

1. Definitions

- 1.1 “SOCO” means SOCO Limited, its successors and assigns or any person acting on behalf of and with the authority of SOCO Limited.
- 1.2 “Customer” means the person/s buying the Parts (and/or hiring Loan Equipment) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Parts” means all Parts or Services supplied by SOCO to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Parts’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Loan Equipment” means all Loan Equipment including any accessories supplied on loan by SOCO to the Customer (and where the context so permits shall include any supply of Services). The Loan Equipment shall be as described on the invoices, quotation, or any other work authorisation form provided by SOCO to the Customer.
- 1.5 Call-Out Fee shall mean all costs (including, but not limited to, hourly rates) incurred by SOCO due to carrying out services on site as requested by the Customer.
- 1.6 “Price” means the Price payable for the Parts/Loan Equipment hire as agreed between SOCO and the Customer in accordance with clause 5 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Parts/Loan Equipment.
- 2.2 These terms and conditions may only be amended with SOCO’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and SOCO.
- 2.3 The Customer acknowledges and accepts that the supply of Parts for accepted orders may be subject to availability and if, for any reason, Parts are not or cease to be available, SOCO reserves the right to vary the Price with alternative Parts as per clause 5.1. SOCO also reserves the right to halt all Services until such time as SOCO and the Customer agree to such changes.
- 2.4 The Customer acknowledges and agrees that in the event that the Customer requests SOCO to make a Call-Out to carry out Services on site, then SOCO reserves the right to charge a minimum Call-Out Fee of one (1) hour being SOCO’s hourly labour rate or a minimum Call-Out Fee of two (2) hours if after normal working hours (penalty rates may apply for weekends and/or Public Holidays, unless otherwise agreed between SOCO and the Customer), plus travel and Parts.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to SOCO as the Customer’s duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any materials or Services on the Customer’s behalf and/or to request any variation to the Services on the Customer’s behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies SOCO in writing that said person is no longer the Customer’s duly authorised representative).
- 3.2 In the event that the Customer’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer’s behalf then the Customer must specifically and clearly advise SOCO in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to SOCO for all additional costs incurred by SOCO (including SOCO profit margin) in providing any works, materials, Services or variation/s requested by the Customer’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

- 4.1 The Customer shall give SOCO not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by SOCO as a result of the Customer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At SOCO’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by SOCO to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to SOCO’s current price list; or
 - (c) SOCO’s quoted price (subject to clause 5.1) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 SOCO reserves the right to change the Price:
 - (a) if a variation to the Parts/Loan Equipment which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested;or
 - (c) in the event of increases to SOCO in the cost of labour or materials which are beyond SOCO’s control.
- 5.3 At SOCO sole discretion a deposit may be required.
- 5.4 Where SOCO is requested to store the Customer’s Parts or equipment or where Parts or equipment are not collected within seven (7) days of advice to the Customer that they are ready for collection, then SOCO (at its sole

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discretion) after seven (7) days may charge a minimum fee of two dollars and fifty cents (\$2.50) per day for storage.

- 5.5 Time for payment for the Parts/Loan Equipment (all Loan Equipment *where applicable* shall be subject to a minimal rental charge during the course of the Services) being of the essence, the Price will be payable by the Customer on the date/s determined by SOCO, which may be:
- (a) on delivery of the Part;
 - (b) completion of the Services;
 - (c) for certain approved Customer's, due forty five (45) days following the end of the month in which a statement is posted/emailed to the Customer's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by SOCO.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and SOCO.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to SOCO an amount equal to any GST SOCO must pay for any supply by SOCO under this or any other agreement for the sale of the Parts/hire of the Loan Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Parts

- 6.1 Delivery ("**Delivery**") of the Parts is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Parts/Loan Equipment at SOCO's address; or
 - (b) SOCO (or SOCO's nominated carrier) delivers the Parts/Loan Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At SOCO's sole discretion the cost of delivery is in addition to the Price.
- 6.3 SOCO may deliver the Parts/Loan Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Any time or date given by SOCO to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and SOCO will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

7. Risk

- 7.1 Risk of damage to or loss of the Parts passes to the Customer on Delivery and the Customer must insure the Parts on or before Delivery.
- 7.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Customer, SOCO is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by SOCO is sufficient evidence of SOCO rights to receive the insurance proceeds without the need for any person dealing with SOCO to make further enquiries.
- 7.3 If the Customer requests SOCO to leave Parts outside SOCO's premises for collection or to deliver the Parts to an unattended location then such Parts shall be left at the Customer's sole risk.
- 7.4 Where SOCO is required to install the Parts the Customer warrants that the structure of the premises or equipment in or upon which these Parts are to be installed or erected is sound and will sustain the installation and work incidental thereto and SOCO shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 7.5 The Customer acknowledges that SOCO is only responsible for Parts that are replaced by SOCO and that in the event that other parts, subsequently fail, the Customer agrees to indemnify SOCO against any loss or damage to the Parts, or caused by the parts, or any part thereof howsoever arising.
- 7.6 SOCO shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, SOCO accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.7 Any advice, recommendation, information, assistance or service provided by SOCO in relation to Parts or Services supplied is given in good faith is based on SOCO's own knowledge and experience and shall be accepted without liability on the part of SOCO and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Parts or Services.

