

STANDARD TERMS AND CONDITIONS OF BOILER HIRE

These Standard Terms and Conditions of Boiler Hire (“Terms”) apply to any Quote or Cost Estimate (“Proposal”) for, and the provision of, Hire Boiler(s) including related equipment (“Plant”) and related planning, design, transport, manufacturing of connecting pipework and supports etc., installation, maintenance, and repairs including the related materials (“Services”) by Windsor Engineering Group Limited NZBN 9429039949783 (“Windsor”) to the purchasing party (“Client”), unless otherwise agreed in writing between authorized representatives of Windsor and the Client (“Parties”).

1. Contract and Acceptance

- (a) The Hire Contract, any variations agreed in writing, the Windsor Proposal, these Terms, the documents referred in the Windsor Proposal, and the Client Specification and the documents referred therein, Client’s Purchase Order or order confirmation (in this descending order of priority), represent the entire Contract (“Contract”) between the Client and Windsor. Any preliminary or verbal representation or warranty will be of no effect.
- (b) Windsor’s Proposal will be open for acceptance by the Client for 30 days from the date of the Proposal, unless otherwise stated in the proposal. In the absence of written acknowledgement, the performance of any of the Services or provision of Plant (together “Works”) by Windsor on Client’s request will be deemed acceptance of the Contract.
- (c) Any terms or conditions printed or referenced on any correspondence or documentation from the Client at any time including but not limited to the Client’s Purchase Order, order confirmation or instructions, in response to Windsor’s Proposal or otherwise, will not replace, constitute part of or vary the Contract (even if any representative of Windsor acknowledges those terms or annexes those terms to any correspondence).
- (d) Neither party shall transfer or assign the whole or any part of this Contract or any benefit or interest in or under this Contract without the prior written agreement between authorized representatives of the parties, which shall not be unreasonable withheld or delayed.

2. Price and Variation

- (a) The lump sum fixed prices stated in the Hire Agreement, Client’s Purchase Order or order confirmation, or the Windsor Proposal, plus the value of the Hire Charges and any reimbursable Services (by applying the schedule of rates) together form the “Price”. The Price is in New Zealand Dollars unless otherwise stated in the Contract.
- (b) The Client shall pay Windsor the Price and Windsor shall perform the Works.
- (c) Goods and Services Tax (GST) is not included in the Proposal or the Price.
- (d) The Hire Period begins upon the Hire Start Date and ends at the latest of the Hire End Date and the date of return of all Plant at the Place of Return.
- (e) The Client shall be responsible for Hire Charges whether the Plant is being operated or not unless the downtime is caused by:
 - i. negligence of Windsor which could not have been avoided by the Client’s compliance with this Contract; or
 - ii. failure of the Plant which was not caused by the Client or a third party while at the risk of the Client.
- (f) Windsor reserves the right to alter the Plant for any reason, but such alteration shall not affect the warranties or Price.
- (g) Windsor reserves the right to increase the Price and extend the Completion Date for i) a variation to the Contract, ii) an act, omission to act or delay by the Client including any omission, delay or errors in the issue of Client information or approval of Windsor documents, iii) restrictions in access to and possession of a reasonable portion of the site to properly perform the Works, iv) changes in the rates of foreign currency exchange, v) changes in law or regulations and authority instructions, vi) disruptions in the supply and transport of materials and plant (including as a result of the COVID-19 pandemic) vii) delays or increased costs beyond Windsor’s reasonable control including delivery times and costs not reasonably anticipated for similar goods and services at the time of the Proposal, and viii) a Force Majeure Event.

3. Payment

- (a) Windsor shall supply tax invoices for payment for the Plant Hire Charges and for the Services.
- (b) The Client shall pay all invoices promptly and in full by the 20th of the month following invoice.
- (c) The Client shall not deduct or offset any amount due for any reason, unless agreed between the parties in writing.
- (d) Minor defects, not impeding the functionality and/or safety of the Works, shall not entitle the Client to withhold moneys.
- (e) Payments shall be made as follows:
 - i. 30% of the (estimated) final Price by way of deposit upon acceptance;
 - ii. monthly for the Hire Charges; and
 - iii. monthly for the balance of the Works (lump sum fixed price and reimbursable Services) performed in excess of the deposit value.

4. Consequences of Non-Payment

- (a) If the Client fails to pay the Windsor Invoice in accordance with clause 0, then Windsor has the right to:
 - i. charge interest on the moneys owing from the date they become overdue at a daily rate of Windsor's bank overdraft rate plus 2%; and/or
 - ii. suspend the Services; and/or
 - iii. without any liability disable and/or repossess the Plant,until the payment is made in full.
- (b) Until the Plant has been returned and all accounts owed by the Client to Windsor are fully paid, Windsor reserves and retains the right and the Client will provide access in relation to the Plant to enter the Site, the Client's premises and/or other premises where the Plant is located without liability for trespass or any resulting damage, and retake possession of the Plant.
- (c) Non-payment for more than 30 days beyond the due date constitutes a material breach of the Contract by the Client.

