

# PORTACOM NEW ZEALAND LIMITED

## TERMS & CONDITIONS OF SALE & HIRE



### 1. DEFINITIONS

- 1.1 "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.
- 1.2 "Contract" has the meaning given to that term in clause 3.2.
- 1.3 "Customer" means any person purchasing or hiring Goods (as the case may be), its agents and employees, successors, assigns or any person acting on behalf of that person.
- 1.4 "Goods" means all portable modular buildings, fencing, blocks, braces, accessories and parts or other goods, chattels, or services provided by Portacom to the Customer, including the provision of building products, all charges for labour and work, hire rates, goods and portable modular building or fencing hire, insurance charges, installation charges, collection charges, or any fee or charge associated with the supply, relocation or removal of such goods by Portacom to the Customer and all proceeds of those goods.
- 1.5 "PPSA" means the Personal Property Securities Act 1999.

### 2. QUOTES

- 2.1 Where a quotation is given by Portacom for Goods:
- (a) The quotation shall be valid for 20 working days from the date of issue unless withdrawn earlier by Portacom;
  - (b) The quotation shall be inclusive of Goods and Services Tax but exclusive of any freight and/or transport costs, unless otherwise stated;
  - (c) The quotation does not include the cost of locating, diverting or sealing off existing services, creation of temporary access roads; obtaining permits or consents from the local authority or other person; or any extra supply or variations to the quotation including, without limitation, extra supply required due to non-disclosure of relevant matters by the Customer at the time of quotation, delays caused by the Customer or any other party, which is beyond the control of Portacom or removal or relocation of the Goods; and
  - (d) The quotation shall be subject to availability and/or internal capital expenditure approval.
- 2.2 Where Goods referred to in clause 2.1 are required in addition to the quotation, the Customer agrees to pay for the additional cost of such Goods.

### 3. ACCEPTANCE

- 3.1 All orders are subject to acceptance by Portacom. Any order will only be on these terms. These terms are paramount and take priority over terms which may be offered by the Customer, or any previous terms of Portacom.
- 3.2 These terms and any invoices, orders or other documents or statements issued and accepted by Portacom describing the Goods sold or hired to the Customer and the provisions of any credit application, form the agreement of supply or hire between Portacom and the Customer in relation to the sale or hire of Goods ("Contract").

### 4. PRICE

- 4.1 Where no price is stated in writing or agreed to verbally, the Goods shall be deemed to be sold at the current price that such Goods are sold by Portacom at the time the relevant order is accepted.
- 4.2 Hire rates shall be as shown on Portacom's current Hire Schedule (which the Customer acknowledges has been produced and agreed to) and such hire rates are calculated daily based on a 7 day week. A part day shall constitute a full day for the purposes of these rates.
- 4.3 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of Portacom between the date of the accepted order and delivery of the Goods.
- 4.4 The price does not include relocation or removal of the Goods. Such relocation or removal price will be stated in writing by Portacom at the time of the removal or relocation of the Goods (as the case may be).
- 4.5 Where delivery, installation, relocation and/or removal of the Goods is more complex than anticipated due to site conditions, Portacom shall be entitled to increase the price by a factor not exceeding 10% to account for the additional complexity.

### 5. PAYMENT

- 5.1 Payment for Goods shall be made:
- (a) Where the Customer has an existing account with Portacom, or has arranged an account with Portacom, the price shall be paid in full on or before the 20th day of the month following the date of the invoice;
  - (b) Where the duration of the supply extends beyond one month from the date of commencement the price shall be paid in equal instalments each month or part month on or before the 20th day of the month following the date of each monthly invoice; or
  - (c) In any other situation, in full on receipt of delivery of Goods, (each of the dates referred to in clauses 6.1(a), (b) and (c) being the "due date" for the purposes of clause 5.2).
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month until payment of the amount owing, all related interest and any amounts owing pursuant to clause 5.4, is made in full.
- 5.3 Payments to Portacom must be made without rebate, deduction, withholding, set off or counterclaim of any kind, except where the Customer genuinely disputes an invoice and advises Portacom of the dispute within 7 days of receipt of the invoice, in which case the disputed amount may be deducted and the payment of the undisputed amount should be made to Portacom. The dispute shall then be resolved pursuant to clause 15. Once the dispute has been resolved, any balancing payment must be made within 7 days.
- 5.4 Any expenses, disbursements and legal costs incurred by Portacom in the enforcement of any rights, or an attempted exercise of any of its rights or remedies contained in these terms shall be paid by the Customer, including, without limitation, commissions, legal costs on a solicitor and client basis or debt collection agency fees.
- 5.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