8. Access

- 8.1 The Customer shall ensure that SOCO has clear and free access to the work site at all times to enable them to undertake the Services. SOCO shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of SOCO.

9. Compliance with Laws

- 9.1 The Customer and SOCO shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 9.2 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the New Zealand and Australian Wiring rules.
- 9.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

10. Title To Parts

- 10.1 SOCO and the Customer agree that ownership of the Parts shall not pass until:
 - (a) the Customer has paid SOCO all amounts owing to SOCO; and
 - (b) the Customer has met all of its other obligations to SOCO.
- 10.2 Receipt by SOCO of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 10.3 It is further agreed that:
 - (a) until ownership of the Parts passes to the Customer in accordance with clause 10.1 that the Customer is only a bailee of the Parts and must return the Parts to SOCO on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Parts on trust for SOCO and must pay to SOCO the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Parts then the Customer must hold the proceeds of any such act on trust for SOCO and must pay or deliver the proceeds to SOCO on demand.
 - (d) the Customer should not convert or process the Parts or intermix them with other Parts but if the Customer does so then the Customer holds the resulting product on trust for the benefit of SOCO and must sell, dispose of or return the resulting product to SOCO as it so directs.
 - (e) the Customer irrevocably authorises SOCO to enter any premises where SOCO believes the Parts are kept and recover possession of the Parts.
 - (f) SOCO may recover possession of any Parts in transit whether or not delivery has occurred.
 - (g) the Customer shall not charge or grant an encumbrance over the Parts nor grant nor otherwise give away any interest in the Parts while they remain the property of SOCO.
 - (h) SOCO may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Customer.

11. Personal Property Securities Act 1999 (“PPSA”)

- 11.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Parts/Loan Equipment previously supplied by SOCO to the Customer (if any) and all Parts/Loan Equipment that will be supplied in the future by SOCO to the Customer.
- 11.2 The Customer undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SOCO may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, SOCO for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Parts/Loan Equipment charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of SOCO; and
 - (d) immediately advise SOCO of any material change in its business practices of selling Parts which would result in a change in the nature of proceeds derived from such sales.
- 11.3 SOCO and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by SOCO, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Customer shall unconditionally ratify any actions taken by SOCO under clauses 11.1 to 11.5.

12. Security and Charge

- 12.1 In consideration of SOCO agreeing to supply the Parts/Loan Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Customer indemnifies SOCO from and against all SOCO costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SOCO rights under this clause.

