

Terms and Conditions – SCAFIT LTD

Where we have agreed to provide you with Scaffolding Services, the below terms apply.

1. Definitions and interpretation

Definitions

- 1.1 In these Terms and Conditions, unless the context otherwise requires:
- Agreement** means these Terms and Conditions, which are deemed to also include any terms specified in any invoices, quotations or any other forms as provided by us to you.
- Delivery** means the time that the Scaffolding is installed, and hand-over certificate, green tag or other confirmation of delivery is issued.
- GST** means goods and services tax in terms of the Goods and Services Tax Act 1985, at the prevailing rate from time to time.
- Minimum Hire Period** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by us to you.
- Scaffolding** means all Scaffolding, safety nets, shrink wrap, site fencing or other products (including any accessories) supplied on hire to you by us, at your request from time to time.
- Scaffolding Services** includes any erection, dismantling and transport of the Scaffolding, any parts, accessories and/or consumables supplied by us to you, either separately or depositing incidentally by us while conducting or supplying to you the Scaffolding.

Interpretation

- 1.2 In this agreement unless the context otherwise requires:
- (a) A reference to a person includes any other entity or association recognised by law and vice versa.
- (b) Words referring to the singular include the plural and vice versa.
- (c) Words importing any gender will include the other gender.
- (d) Clause headings are for reference only.
- (e) References to clauses and schedules are references to clauses of and schedules to this agreement.
- (f) References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.
- (g) A reference to us includes our employees and agents.

2. Compliance with directions

- 2.1 You will comply at all times with any directions, instructions, requirements and guidance given by us in respect of Scaffolding Services, including but not limited to those matters we consider necessary to meet our regulatory obligations.
- 2.2 You will co-operate with all reasonable requests that we make in relation to any matter concerning health and safety, industry standards or statutory requirements and that our provision of Scaffolding Services will at all times be subject to your compliance with those requests.
- 2.3 Without limiting the foregoing:
- (a) You must confirm with all relevant authorities that all power cables are safe within four metres of intended Scaffolding, or as per regulatory requirements.
- (b) Scaffolding to be erected at a height of more than five metres may only be erected, altered or dismantled under the supervision of a scaffolder holding a certificate of competency or license that may be required by any legislation or local regulatory authority for the purpose of the erection or the dismantling of the Scaffolding; and
- (c) If you modify or remove the Scaffolding and we consider it is no longer compliant with regulatory requirements, we may perform any work required to rectify the deemed non-conformity at your expense.

3. Ownership and risk

- 3.1 You acknowledge that the Scaffolding remain our property at all times and until they are returned to us, loss or damage of the Scaffolding is at your risk.

4. Hire Charges and other payments

- 4.1 It is an essential condition of our provision of Scaffolding Services to you that you pay our Hire Charges within 7 days of our invoice being sent to you.
- 4.2 Unless we agree in writing otherwise, we will have no obligation to provide Scaffolding Services to you unless our Hire Charges have been paid in full to us prior to the date of Delivery.
- 4.3 Where we are required to provide Scaffolding Services urgently, including but not limited to requiring us to work outside of our normal business hours, we reserve the right to charge you additional labour costs in our discretion.
- 4.4 Any quotations or estimates given by us are subject to a site inspection. Quotations must be accepted by you within 30 days of our issuing them to you.
- 4.5 We reserve the right to change or vary the Hire Charges:
- (a) if a variation to the Scaffolding Services is requested; or
- (b) if a variation to the timing of Scaffolding Services is requested; or
- (c) if we incur cost increases beyond our control occur (such as the cost of materials, labour, taxes, levies, duties, insurance and/or freight); or
- (d) if additional Scaffolding Services are required due to the discovery of hidden or unidentifiable difficulties, including, but not limited to:
- (i) poor weather and/or environmental conditions;
- (ii) limitations to accessing the site;
- (iii) any subsidence of ground conditions;
- (iv) availability of machinery;
- (v) protruding or dismantled formwork;
- (vi) repositioning or adjusting the Scaffolding;
- (vii) additional site visits required;
- (viii) safety considerations;
- (ix) any relocation and/or alteration to Scaffolding Services; and
- (x) prerequisite work by any third party not being completed.
- 4.6 We will endeavour to provide you with revised estimates or quotations of Hire Charge changes for variations or changes as soon as possible.
- 4.7 If we provide you with a revised Hire Charge estimate you must respond with 3 business days. Failure to do so will be deemed to be a complete acceptance of the changed or varied Hire Charges.
- 4.8 We periodically inspect our Scaffolding on site. Unless specified otherwise, our intended and scheduled inspections will be charged per visit. If you ask us to inspect Scaffolding outside of our intended and

