



## TERMS & CONDITIONS

### 1. Definitions

- 1.1 'Agreement' means these terms and conditions of trade.
- 1.2 'Claim' means any right, claim, action, demand, damage, loss, charge, circumstance, expense, cost (legal or otherwise) or liability of whatsoever nature whether in negligence, tort, restitution, contract, breach of statutory duty, under any legislation or otherwise.
- 1.3 'Easy Reach Scaffoldings' means Easy Reach Scaffolding Pty Ltd and its successors and assigns.
- 1.4 'Goods' means all goods described on the invoices, quotation, authority to hire, or any other work commencement forms provided by Easy Reach Scaffolding Pty Ltd to the Hirer (or Purchaser, as the case may be) and where the context requires, includes the supply of Services as defined.
- 1.5 'Hirer' means the hirer or any person acting on behalf of and with the authority of the hirer.
- 1.6 'Purchaser' means the person purchasing the Goods or any person acting on behalf of and with the authority of the purchaser.
- 1.7 'Insolvency event' means: (a) if the Hirer:
- (i) is unable to pay its debts as and when they fall due;
  - (ii) commits an act of bankruptcy;
  - (iii) being a company, an application is made or a resolution is passed for its winding up;
    - (a) if any execution or distress is levied upon the Hirer
    - (b) if any judgement against the Hirer remains unsatisfied for seven (7) days or more
    - (c) if the Hirer makes an assignment or compromise for the benefit of its creditors; and
    - (d) if the Hirer has appointed it, or to any of its assets, a receiver, manager, administrator, liquidator (provisional or otherwise) or external controller
- 1.8 'Payment Claim' means any statement or invoice rendered by Easy Reach Scaffolding Pty Ltd to the Hirer for the Goods.
- 1.9 'Price' means the cost of the Goods in accordance with this Agreement.
- 1.10 'PPSA' means the PPS Act (*Personal Property Securities Act 2009*) and any other legislation and regulations in respect of it.
- 1.11 'Quotation' means the quotation provided by Easy Reach Scaffolding Pty Ltd to the Hirer for the hire of the Goods.
- 1.12 'Services' means services supplied by Easy Reach Scaffolding to the Hirer and includes any advice or recommendations (and where the context requires includes the supply of Goods as defined).
- 1.13 'Site' means the site to which the Goods are to be supplied, or used.

### 2. Easy Reach Scaffolding's obligations

- 2.1 Easy Reach Scaffolding will supply the Goods in clean and good working order in accordance with this Agreement.

### 3. Payment by Hirer of Price

- 3.1 The Price shall be in accordance with:
- (a) the Quotation, provided that the Quotation is accepted within thirty (30) days; or
  - (b) Easy Reach Scaffolding's current price list as at the date of supply of the Goods
- 3.2 The Hirer must pay the Price:
- (a) by paying a deposit, or a payment in advance as advised by Easy Reach Scaffolding, before Easy Reach Scaffolding is obliged to supply the Goods; or
  - (b) in accordance with Easy Reach Scaffolding's Payment Claim, in which case payment shall be due thirty (30) days from the end of the month when the Payment Claim was given to the Hirer.
- 3.3 If the Hirer terminates the hire before the Goods are collected, then the Hirer must pay Easy Reach Scaffolding a *picking fee* being the costs incurred by Easy Reach Scaffolding in identifying and setting aside the various components which comprise the Goods ready for hire by the Hirer.

### 4. Delivery of Goods

- 4.1 The Hirer acknowledges and agrees that from the time when the Goods are collected by a carrier (either a carrier directed by the Hirer or a carrier used at the discretion of Easy Reach Scaffolding, including a carrier sub-contracting its services to Easy Reach Scaffolding):
- (a) such collection is deemed to be a delivery of the Goods to the Hirer; and
  - (b) all risk in the Goods passes to the Hirer.
- 4.2 The Hirer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 4.3 Delivery of the Goods to, or collection of the Goods by a third party nominated by the Hirer is deemed to be delivery to the Hirer for the purposes of this Agreement.

