

## 1. DEFINITIONS

- 1.1 **"Company"** means WACO KWIKFORM Limited ACN 002 835 396 (ABN 48 002 835 396).
- 1.2 **"Business Day"** means a day on which banks are open for business in the State or Territory where the Hire contract/Sale Contract is entered into excluding a Saturday, Sunday or public holiday;
- 1.3 **"Buyer"** means the person entering a Sale Contract with the Company. A reference to "Buyer" shall include its successors and assigns (if a corporation) and the legal personal representative (if an individual or partnership of individuals).
- 1.4 **"Goods"** means the goods and services the subject of the Sale/Hire Contract.
- 1.5 **"Hire Contract"** means any hire transaction between the Company and the Hirer particularised in the quotation to which these conditions are attached.
- 1.6 **"Hirer"** means the person who enters a Hire Contract with the Company. A reference to "Hirer" shall include its successors and assigns (if a corporation) and the legal personal representative (if an individual or partnership of individuals).
- 1.7 **"Sale Contract"** means any sale transaction between the Company and the Buyer particularised in the quotation to which these conditions are attached.
- 1.8 **"Services"** means and includes the erection, movement and dismantling of scaffolding and/or formwork equipment.
- 1.9 **"PPSA"** means the PPS Act and any other legislation and regulations in respect of it and the following words have the respective meanings given to them in the PPS Act: collateral, financing change statement, financing statement, grantor, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.
- 1.10 **"PPS Act"** means the Personal Property Securities Act 2009 (Cth) (as amended).

## 2. CONDITIONS PRECEDENT

- 2.1 These conditions apply to all sales and hire of the Company's Goods despite any contrary terms in any of Buyer's/Hirer's documents and constitutes the entire agreement between the parties to the exclusion of all other conditions. Acceptance of delivery of the Goods indicates Buyer's/Hirer's acceptance of these conditions unamended. No representations, inducements, promises or agreements between the parties will be of any force or effect in varying these conditions unless in writing and signed by both parties.
- 2.2 Hirer warrants that the Goods will be used for the purposes of a business or trade

## 3. PERSONAL PROPERTY SECURITIES ACT

- 3.1 (a) The Hirer/Buyer consents to the Company effecting and maintaining a registration on the register on the Personal Property Securities Register in terms of the PPSA (in any manner the Company considers appropriate) in relation to any security interest contemplated or constituted by this Hire/Sale Agreement in the Goods and the proceeds arising in respect of any dealing in the Goods and the Hirer/Buyer agrees to sign any documents and provide all assistance and information to the Company as may be necessary or required to facilitate the registration and maintenance of any security interest.
- (b) The Company may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest).
- (c) The Hirer/Buyer waives the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Goods (Section 157(3)(b) of the PPSA).
- 3.2 The Hirer/Buyer undertakes to:
- (a) do anything (in each case, including executing any new document or providing any information) that is required by the Company.
- (i) so that the Company acquires and maintains one or more perfected security interest under the PPSA in respect of the Goods and its proceeds;
- (ii) to register a financing statement or financing change statement; and
- (iii) to ensure that the Company's security position and rights and obligations are not adversely affected by the PPSA.
- (b) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire/Sale Agreement without the Company's prior written consent; and
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the Company's prior written consent.
- 3.3 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire/Sale Agreement the following provisions of the PPS Act will not apply and the Hirer/Buyer will have no rights under them: section 95 (to the extent that it requires 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 130; section 132(4); section 135 and section 143.
- 3.4 Unless otherwise agreed and to the extent permitted by the PPSA the Hirer/Buyer and the Company agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Hirer/Buyer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclose of the above information.
- 3.5 For the purposes of section 20(2) of the PPS Act, the collateral is any Goods which is described in any Hire or Sale Agreement provided by the Company to the Hirer/Buyer from time to time. This Hire/Sale Agreement is a security agreement for the purposes of the PPS Act.
- 3.6 The Company may apply amounts received in connection with this Hire/Sale Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire/Sale Agreement in any way it may in the Company's absolute discretion determine.
- 3.7 The Hirer/Buyer agree to notify the Company in writing of any change to its details set out in the Credit Application within 5 days from the date of such change.