### 6. WARRANTIES BY CUSTOMER

- 6.1 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 and has informed Portacom of all matters relating to such consents;
  - (c) Prior to commencement of any supply it shall mark all boundaries of the land where work is to proceed AND mark all areas of such land where work is required AND shall inform Portacom of all such markings AND point out to the driver of any machine or vehicle about to execute or executing the supply where the supply is to be executed and the extent of the supply to be carried out, and if any soil is to be removed, the place where it is to be deposited;
  - (d) It irrevocably authorises Portacom to enter and to bring its vehicles onto the Customer's property (or any property within the Customer's control) to deliver, relocate or to remove the Goods at the end, or termination, of the hire period (as the case may be);

- (e) Where the supply includes a portable modular building, hired by Portacom to the Customer, that 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, or near, or adjacent to the land upon which any supply is to proceed;
- (f) It has provided suitable vehicle access for delivery, relocation or removal of the Goods within 20 metres of the installation site (actual site position of portable modular building or fencing);
- (g) The installation site is clear, level, free of impediment, and has uninterrupted access for machinery and labour;
- (h) Where the supply includes a portable modular building, hired by Portacom to the Customer, this will be firmly fixed to foundations or securely anchored to the ground. Where the supply requires a portable modular building to be placed on a concrete floor, such floor shall have a smooth trowelled concrete finish and is level to within 3mm in no less than 3,000mm and within 5mm at any point in the floor.
- (i) Where the supply of Goods includes the hire of fencing, the Customer shall not permit an accession to the Goods and shall not allow the Goods to be installed on, or affixed to, the land.
- (j) The Goods are to remain as chattels and the Customer shall not allow the Goods to be affixed to land or property without Portacom's prior written approval; and
- (k) It has advised Portacom of any possibility of or knowledge of any subsidence, slip, erosion, flooding, or any other thing which might constitute a hazard on the land where the supply is to proceed or on any adjacent land.

## **7. DELIVERY, RELOCATION AND REMOVAL**

- 7.1 Delivery shall occur when the Customer takes physical possession of the Goods.
- 7.2 If the Customer fails or refuses or indicates 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.
- 7.3 The time agreed for completion of delivery shall not be an essential term of these terms and Portacom shall not be responsible for any delay in delivery.
- 7.4 Delivery under the Contract may be made by instalments, as notified from Portacom to the Customer.
- 7.5 Any relocation of the Goods must be performed by Portacom, unless Portacom otherwise consents in writing for the Customer to engage a third party to relocate the Goods. If Portacom expressly consents to a third party relocating the Goods then the relocation shall be on the terms and conditions set out in Portacom's written consent.
- 7.6 The Customer shall notify Portacom, by telephone, when the Customer seeks to relocate the Goods.
- 7.7 If the Customer requires Goods to be relocated or removed then the Goods must be immediately ready for removal or relocation at the specified time notified pursuant to clause 7.6.
- 7.8 The Customer indemnifies Portacom against any cost, claim, damage, expense or liability suffered or incurred by Portacom whether arising directly or indirectly from Portacom's actions or inactions under this clause 7.

## **8. PORTACOM'S RIGHT TO CANCEL**

- 8.1 Portacom may terminate the Contract, by notice with immediate effect, if:
  - (a) the Customer breaches any part of these terms;
  - (b) Portacom believes the Goods to be at risk for whatever reason including, but not limited to, the manner of use of the Goods or that the Customer is unable to, or might be unable to, pay any hire charge or purchase price; or
  - (c) any step is taken to appoint a receiver, manager, trustee in bankruptcy, liquidator, provisional liquidator, administrator or any like person of the whole or any part of the Customer's business or assets.
- 8.2 The Customer grants Portacom, or will procure that Portacom is granted, an irrevocable right and authority to enter, at any time, onto any place where the Goods are situated or thought to be situated to remove the Goods in the event that the Contract is terminated.
- 8.3 The Customer indemnifies Portacom against any costs, claims, damage, expense or liability suffered or incurred by Portacom arising directly or indirectly from Portacom exercising its rights under this clause or otherwise acting to recover Goods hired or money payable by the Customer.
- 8.4 Portacom will not be liable to the Customer or any other person for any loss suffered or liability incurred arising from the termination of the Contract or the repossession of the Goods.
- 8.5 Cancellation of the Contract by Portacom is without prejudice to any rights that Portacom may have under the Contract in law or equity.