- scheduled inspections, we will be entitled to charge you for those inspections in our reasonable discretion.
- 4.9 We may in our discretion require payment of a bond as a condition of providing Scaffolding Services. We will refund any bond to you in full provided that you return the Scaffolding in good condition to us when we request. If Scaffolding is not returned, or are returned late, or not in good condition, we are entitled to retain the bond or any part of it and may also require you to pay to replace or repair the Scaffolding.
- 4.10 Without prejudice to our other remedies under this agreement, at law or otherwise, you will pay interest at a default interest rate of 16% per annum on all amounts owing to us which remain outstanding after the due date for payment, until all outstanding amounts have been paid in full. This provision does not constitute a waiver of your default and the charging of default interest is not an extension of credit to you.
- 4.11 You will pay to us all costs and expenses incurred by us in recovering money or in connection with the exercise or attempted exercise of any of our rights or remedies under this agreement, including commissions and legal costs on a solicitor and client basis.
- 4.12 You must make all payments due under this agreement without set-off or deduction of any kind.
- 4.13 You acknowledge and accept that by signing this agreement and by providing a credit card for payment, all charges under this agreement may be charged to the nominated credit card or to any other credit card that may be provided by you.
- 4.14 GST is payable in addition to all payments and charges specified as being payable by you under this agreement.
- 5. Delivery of Scaffolding**
- 5.1 Any time specified by us for Delivery is an estimate only and we will not be liable for any loss or damage incurred by you as a result of Delivery being late.
- 5.2 At our sole discretion, the cost of Delivery is either included in the Hire Charges or is in addition to the Hire Charges.
- 5.3 You must take Delivery by receipt or collection of the Scaffolding whenever it is tendered for Delivery. If you are unable to take Delivery as arranged, we will be entitled to charge a reasonable fee for redelivery.
- 5.4 If we are unable to supply the Scaffolding as agreed due to any act or omission by you, then you may be charged an additional fee for redelivering the Scaffolding at a later time and date.
- 5.5 We may deliver Scaffolding in separate instalments and we may issue separate invoices for each instalment.
- 5.6 You must inspect the Scaffolding on Delivery and immediately notify us of any alleged defect, shortage in quantity, damage or failure to comply with any description or quote on Delivery. If you do not give such notification within 24 hours of Delivery then you are deemed to have accepted the Scaffolding.
- 5.7 If you give us notification under the previous clause, then you must provide us with an opportunity to inspect the Scaffolding within a reasonable time following Delivery. Where we agree that you are entitled to reject Scaffolding our liability will be limited to replacing the defective items.
- 6. Return of Scaffolding**
- 6.1 Return of the Scaffolding will be completed when the Scaffolding has been dismantled and accepted by us, including the completion of our documentation. Where the Scaffolding is returned by your transport, the Scaffolding returned shall be counted by us and documentation issued by us to you will be conclusive proof of the return of the quantities of Scaffolding.