## 4. ADDITIONAL COSTS

- 4.1 The Goods are hired on condition that Buyer/Hirer will pay any applicable tax, Goods and Services Tax ("GST"), stamp duty, fee, levy or charge of any nature whatsoever imposed by any semi government or government authority in respect of the hire in addition to the price of the Goods.
- 4.2 Extra costs caused by inaccuracies arising through orders, instructions or information given by Buyer/Hirer to the Company other than in writing shall be paid by Buyer/Hirer net 30 days from date of invoice.
- 4.3 Buyer/Hirer will pay all reasonable costs and expenses incurred by the Company in arranging carriage, unloading and reloading of Goods on Buyer's/Hirer's instructions.

## 5. PAYMENT

- 5.1 Unless otherwise stated in writing, all invoices, additional costs and charges of any kind (including hire, delivery, installation and collection charges) are payable net 30 days from date of invoice.
- 5.2 Where delivery of Goods is effected by part deliveries the Company shall be entitled to pro rata progress payments in respect thereof.
- 5.3 While any payment to be made by the Hirer is overdue the amount outstanding from time to time shall bear interest at the maximum rate charged by the Company's bank from time to time on an unsecured overdraft in excess of one hundred thousand dollars. A certificate by any bank manager of any branch of such bank shall in the absence of manifest error be conclusively binding on the parties as to the interest rate.

## 6. PROMOTIONAL MATERIAL

- 6.1 The descriptions and illustrations contained in the Company's catalogues, price lists and other advertising material are intended merely to present a general idea of the Goods described therein and do not form part of this Sale/Hire Contract. The Company accepts no responsibility for the accuracy of any such design drawings, specifications, illustrations, samples, instructions and submissions and these do not constitute any warranty guarantee, representation or opinion of the practicability of construction or the efficacy, safety or otherwise of the Goods and the Company will not be responsible for the cost of any additional work caused by defects in any such drawings, designs or specifications nor will the Company be liable for any consequential loss or damage caused by any defect or otherwise. All drawings, catalogues, printed matter etc, accompanying the contract or in Buyer/Hirer's possession before or after Buyer/Hirer's entry into this Sale/Hire Contract are informative only and weights, measurements, powers, capacities or other particulars of Goods offered are stated in good faith and, subject to the terms hereof. Inaccuracies shall not void or violate this contract nor be made the basis of any claim against the Company or justify rejection of the Goods.

6.2 All designs, drawings, specifications, illustrations, samples and instructions supplied by the Company shall remain the sole property of the Company and shall not be reproduced, copied or used in whole or in part without its prior written consent.

## **7. WARRANTY**

7.1 The Company warrants that, in the event of any short delivery or deliveries of the Goods or any defect in the Goods due to either faulty material or workmanship which becomes apparent within a period of seven (7) days from the date of delivery, the Goods shall (if it is reasonably possible) either be made up or replaced as applicable by the Company provided that:

- (a) in relation to any defective Goods those Goods are returned to the Company within the said period; or
- (b) if it is not practicable to return the Goods the Buyer/Hirer notifies the Company within the said period and the Company in its reasonable opinion is satisfied that the Goods were defective at the time of delivery.

7.2 The Company's goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Buyer/Hirer is entitled to a replacement or refund for a major failure and compensation for any reasonably foreseeable damage. The Buyer/Hirer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to major failure. To the extent that any statute permits the company to limit its liabilities to compensate or indemnify any person for breach of a condition or warranty implied thereby, then the respective liabilities of the Company for such breach shall be limited in the case of Goods to:

- (a) the replacement of the Goods or the supply of equivalent Goods,
- (b) the repair of Goods;
- (c) the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or
- (d) the payment of the cost of having the Goods repaired,

and in the case of services to:

- (a) the re-supply of the services; or
- (b) the payment of the cost of having the services supplied again.