### 5 Defects

- 5.1 Within 24 hours of delivery (or deemed delivery), the Hirer must inspect the Goods and notify Easy Reach Scaffolding in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote (Defects). If the Hirer alleges Defects with the Goods, then it must provide to Easy Reach Scaffolding every opportunity to inspect the Goods. Failure by the Hirer to comply with this clause will deem the Goods to be in accordance with this Agreement and free from any Defect.
- 5.2 If the Goods suffer from a Defect, then Easy Reach Scaffolding's liability is limited to the replacement or the repair of the Goods.

## 6. Hirer's Responsibilities

- 6.1 The Hirer must:
- (a) ensure that:
- (i) the Site has ground conditions (which may include supporting structure) adequate to support the Goods; and
  - (ii) that all overhead and in ground services at the Site are located and identified or relocated, protected or temporarily shut down as necessary to ensure a safe working environment for the Goods (including delivery of the Goods);
- (b) provide traffic management and access to the Site to ensure that the Goods can be delivered in an efficient and timely manner. If any delays are suffered in delivering the Goods, then the Hirer shall reimburse Easy Reach Scaffolding for all extra costs and expenses incurred by reason of the delay and upon Easy Reach Scaffolding providing written notification to the Hirer of such costs and expenses, such amounts shall become a debt due and payable from the Hirer to Easy Reach Scaffolding;
- (c) ensure that all necessary authority consents and approvals are obtained (including building permits and air rights), for the lawful use of the Goods;
- (d) immediately notify Easy Reach Scaffolding in writing of the full circumstances of any equipment failure or accident;
- (e) operate the Goods safely and strictly in accordance with the law (including, but not limited to Australian Building and Industry Codes and Occupational Health and Safety legislation) only for its intended use, and in accordance with good industry practice and any manufacturer's instructions whether supplied by Easy Reach Scaffolding or noted on the Goods;
- (f) ensure that all persons operating or erecting the Goods are suitably instructed in its safe end proper use and where necessary are properly qualified and trained (including holding a current Certificate of Competency and/or are fully licensed);
- (g) keep the Goods in their own possession and control and not assign the benefit of this Agreement, nor be entitled to a lien over the Goods (including granting a lien related to the costs of repair of the Goods). The Hirer accepts full responsibility for the safekeeping of the Goods and indemnifies Easy Reach Scaffolding against all loss or damage to the Goods 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 Hirer;
- (h) indemnify Easy Reach Scaffolding against all Claims in connection with any injury to persons or damage to property arising out of and in connection with the use of the Goods however arising, whether from the negligence of the Hirer or any other persons including but without limitation where the Goods are being operated for any reason by any employee, servant or agent of Easy Reach Scaffolding; and not alter the Goods in any way including but not limited to making additions, defacing or erasing any identifying mark, plate or number on or in the Goods or in any other manner interfere with the Goods.

## 7. Damage or loss of Goods

- 7.1 Immediately on demand by Easy Reach Scaffolding the Hirer will pay:
- (a) The new list price of any Goods which are for whatever reason not returned to Easy Reach Scaffolding (b) All costs incurred by Easy Reach Scaffolding in:
- (i) cleaning the Goods;

- (ii) repairing any damage to the Goods (except for any damage caused by usual fair wear and tear and proper use of the Goods in accordance with good industry practice);
- (c) costs of carriage, monthly safety inspections, stamp duty, Goods and Services Tax, and any other taxes or duties, and all fines, penalties, seizure costs, impoundment costs, levies or charges arising from or related to the Hirer's use of the Goods, except to the extent that such charges are expressly included in the Quotation;
- and
- (d) all costs incurred by Easy Reach Scaffolding in recovering possession of the Goods;
- 7.2 On demand, such costs become a debt due and payable from the Hirer to Easy Reach Scaffolding.

