

# CSP Pacific

A Fletcher Concrete & Infrastructure Limited business

## CONDITIONS OF HIRE

### 1. INTERPRETATION

- (a) **Definitions:** In this Agreement unless the context otherwise requires:
- Agreement** means this hire agreement which includes the Application Form and these Conditions of Hire;
- Application Form** means the Credit Application and Terms of Credit Form;
- Business Day** means a day other than Saturday or Sunday on which registered banks are open for ordinary over-the-counter banking business in Auckland, New Zealand;
- CSP** means Fletcher Concrete & Infrastructure Limited through its CSP Pacific division;
- Default Interest Rate** means the rate of two per cent above CSP's bank's overdraft interest rate;
- Equipment** means all roadside crash barriers and cushions, products, parts and materials, VMS Boards and any other products or materials hired from CSP by the Customer from time to time as agreed by the parties;
- GST** means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time, including any tax levied in substitution for that tax;
- Hire Commencement Date** means the time and date on which the Equipment is first made available to the Customer for pick up from the Premises;
- Hire Period** means the period commencing on the Hire Commencement Date and ending on the date that the Customer returns the Equipment to the Premises or this Agreement is terminated under clause 10;
- Hire Rate** means the cost of hiring each piece of Equipment for any specified period as notified by CSP to the Customer from time to time (plus GST);
- LTD Waiver Fee** means an additional amount payable under clause 3(a) by the Customer for the purposes of limiting the Customer's liability to CSP if any item of Equipment is lost, stolen or damaged while in the Customer's possession or control, with the LTD Waiver Fee being for such amount as agreed between CSP and the Customer from time to time (plus GST) or as otherwise notified by CSP to the Customer from time to time;
- Premises** means CSP's premises as specified by CSP from time to time; and
- VMS Boards** means any variable message system boards hired from CSP by the Customer from time to time.

### 2. HIRE OF EQUIPMENT

The Customer acknowledges and agrees that, unless expressly agreed to in writing by CSP, the terms and conditions set out in this Agreement will apply in relation to the hireage of all Equipment from CSP.

### 3. PAYMENT OBLIGATIONS

- (a) In consideration for CSP agreeing to hire the Equipment to the Customer, the Customer will pay to CSP the Hire Rate and the LTD Waiver Fee (if relevant) for each piece of Equipment at all times during the Hire Period (plus GST).
- (b) If required by CSP, the Customer will pay a deposit of not more than the estimated total rental payable under clause 3(a) prior to the Hire Commencement Date. On return of the Equipment, the actual total charges will be calculated and the Customer will be required to pay or will be refunded with the difference between the deposit and the actual total rental payable under clause 3(a).
- (c) Subject to the terms of this Agreement, the Customer will pay all amounts payable under this Agreement immediately upon the expiry of the Hire Period or such other period as agreed to by CSP provided that payment will not be made later than the 20th day of the month following the date on which CSP issues the Customer with an invoice for the relevant amount.
- (d) The Customer will pay all amounts due under this Agreement in cleared funds without any deduction, set-off or counterclaim whatsoever.
- (e) Without prejudice to CSP's other remedies under this Agreement at law or otherwise, if the Customer does not make any payment due under this Agreement when due, CSP may charge default interest at the Default Interest Rate on the overdue amount for the period from the due date for payment until the actual date of payment. Default interest will be calculated on a daily basis and compounded monthly. In addition the Customer will pay to CSP all costs and expenses incurred by CSP in recovering any money due or in connection with the exercise or attempted exercise of any of its rights or remedies under this Agreement, (including without limitation all collection commissions and legal costs charged on a solicitor and client basis).