7.3 Subject to clauses 7.1 and 7.2 and any legislation to the contrary:

- (a) The Company provides no warranty of any kind where the Goods are installed and/or used in conjunction with the goods of a supplier other than the Company. The Company will have no liability for any damage whatsoever suffered by any person arising from such installation or use except to the extent caused by the negligent acts or omissions of the Company;
- (b) Representations and agreements not expressly contained herein shall not be binding upon the Company as conditions, warranties or representations; all such conditions warranties and representations on the part of the Company, whether express or implied, statutory or otherwise, whether collateral or antecedent or otherwise are hereby expressly negated and excluded;
- (c) The Company is not liable to the Buyer/Hirer for any loss or for damage to persons or property or for death or injury except to the extent the loss or damage is caused by the negligent acts or omissions of the Company;
- (d) The Buyer/Hirer shall indemnify the Company against any claims made against the Company by any third party in respect of any such loss, damage, death or injury as is set out in sub paragraph (c) hereof; the Buyer/Hirer further agrees to indemnify the Company against all losses and expenses which the Company may suffer or incur due to the failure of the Buyer/Hirer fully to observe its obligations under this contract, except to the extent that any losses or expenses are caused by the negligent acts or omissions of the Company.
- (e) It is expressly agreed that the Hirer/Buyer will not pursue any claim against the Company or hold the Company liable for any consequential losses or indirect losses or damages including without limitation loss of opportunity, use, sales or profit arising out of the performance by the Company of the Hire Contract/Sale Contract.

## **8. REPOSSESSION**

Where the Company is entitled hereunder to retake possession of the goods Buyer/Hirer hereby grants a licence to the Company to enter any place where any of the Goods may be for the purpose of removing same, provided the Company uses reasonable endeavours to minimise any disturbance to the land and premises. If Buyer/Hirer is unable to grant the Company any such licence Buyer/Hirer shall, upon being requested by the Company so to do, forthwith deliver to the Company such of the Goods as the Company may demand at the nearest place accessible to the Company and convenient to it for removing same. The Buyer/Hirer shall reimburse the Company for all reasonable obtaining costs, charges and expenses (including solicitor/client legal expenses) which the Company may incur in obtaining possession of all or any of the Goods without prejudice to the Company's claim for extra charges for Goods retained for a longer period than the minimum period provided for in the Hire Contract. If the Company incurs any cost or liability for whatever reason as a result (whether direct or indirect) of taking possession as aforesaid Buyer/Hirer hereby indemnifies the Company against any such liability or cost, except to the extent that any losses or expenses are caused by the negligent acts or omissions of the Company.

## **9. WAIVER**

No provision hereof and no breach of any provision shall be deemed waived by the Company by reason of any previous waiver by the Company of any breach hereof.

## **10. DISPUTES**

All Hire Contracts/Sale Contracts shall be governed by the laws of the State or Territory where the contract is entered into and the parties submit to the non-exclusive jurisdiction of the Courts of such State or Territory and all Courts exercising appellate jurisdiction therefrom.

## **CONDITIONS RELATING TO HIRE 11 TO 21.**

### **11. DELIVERY**

11.1 The Hirer may not reject Goods due to short delivery.

11.2 (a) If the Goods are delivered to Hirer in more than one delivery such partial delivery will not relieve Hirer of its obligations to accept further deliveries of the balance of the Goods.  
(b) The Company will use its best endeavours to keep to the dates given for delivery of the Goods but will accept no liability for failure to do so unless caused by the negligent acts or omissions of the Company. Oral Instructions to the Company after the date hereof, until confirmed in writing, shall not be binding on the Company unless it elects to adopt them. A reasonable delay in provision of the Goods shall not entitle Hirer to cancel the Hire Contract.

11.3 In the event of a delay in the commencement of this Hire Contract then the Company shall only be liable to comply with its obligations under this Hire Contract subject to the availability of Goods. The Company shall not be obliged to keep aside or hold back any of its Goods if there is a delay in the proposed commencement of this Hire Contract.

### **12. PRICES**

12.1 The prices stated in any quotation are current. If the Company wishes to vary the Price, it will provide the Hirer with 30 days written notice of the variation before the price variation takes effect. If the Hirer does not agree with the variation in price, the Hirer is entitled to terminate this Hire Contract under clause 16.2 in which case the provisions of clause 17 will apply. Quotations for erection and dismantlement are based on an "all up all down" basis unless stated otherwise. Hirer shall be liable for additional labour and transport costs resulting from any variation requested by it.