- 6.2 If we have received advice from you that Scaffolding is ready for return and upon arrival you still require the Scaffolding, which subsequently requires us to return to collect the Scaffolding at a later date and time, then our Hire Charges will continue and you will be charged for any associated cost incurred by us in our discretion.
- 7. Access to sites**
- 7.1 You have a continuing obligation to ensure that at all times we have clear and free access to all sites at which Scaffolding Services are to be provided. Such access must be suitable to accept the weight of heavy equipment as may be deemed necessary by us) to enable us to erect, install and/or dismantle Scaffolding and provide Scaffolding.
- 7.2 The access provisions above include provision of access at all times for us to inspect the Scaffolding on the site (or wherever the Scaffolding may be located).
- 7.3 Your obligation to provide us with access to all sites includes adequate access to available water, electricity, toilet and washing facilities unless otherwise agreed by us.
- 7.4 When Scaffolding has been installed or removed, we will endeavour to leave the site reasonably clean in accordance with our usual standards. You acknowledged that it is unreasonable to expect the clean-up to restore the property to its pre-existing condition and that we will have no liability for any damage to the site beyond our obligations in this clause.
- 7.5 You acknowledge and accept that where the Scaffolding is required to be tied to the building structure, with ties at each scaffold lift, using either bolts, pins or screw eyes, the subsequent repairs of these holes and/or repainting will be your responsibility unless otherwise stated.
- 7.6 If advised that ties are required, your construction procedures must allow for these to secure the Scaffolding to the building and remain in position whilst the Scaffolding is in use.
- 7.7 You must ensure that where Scaffolding is installed on concreted areas, patios, driveways or timber decks, lower-level roofs areas or other structures that suitable coverings are put in place to help prevent any marking/staining of the finished product. We have no liability for any loss or damage to the site except where the loss or damage is caused wilfully by us or as a result of gross negligence or recklessness.
- 7.8 You must ensure that your notified delivery address is clear and ready for installation of the Scaffolding prior to Delivery and that the foundations upon which we are to install the Scaffolding are sufficiently firm and otherwise suitable to safely carry the structure and the load to be put on it without subsidence. You are liable to us for any loss, costs or damages which we may suffer or incur where we are unable or unwilling to install the Scaffolding due to our considering that the site has not been cleared and ready.
- 8. Your undertakings**
- 8.1 You undertake with us that you:
- (a) are responsible for all loss or damage whatsoever including the cost of repairs suffered or incurred by us in consequence of any breakdown or damage to the Scaffolding where such breakdown or damage is caused by any negligent act or omission or misdirection or misuse of the Scaffolding on your part or by persons under your control to the extent that our insurance cover does not cover such loss or damage;
 - (b) will use only competent appropriately qualified operators to operate the Scaffolding;
 - (c) will notify us in writing immediately if the Scaffolding are lost or damaged and will follow all of our reasonable instructions;

