

CSP Pacific Terms of Hire

The following Hire Terms, together with the Fletcher Building Terms of Credit, will be incorporated into every contract between Fletcher Concrete and Infrastructure Limited trading as CSP Pacific (CSP) and the Customer for the supply by CSP of Goods unless specifically excluded in writing and annexed hereto. For the avoidance of doubt, where the terms of the Fletcher Building Terms of Credit are inconsistent with these Hire Terms, particularly clauses on Ownership, these Hire Terms will take precedence. No variation of these terms will be binding upon CSP unless made in writing. In the event of inconsistency between these terms and the terms of any quotation or other agreement these terms will take precedence.

1. HIREAGE

The Customer acknowledges and agrees that it will:

- (a) be responsible for uplifting all Goods from CSP and will be responsible for transporting the Goods at its own risk and expense to, and from, the Customer's desired location. If CSP agrees to transport the Goods 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 Goods at the agreed time or date;
- (b) Install and maintain the Goods at all times during the hire period in accordance with the manufacturer's and/or CSP's instructions and dismantle the Goods upon expiry of the hire period in accordance with the manufacturer's and/or CSP's instructions and redeliver the Goods to CSP at its own cost unless otherwise agreed with CSP (in which case an additional charge may apply);
- (c) Only use the Goods for its intended purpose;
- (d) Take proper and reasonable care of the Goods 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 Goods are 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 Goods throughout the term of the hire 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 Goods;
- (g) Ensure at all times during the hire period the Goods are used solely for the purpose intended by the manufacturer within the Goods' design capabilities and limitations, and in accordance with the manufacturer's and/or CSP's instructions;
- (h) Carry out all necessary servicing of the Goods

required to maintain the Goods in good working order at all times during the hire period;

- (i) Promptly notify CSP if the Goods or any part thereof is lost, stolen, destroyed, damaged, or breaks down provided that the loss, theft or destruction or damage to the Goods will not affect the continuance of this agreement or the customer's liability to pay the hire rate during the hire period.

2. INSURANCE

- (a) 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
- (b) 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 its Goods or if the Goods are not returned to CSP in the same condition as it was in at the hire commencement date.

3. WARRANTIES

- (a) The Customer acknowledges that the Customer has inspected the Goods 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 Goods' condition, quality and suitability for the Customer's purpose and that the Customer has satisfied itself that the Goods are suitable for the Customer's intended use.

4. LIABILITY FOR LOST, STOLEN OR DAMAGED GOODS

- (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 Goods 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 Goods 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 Goods including without limitation:
 - i. any costs incurred by CSP to recover and repair or replace the Goods; and
 - ii. the hire rate for that period of the hire period during which the Goods are being recovered

and repaired or replaced by CSP, provided that the Customer has paid to CSP the 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 Goods which is damaged or lost will be limited to:

- iii. \$500 (if the replacement cost of the Goods is more than \$500) or the replacement cost of the Goods (if the replacement cost of the Goods is less than \$500); or
 - iv. 15% or the cost of repairs (if the Goods is partially damaged and can be repaired) or 15% of the full new replacement cost of the Goods (if the Goods are 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 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 as above in clause 6(a) will not apply if,
- i. The Customer has failed to pay the Waiver Fee in full and on time to CSP in accordance with this agreement; or
 - ii. The loss or damage to the Goods is caused as a result of:
 - i. The Customer's breach of any clause of this agreement;
 - ii. The Customer's negligent act or omission;
 - iii. The Customer's use of the Goods in violation of any laws;
 - iv. The Customer's failure to use the Goods for its intended purpose or in accordance with CSP's instructions or the manufacturer's instructions.
 - v. Any collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
 - vi. Electrical overload, surge in electrical current or the use of underrated or excessive lengths of extension leads with any electrical Goods or motors;

- vii. Exposure to any corrosive or caustic substance, such as cyanide, saltwater, acid etc; or
- viii. Any act of vandalism; or
- iii. The loss or damage is to any tyres or lubes forming part of the Goods or the screen of any VMS Board of any glass forming part of the Goods.

5. TERMINATION OF HIRE

- (a) CSP may terminate the Hire 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 at Work Act 2016 in respect of the Goods;
 - (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 compromise with creditors; Is the subject, or an order being made or an effective resolution being passed for winding up of the Customer; has a receiver, manager, administrator or similar officer appointed in respect of its assets; or
 - (vi) Commits or causes any act or omission to occur which in the reasonable opinion of CSP may in any way damage the Goods.
- (b) Notwithstanding 7(a), CSP may terminate this agreement (and any hire agreements made pursuant to the 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 Goods to any address noted 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 Goods, CSP may take action as necessary to retake possession of the Goods (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 Goods are, or are supposed to be and to search for, remove and retake possession of the Goods 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 Goods pursuant to this clause.

6. GENERAL

- (a) The Customer agrees that (except as provided in these terms) these terms represent the entire agreement between the Customer and CSP.

- (b) 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 Goods only and has no rights, title or interest in the Goods.
- (c) 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.
- (d) If the Customer is a joint venture, partnership or alliance between two or more parties who are each named in the credit application or invoice, then each of those parties shall be jointly and severally liable for all of the obligations and liabilities of the Customer under this contract.
- (e) The Customer agrees that the following terms used in these terms will have the following meanings:
 - i. "Customer" means the person named as Customer in the attached credit application or invoice.
 - ii. "Goods" means all lighting columns, roadside crash barriers and cushions, crash attenuators, massbloc, multiplate culverts products, parts and materials, any variable message system boards (VMS Boards) and any other products or materials hired from CSP by the Customer and includes all products, parts and materials referred to in any invoice issued by CSP to the Customer at any time and from time to time and includes services (design charge, freight, handling charge, installation) wherever applicable.
 - iii. "Waiver Fee" means an additional amount to be paid under this agreement 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 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. Waiver Fee is payable in accordance with the terms of payment in this agreement. "