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- 12.3 The Customer irrevocably appoints SOCO and each director of SOCO as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.
- 13. Customer's Disclaimer**
- 13.1 The Customer hereby disclaims any right to rescind, or cancel any contract with SOCO or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by SOCO and the Customer acknowledges that the Parts are bought relying solely upon the Customer's skill and judgment.
- 14. Defects**
- 14.1 The Customer shall inspect the Parts/Loan Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify SOCO of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford SOCO an opportunity to inspect the Parts/Loan Equipment within a reasonable time following delivery if the Customer believes the Parts are defective in any way. If the Customer shall fail to comply with these provisions the Parts/Loan Equipment shall be presumed to be free from any defect or damage. For defective Parts/Loan Equipment, which SOCO has agreed in writing that the Customer is entitled to reject, SOCO liability is limited to either (at SOCO discretion) replacing the Parts/Loan Equipment or repairing the Parts/Loan Equipment.
- 14.2 Parts/Loan Equipment will not be accepted for return for any reason other than those specified in clause 14.1 above (or in the case of Loan Equipment hire, normal termination of Loan Equipment hire in accordance with the full terms and conditions herein).
- 15. Returns**
- 15.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 14.1; and
 - (b) SOCO has agreed in writing to accept the return of the Parts; and
 - (c) the Parts are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (d) SOCO will not be liable for Parts which have not been stored or used in a proper manner; and
 - (e) the Parts are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 15.2 The SOCO may (in its discretion) accept the return of Parts for credit but this may incur a handling fee of twenty five percent (25%) of the value of the returned Parts plus any freight.
- 15.3 Non-stocklist items or Parts made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 16. Warranty**
- 16.1 For Parts not manufactured by SOCO, the warranty shall be the current warranty provided by the manufacturer of the Parts. SOCO shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Parts.
- 16.2 To the extent permitted by statute, no warranty is given by SOCO as to the quality or suitability of the Parts for any purpose and any implied warranty, is expressly excluded. SOCO shall not be responsible for any loss or damage to the Parts, or caused by the Parts, or any part thereof however arising.
- 16.3 In the case of second hand Parts, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by SOCO as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. SOCO shall not be responsible for any loss or damage to the Parts, or caused by the Parts, or any part thereof however arising.
- 17. Consumer Guarantees Act 1993**
- 17.1 If the Customer is acquiring Parts for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Parts by SOCO to the Customer.
- 18. Default and Consequences of Default**
- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SOCO sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes SOCO any money the Customer shall indemnify SOCO from and against all costs and disbursements incurred by SOCO in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SOCO collection agency costs, and bank dishonour fees).
- 18.3 At SOCO sole discretion, should any account become overdue from the agreed payment due date then an amount of ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied as a late payment fee which sum shall become immediately due and payable.
- 18.4 Without prejudice to any other remedies SOCO may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions SOCO may suspend or terminate the supply of Parts/Loan Equipment to the Customer. SOCO will not be liable to the Customer for any loss or damage the Customer suffers because SOCO has exercised its rights under this clause.

- 18.5 Without prejudice to SOCO other remedies at law SOCO shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to SOCO shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SOCO becomes overdue, or in SOCO opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

19. Cancellation

- 19.1 SOCO may cancel any contract to which these terms and conditions apply or cancel delivery of Parts/Loan Equipment at any time before the Parts/Loan Equipment are due to be delivered by giving written notice to the Customer. On giving such notice SOCO shall repay to the Customer any money paid by the Customer for the Parts/Loan Equipment. SOCO shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 In the event that the Customer cancels delivery of the Parts/Loan Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by SOCO as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.3 Cancellation of orders for Parts made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. Privacy Act 1993

- 20.1 The Customer authorises SOCO or SOCO agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by SOCO from the Customer directly or obtained by SOCO from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 20.2 Where the Customer is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 The Customer shall have the right to request SOCO for a copy of the information about the Customer retained by SOCO and the right to request SOCO to correct any incorrect information about the Customer held by SOCO.

21. Unpaid Seller's Rights

- 21.1 Where the Customer has left any item with SOCO for repair, modification, exchange or for SOCO to perform any other service in relation to the item and SOCO has not received or been tendered the whole of any moneys owing to it by the Customer, SOCO shall have, until all moneys owing to SOCO are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected Parts.
- 21.2 The lien of SOCO shall continue despite the commencement of proceedings, or judgment for any moneys owing to SOCO having been obtained against the Customer.

22. Loan Equipment Hire

- 22.1 Loan Equipment shall at all times remain the property of SOCO and is returnable on demand by SOCO. In the event that Loan Equipment is not returned to SOCO in the condition in which it was delivered SOCO retains the right to charge the Customer the full cost of repairing the Loan Equipment. In the event that Loan Equipment is not returned at all SOCO shall have right to charge the Customer the full cost of replacing the Loan Equipment.
- 22.2 The Customer shall;
- (a) keep the Loan Equipment in their own possession and control and shall not assign the benefit of the Loan Equipment nor be entitled to a lien over the Loan Equipment.
 - (b) not alter or make any additions to the Loan Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Loan Equipment or in any other manner interfere with the Loan Equipment.
 - (c) keep the Loan Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by SOCO to the Customer.
- 22.3 The Customer accepts full responsibility for the safekeeping of the Loan Equipment and the Customer agrees to insure, or self-insure, SOCO interest in the Loan Equipment and agrees to indemnify SOCO against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Loan Equipment. Further the Customer will not use the Loan Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

23. General

- 23.1 The failure by SOCO to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SOCO right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Palmerston North Courts of New Zealand.
- 23.3 SOCO shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by SOCO of these terms and conditions (alternatively SOCO liability shall be limited to damages which under no circumstances shall exceed the Price of the Parts/Loan Equipment hire).
- 23.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by SOCO nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 The Customer agrees that SOCO may amend these terms and conditions at any time. If SOCO makes a change to these terms and conditions, then that change will take effect from the date on which SOCO notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for SOCO to provide Parts/Loan Equipment to the Customer.
- 23.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.7 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.