### 4. CUSTOMER'S OBLIGATIONS

The Customer acknowledges and agrees that it will:

#### *Transport and Installation of Equipment*

- (a) be responsible for unloading all Equipment from the Premises and will be responsible for transporting the Equipment at its own risk and expense to, and from, the Customer's desired location. If CSP agrees to transport the Equipment for and on behalf of the Customer it will be at the Customer's risk and cost provided that the Customer will be required to provide suitable vehicular access to the desired location and ensure appropriate traffic management precautions are in place. CSP will have no liability to the Customer if it is unable to deliver the Equipment at the agreed time or date;
- (b) install and maintain the Equipment at all times during the Hire Period in accordance with the manufacturer's and/or CSP's instructions and dismantle the Equipment upon expiry of the Hire Period in accordance with the manufacturer's and/or CSP's instructions and redeliver the Equipment to CSP at its own cost unless otherwise agreed with CSP (in which case an additional charge may apply);
- Use of Equipment*
- (c) only use the Equipment for its intended purpose;
- (d) take proper and reasonable care of the Equipment and return it in a clean and tidy condition and in the same order it was in at the Hire Commencement Date

- (or to otherwise pay on demand CSP's reasonable cleaning charges and costs of repair if the Equipment is not returned in the same condition as it was on the Hire Commencement Date);
- (e) obtain all necessary licences, permits and permissions for the use of the Equipment throughout the term of this Agreement;
- (f) comply with all applicable laws, regulations and by-laws (including, but not limited to, the Health & Safety in Employment Act 1982) in relation to the use of the Equipment;
- (g) ensure that at all times during the Hire Period the Equipment is used solely for the purpose intended by the manufacturer, within the Equipment's design capabilities and limitations, and in accordance with the manufacturer's and/or CSP's instructions;
- (h) carry out all necessary servicing of the Equipment required to maintain the Equipment in good working order at all times during the Hire Period;
- (i) promptly notify CSP if the Equipment or any part thereof is lost, stolen, destroyed, damaged, or breaks down provided that the loss, theft or destruction of or damage to the Equipment will not affect the continuance of this Agreement or the Customer's liability to pay the Hire Rate during the Hire Period;
- Protection of CSP's Rights in Equipment*
- (j) protect CSP's interest in the Equipment, including making it clear to third parties that CSP owns the Equipment;
- (k) not place, or allow to be placed, on the Equipment any marks that are inconsistent with CSP's ownership;
- (l) not remove or obscure any of CSP's identification marks on the Equipment;
- (m) not remove the Equipment from New Zealand;
- (n) not allow any other person to use the Equipment or give any other person any interest in, or any form of encumbrance or security over, the Equipment, or authorise any other person to do any of the above;
- (o) allow CSP and its employees and contractors access to the Equipment all at times during the Hire Period (wherever it is situated) for the purposes of inspecting, testing or repairing the Equipment;
- (p) keep the Equipment at all times in the possession and control of the Customer free from distress, execution or other legal process, and not remove the same without the consent in writing of CSP. If the Equipment or any part thereof is removed, seized or taken out of the possession or withheld from the Customer, the Customer will immediately give written notice to CSP of the address of the place where the Equipment or part thereof may be and the name of the person who removed, seized or took the Equipment out of the Customer's possession;
- Insurance*
- (q) at all times during the Hire Period maintain public liability insurance and full replacement insurance with reputable insurers and on such terms as approved from time to time by CSP (such approval not to be unreasonably withheld). The Customer will provide to CSP, whenever reasonably requested by CSP to do so, written evidence of compliance by the Customer with its obligations under this clause; and
- Indemnity*
- (r) indemnify CSP, its agents and subcontractors at all times against any loss, damage or cost including consequential loss or damage suffered or incurred by CSP, its agents and subcontractors as a direct or indirect result of a breach by the Customer of any of its obligations or warranties under this Agreement or from the Customer's hire, possession or use of the Equipment or if the Equipment is not returned to CSP in the same condition as it was in at the Hire Commencement Date.

### 5. WARRANTIES

- (a) The Customer acknowledges that the Customer has inspected the Equipment and has relied on such inspection in deciding to hire. Except as expressly set out in this Agreement the Customer acknowledges that CSP has made no warranty as to the Equipment's condition, quality and suitability for the Customer's purpose and that the Customer has satisfied itself that the Equipment is suitable for the Customer's intended use.
- (b) If the Customer is not an individual, the person who signs this Agreement on behalf of the Customer warrants that they have authority to bind the Customer and will, in any event, be personally liable for the performance of the obligations of the Customer.