## 8. Termination

- 8.1 On termination of the hire, the Hirer shall deliver the Goods to Easy Reach Scaffolding complete with all parts and accessories in a clean state and in good order (usual fair wear and tear excepted). The Hirer acknowledges and agrees that the risk in the Goods passes to Easy Reach Scaffolding when the Goods are actually received by Easy Reach Scaffolding, and not when the Goods are provided to a carrier, either a carrier directed by the Hirer or a carrier used at the discretion of Easy Reach Scaffolding (including a carrier subcontracting its services to Easy Reach Scaffolding).
- 8.2 The Hirer grants to Easy Reach Scaffolding an irrevocable license to access the Site (which includes the right to open any gates or doors and remove any fences or other obstructions preventing free and unfettered access to the Goods) to enable the recovery of the Goods. If Easy Reach Scaffolding suffers any delays in recovering the Goods in breach of this clause 8, then the Hirer shall reimburse Easy Reach Scaffolding for all extra costs and expenses incurred by reason of the delay, together with all lost hire fees associated with the Goods being unavailable. Upon Easy Reach Scaffolding providing written notification to the Hirer of such costs and expenses, such amounts shall become a debt due and payable from the Hirer to Easy Reach Scaffolding.
- 8.3 If the Hirer:
- (a) commits an Insolvency Event; or
  - (b) breaches any term of this Agreement
- then without prejudice to any of Easy Reach Scaffolding's other remedies:
- (c) all amounts owing to Easy Reach Scaffolding shall, whether or not due for payment, immediately become due and payable; and
  - (d) Easy Reach Scaffolding may without the requirement to give any notice, recover the Goods.
- 8.4 Without prejudice to any other rights or remedies available to Easy Reach Scaffolding and notwithstanding any period of hire specified, Easy Reach Scaffolding may terminate the Agreement at will, and without payment or compensation:
- (a) by giving the Hirer 24 hours notice of its intention to terminate, which notice need not be in writing and shall be deemed sufficiently given if made to:
    - (i) the Hirer;
    - (ii) the operator for the time being of the Goods;
    - (iii) the occupier for the time being of the Site at which the Goods are located; or
  - (b) If no person is in attendance at the Site, by recovering the Goods, and leaving a note to that effect on the fence or a post of the Site.

## 9. Liability

- 9.1 To the extent permitted by law, all warranties (whether statutory or otherwise, and whether express or implied, oral or written) as to the state, quality or fitness for purpose of the Goods, are hereby expressly excluded.
- 9.2 To the extent permitted by law, and subject only to where the Agreement expresses otherwise, Easy Reach Scaffolding is not liable to the Hirer for, and the Hirer forever releases and discharges Easy Reach Scaffolding from, any Claim by, or loss to the Hirer arising out of or connected with the Hire and/or the Goods or its operation, any breach or default by Easy Reach Scaffolding, or any negligence of Easy Reach Scaffolding.
- 9.3 Nothing in the Agreement is intended to exclude, restrict or modify rights which the Hirer may have under the Trade Practices Act 1974 (TPA) or any other legislation which may not be excluded, restricted or modified by agreement. If the TPA or any other legislation implies a condition or warranty into the Agreement in respect of goods supplied, and Easy Reach Scaffolding's liability for breach of that condition or warranty may not be excluded but may be limited, Easy Reach Scaffolding's liability for any breach of that condition or warranty is limited to Easy Reach Scaffolding doing any one or more of the following (at its election), namely replacing the Goods, supplying equivalent Goods, repairing the Goods, paying the cost of replacing the Goods or of acquiring equivalent equipment, or paying the cost of having the Goods repaired.
- 9.4 The Hirer irrevocably and unconditionally indemnifies Easy Reach Scaffolding against, and releases Easy Reach Scaffolding from, any Claim or loss of whatsoever nature Reach Scaffolding and kind and whether sustained by the Hirer or any other person, in relation to or connected with the Hire of the Goods under the Agreement.