12.2 (a) Subject to clause 16, Hirer will pay hire charges at the rate and in the manner specified in the quotation to which these conditions are attached on and from the day of delivery until;

- (i) the goods are returned by Hirer, to the premises of the Company; or
- (ii) the second day after receipt by the Company of notice in writing from Hirer notifying that the Goods are ready for collection and the period of hire shall include the day Goods are returned or the said second day (as the case may be).

(b) If Hirer requests the Company to transport the Goods to or from Company premises, Hirer shall pay the Company all reasonable charges and expenses incurred by the Company in delivering and/or collecting the Goods in addition to the hire charges.

(c) Unless otherwise stated in writing hire rates are based on a minimum period of four weeks from the date of delivery and daily thereafter.

(d) Labour charges will be invoiced weekly and are payable net 7 days from the date of invoice.

(e) Hirer shall be liable for all hire charges in accordance with this contract.

(f) Labour prices are based on the labour rate at the date of commencement of the hire. If the labour rate increases during the term of the Hire Contract, the Company will provide 30 days written notice of an increase in price to the Hirer before the increase takes effect and if the Hirer does not agree to the increase in price the Hirer will be entitled to terminate this Hire Contract under clause 16.2 in which case the provisions of Clause 17 will apply.

12.3 If the price charged is a special rate determined by reference to intended length of hire and if the Company agrees to accept an early return of the goods such acceptance will only be on the condition that the Company is entitled to charge and recover a retrospective price increase related to the standard hire charge as at the date of commencement of the hire.

### **13. INSURANCE & RISK**

- 13.1 All Goods delivered to the site are at Hirer's risk. The Company does not insure Goods whilst on site and Hirer shall ensure that the Goods are adequately insured under a Contractors All Risk Insurance policy which will be available for the Company's inspection, on request.
- 13.2 The Hirer shall pay for any unreturned Goods at the Company's then current selling price and for the cost of all repairs to the Goods and of any replacement parts other than those caused by an inherent fault or by fair wear and tear.

### **14. CONDITION OF THE GOODS**

- 14.1 Hirer agrees to allow the Company to inspect the Goods from time to time and Hirer shall ensure that the Goods are used at all times in a proper and responsible manner and are being maintained in proper condition.
- 14.2 The Hirer will during the term of this Hire Contract keep the Goods clean and in good repair.
- 14.3 The Hirer shall be responsible for any cleaning charges associated with the Goods as deemed necessary by the Company.

### **15. DELAY OR NON PERFORMANCE**

The Company shall not be responsible for delay in completion of or failure to complete the job in relation to which the Goods are hired resulting from any act or default beyond the Company's reasonable control, including but without limiting the generality of the foregoing civil commotion, industrial disputes, strikes, lock outs, epidemics, inclement weather, war, fire, accidents or governmental intervention.

### **16. TERMINATION**

- 16.1 The Company shall be at liberty to cancel this Hire Contract at any time or suspend delivery of the Goods, without being liable for damages for so doing in the following circumstances:
- (a) Hirer commits a breach of this or any other uncompleted sales or hire contracts between the Company and either Hirer or any company or person related to or associated with Hirer ;
  - (b) Hirer commits any act of insolvency or goes into administration or receivership or goes into liquidation;
  - (c) A receiver and manager of any of Hirer's undertaking or assets is appointed;
  - (d) Hirer proposes or makes any composition or arrangement with its creditors;
  - (e) An official manager is appointed in respect of Hirer;
  - (f) Hirer becomes bankrupt or applies to take benefit of any law for relief of bankrupt or insolvent debtors or compounds with his creditors or makes an assignment of his remuneration for their benefit.

In such circumstances the Company shall be entitled then and at any time thereafter at the expense of Hirer to enter upon Hirer's site with workmen and equipment and remove the Goods (provided the Company uses reasonable endeavours to minimise any disturbance to the land and premises). therefrom and without prejudice to any action or other remedy which Company has or might or otherwise could have for arrears of hire charges or for other sums due or for any breach of Hirer's obligations hereunder or for damages that are a result of any event and thereupon the Company shall be freed and discharged from all actions suits claims or demands by or obligation to Hirer under or by virtue of this Hire Contract.