### 6. LIABILITY FOR LOST, STOLEN OR DAMAGED EQUIPMENT

- (a) The Customer acknowledges and agrees that as between the Customer and CSP the Customer will be solely and exclusively responsible for any loss of, or damage to any Equipment while it is in the Customer's possession or control (fair, wear and tear excepted but including without limitation any loss or damage incurred by CSP, its agents and subcontractors as a result of any incorrect use, installation or maintenance of the Equipment by the Customer during the Hire Period) and that the Customer will indemnify CSP against any loss or damage suffered by CSP as a result of any loss or damage to the Equipment including without limitation:
- (i) any costs incurred by CSP to recover and repair or replace the Equipment; and
- (ii) the Hire Rate for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced by CSP, provided that if the Customer has paid to CSP the LTD Waiver Fee in the manner set out in this Agreement, each of the following criteria set out in clause 6(b) are met and the circumstances set out in clause 6(c) do not apply, the Customer's liability to CSP in relation to any item of Equipment which is damaged or lost will be limited to:
- (iii) \$500 (if the replacement cost of the Equipment is more than \$500) or the replacement cost of the Equipment (if the replacement cost of the Equipment is less than \$500); or

- (iv) 15% of the cost of repairs (if the Equipment is partially damaged and can be repaired) or 15% of the full new replacement cost of the Equipment (if the Equipment is lost, stolen or damaged beyond repair), whichever is greater.
  - (b) The limitation of liability set out above in clause 6(a) will only apply if the Customer has paid the LTD Waiver Fee and:
    - (i) the Customer notifies a CSP staff member promptly as soon as they are aware of the incident;
    - (ii) the Customer reports the incident to the police within 24 hours and provides CSP with a written police report;
    - (iii) the Customer has co-operated with CSP and provides details of the incident, including any written or photographic evidence CSP may require; and
    - (iv) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 6(c).
  - (c) The limitation of liability set out above in clause 6(a) will not apply if:
    - (i) the Customer has failed to pay the LTD Waiver Fee in full and on time to CSP in accordance with this Agreement; or
    - (ii) the loss or damage to the Equipment is caused as a result of:
      - A. the Customer's breach of any clause of this Agreement;
      - B. the Customer's negligent act or omission;
      - C. the Customer's use of the Equipment in violation of any laws;
      - D. the Customer's failure to use the Equipment for its intended purpose or in accordance with CSP's instructions or the manufacturer's instructions;
      - E. any collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
      - F. electrical overload, surge in electrical current or the use of under-rated or excessive lengths of extension leads with any electrical Equipment or motors;
      - G. exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc; or
      - H. any act of vandalism; or
    - (iii) the loss or damage is to any tyres or tubes forming part of the Equipment or the screen of any VMS Board or any glass forming part of the Equipment.
- 7. LIMITATION OF LIABILITY**  
The parties acknowledge that:
- (a) nothing expressed or implied in this Agreement will confer any liability on CSP in respect of any direct, indirect, consequential or special loss, damage, cost or expense suffered or incurred by the Customer however it may arise, including, but not limited to, as a direct or indirect result of a breach by CSP of any of its obligations under this Agreement, negligence of CSP, or by operation of law;
  - (b) notwithstanding clause 7(a), the maximum liability of CSP to the Customer under these Conditions of Hire will be limited to repairing or replacing the Equipment (at CSP's option), provided that if the Equipment cannot be promptly repaired CSP will provide the Customer with replacement Equipment (if such Equipment is available); and
  - (c) that where the Customer is acquiring, or holds itself out as acquiring, the Equipment for the purposes of a business, in terms of section 43(2) of the Consumer Guarantees Act 1993, the Customer will not assert or attempt to assert any rights or claims against CSP under the provisions of that Act.
- 8. TITLE**  
The Customer acknowledges that ownership of the Equipment remains at all times with CSP and that except in accordance with this Agreement the Customer is a bailee of the Equipment only and has no rights, title or interest in the Equipment.
- 9. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**  
All terms in this clause 9 have the meaning given in the PPSA and section references are references to sections of the PPSA. The Customer acknowledges that this Agreement creates in favour of CSP a first ranking security interest in the Equipment and that CSP may register a financing statement to that effect against the Customer. The Customer agrees:
- (a) to promptly execute any documents, provide all necessary information and do anything else required by CSP to ensure that the security interest created under this Agreement constitutes a perfected security interest in the Equipment;
