

(e) any excess or deductible amount to be shown on insurance certificates and the Customer is liable for any excess or deductable.

25.2 All the Customer's insurance policies under this clause must:

(a) be in the name of the Customer; and

(b) be current and note Portacom as an interested party.

25.3 The Customer must on request produce to Portacom a certificate of currency for all required policies.

**26. BUILDING RENTER PROTECTION**

26.1 This clause 26 only applies where the Customer has chosen to take out Building Renter Protection included in the Quotation and has consistently paid the Building Renter Protection Fee.

26.2 The Building Renter Protection Fee, plus GST, referred to in the Quotation will automatically be charged to the Customer in addition to the hire charges each month of the Hire Period.

26.3 The Customer's payment of the Building Renter Protection Fee relieves the Customer of liability over the Building Renter Protection Excess for any loss or damage to any hired Goods (other than associated accessories) during the Hire Period caused by:

(a) Act of God;

(b) vandalism;

(c) theft (including forced or attempted forced entry); or

(d) graffiti.

26.4 The Customer's payment of the Building Renter Protection Fee also relieves the Customer of liability for any loss or damage to any hired associated accessories located inside a hired Good that are lost or damaged by an Act of God.

26.5 Notwithstanding anything to the contrary, the Customer cannot limit its liability under this clause 26 to the extent that any loss or damage is caused by any negligent act or omission of the Customer, its officers, employees, agents, or contractors failing to properly secure the Goods.

26.6 If any hired Goods are lost or damaged, before the Customer can limit its liability under this clause 26, it must:

(a) pay any Building Renter Protection Fees due and owing;

(b) pay the Building Renter Protection Excess;

(c) demonstrate that it has taken reasonable precautions against loss, damage, theft and forced entry;

(d) notify Portacom in writing of any loss or damage to the hire Goods within five business days of becoming aware of such damage;

(e) if required by Portacom, deliver to Portacom, to its reasonable satisfaction, evidence of the loss or damage (including any police reports in the event of theft, vandalism or forced entry), within ten business days of becoming aware of such event; and

(f) not be in breach, or not have breached, any term of this Contract.

26.7 The parties acknowledge and agree that the Building Renter Protection in this clause 26 is not insurance and therefore does not cover any general liability incurred by the Customer (including, but not limited to, any loss or injury to third parties) or its use of the Goods, or any consequential loss incurred by the Customer or any third party.

**27. RELOCATION**

27.1 Any relocation of the Goods must be performed by Portacom, unless Portacom otherwise consents in writing, and if Portacom consents then the relocation will be undertaken at the Customer's risk but must be undertaken in accordance with the terms and conditions set out in Portacom's written consent.

27.2 The Customer shall let Portacom know, by telephone, at least 48 hours before the Customer seeks to relocate the Goods.

27.3 If the Customer requires Goods to be moved, the Goods must be immediately ready for removal or relocation at the specified time notified under clause 27.2. The Customer indemnifies Portacom for any cost or loss incurred by Portacom resulting from the Goods not being ready for relocation by that time.

**28. PICK UP AND RETURN OF GOODS**

28.1 If Portacom is to pick up the Goods, the Customer must give Portacom at least 3 business days' notice in writing that it requires the Goods to be returned before the Goods will be picked up or returned.

28.2 The date of pick-up of the Goods by Portacom is approximate only. Portacom will not be liable for any delay in the pick-up of the Goods, however caused. Time for pick-up of the Goods is not of the essence.

28.3 The return of the Goods will be at the Customer's cost and risk unless otherwise agreed in writing by the parties.

28.4 The Goods must be returned complete and in the same condition as when delivered (except for normal wear and tear). The Customer indemnifies Portacom for any cost or loss incurred by Portacom resulting from the Goods not being ready for pick up.

28.5 The Goods must be cleaned, disconnected from all services and otherwise available for collection.

28.6 Portacom will inspect the Goods upon its return to verify the quantity and condition and issue a return ticket. The Customer may attend such inspection. Unless Portacom receives written notice of any dispute from the Customer within five business days of the date on which the return ticket was issued, the Goods shall be deemed to have been returned to Portacom in the quantity and condition specified in such return ticket.

**29. WARRANTY**

29.1 Portacom warrants that the Goods:

(a) will be free from defects and be of merchantable quality;

(b) will correspond to their general specification at the time of delivery; and

(c) comply with the relevant standards.

29.2 It is a condition of this warranty that the Customer meets all its obligations, especially its payment obligations.

29.3 Portacom's liability under a warranty claim is limited to repairing or replacing the Goods or the defective part.

**30. CLEANING, DAMAGE AND LOSS OF THE GOODS**

30.1 If the Customer cleans the Goods, such cleaning shall be per any applicable law and accepted local standards and practices, in particular all abolition units should be flushed several times before being disconnected.

30.2 Portacom has the right to charge the Customer for the costs of cleaning the Goods if it has not been cleaned following the applicable standards or law.

30.3 The Customer must let Portacom know immediately of any damage, loss or theft of the Goods and provide full particulars of such damage, loss or theft in writing.

30.4 Subject to clause 26:

(a) the Customer will be liable for damaged Goods and same will be repaired, at the Customer's cost, to the condition that they were in at the commencement of the hire;

(b) the Customer must pay for the replacement of any Goods that are lost, stolen or unfit for repair, that is, if the Goods cannot be repaired with reasonable effort and cost; and

(c) the Customer will indemnify Portacom for any lost revenue incurred by Portacom whilst the damaged or missing Good is being repaired or replaced.

**31. RIGHT OF INSPECTION**

31.1 The Customer grants Portacom the right to enter the Site and inspect the Goods during normal business hours at any time during the Hire Period.

31.2 The Customer must let Portacom know of the exact location of the Goods upon request of Portacom.

31.3 Notwithstanding any other rights under the Contract, Portacom has the right to remove the Goods if, within the course of inspection it discovers that:

(a) the Goods are used contrary to the provisions of the Contract; or

(b) there is a risk that the further use of the Goods may damage the Goods, third party property or the safety or health of individuals using the Goods.

31.4 The Customer will be liable for all costs and expenses associated with the exercise by Portacom of their rights under clause 31.3.

**32. CUSTOMER'S OBLIGATIONS**

The Customer must at its own cost:

(a) ensure that road slabs or other indirect foundations are in a condition to withstand the planned pressure from one base of the support in accordance with all current standards and regulations;

(b) ensure safe access to and from all places of work at the Site and provide a safe working environment; and

(c) securely store any Goods not in use.

**33. BRANDING AND ADVERTISING**

The Customer must not place or allow any other party to place any advertisement or sign on the Good without Portacom's prior consent.

## TERMS UNDERSTOOD AND AGREED

These terms have been read and understood by the Customer who agrees to be bound by them in relation to goods presently acquired and after-acquired from Portacom (whether they are sold or hired). The Customer acknowledges that **Portacom New Zealand Limited takes a security interest in all such present and after-acquired goods**.

Signature *(Required)*.....

Full Name *(Required)*:

Position *(Required)*:

Date *(Required)*: