

BT SCAFFOLDS PTY LTD

ACN 160 984 092, ABN 99 160 984 092

TERMS and CONDITIONS of HIRE

1. DEFINITIONS

- a. "Customer" means the person/s hiring equipment.
- b. "Seller" means BT Scaffolds Pty Ltd.
- c. "Goods" means all goods and services supplied by the seller to the Customer at the Customer's request.
- d. "Equipment" means all equipment delivered/supplied to the customer.
- e. "Minimum Hire Period" means the minimum period of hire as described on invoices, quotations, hire agreement forms and/or any other documentation.
- f. "Site" means the location/s where the equipment is to be used.
- g. "Price" means the price payable for the goods as determined by the seller.
- h. "Quotation" means the Seller's quotation.

2. ACCEPTANCE

- a. 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 Goods/Equipment.

3. CHANGE IN CONTROL

- a. The customer shall give the Seller not less than fourteen (14) days prior written notice or 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 the Seller as a result of the customer's failure to comply with this clause.

4. PAYMENT, FEES AND CHARGES

- a. The customer must pay and agrees to pay any tax invoice provided by the Seller to the customer
- b. The Seller's quoted price will be valid for the period stated in the quotation or for a period of thirty (30) days, whichever comes first.

- c. The Seller reserves the right to change the price if a variation to the Seller's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or identifiable difficulties or as a result of increases to the Seller in the cost or quantity of materials and labour) will be charged on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion whether or not there is written authorisation from the customer.
- d. Time for payment for the Goods/Equipment is of the essence. The price will be payable by the customer on the date/s determined by the Seller, which may be
 - i. upon delivery of the Goods/Equipment;
 - ii. Before the delivery of the Goods/Equipment;
 - iii. Thirty (30) days following the off-hire of the Goods/Equipment;
 - iv. The date specified on any invoice or other form as being the date for payment; or
 - v. Failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the customer by the Seller.
- e. Payment may be made by cash, bank cheque, EFT (Electronic Funds Transfer), credit cards, or by any other method agreed to between the customer and the Seller, however an additional 2.5% credit card fee will be charged if payment is made by credit card.
- f. Unless otherwise stated the price does not include GST. In addition to the price, the customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement. 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.
- g. The customer must pay the cost of any extra call out to collect equipment from any location not allowed for the original quote; hire for any stolen, lost, damaged or unreturned equipment until it is repaired and fit for rehire or

replaced. Replacement and repair is at the customer's cost together with any incidental loss or damage suffered by the Seller.

5. DELIVERY OF GOODS/EQUIPMENT

- a. Delivery of the Goods/Equipment is taken to occur at the time that:
 - i. The customer or the customer's nominated carrier takes possession of the Goods/Equipment; or
 - ii. The Seller (or the Seller's nominated carrier) delivers the Goods/Equipment to the client's nominated address even if the customer is not present at the address.
- b. At the Seller's sole discretion the cost of delivery is either included in the price or is in addition to the price.
- c. The customer must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the customer is unable to take delivery of the Goods/Equipment as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- d. Delivery of the Goods/Equipment to a third party nominated by the customer shall be deemed to be delivery to the client for the purposes of this agreement.
- e. The customer may provide a representative to check the quality of equipment delivered or returned. If the customer does not provide a representative then the delivery docket will provide conclusive evidence as to the quantities delivered or returned and the customer's representative shall notify the seller forthwith at the time of the delivery or return of any discrepancies with the quantities of scaffolding recoded.
- f. Any time or date given by the seller to the customer is a estimate only. The customer must still accept delivery of the Goods/Equipment even if late and the seller will not be liable for any loss or damage incurred by the client as a result of the delivery being late.

6. RISK TO GOODS

Risk of damage to or loss of the goods passes to the customer on delivery and the customer must insure the goods at or before delivery.

If any of the goods are damaged or destroyed following delivery the seller is entitled to receive all insurance proceeds payable for the goods. The

production of these terms and conditions by the seller is sufficient evidence of the seller's rights to receive the insurance proceeds without the need for any person dealing with the seller to make further enquiries.

If the customer requests the seller to leave goods outside the seller's premises for collection or to deliver the goods to a unattended location then such goods shall be left at the customer's sole risk.

Notwithstanding the receipt or otherwise of insurance proceeds, the Seller shall remain entitled to any loss or damage sustained as a debt due and owing from the Customer.

7. ACCESS

- a. The customer shall ensure that the seller has clear and free access to the work site at all times. The seller shall not be liable for any loss or damage to the and the Customer indemnifies the Seller in respect of any such claims by any person whatsoever including in relation to legal costs on an indemnity basis.

8. TITLE TO GOODS

- a. The seller and the customer agree that ownership of the goods shall not pass to the customer.
- b. Receipt by the seller in 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.
- c. The customer holds the benefit of the customer's insurance of the goods on trust for the seller and must pay to the seller the proceeds of any insurance in the event of the goods being lost, damaged or destroyed.
- d. The customer must not sell, dispose or otherwise part with possession of the goods. If the customer sells, disposes or parts with possession of the goods then the customer must hold the proceeds of any such act on trust for the seller and must pay or deliver the proceeds to the seller on demand and is liable for any other loss and damage sustained as a debt due and owing.
- e. The customer should not convert or process the goods or intermix them with other goods but if the customer does so then the customer holds the resulting

product on trust for the benefit of the seller and must sell, depose of or return the resulting product to the seller on demand.

- f. The customer irrevocably authorises the seller to enter any premises where the seller believes the goods are kept and recover possession of the goods.
- g. The seller may recover possession of any goods whatsoever.
- h. The customer shall not charge or grant an encumbrance over the goods nor grant nor otherwise give away interest in the goods while they remain the property of the seller.
- i. The seller may commence proceedings to recover the price of the goods sold notwithstanding that ownership of the goods has not passed to the customer.

9. PERSONAL PROPERTY SECURITIES ACT 2009 (“PPSA”)

- a. In this clause Financing Statement (“FS”), Financing Change Statement (“FCS”), Security Agreement (“SA”), Security Interest (“SI”) and Purchase Money Security Interest (“PMSI”) have the meanings given to them by the PPSA.
- b. The customer acknowledges that:
 - i. These terms and conditions constitute a SA for the purposes of the PPSA;
 - ii. The seller holds a SI and/or a PMSI in the goods/equipment supplied by the seller; and
 - iii. The goods/equipment will not form part of the customer’s inventory for the purposes of the PPSA.
- c. If requested by the seller, the customer must promptly and without undue delay execute any documents and provide all information required (which must be complete, accurate and up-to-date in all respects) in order to complete a FS and comply with any other reasonable requests by the seller to ensure that the seller’s SI and PMSI are perfected.
- d. The customer must notify the seller immediately in writing of any change in the customer’s name and/or details and must also provide to the seller all information required (which must be complete, accurate and up-to-date in all respects) to complete a FCS.
- e. The customer must not register a FCS in respect of any SI or PMSI which the seller has now or in the future.

- f. The customer waives all rights to receive a copy of the verification statement confirming registration of a FS or a FCS in relation to the seller's SI and/or PMSI.
- g. The customer is responsible for all costs, expenses and other charges incurred, expended or payable by the seller in relation to the registration of any FS or FCS.
- h. The customer waives its rights under sections 95 (notice of removal of accession), section 96 (when a person with an interest in the whole may retain an accession), 118 (enforcing security interests in accordance with land law decisions), 121(4) (enforcement of liquid assets), 125 (obligation to dispose of or retain collateral), 128 (secured party may dispose of collateral), 129 (disposal by purchase), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal), 135 (notice of retention), 142 (redemption of collateral) and 143 (reinstatement of security interest) of the PPSA and the parties agree that those provisions do not apply to these terms and conditions and/or SA or any supply of goods/equipment pursuant to these terms and conditions and/or SA.
- i. Unless otherwise specifically stated, the terms and conditions herein are not intended to have the effect of contracting out of any provisions of the PPSA.

10. SECURITY AND CHARGE

- a. In consideration of the seller agreeing to Supply the Goods/Equipment, the customer charges all of it's rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owed by the customer, either now or in the future, to secure the performance by the customer of it's obligations under these terms and conditions (including, but not limited to, the payment of any money).
- b. The customer indemnifies the seller from and against all the seller's costs and disbursements including legal costs on a solicitor and own customer basis incurred in exercising the sellers rights under this clause.
- c. The customer irrevocably appoints the seller and each director of the seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to,

signing any document on the Customer's behalf including but not limited to any caveat.