- 16.2 The Hirer may without being liable for damages for so doing cancel this Hire Contract, by notice in writing to the Company within 30 days following notice by the Company of a variation of price in accordance with clause 12.1 or an increase in Labour Prices in accordance with clause 12.2(f).

### **17. RETURN OF GOODS**

- 17.1 At the termination of hire all Goods shall be returned to the Company in good condition excepting only fair wear and tear. All Goods shall be deemed in good condition unless the Company notifies Hirer to the contrary within seven (7) days of delivery of the Goods. The Hirer shall on demand pay in respect of any Goods damaged or not so returned the then current selling price for the Goods. Until such sum is paid hire charges shall continue to accrue together with any and all other costs and expenses incurred by the Company as a result of such shortages or losses. The Hirer's responsibility for the preservation and safe keeping of the Goods shall not be determined until the Goods are physically handed over to Company by the Hirer.
- 17.2 When the Goods are returned to the Company by the Hirer same will be counted by the Company at the Company's yard and a hire return docket issued which shall be prime facie proof of the return of the quantity of the Goods listed thereon but not of their condition.
- 17.3 Two clear Business Day's notice in writing is required in order to arrange pick up of Goods from site by the Company. The Hirer shall ensure that all Goods are stacked in an accessible location and shall assist in the loading of the Goods where reasonably required.
- 17.4 No return will be accepted on weekends or Public Holidays or after 4.00p.m. Mondays to Fridays.

### **18. TRANSFER OF GOODS**

Except as herein provided the Goods must remain in the Hirer's possession during the currency of the hiring and at the site specified or if no site is specified at the point of delivery, and must not be transferred to any other location without the prior written authority of the Company. Hirer shall not sell or offer for sale, assign or re hire, grant a lien over or otherwise deal with the Goods. The Hirer agrees that the Company may unload the Goods at the site specified herein or advised notwithstanding that the Hirer or a representative thereof is not present and such unloading shall constitute delivery for the purposes hereof at the time (if any) specified in the quotation to which these conditions are attached.

### **19. OWNERSHIP OF THE GOODS AND BREACH OF CONDITIONS**

- 19.1 The Goods remain at all times the Company's property. The Hirer only has the rights of a bailee. In the event of breach of any of these conditions or of any default in any payment due from the Hirer under this Hire Contract or any other contract with the Company the Company shall be at liberty forthwith to terminate the hiring without notice to the Hirer and thereupon to take possession at any time and in any manner of all or any of the Goods.
- 19.2 The Hirer indemnifies and releases the Company from and against all claims whatsoever arising out of the Hire Contract as a result of or in connection with the Company taking possession of the Goods, except to the extent that a claim is caused by the negligent acts or omissions of the Company.
- 19.3 If the Company repossesses the Goods then the Hirer shall fully indemnify the Company from all costs and matters arising therefrom including legal costs on a full indemnity basis, except costs and matters that arise due to the negligent acts or omissions of the Company.

### **20. AFFIXING SIGNS/CONSENTS**

- 20.1 The Company shall be entitled to affix to the Goods during the period of hire a sign or signs exhibiting the Company's name address and any other details that it may think fit and the Hirer shall not damage, remove, interfere with or obscure such sign or signs.
- 20.2 Hirer shall be responsible for giving to any local or other relevant authorities any necessary or appropriate notice of intention to install the Goods on Hirer's site and shall be responsible for payment of any and all fees.

### **21. OCCUPATIONAL HEALTH AND SAFETY**

- (a) The Hirer shall use the Goods solely for the purpose for which the Goods are supplied and in accordance with any limitations on the use of the Goods arising from any legislation or the requirements of any local regulatory authority.
- (b) Hirer shall ensure that the Goods are erected and dismantled by suitably qualified persons. A suitably qualified person shall be the holder of any certificate of competence or licence that may be required by any legislation or local regulatory authority for purpose of the erection or dismantling of the Goods.
- (c) All safety information provided by the Company will be conveyed by Hirer to all persons responsible for the installation, utilisation or dismantling of the Goods.
- (d) Hirer shall attach and maintain all safety signs supplied with the Goods in prominent positions on the Goods or in such other positions as are necessary to bring the signs to the attention of any users of the Goods.
- (e) Hirer shall at all times comply with any relevant legislation creating occupational health and safety requirements in connection with the use of the Goods.