## **9. SUBCONTRACTORS**

- 9.1 The Customer authorises Portacom to subcontract the supply of any Goods.

## **10. RISK**

- 10.1 The Goods will be at the Customer's risk, and the Customer accepts all risk of loss and damage to the Goods (irrespective of whether or not such damage is caused by the Customer), immediately on delivery.
- 10.2 The Customer will insure the Goods at full replacement value until legal and beneficial ownership of them has passed to the Customer. If the Goods are damaged or destroyed before legal and beneficial ownership of them has passed to the Customer, the Customer will hold the proceeds of such insurance in a separate fund and on trust for Portacom.

## **11. SALE OF GOODS**

- 11.1 Where Goods are sold to the Customer:
  - (a) Legal and beneficial ownership of such Goods, will remain with Portacom until payment in full is made for the price of those Goods;
  - (b) Until legal and beneficial ownership of the Goods has passed to the Customer, or the Goods have been on-sold by the Customer, the Customer will not disassemble or make any structural alterations to the Goods without the prior written consent of Portacom; and
  - (c) If the Goods have been on-sold, or otherwise disposed of, then the Customer will be accountable to Portacom for payment of the purchase price of those Goods sold and will hold an equivalent amount from the sale proceeds in a separate fund, on trust for Portacom.

## **12. HIRE OF GOODS**

- 12.1 In the case of damage to the Goods, however caused, the Customer shall be responsible for and shall indemnify Portacom for the full costs of all repairs to restore the Goods to the condition they were in at the time of hire.
- 12.2 In the case of loss or irreparable damage to the Goods, however caused, the Customer shall be responsible for and shall indemnify Portacom for the full cost to Portacom of replacing the Goods.
- 12.3 In addition to the costs set out in clause 12.1 and 12.2 the Customer shall be responsible for and shall indemnify Portacom for any loss of revenue suffered by Portacom due to the unavailability of the Goods for sale or hire due to loss or damage to the Goods.
- 12.4 Where Goods are hired to the Customer, the Customer shall:
  - (a) Not part with the possession of the Goods AND shall not sublet, or sell, or attempt to alienate the Goods in any way, or grant security interest in, or deal with the Goods in any way that may be prejudicial to Portacom;
  - (b) Be liable for any loss or damage to any Goods, including but not limited to, damage or loss caused by fire, storm, collision, accident, theft or burglary, or arising from misuse, abuse or overloading, mysterious disappearance or wrongful conversion, any breach the Contract, violation of any laws, normal servicing, location, use, loading, unloading or transportation on or over water, wharves, bridges or vessels of any kind, exposure to any corrosive substances (including caustic, cyanide, acids, salt water), theft where not reasonably locked and secured, transportation (except where transported by Portacom), or negligence by the Customer and shall pay to Portacom the cost of making good the repair to the Goods or the cost of replacing the Goods, whichever is the lesser. The Customer shall be liable for the cost of replacing any lost or non returned keys;
  - (c) Take proper care of and use the Goods in a manner or to such an extent that a reasonable customer would, and according to any manufacturer's specifications and instructions, if any, given by Portacom AND shall maintain the Goods in a good and clean condition;
  - (d) Not carry out repairs, maintenance, adjustments, alterations or additions to the Goods without the express consent of Portacom;
  - (e) Not remove any signage of the Goods without the prior written consent of Portacom;
  - (f) Ensure that the returned Goods are clean. The Customer shall be liable for the costs of cleaning Goods returned in a dirty condition. Ablution units are to be flushed several times before disconnection from services;

