

# R & S Scaffold Limited – Terms & Conditions of Trade

<b>1. Definitions</b>	
1.1 "Supplier" means R & S Scaffold Limited, its successors and assigns or any person acting on behalf of and with the authority of R & S Scaffold Limited.	(c) The Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. The Client sells, disposes 22.1
1.2 "Client" means the person buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.	or parts with possession of the Goods when the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
1.3 "Goods" means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).	(d) The Client shall not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
1.4 "Equipment" means all Equipment including any accessories supplied on hire by the Supplier to the Client (and where the context so permits shall include any Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Client.	(e) The Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
1.5 "Hire Period" means the Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client.	(f) The Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
1.6 "Price" means the Price payable for the Goods/Equipment hire as agreed between the Supplier and the Client in accordance with clause 5.2.	(g) The Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Client.
<b>2. Acceptance</b>	(h) The Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally by these terms and conditions if the Client places an order for or accepts delivery of 10.1 the Goods/Equipment.	<b>Personal Property Securities Act 1999 ("PPSA")</b>
2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.	Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
2.3 Where the Client requesting or organising the Supplier to provide Services is acting with or on behalf of any third party and that third party is intended to be responsible for the payment (or any part thereof) of the Price then in the event that the third party does not pay for the Services when due, the Client acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.	(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
<b>3. Change in Control</b>	(b) security interest is taken in all Goods/Equipment previously supplied by the Supplier to the Client (if any) and all Goods/Equipment that will be supplied in the future by the Supplier to the Client.
3.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership by the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact person or fax numbers, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.	The Client undertakes to:
<b>4. Authorised Representatives</b>	(a) sign any other documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or information change statement on the Personal Property Securities Register; and
4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to the Supplier as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies the Supplier in writing that said person is no longer the Client's duly authorised representative).	(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or information change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.	(c) not register a financing change statement or a change demand without the prior written consent of the Supplier; and
4.3 The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any works, materials, Services or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).	(d) immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
<b>5. Price and Payment</b>	The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
5.1 At the Supplier's sole discretion the Price shall be either:	(a) the Supplier and the Client agree that nothing in sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
(a) as indicated on any invoice provided by the Supplier to the Client; or	Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
(b) the Price as at the date of delivery of the Goods/Equipment according to the Supplier's current price list;	(c) the Client shall unconditionally ratify any actions taken by the Supplier under clauses 10.1 to 10.5.
(c) the Supplier's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.	<b>Security and Charge</b>
5.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to the Supplier in the cost of taxes, levies, materials and labour or as a result of availability of Goods) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice.	11.1 In consideration of the Supplier agreeing to supply the Goods/Equipment, the Client charges all (including but not limited to) the Client's (whether joint or several) in any land, realty or other asset capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
5.3 At the Supplier's sole discretion a deposit may be required.	11.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
5.4 All time for payment for the Goods/Equipment, including any variations, the Price will be payable by the Client on the dates determined by the Supplier, which may be:	11.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.
(a) on delivery of the Goods/Equipment;	<b>Client's Disclaimer</b>
(b) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;	12.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made by the Supplier and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
(c) the date specified on any invoice or other form as being the date for payment; or	<b>Consumer Guarantees Act 1993</b>
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.	13.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card or by any other method of payment.	<b>Defects</b>
5.6 Receipt by the Supplier 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.	14.1 The Client shall inspect the Goods/Equipment on delivery and shall within seven (7) days of delivery, time being of the essence, notify the Supplier of any alleged defect, shortage in quantity, damage of failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Goods/Equipment within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under the contract for the sale of the Goods/Equipment of the Client.	<b>Returns of Goods</b>
5.8 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card or by any other method of payment.	Returns of Goods will only be accepted provided that:
5.9 The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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.	(a) the Client has complied with the provisions of clause 14.1; and
<b>6. Delivery of Goods/Equipment</b>	(b) the Supplier has agreed in writing to accept the return of the Goods; and
6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that the Supplier (or the Supplier's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.	(c) the Goods are returned at the Client's cost within seven (7) days of the delivery date;
6.2 At the Supplier's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.	(d) the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and
6.3 Delivery of the Goods/Equipment to a carrier, either named by the Client or failing such naming to a carrier at the discretion of the Supplier for the purpose of transmission to the Client, is deemed to be delivery of the Goods/Equipment to the Client.	(e) the Goods are returned in the condition in which they were delivered and with all packaging, manuals, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
6.4 The costs of carriage and any insurance which the Client reasonably directs the Supplier to incur shall be reimbursed by the Client (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Client's agent.	<b>Warranty</b>
6.5 Where there is no agreement that the Supplier shall send the Goods/Equipment to the Client, delivery to a carrier at limited carrier's risk at the expense of the Client is deemed to be delivery to the Client.	For Goods not manufactured by the Supplier, the warranty shall be the current warranty offered by the manufacturer of the Goods. The Supplier shall not be bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
6.6 The Supplier may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	17.1 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the Goods before the Goods are delivered to him and that no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Supplier shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
6.7 Delivery of the Goods/Equipment to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.	<b>Intellectual Property</b>
6.8 Any time or date given by the Supplier to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.	17.2 Where the Supplier has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.
<b>7. Risk to Goods</b>	17.3 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.	<b>Default and Consequences of Default</b>
7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.	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 the Supplier's sole discretion such interest shall compound monthly at such a rate) after as if the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
7.3 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the Hire Period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.	18.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
7.4 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Goods or Services supplied is given in good faith is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.	18.3 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
7.5 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Supplier reserves the right to vary the Price with alternative Goods as per clause 5.2. The Supplier also reserves the right to halt all Services until such time as the Supplier and the Client agree to such changes.	(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
<b>8. Accuracy of Clients Plans and Measurements</b>	(b) the Client 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
8.1 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information is inaccurate, the Client is liable for any loss or damage resulting from any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.	(c) the Client, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
8.2 In the event the Client gives information relating to measurements and quantities of the Goods required to complete the services, the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Supplier places an order for these measurements and quantities. The Supplier accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.	<b>Compliance with Laws</b>
<b>9. Title to Goods</b>	19.1 The Client and the Supplier shall comply with the provisions of all statutes, regulations and orders of government, local and other public authorities that may be applicable to the Services.
9.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:	19.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
(a) the Client has paid the Supplier all amounts owing to the Supplier; and	19.3 The Client agrees that the Client will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
(b) the Client has met all of its other obligations to the Supplier.	<b>Cancellation</b>
9.2 Receipt by the Supplier 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.	20.1 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of any Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods/Equipment. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
9.3 It is further agreed that:	20.2 In the event that the Client cancels delivery of Goods/Equipment the Client shall be liable for any net loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
(a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;	<b>Dispute Resolution</b>
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.	21.1 All disputes and differences between the Client and the Supplier touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

Please note that a larger print version of these terms and conditions is available from the Supplier on request.