5. Delivery and Return

- (a) Windsor will deliver the Plant in accordance with the Incoterms stated in the Hire Contract at the Place of Delivery ("Delivery") on or before the Hire Start Date.
- (b) Windsor will use all reasonable endeavours to deliver the Plant and complete the Services at the agreed time.
- (c) If, and subject to clause 5(b) and 2(g), Windsor delivers the Plant after the Hire Start Date or completes the Services after the date agreed in writing, Windsor's maximum liability in connection with delay shall not exceed 0.1% of the Price per day to a maximum of 5% of the Price in the aggregate.
- (d) The Client shall return the Plant in accordance with the Incoterms stated in the Hire Contract at the Place of Return ("Return") on or before the Hire End Date.
- (e) The Client shall indemnify Windsor for all costs and losses as a result from returning the Plant after the Hire End Date.

6. Extension and Cancellation

- (a) Windsor may, at its sole discretion and without liability, refuse an extension of the Hire Period.
- (b) If through circumstances beyond the reasonable control of Windsor, Windsor is unable to provide the Plant in time, then Windsor may without any liability cancel the Contract (even if it has already been accepted) by notice in writing.
- (c) If the Client cancels or defers the performance of this Contract, the Client will return the Plant to the Place of return and pay to Windsor all outstanding Windsor Invoices up to the date of cancellation, the Hire Charges up to the Hire End Date and for all Services provided. the Client indemnifies Windsor against all costs and losses incurred by Windsor as a result of the cancellation.

7. Risk and Title

- (a) All risk relating to the Plant passes to the Client upon Delivery and passes back to Windsor upon Return, notwithstanding the Plant is re-hired by the Client.
- (b) Title in the Plant remains with Windsor notwithstanding the delivery, collection or passing of risk to the Client.
- (c) In this clause 6 words and expressions which are not defined in these Conditions, but which have a defined meaning in the PPSA, have the same meaning as in the PPSA.
 - i. The Client acknowledges Windsor has a security interest in the Plant.
 - ii. Windsor may register any security interest on the PPSA register in any form (including by registering one or more financing statements, with such expiry dates as Windsor determines in its discretion). The Client must provide Windsor with any information it requires for the purposes of such registration.
 - iii. The Client irrevocably and unconditionally waives its right to receive any notice from Windsor in connection with the registration of a financing statement or a financing change statement.

- iv. The Client agrees that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 124(1)(a), 133 and 134 of the PPSA shall apply to the Contract or the security under the Contract and waives the Client's rights under sections 121, 125, 126, 127, 129, 131, 132 and 133 of the PPSA.
- v. The Client must take any steps (including provide information) Windsor reasonably requires to perfect or ensure the enforceability and priority of any security interest.
- vi. Until Windsor's security interest (whether perfected or not) is satisfied, the Client agrees not to cause or allow a security interest of higher priority to be created in the Plant. If the Client breaches this subclause, the Client shall indemnify Windsor for any cost, expense, loss or damage suffered including legal fees.

8. Warranty

- (a) Windsor warrants that upon delivery the Plant and Services will be free from substantial defect in workmanship and are fit for the purposes and will perform to the standards as specified in this Contract.
- (b) Windsor warrants that the Plant complies with all relevant laws, by-laws and regulations during the Hire Period.
- (c) Windsor warrants the Services for 12 months following delivery from the completion of the Services.
- (d) Any fault or damage arising from Client's misuse or negligence, acts or omissions (including non-compliance with the operation and maintenance manuals and good practices), or any attempt to repair, amend, adjust, or rectify the Works without Windsor's prior written approval is excluded from the Warranty.
- (e) The Client shall reimburse Windsor's costs for any claim for a (perceived) defect not covered under the warranty.
- (f) The Client shall be liable for, indemnify and hold Windsor harmless against any loss, damage, expense or other costs (except to the extent that they were caused by a negligent act or omission of Windsor and could not have been avoided by the Client's compliance with this Contract) arising out of any liability, claim, demand or proceedings arising under any statute, regulation or ordinance or at common law or in equity, which arises out of the operation or use of the Plant or in connection with this Contract.

9. Clients Obligations

- (a) The Client must (and shall bear the cost thereof):
 - i. Provide a suitable footing to install the Plant;
 - ii. Conduct a hazard and risk assessment before using the Plant, including to ensure the Plant is fit for operation and safe to use;
 - iii. Provide fuel, electrical power, softened water, and chemicals in accordance with the Specifications.
 - iv. Operate and maintain the Plant in good, safe and operating condition in accordance with all relevant laws, by-laws and regulations and any information provided by Windsor including any operation and maintenance manuals;
 - v. Perform Operational Inspections and procure Water Treatment Analysis by an independent third party in accordance with the relevant laws, by-laws and regulations and any information provided by Windsor. The Client shall provide written certification, in the format required by Windsor, the Plant has been inspected and maintained during the Hire Period (including but not limited to an Inspections Logbook and Water Analysis results).
 - vi. Ensure enough boiler chemicals are available and (if chemicals are provided through Windsor) timely notify Windsor when additional chemicals are required;
 - vii. Ensure all persons operating the Plant are instructed in its safe and proper use and hold all relevant competencies and licences;
 - viii. provide free access to Windsor at any time to inspect the Plant, documentation, and Logbook;
 - ix. report and provide full details to Windsor of any accident or damage to the Plant within 24 hours of the accident or damage occurring;
 - x. notify Windsor as soon as practicable after a defect has been discovered.
- (b) The Client must not:
 - i. modify, tamper with, damage or without the consent of Windsor repair the Plant;
 - ii. operate the plant if a defect has been discovered that may impede the Plant's operation;
 - iii. re-hire the Plant without Windsor's prior written consent (notwithstanding such consent being given by Windsor, Client's liability under this agreement remains unchanged)
 - iv. Allow any person to operate the Plant:
 - I. if the person does not hold the relevant licence to operate that Plant;
 - II. if the person is affected by drugs and/or alcohol;
 - III. if the plant is damaged; or
 - IV. beyond the recommended or legal load and capacity limits of the Plant.
- (c) The Client shall provide and maintain following insurances and notify Windsor as an interested party. Upon Windsor's request the Client shall promptly furnish Certificates of currency.

- i. covering the Plant for accident, fire and theft to the full value of the Plant; and
- ii. public liability of not less than \$20 million per occurrence; and
- iii. motor vehicle of not less than \$20 million per occurrence.

10. Windsor's Obligations

- (d) Deliver the Plant at the place for delivery and the Time for Delivery and the perform the Services.
- (e) Provide all required inspections of the Plant during the Hire Period as part of the Hire Charge Rate, as required by any relevant laws, by-laws and regulations.
- (f) Repair or replace any defect (unless and insofar such defect is caused by the action or inaction of the Client).

11. Drawings and Information

- (a) Information provided by Windsor shall be regarded as approximate only and is not binding unless the precise dimensions and specifications are agreed in writing by Windsor.
- (b) Windsor reserves the right to alter the Goods, not affecting the performance, Price and/or warranty.

12. Confidentiality

- (a) Any proposals and any drawings, information, illustrations, concepts, designs, specifications, proprietary information, know-how, logics and software, operation manuals, intellectual property (even when provided for the purpose of obtaining or issuing a proposal or for the performance of the Works), or any other information, whether annotated in writing or otherwise, and including the Plant itself provided or produced by Windsor ("Confidential Information") shall remain Windsor's property and copyright and is confidential.

The Client shall:

- iv. only use the Confidential Information for the Purpose (decide whether to accept Windsor's Proposal or to transport, install, test, commission, operate, maintain, and use the Plant, together the "Purpose");
 - v. maintain the confidentiality of the Confidential Information and not divulge in full or in part, and treat the same with a degree of care and confidence at least equivalent to that which the Client treats their own confidential information; and
 - vi. not disclose the Confidential Information, directly or indirectly, to any third party without Windsor's prior written consent (except to the Client's employees, officers, and professional advisors) and ensure any third party will keep the Confidential Information confidential;
- (b) The Client shall indemnify Windsor for any breach in confidentiality by the Client, it's employees, officers, advisors or a third party unless such Confidential Information was already in the public domain (other than information which has been made public in breach of this Contract).
 - (c) Any drawings or information supplied by the Client shall remain the Client's property.
 - (d) Neither party shall misuse either party's confidential information.

13. Intellectual Property

- (a) All intellectual property rights in Confidential Information owned by a party at the date of this Contract remains the exclusive property of that party.
- (b) All intellectual property rights in the Confidential Information provided, created or modified by Windsor in connection with the issue of a Proposal or performance of the Works shall become and remains the exclusive property of Windsor.
- (c) Windsor shall grant to the Client a non-exclusive, non-transferrable and royalty free licence and right to use the Confidential Information provided by Windsor in relation to the Works and solely for the Purpose.
- (a) Client shall grant to Windsor a non-exclusive, non-transferrable, royalty free, perpetual licence and right to use the Confidential Information provided by the Client solely for the issue of a Proposal or the performance of the Works.

14. Disputes

- (a) In the event of a dispute arising the parties shall actively and openly endeavour to amicably settle such dispute themselves, with a view to achieving prompt resolution.
- (b) Where the parties are not able to settle the dispute within 10 days, either party may, by notice in writing to the other, refer any dispute under this Contract to mediation, in which case the following shall apply:
 - i. The mediation shall be conducted by a single mediator.
 - ii. The parties shall endeavour to agree within 10 working days on a mediator within 10 Working Days of service of notice of intention to commence mediation, either party may request the Arbitrator's and Mediator's Institute of New Zealand to appoint a sole mediator.
 - iii. All discussions in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce settlement concluded by mediation, be referred to in any later proceedings.
 - iv. Each party shall bear their own costs in mediation and shall pay the cost of the mediator in equal shares.
- (c) If the parties cannot resolve the dispute by mediation, then either party may by written notice to the other refer the dispute to arbitration in accordance with the Arbitration Act 1996 on the following terms:
 - v. A single arbitrator shall be appointed.
 - vi. If the parties fail to agree on an arbitrator, then the Arbitrator's and Mediator's Institute of New Zealand shall appoint the arbitrator.
 - vii. The parties agree that the arbitrator's decision shall be final and binding.
- (d) Pending the settlement of a dispute, the Parties shall continue to perform all their obligations under the Contract.
- (e) Neither Party shall commence any court proceedings relating to a dispute unless it has complied with the clauses above relating to dispute resolution (except where the party seeks urgent interlocutory or injunctive relief).
- (f) The Parties expressly agree that they shall hold confidential, unless otherwise required by law or at the direction of a Court of competent jurisdiction, all information relating to the subject matter of the dispute as disclosed during or for the purposes of the dispute resolution.

15. Miscellaneous

- (a) Limitation of Liability
Notwithstanding any other provision of this Contract and to the full extent permitted at law, the total cumulative liability of Windsor to the Client arising out of or in connection with this Contract for all loss, damage, cost or expense suffered or incurred whether in contract or tort (including negligence), in equity, in restitution, by way of warranty or indemnity or under statute shall be limited to no more than fifty percent (50%) of the Price (excluding GST).
- (b) Consequential Loss excluded.
Notwithstanding any other provision of this Contract and to the full extent permitted by law, Windsor is not liable for any indirect, special, contingent or consequential type losses or damages which include but are not limited to loss of actual or anticipated profits, loss of opportunity, loss of goodwill or loss of revenue.
- (c) Proportionate Liability
Subject to clauses 8, 15.(a) and 15.(b)above, Windsor shall be proportionately liable to the extent that Windsor caused or contributed to such claim, demand, proceeding, cost, expense, loss, liability or damage under the Contract.
- (d) Law and courts
This Contract is governed by the law of New Zealand and the Parties submit to the exclusive jurisdiction of those Courts. The parties agree that the Consumer Guarantees Act 1993 does not apply to the Works and this Contract.
- (e) Survival.
All provisions that remain in force due to its nature and including indemnification, warranty, liability and limits thereon, and confidentiality and/or protections of proprietary rights shall survive the termination or expiry of this Contract.

(Dated 06/2022)

HIRE CONTRACT

Contract Number and Date		
Client		
Plant	Boiler Type: Boiler Official number: Boiler Output: Boiler Fuel: Other Plant:	
Hire Start Date (Equals date of delivery)		
Place of Delivery (Incoterm and place)		
Site address (where Plant will be used)		
Hire End Date (This is the date of return)		
Place of Return (Incoterm and place)		
Hire Charge Rate (For all Plant)		
Services (List all Services)		
Price for Services (Only if provided at fixed price)		
Client Specifications (List all relevant Client provided documents, site rules etc.)		
Client's Representative Name:	Name: Address: Phone: Email: Date:	Mobile: Signature:
Client's Responsible Person (Per the Approved Code of Practice for Boilers)	Name: Address: Phone: Email: Date:	Mobile: Signature:
Windsor Representative	Name: Address: Phone: Email: Date:	Mobile: Signature:

Place of Delivery Where does Windsor deliver the Plant

Incoterms 2020	EXW	FCA	DAP	DPU
	Ex Works (Place)	Free Carrier (Place)	Delivery at Place (place)	Delivered at Place Unloaded (Place)
Loading on Truck	Client	Windsor	Windsor	Windsor
Delivery to Site	Client	Client	Windsor	Windsor
Unloading at Site	Client	Client	Client	Windsor

Place of Return Where does the Client return the Plant

Incoterms 2020	EXW	FCA	DAP	DPU
	Ex Works (Place)	Free Carrier (Place)	Delivery at Place (place)	Delivered at Place Unloaded (Place)
Loading on Truck	Windsor	Client	Client	Client
Delivery to place	Windsor	Windsor	Client	Client
Unloading at place	Windsor	Windsor	Windsor	Client