  - (b) to pay to CSP all fees and expenses incurred by CSP in relation to the filing of a financing statement in connection with this Agreement; and
  - (c) that nothing in sections 133 and 134 of the (PPSA) applies to this Agreement, and to the extent they are applicable to the Customer, waives its rights under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133, and 134 of the PPSA and to receive a copy of any Verification Statement (as that term is defined in the PPSA).
- 10. TERMINATION**
- (a) CSP may terminate this Agreement immediately if the Customer:
    - (i) fails to pay any money payable under this Agreement by the due date;
    - (ii) fails to strictly observe any of the provisions of this Agreement;
    - (iii) does not comply with or is subject to a prosecution under the provisions of the Health and Safety in Employment Act 1992 in respect of the Equipment;
    - (iv) allows a judgment or order against the Customer to remain unsatisfied for more than seven days;
    - (v) becomes insolvent or makes an assignment to or composition with creditors;
    - (vi) is the subject of an order being made or an effective resolution being passed for winding-up of the Customer;
    - (vii) has a receiver, manager, administrator or similar officer appointed in respect of its assets; or
    - (viii) commits or causes any act or omission to occur which in the reasonable opinion of CSP may in any way damage the Equipment.
  - (b) Notwithstanding clause 10(a), CSP may terminate this Agreement (and any hire agreements made pursuant to this Agreement) at any time by 5 Business Days notice to the Customer.
  - (c) On termination of this Agreement for any reason, the Customer will:
    - (i) immediately return the Equipment to any address notified to the Customer at the Customer's cost in all respects; and
    - (ii) pay to CSP all rental and other moneys due to CSP and unpaid at the date of termination.
  - (d) If the Customer fails to return the Equipment, CSP may take action as necessary to retake possession of the Equipment at the cost of the Customer. For the purposes of this provision, the Customer grants to CSP an irrevocable right for CSP and its agents, employees and contractors to enter into any land, buildings or premises where the Equipment is, or is supposed to be and to search for, remove and retake possession of the Equipment without being liable in any way to the Customer or to anyone claiming under the Customer for so doing.
  - (e) The Customer indemnifies CSP against any and all claims that may arise as a result of CSP repossessing the Equipment pursuant to this clause.
- 11. PRIVACY ACT 1993**  
If the Customer is an individual, the Customer acknowledges that CSP is collecting the personal information provided in the Application Form about the Customer and will collect personal information regarding the Customer during the course of the Customer's dealing with CSP. The Customer further authorises CSP at any time to disclose and to seek personal information in relation to the Customer's credit worthiness or credit history from any third party. The Customer acknowledges that all personal information collected will be used to assess the Customer's credit worthiness and in relation to the ongoing operation of the Customer's account. Failure to supply any personal information requested may result in the Customer's application for credit being rejected or the Customer's account with CSP being terminated. If the Customer is an individual, the Customer acknowledges it has a right to access the information about itself held by CSP and may request correction of that information, provided that CSP may charge a reasonable fee for providing access to such information.
- 12. MISCELLANEOUS**
- (a) In the event of inconsistency between these Conditions of Hire and the terms of any quotation, Application Form or other agreement these terms will take precedence.
  - (b) The Customer agrees that (except as provided in these Conditions of Hire) these terms, the Application Form and the details concerning the hire of Equipment to be agreed by the parties under this Agreement, represent the entire agreement between the Customer and CSP in respect of the hire of Equipment.
  - (c) This Agreement will not be modified, amended, waived, in whole or in part, except by written agreement between the parties.
  - (d) The Customer will not assign any of its rights, title or interest under this Agreement without the prior written consent of CSP.
  - (e) This Agreement will be construed in accordance with and be governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the New Zealand courts.
  - (f) If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of New Zealand, neither the legal validity nor enforceability of the remaining provisions hereof will in any way be affected or impaired thereby to the intent that this Agreement should be construed as if the provision or part thereof in question has been deleted.
  - (g) If CSP makes any indulgence or concessions to the Customer under this Agreement then that will not be a waiver of CSP's rights or operate as a variation to the terms of this Agreement.