## **CONDITIONS RELATING TO SALE 22 to 25**

### **22. DELIVERY**

The Buyer may not reject Goods due to short delivery.

- (a) Delivery or deliveries of the Goods by the Company under this Sale Contract shall be ex depot unless otherwise expressly provided and the risk but not the property therein shall pass on delivery.
- (b) The Buyer shall not be relieved of any obligation to accept or pay for the Goods by reason of any reasonable delay in dispatch PROVIDED HOWEVER that the Buyer may obtain alternative Goods from the Company to satisfy its immediate needs in which event the purchase of such Goods shall replace the equivalent quantity to be supplied by the Company pursuant hereto.
- (c) Any times quoted for delivery of the Goods or commencement of their erection are estimates only however the Company will use its best endeavours to keep to the dates for delivery of the Goods. The Company shall not be liable for any loss or damage howsoever arising resulting from failure to commence

or for delays in delivery or erection at the time stated unless caused by the negligent acts or omission of the Company or a guarantee has been given in writing by the Company to deliver or commence erection within a specified time. A reasonable delay in delivery or installation shall not entitle the Buyer to cancel the contract.

- (d) Should the performance of the Company's obligations under this Sale Contract be hindered or delayed by any act or default beyond the Company's reasonable control, including, but without limiting the generality of the foregoing civil commotions, industrial disputes, strikes, lock cuts, epidemics, inclement weather, war, fire, accidents, governmental intervention, or the inability of the Company to procure necessary materials or services including inability due to material increases in the cost of the Company's materials and/or labour, the time for such performance shall be extended for such time as may be reasonable and any such extension of time shall exonerate the Company from any liability in respect of such hindrance or delay.
- (e) The Company may deliver the Goods by instalments and such partial delivery will not relieve the Buyer of its obligation to accept further deliveries of the balance of the Goods.

### 23. PRICES

- 23.1 The prices stated in any quotation are current. If the Company wishes to vary the Price, it will provide the Buyer with 30 days written notice of the variation before the price variation takes effect. If the Buyer does not agree with the variation in price, the Buyer is entitled to terminate this Sale Contract under clause 24.2 in which case the Company will suspend delivery of Goods and/or where it is still entitled to the Goods hereunder take possession of them. Quotations for erection and dismantlement are based on an "all up all down" basis unless stated otherwise. The Buyer shall be liable for additional labour and transport costs resulting from any variation requested by it
- 23.2 All prices are net ex branch or depot store unless otherwise stated in writing.

### 24. Termination

- 24.1 In the event that the Buyer defaults in any payment due to the Company on any account whatsoever, commits any act of bankruptcy or goes into administration or receivership or liquidation or a petition to wind up the Buyer is presented in any Court of competent jurisdiction, the Company may in its sole discretion, and without prejudice to any other rights or remedies available to it, terminate the Sale Contract or suspend delivery of Goods hereunder and where it still retains title to the Goods hereunder, retake possession of them
- 24.2 The Buyer may without being liable for damages for so doing cancel this Sale Contract, by notice in writing to the Company within 30 days following notice by the Company of a variation of price in accordance with clause 23.1.

### 25. TITLE RETENTION

The following are separate and independent conditions of this contract, namely that:

- (a) Ownership and property in the Goods shall, notwithstanding delivery to the Buyer, only pass from the Company to the Buyer when payment in full ("payment") for the Goods has been received by the Company (whether or not the Goods are delivered in instalments and some have been paid for by the Buyer) and until such time the Buyer shall, by separate storage or some other means, ensure that the Goods are readily identifiable as the property of the Company and shall keep the Goods as bailee for and on behalf of the Company;
- (b) Payment shall become due immediately upon the commencement of any act or proceeding in relation to the Buyer's solvency;
- (c) If payment is not made within 3 days of final demand in writing made by the Company, the Buyer irrevocably authorises the Company without prejudice to any other remedies the Company may have, to enter the premises where the Goods are stored and re take possession of the Goods;
- (d) Notwithstanding the above, until the Company has received full payment for the Goods the Buyer shall be entitled to offer for sale and sell the Goods in the ordinary course of business as principal, not agent, at the best obtainable price and the Company will be legally and beneficially entitled to the proceeds of sale to the extent of any payment due to the Company and the Buyer must keep the proceeds of any such sale separate from its own moneys and account to the Company for such proceeds and the Company will have the right to trace the proceeds according to the rules of common law; a like right will apply where the Buyer uses the Goods in any way so as to be entitled to payment from a third party;
- (e) Notwithstanding the above, risk passes to the Buyer on delivery to the carrier at the Company's premises unless otherwise agreed and the Buyer shall at its own expense insure the Goods against any damage howsoever caused and shall maintain such insurance until ownership and property in the Goods passes to the Buyer.