## 10. Default & Consequences of Default

- 10.1 Interest on overdue Payment Claims accrues from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and continues to accrue until the date of entry of any judgment.
- 10.2 Without prejudice to any other remedies which Easy Reach Scaffolding may have, if at any time the Hirer is in breach of any obligation (including those relating to payment), Easy Reach Scaffolding may suspend or terminate the supply of Goods to the Hirer and any of its other obligations under this Agreement. Easy Reach Scaffolding will not be liable to the Hirer for any loss or damage the Hirer suffers because Easy Reach Scaffolding exercised its rights under this clause.
- 10.3 If any Payment Claim remains unpaid for more than 60 days, then the Hirer will become liable to Easy Reach Scaffolding for an administrative fee of the greater of \$20.00 or 10% of the amount overdue which amount shall be a debt due and payable.

## 11. Clauses applying to the sale of Goods

- 11.1 Clauses 1, 3, 4, 5, 6, 8.2, 9, 10, 12, 13 & 14 apply to the sale of Goods by Easy Reach Scaffolding, and the word "Purchaser" replaces the word "Hirer" as required.
- 11.2 Subject to the terms of this Agreement, Easy Reach Scaffolding sole liability and remedy in relation to Goods not manufactured by it shall be recourse to the warranty provided by the manufacturer of the Goods. Easy Reach Scaffolding shall be under no liability whatsoever except for

the express conditions as detailed and stipulated in the manufacturers' warranty.

- 11.3 In relation to second hand Goods, the Purchaser acknowledges that it has had the full opportunity to inspect the Goods, and that it accepts the same with all faults and that no warranty is given by Easy Reach Scaffolding as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded.

## 12. Privacy Act 1988

- 12.1 The Hirer and/or the Guarantor/s agree for Easy Reach Scaffolding to obtain from a credit-reporting agency a credit report containing personal credit information about the Hirer in relation to credit provided by Easy Reach Scaffolding.
- 12.2 The Hirer agrees that Easy Reach Scaffolding may exchange information about the Hirer with those credit providers named in the New Customer – Application for Account form or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) To assess an application by the Hirer;
  - (b) To notify other credit providers of a default by the Hirer;
  - (c) To exchange information with other credit providers as to the status of this credit account, where the Hirer is in default with other credit providers;
  - (d) To assess the credit worthiness of Hirer and/or Guarantor/s; and
  - (e) The Hirer being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 12.3 The Hirer agrees that personal data provided may be used and retained by Easy Reach Scaffolding for the following purposes and for other purposes as shall be agreed between the Hirer and Easy Reach Scaffolding or required by law from time to time:
- (a) for the provision of Goods;
  - (b) analysing, verifying and/or checking the Hirer's credit, payment and/or status in relation to provision of Goods;
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Hirer, and
  - (d) enabling the daily operation of the Hirer's account and/or the collection of amounts outstanding in the Hirer's account in relation to the Goods.
- 12.4 Easy Reach Scaffolding may give information about the Hirer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Hirer; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Hirer.

## 13. Personal Property Securities Act ("PPSA")

- 13.1 You consent to us affecting and maintaining a registration on the register (in any manner we consider appropriate) in relation to any security interest contemplated or constituted by this Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and you agree to sign any documents and provide all assistance and information to us required to facilitate the registration and maintenance of any security interest. We may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). You waive the right to receive a notice of a verification statement in relation to any