11. DEFECTS, WARRANTIES AND RETURNS, COMPETITION AND CONSUMER ACT 2010(CCA)

- a. The customer must inspect the goods/equipment on delivery and must within three (3) days of delivery notify the seller in writing of any evident defect/damage, shortage in quantity or failure to comply with the description or quote. The customer must notify any other alleged defect in the goods/equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the customer must allow the seller to inspect the goods/equipment.
- b. The seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- c. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the goods/equipment. The seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- d. If the customer is a consumer within the meaning of the CCA, the seller's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
- e. If the customer is not a consumer within the meaning of the CCA, the seller's liability of any defect or damage in the goods is limited to the replacement of the Goods for the remainder of the hire period.
- f. Subject to this clause 11, returns will only be accepted provided that;
 - i. The customer has complied with the provisions of clause 11.1; and
 - ii. The seller has agreed that the goods are defective; and
 - iii. The goods are returned within three (3) days at the Customer's cost; and
 - iv. The goods are returned in the condition in which they were delivered.

12 DEFAULT AND CONSEQUENCES OF DEFAULT

- a. 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 per cent (2.5%) per calendar month (and at the sellers sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- b. If the customer owes the seller any money, the customer shall indemnify the seller from and against all costs and disbursements incurred by the seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own customer basis, the sellers collection agency costs, and bank dishonour fees).
- c. Without prejudice to any other remedies the seller may have, if at time the customer is in breach of any obligation (including those relating to payment) under these terms and conditions the seller may suspend or terminate the supply of goods/equipment to the customer. The seller will not be liable to the customer for any loss or damage the customer suffers because the seller has exercised its rights under this clause.
- d. Without prejudice to the seller's other remedies at law the seller shall be entitled to cancel all or any part of any order of the customer which remains unfulfilled and all amounts owing to the seller shall, whether or not due for payment, become immediately payable if;
 - i. Any money payable to the seller becomes overdue, or in the seller's opinion the customer will be unable to make a payment when it falls due;
 - ii. The customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into a arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - iii. A receiver, manager, administrator, liquidator (provisional or otherwise) or similar person is appointed in respect of the customer or any asset of the customer

13 CANCELLATION

- a. The seller may cancel any or cancel delivery of Goods/Equipment at any time before the goods are delivered by giving written notice to the customer. On giving such notice the seller shall repay to the customer any money paid by

the customer for the goods/equipment. The seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

- b. In the event that the customer cancels delivery of Goods/Equipment the customer shall be liable for any and all loss incurred (whether direct or indirect) by the seller as a result of the cancellation(including but not limited to, any loss of profits).

14 COMPLIANCE WITH LAWS

- a. The customer shall comply with the provisions of all statutes, regulations and bylaws of the government, local and other public authorities that may be applicable to the works, Goods and Equipment.
- b. The customer shall obtain (at the expense of the customer) all licences and approvals that may be required for the works.
- c. The customer will ensure that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant standards or legislation.

15 *PRIVACY ACT* 1988

- a. The customer agrees that the seller is entitled to obtain from a credit reporting agency a credit report containing personal credit information about the customer in relation to credit provided by the seller.
- b. The customer agrees that the seller may exchange information about the customer with whose credit providers either named as trade referees by the customer or named in a consumer credit report issued by a credit reporting agency for the following purposes;
 - i. To assess an application by the customer; and/or
 - ii. To notify other credit providers of a default by the customer; and /or
 - iii. To exchange information with other credit providers as to the status of this credit account, where the customer is in default with other credit providers; and/or
 - iv. To assess the creditworthiness of the customer.
 - v. The customer understands that the information exchanged can include anything about the customer creditworthiness, credit

standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988

- c. The customer consents to the seller being given a consumer credit report to collect overdue payment on commercial credit.
- d. The customer agrees that personal credit information provided may be used and retained by the seller for the following purposes (and all other purposes as shall be agreed between the customer and seller or required by law from time to time);
 - i. the provision of goods/equipment; and/or
 - ii. the marketing of goods/equipment by the seller, its agents or distributors; and/or
 - iii. analysing, verifying and/or checking the customers credit, payment and/or status in relation to the provision of goods/equipment; and/or
 - iv. processing of any payment instructions, direct debit facilities and/or credit facilities requests by the customer; and/or
 - v. enabling the daily operation of customer's account and/or the collection of amounts outstanding in the customer's account in relation to the goods.
- e. The seller may give information about the customer to a credit reporting agency for the following purposes;
 - i. to obtain a consumer credit report about the customer
 - ii. allow the credit reporting agency to create or maintain a credit information file containing information about the customer.
- f. The information given to the credit reporting agency may include;
 - i. personal particulars (the customer's name, sex, address, previous address, date of birth, name of employer and driver's licence number);
 - ii. details concerning the customer's application for credit or commercial credit and the amount requested;
 - iii. advice that the seller is a current credit provider to the client;
 - iv. advice of any overdue accounts, loan repayments, and any outstanding monies owing which are overdue by more than thirty (30) days, or for which debt collection action has been started;

- v. that the customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- vi. advice that, in the opinion of the seller, the customer has committed a serious credit infringement or shown an intention not to comply with the customer's credit obligations;
- vii. advice that cheque/s drawn by the customer have been dishonoured;
- viii. that credit provided to the customer by the seller has been paid or otherwise discharged

16 BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS ACT 2004

- a. At the seller's discretion, if there are any disputes or claims for unpaid Goods and/or Equipment and/or Services, then the provisions of the Building and Construction Industry Payments Act 2004 may apply;
- b. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland.

17 GENERAL

- c. The failure by the seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the seller's 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.
- d. 2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, and are subject to the jurisdiction of the courts of that state.
- e. Subject to clause 11, the seller 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 the seller of these terms and conditions (alternatively the seller's liability shall be limited to damages which under no circumstances shall exceed the price of the Goods/Equipment hire).

- f. 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 the seller nor to withhold payment of any invoice because part of that invoice is in dispute
- g. The seller may licence or sub-contract all or any part of its rights and obligations under this contract without the customer's consent.
- h. The customer agrees that the seller may amend these terms and conditions at any time. If the seller makes a change to these terms and conditions, then that change will take effect from the date on which the seller notifies the customer of such change. The customer will be taken to have accepted such changes if the customer makes a further request for the seller to provide Goods/Equipment to the customer.
- i. The Seller shall not be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm or other event beyond the reasonable control of the Seller.
- j. 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.

18 RISK TO EQUIPMENT

- a. The Seller retains property in the Equipment nonetheless all risk for the Equipment passes to the Customer on delivery.
- b. The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Seller for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer.
- c. The Customer will insure the Seller's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accidental fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment.
- d. The Customer accepts full responsibility for and shall keep the Seller indemnified against all liability in respect of all actions, proceedings, claims and damages, costs and expenses in respect of any injury to persons,

damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

19 TITLE TO EQUIPMENT

- a. The Equipment is and will at all times remain the absolute property of the Seller.
- b. If the Customer fails to return the Equipment to the Seller than the Seller or the Seller's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- c. The Customer is not authorised to pledge the Seller's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

20 CUSTOMER'S RESPONSIBILITIES

- a. The Customer shall:
 - i. Maintain the Equipment as is required by the Seller.
 - ii. Notify the Seller immediately by telephone of the full circumstances of any scaffolding defect or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification.
 - iii. Satisfy itself at commencement that the Equipment is suitable for the purpose for which the Customer requires it.
 - iv. Use the equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Seller or posted on the Equipment or the Seller's website.
 - v. Ensure that all persons using or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to the Seller upon request.

- vi. Comply with all occupational health and safety laws relating to the Equipment and its operation.
 - vii. On termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered to the Seller.
 - viii. Keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to a lien over the equipment.
 - ix. Not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing an identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - x. Employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any other party for any other work.
 - xi. Not exceed the recommended or legal load and capacity limits of the Equipment.
 - xii. Not use or carry illegal, prohibited or dangerous substances in or on the Equipment.
 - xiii. Not mix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- b. Immediately on request by the Seller the Customer will pay:
- i. The new list price of any Equipment that is for whatever reason damaged, destroyed, written off or not returned to the Seller.
 - ii. All costs incurred in cleaning the Equipment.
 - iii. All costs of repairing any damage caused by the use of the Equipment.
 - iv. The cost of repairing any damage to the Equipment caused by the negligence of the Customer or the Customer's agent.
 - v. The cost of repairing any damage to the Equipment caused by Vandalism, or caused by any reason during the hire period.