### CONDITIONS RELATING TO SERVICES – 26 TO 30

#### 26. ERECTION AND DISMANTLE

- 26.1 (a) The Buyer/Hirer shall be responsible for obtaining all necessary or requisite approvals from Council, Local Government Authority or any other authority.
- (b) The Buyer/Hirer shall be responsible for ensuring that the supply authority de-energises and/or insulates all power, telephone and data cables in accordance with all Statutory Authority's By-Laws and Regulations before erection commences.
- (c) The Buyer/Hirer shall be responsible for instructing Waco on the exact location of the proposed scaffold structure.
- (d) Buyer/Hirer shall ensure that the site is cleared and ready for installation of the Goods before the Company is to start installation and that the foundations upon which the Company is to erect are sufficiently firm and otherwise suitable to safely carry the structure and the load to be put on it without subsidence. The Buyer/Hirer will be liable to the Company for any loss costs or damages which the Company may suffer or incur by reason of Buyer's/Hirer's failure to carry out its obligations hereunder if the Company is unable or unwilling to install the Goods due to the site not being cleared and ready as aforesaid, nevertheless Buyer/Hirer shall be liable to pay the cost of the sale or hire of the Goods on the terms stated herein;
- (e) The Buyer/Hirer shall be responsible for ensuring that there are adequate tying positions for equipment as required.
- (f) Buyer/Hirer shall pay for any reasonable additional costs involved in deviations between drawings or data supplied by it and actual on site requirements;
- (g) Buyer/Hirer shall pay for any reasonable additional costs involved in any delays to the Company's employees occasioned by denial of access to their work, obstruction by other trades or curtailment of electric power or other matters beyond the Company's reasonable control.
- 26.2 Where the Goods are not installed by the Company, Buyer/Hirer shall ensure that the Goods are erected and dismantled by suitably qualified persons. A suitably qualified person shall be the holder of any certificate of competency or licence that may be required by any legislation or local regulatory authority for purpose of the erection or dismantling of the Goods.

#### 27. CRANAGE

The Buyer/Hirer will at its cost supply all crantage and hoisting facilities as and when required for the erection, movement and dismantling of equipment.

#### 28. EFFECT OF DEFAULT

If the Buyer/Hirer defaults under this Agreement then the Company shall have the right, without prejudice to any other right it may have in law or equity, to;

- (a) Withhold or suspend performance of any contractual obligations of the Company to the Buyer/Hirer under this Agreement until the Company has received all moneys due owing and payable to it in terms of this Agreement; or
- (b) Forthwith determine this Agreement. Termination of this Agreement shall not affect the right of the Company to recover from the Buyer/Hirer any moneys payable hereunder or any damages suffered as a result of the breach of this agreement by the Buyer/Hirer.

#### 29. VARIATIONS

All variations shall be requested in writing and shall only be effected by the Company upon the cost of such variation being agreed in writing.

NOTE: Where a variation is requested and labourers are not available on site, then in respect of such variation labour charges will be charged on a basis of a minimum four (4) hours per labourer.

#### 30. DELAY

- (a) Any waiting time incurred on site howsoever caused and for whatever reason, will be charged for at Waco's standard hourly rate unless such waiting time is caused through the fault of the Company.
- (b) Should the performance of the Company's obligations under this Agreement be delayed by any act or default which is beyond Waco's control, including but without limitation, inclement weather, industrial disputes, strikes, lockouts, civil commotions, war, fire floods, Governmental intervention or any act of God, then the time for such performance shall be extended for such time as may be reasonable and any such extension of time shall exonerate Waco from any liability in respect of such delay.