- (d) will take proper and reasonable care of the Scaffolding and return it in good order and condition;
- (e) will satisfy yourself that the Scaffolding are suitable for your intended use;
- (f) will use the Scaffolding in a lawful manner with due regard to all laws and regulations pertaining to the use of Scaffolding;
- (g) will immediately notify us by telephone if the Scaffolding breaks down;
- (h) except as permitted by the Consumer Guarantees Act 1993 will not bring or threaten to bring any claim against us for loss or damage incurred or threatened against you or arising directly or indirectly from your use of the Scaffolding;
- (i) will indemnify us against any claim made by any person against us for any loss suffered or liability incurred arising directly or indirectly out of your use or possession of the Scaffolding;
- (j) will ensure that when the Scaffolding are not in use during the Term they are securely stored and/or locked; and
- (k) will not sell, assign, or transfer the Scaffolding, or otherwise part with possession of, or mortgage, charge or encumber the Scaffolding in any way.
- 8.2 You warrant that all persons who use the Scaffolding will use them in the manner they were designed to be used, and follow any codes of practice and directions from us, local authorities, or from the manufacturer of the Scaffolding relating to the use and safety of the Scaffolding, and will comply with all obligations in relation to the use and control of the Scaffolding and persons using the Scaffolding with the Health and Safety at Work Act 2015 and all other relevant legislation.
- 8.3 If you are not an individual, then the person who signs this agreement on your behalf warrants that they have authority to bind you and will, in any event, be personally liable for the performance of your obligations under this agreement.
9. **Our right to cancel**
- 9.1 We may terminate this agreement at any time on giving what we, in our discretion, consider to be reasonable notice.
- 9.2 If we believe the Scaffolding to be at risk for any reason whatsoever, including but not limited to:
- (a) the manner of its use by you; or
- (b) adverse weather or work conditions; or
- (c) where you are unable to, or might be unable to pay any amounts payable to us; or
- (d) where you otherwise fail to comply with this agreement,
- we may immediately terminate this agreement.
- 9.3 On termination of this agreement, you will immediately return the Scaffolding or we may take action as necessary to retake possession of the Scaffolding.
- 9.4 You grant to us, or will ensure that we are granted, an irrevocable right and authority to enter at any time onto any place where the Scaffolding are situated or thought to be situated to remove the Scaffolding.
- 9.5 Termination of this agreement by us is without prejudice to any rights that we may have under this agreement.
- 9.6 Notwithstanding that we may have terminated this agreement, you indemnify us against any cost, claim, damage, expense or liability suffered or incurred by us whether arising directly or indirectly from us exercising its rights under this clause or otherwise acting to recover any Scaffolding hired or monies payable by you under this agreement.
- 9.7 We will not be liable to you or any other persons for any loss suffered or liability incurred arising from termination of this agreement or repossession of the Scaffolding.
- 9.8 Any obligations that you have to us under this agreement which remain wholly or partly unfulfilled at the time of termination of this agreement or the end of the hire period will continue and not be released notwithstanding the end of the hire period or the termination of this agreement.
10. **Your rights to cancel**
- 10.1 It is acknowledged that various clauses of this agreement confer on us the right to vary how we provide Scaffolding Services to you. You acknowledge that these clauses are included to allow us to manage our business with the flexibility that the construction industry requires.
- 10.2 If we exercise any rights described in clause 10.1 in a way that causes significant detriment to you and:
- (a) The changes have been made other than in response to changing or unanticipated circumstances beyond our control; or
- (b) We have not given you reasonable notice in writing
- then you may terminate the agreement notwithstanding the Minimum Hire Period.
11. **Liability**
- 11.1 When you acquire goods and/or services from us, for the purposes of a business:
- (a) the parties acknowledge and agree that:
- (i) you are acquiring the goods or services covered by these Terms for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;
- (ii) the goods and/or services are both supplied and acquired in trade for the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and
- (b) you agree that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.
- 11.2 Except where we are in breach of an applicable guarantee under the Consumer Guarantees Act 1993, in entering into this agreement you agree that we will not be liable for direct or consequential damage or lost profit or business, loss or expense whatsoever and howsoever arising (whether in contract or in tort) including that resulting from the negligence of us or arising by operation of law and whether suffered by you and/or any third party for any amount that exceeds the amount you have actually paid to us under this agreement.
- 11.3 In the event of a defect in the Scaffolding, we may at our discretion either provide you with replacement Scaffolding for the remainder of the Term or refund the Hire Charges you have paid for any period(s) of the Term when the Scaffolding were defective.
- 11.4 You acknowledge that we make no representation or warranty to you regarding the suitability of the Scaffolding for use in any particular conditions and that any condition or warranty expressed or implied by law in respect of the hire of the Scaffolding to you is expressly excluded to the maximum extent permitted by law.