	registration on the register of a security interest in respect of the equipment.		
13.2	You undertake to:		
	(a) do anything (in each case, including executing any new document or providing any information) that is required by us:		
	(i) so that we acquire and maintain one or more perfected security interests under the PPSA in respect of the equipment and its proceeds,	14.2	If any provision of the Agreement is void, voidable or unenforceable, then such term shall be read down, or excised so that such provision will not affect any other term of the Agreement.
	(ii) to register a financing statement or financing change statement and		
	(iii) to ensure that our security position, and rights and obligations, are not adversely affected by the PPSA;	14.3	The conditions in this Agreement cannot be waived or varied unless agreed in writing by Easy Reach Scaffolding. Easy Reach Scaffolding may vary the Agreement by providing written notice to the Hirer.
	(b) not register a financing change statement in respect of a security interest contemplated or constituted by this Agreement without our prior written consent; and	14.4	Any instructions received by Easy Reach Scaffolding from or on behalf of the Hirer for the supply of Goods and/or the Hirer's acceptance of Goods from Easy Reach Scaffolding constitute the commencement of and acceptance of the terms and conditions of this Agreement.
	(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the equipment in favour of a third party without our prior written consent.	14.5	Any addition or variation to the Goods supplied ( <b>variations</b> ), are supplied by Easy Reach Scaffolding on the terms of the Agreement, and any direction by or on behalf of the Hirer for the variations constitutes a continuing acceptance by the Hirer of the terms of this Agreement.
13.3	If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising under or in connection with this Agreement and;		
	(a) Section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and you will have no rights under them: section 95 (to the extent that it required the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130, section 132(3)(d); section 132(4); section 135; section 142 and section 143; and	14.6	All the rights, immunities and limitations of liability in the Agreement benefiting Easy Reach Scaffolding shall continue to have full force and effect in all circumstances and notwithstanding any breach of the Agreement by Easy Reach Scaffolding or any termination of the Agreement by Easy Reach Scaffolding.
	(b) Section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and you will have no rights under them; section 127, section 129(2) and (3), section 130(1); section 132; section 134(2); section 135; section 136(3) and (5) and section 137.	14.7	Without limiting the ability of Easy Reach Scaffolding to recover all amounts owing to it, the Hirer irrevocably authorizes Easy Reach Scaffolding to charge any amounts owing by the Hirer under the Agreement to any credit card, details of which have been provided to Easy Reach Scaffolding.
13.4	Unless otherwise agreed to the extent permitted by the PPSA, you and we agree not to disclose information of the kind referred to in Section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. You waive any right you may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorize the disclosure of the above information.	14.8	Immediately on demand by Easy Reach Scaffolding, the Hirer will pay all legal costs (on a solicitor / client basis) and expenses (including commissions payable to a commercial agent) incurred by Easy Reach Scaffolding in enforcing this Agreement.
13.5	For the purpose of section 20(2) of the PPSA, the collateral is equipment including any equipment which is described in any Hire Schedule provided by us to you from time to time. This Agreement is a security agreement for the purposes of the PPSA.	14.9	All intellectual property in or incidental to the Goods, its use (including erection) and in any designs, drawings, specifications, sketches and samples provided by Easy Reach Scaffolding is vested in and remains the property of Easy Reach Scaffolding.
13.6	We may apply amounts received in connection with this agreement to satisfy obligations secured by a security interest contemplated or constituted by this Agreement in any way we determine in our absolute discretion.	14.10	Where more than one Hirer has entered into this Agreement, then the Hirers agree to be jointly and severally liable under this Agreement.
13.7	You agree to notify us in writing of any change to your details set out in the credit application, within 5 days from the date of such change.	14.11	Notwithstanding anything to the contrary contained herein or any other rights where the Hirer is the registered proprietor of any land, realty or any other asset capable of being charged (Assets), the Hirer agrees to mortgage and/or charge all of their joint and/or several interest in the Assets to secure any monies owing, or that may become owing under this Agreement. The Hirer irrevocably agrees that Easy Reach Scaffolding (or Easy Reach Scaffolding' nominee) shall be entitled to register a charge, mortgage or caveat, in accordance with this clause.
		14.12	The Agreement shall be governed by and construed in accordance with the laws of Victoria, and are subject to the provisions of the Building and Construction Industry Security of Payment Act 2002 (Vic).
		14.13	This Agreement is not to be interpreted against the interests of a party merely because that party proposed this Agreement or some provision in it or because that party relies on a provision of this Agreement to protect itself.
<b>14.</b>	<b>General</b>		
14.1	This Agreement sets out the full extent of the understanding between the parties and supersedes any prior agreement or		