- (g) Immediately notify Portacom, by telephone, if the Goods are damaged or are otherwise in need of maintenance or repair;
- (h) On request by Portacom advise of the location of any hired Goods;
- (i) Give Portacom irrevocable licence to enter any premises within the Customer's control for the purposes of inspecting, repairing, testing or removing the Goods.
- 12.5 The hire period for the Goods shall start when Portacom gives possession of the Goods to the Customer, or possession of the Goods to a common carrier, or other bailee for the purposes of transportation to the Customer and shall continue until the Customer has returned the Goods into the possession of Portacom.
- 13. PERSONAL PROPERTIES SECURITIES ACT**
- 13.1 Notwithstanding clauses 11 and 12, the Customer acknowledges that:
- (a) These terms create a security interest (as defined under the PPSA) in favour of Portacom in Goods sold to the Customer by Portacom and that the Goods purchased from Portacom remain the property of Portacom until paid for in full;
- (b) These terms create a security interest (as defined in the PPSA) in favour of Portacom in Goods 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;
- (c) The Customer shall act immediately 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
- (d) 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.
- 13.2 In addition to the security interest referred to in clause 13.1, 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.
- 13.3 The Customer agrees (to the extent permitted under the PPSA) that the Customer shall have no rights under Part 9 (Enforcement) of the PPSA.
- 14. CONSUMER GUARANTEES ACT AND PORTACOM'S LIABILITY**
- 14.1 If the Customer acquires or hires the Goods for business purposes, the Consumer Guarantees Act 1993 (for the purposes of clauses 14.1 and 14.2, "the Act") will **not** apply.
- 14.2 If the Customer is a consumer under the Act, to the extent that the Customer's rights under the Act have not been excluded under clause 14.1, nothing in these terms will affect the rights of the Customer under the Act.
- 14.3 Subject to clause 14.2:
- (a) The Customer relies upon its own knowledge, skill and judgement in relation to the particular use or suitability of the Goods for the Customer's purpose;
- (b) All warranties, descriptions, representations or conditions whether implied by the Sale of Goods Act 1908 or otherwise or contained in any document not furnished by Portacom are expressly excluded to the fullest extent permitted by law;
- (c) Portacom will accept no liability for any damages or losses arising from a consequence of any act, default or negligence on the part of Portacom or of an employee, agent or contractor of Portacom;
- (d) Subject to the provisions of clause 14.3 (e), Portacom's liability under or in connection with the performance of these terms, whether in tort, contract, equity or on any other basis, shall be limited to the lesser of the price of the Goods complained of, the cost of repairing or replacing the Goods and the actual loss or damage suffered by the Customer;
- (e) Portacom shall not be liable to the Customer or any third party in contract, tort (including negligence) or on any other basis for:
- (i) any indirect or consequential losses or damages;
- (ii) any loss of use, loss of profits, loss of anticipated savings; or
- (iii) any third party claims, suffered or incurred by the Customer; and
- (f) The limitation in clause 14.3 (e) and exclusion of liability applies whether or not Portacom had, or ought to have had, any special or other knowledge that any such losses, damages or claims would be suffered or incurred by the Customer.
- 14.4 Subject to clauses 14.2 and 14.3, the Goods shall be warranted to be free from defect and any defect shall be replaced or repaired (at the sole discretion of Portacom), or any defective supply shall be rectified PROVIDED THAT any claim made under this clause shall be made in writing to Portacom within 24 months of delivery of the relevant Goods. HOWEVER, Portacom shall not be liable for any defective goods that are not manufactured by it.
- 15. DISPUTE RESOLUTION**
- 15.1 Any and all disputes arising between the parties to these terms, and which are not already governed by specific legislation, 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.
- 16. MISCELLANEOUS**
- 16.1 The Customer shall not assign all or any of its rights or obligations under these terms without the prior written consent of Portacom.
- 16.2 All copyright, patent, and intellectual property of any designs, drawings, specifications, sketches and samples provided by Portacom shall remain the property of Portacom and shall only be used by the Customer for the use for which they were intended and supplied.
- 16.3 Failure by Portacom to enforce any of these terms shall not be deemed to be a waiver of any of the rights or obligations Portacom has under these terms.
- 16.4 All designs, drawings, sketches and other material supplied by Portacom shall be approximate only and do not bind Portacom unless expressly stated AND Portacom reserves the right to alter, change, or vary any such material solely at its discretion if in its opinion it does not significantly affect the performance characteristics of the Goods.
- 16.5 If any provision of these terms shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.6 Portacom shall not be liable for delay or failure to perform its obligations due to any act of God or if the cause of the delay or failure is beyond Portacom's control.
- 16.7 The law of New Zealand shall apply to these terms except to the extent expressly negated or varied by these terms.
- 16.8 Portacom reserves the right to change these terms on 4 months' prior notice posted on Portacom's website ([www.portacom.co.nz](http://www.portacom.co.nz)). The amended terms shall apply with effect from the date that such amended terms are placed on the website unless the amended terms specify a later date from which they are to apply.

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 be sold or hired). In particular the Customer acknowledges that **Portacom New Zealand Limited takes a security interest in all such present and after-acquired goods.**

Date: ..... Customer Name: .....

Signature: ..... Name of Signatory: .....  
Position: .....