12. **No assignment**
- 12.1 You may not assign, sell, or otherwise dispose of any right or obligation under this agreement.
- 12.2 You may not sublet or cross-hire the Scaffolding without our prior written consent, which may be arbitrarily withheld.
13. **Personal Property Securities Act 1999 (PPSA)**
- 13.1 All terms in this clause 13 have the meaning given in the PPSA and section references are to sections of the PPSA.
- 13.2 On our request, you will promptly execute any documents, provide all necessary information and do anything else required by us to ensure that the security interest created under this agreement in favour of us constitutes a perfected security interest in the Scaffolding and their proceeds which will have priority over all other security interests in the Scaffolding.
- 13.3 You will pay to us all fees and expenses incurred by us in relation to the filing of a financing statement in connection with this agreement.
- 13.4 You waive your rights under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133, and 148 of the PPSA.
14. **Arbitration**
- 14.1 If either party has any dispute with the other in connection with this agreement:
- (a) that party will promptly give full written particulars of the dispute to the other; and
- (b) the parties will promptly meet together and in good faith try to resolve the dispute.
- 14.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to arbitration by either party giving written notice of such referral to arbitration to the other.
- 14.3 The arbitration will be conducted by one arbitrator appointed by the parties. If they cannot agree on an arbitrator within 14 days, on request by either party, the appointment will be made by the President of the New Zealand Law Society or the President's nominee.
- 14.4 The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 14.5 Neither party will unreasonably delay the dispute resolution procedures in this clause.
- 14.6 This clause does not apply to:
- (a) any dispute arising in connection with any attempted renegotiation of this agreement; or
- (b) an application by either party for urgent interlocutory relief.
15. **Force Majeure**
- 15.1 A party will not be liable for any failure or delay in complying with any obligation imposed on that party under this agreement if:
- (a) the failure or delay arises directly or indirectly from an event or circumstance reasonably beyond that party's control and not arising from the fault or insolvency, or an intentional act or omission, of that party (**Event**). The following are included as events or circumstances reasonably beyond a party's control:
- (i) act of God;
- (ii) earthquake, flood, fire, storm and adverse weather conditions or natural events for which provision could not reasonably have been made;
- (iii) interruption or failure of any utility services;
- (iv) unpredictable delays which could not reasonably be prevented in delivery of materials, equipment or services;
- (v) sabotage, riot, civil disturbance, explosion, terrorist acts, epidemic, national emergency, or act of war;
- (vi) governmental restraint, sanction, expropriation, prohibition, intervention, direction or embargo;
- (vii) strike, lockout, work stoppage or other labour hindrance; and
- (b) that party complies with clause 15.2.
- 15.2 A party which wishes to rely on clause 15.1 will:
- (a) give the other party written notice as soon as possible after becoming aware of the Event or likelihood of the Event;
- (b) in that notice, provide details of the nature, expected duration and effect of the Event;
- (c) keep the other party informed of any changes in the nature of the cause and of the cessation of the Event; and
- (d) use its reasonable endeavours to:
- (i) mitigate the effects of the Event on that party's obligations under this agreement; and
- (ii) perform that party's obligations under this agreement within the time specified by this agreement despite the Event.
- (e) Clause 15.1 does not excuse a party from any obligation to make a payment when due under this agreement.
- (f) If a party is unable to comply with any of its obligations under this agreement as a result of an Event for 10 consecutive Working Days, either party may cancel this agreement by giving written notice to the other party. Cancellation of this agreement under this clause will not prejudice the rights of either party against the other party in respect of anything occurring under this agreement prior to cancellation.
16. **General**
- 16.1 Subject to clause 14.2, no modification to the Agreement will be binding on us unless it is in writing and signed by us.
- 16.2 If any provision of this agreement is held to be unenforceable, illegal, or invalid by any court or tribunal:
- (a) the rest of this agreement will remain in full force and effect;
- (b) the parties will co-operate to ensure that the spirit and intention of this agreement is carried out as far as is reasonably possible; and
- (c) the parties will, if necessary, amend this agreement accordingly.
- 16.3 The rule of construction known as the contra proferentem rule does not apply to this agreement.
- 16.4 This agreement is governed by and construed according to the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction in respect of any dispute or proceeding arising out of this agreement.