



Terms & Conditions

1. Definitions

1:1 "CCA" means the Competition and Consumer Act 2010 (Cth) and any variations thereof.

1.2 "Company" means Swiftscaff Pty. Ltd.

1:3 "Goods" includes but is not limited to scaffolding, staging and any other goods and services being the subject of a Quotation.

1:4 "Hirer" means the person entering a hire contract with the Company and includes its officers, authorized representatives, contractors, servants and agents.

1:5 "Invoice" means an invoice issued by the Company in relation to Goods hired to the Hirer in accordance with a Quotation.

1.6 "PPSA" means the Personal Property Securities Act 2009 (Cth);

1.7 "Quotation" means any quotation provided by the Company in writing.

2. Variation

2:1 To the maximum extent permitted by law, no representations, inducements, promises or agreements between the parties will be of any effect in varying these Terms and Conditions unless in writing and signed by both parties.

3. Basis of Agreement and Orders

3.1 Unless otherwise agreed by the Company in writing, these Terms and Conditions apply exclusively to every order and cannot be varied, altered or replaced by any other terms, including the Hirer's terms and conditions of purchase (if any).

3.2 Any Quotation provided by the Company to the Hirer concerning the proposed supply of Goods is:

(a) valid for 30 days;

(b) an invitation only to the Hirer to place an order based upon that

Quotation (“Order”); and

(c) subject to the Customer accepting these Terms and Conditions by signing same.

3.3 These Terms and Conditions may include additional terms in the Company’s Quotation. The specific terms of the Quotation will prevail over these Terms and Conditions to the extent of any inconsistency.

3.4 The Order of the Hirer will be accepted by the Company upon the earlier of:

(a) The Company receiving a copy of these Terms and Conditions signed by the Hirer; and

(b) The Company confirming its acceptance of an Order from the Hirer in writing; or

(c) The company providing the hirer with the Goods ordered by the Hirer.

3.5 Quotations, price lists and other publications and sales literature provided by the Company to the Hirer do not constitute an offer.

3.6 The company in its absolute discretion may refuse to accept any Order.

4. Additional Costs

4:1 The Goods are hired on condition that the Hirer shall pay all additional costs, fees or expenses provided for in the Quotation, including without limitation, any tax, , fee, levy or charge of any nature whatsoever imposed in respect of the hire of the Goods.

4:2 The Hirer agrees to pay all additional costs, fees and charges arising from any inaccuracies in hire orders, instructions or information given by the Hirer to the Company.

4:3 Unless otherwise agreed in writing, all handling and transport costs must be paid by the Hirer in addition to the cost of hiring the Goods.

5. Payment

5:1 All invoices, additional costs and any other charges must be paid net thirty (30) days from date of invoice, unless otherwise specified in the Quotation. To the extent of any inconsistency between these Terms and Conditions and the Quotation, the Quotation shall prevail. Overdue accounts shall bear interest on any unpaid amount, until payment is received in full without any deduction or set off, at the rate prescribed for judgment by the Penalty Interest Rates Act 1983.

5:2 Where delivery of Goods to any site is in incomplete loads, pro-rata progress payments are to be paid to the Company in proportion to the amount of Goods actually delivered.

6. Installation & Erection

6:1 Unless otherwise agreed in writing, erection of any Goods shall be performed by a third party (“Erector/Installer of Goods”), for whom the Company acts as agent. The Hirer agrees that it will enter into any contract as may be reasonably be required for the erection of the Goods directly with the Erector/Installer of Goods.

6:2 The Hirer shall indemnify the Company against any loss, claim, action, damages, injury or liability for:

- (a) any and all breaches by the Erector/Installer of Goods of any agreement between it and the Hirer;
- (b) any act or omission or negligence by the Erector/Installer of Goods; and
- (c) any breach of applicable regulations by the Erector/Installer of Goods.
- (d) any and all loss, damage or injury howsoever caused to any premises, to any person and to any third party and whether by the Erector/Installer of Goods or any of its servants, agents or representatives. For the avoidance of doubt, such loss, damage or injury includes any loss, damage or injury caused directly or indirectly by the negligence of the Erector/Installer of Goods or any of its servants, agents or representatives.

6:3 Where engineer’s computations are required, the costs of any such computations shall be borne by the Hirer.

6:4 It is the responsibility of the Hirer to ensure a sound foundation (roof base) free from tunneling underground pipe work, basements and the like and that the area is clear and free from debris for the erection of Goods. The Hirer is solely responsible and liable to compensate the Company for any damage to the Goods caused by:

- (a) circumstances which would be likely to affect the Goods, which were not advised to the Company beforehand in writing;
- (b) substances or undermining;
- (c) collapsed scaffolds caused by poorly drained ground; and
- (d) circumstances where the ground is not consolidated to safely carry the structure.

6:5 Where deviations occur between drawings or data supplied by the Hirer and actual on-site requirements, the Hirer shall be liable for any additional costs incurred.

7. Promotion Materials/Drawings

7:1 Drawings and sketches alike do not represent permits and approvals of the appropriate authorities and are guides only.

7:2 All drawings and sketches remain the Company's property and may not be copied or reproduced in any way.

8. Liability

8:1 Except as specifically set out in these Terms and Conditions, or contained in any warranty provided with the Goods, any term, condition, warranty or consumer guarantee in respect of the Goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded to the maximum extent permitted by law.

8.2 Subject to the CCA, repair or replacement of the Goods, or part of the Goods, or re-supply of the services is the absolute limit of the Company's liability howsoever arising under or in connection with the hire, use of, storage or any other dealings with the Goods or services by the Hirer or any third party to the maximum extent permitted by law.

8.3 Subject to the CCA, the Company is not liable for:

(a) any indirect or consequential losses or expenses suffered by the Hirer or any third party, however caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party;

(b) any loss or damage suffered by the Hirer or any third party where the Company has failed to deliver goods or services or fails meet any delivery date or cancels or suspends the supply of goods or services; and

(c) any loss or damage suffered by the Hirer in relation to any services provided by the Hirer.

8:4 The Company will not be liable for defects or damage to the Goods arising from any improper use, storage, modification or other misuse by the Hirer or its employees, contractors or agents, including but not limited to:

(a) improper adjustment, calibration or operation by the Hirer;

(b) the use of accessories which were not approved in writing or supplied by Company;

(c) any contamination or leakages caused or induced by the Hirer;

(d) any modifications to the Goods which were not authorised in writing by the Company;

(e) any misuse, neglect or abuse of the Goods by the Hirer or anyone for whom the "Hirer" has legal responsibility (including a minor);

(f) fair wear and tear; and

(g) any other use of the Goods not in accordance with the directions for use of the Goods, whether by the Hirer or any third party.

8:5 Nothing in these Terms and Conditions is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be so excluded, restricted or modified.

9. Retention of Title

9:1 The Hirer and the Company agree that the Goods remain the property of the Company at all times. If the Hirer fails to comply with any of these Terms and Conditions the Company, without notice, may re-take possession of the Goods, or trace the proceeds of their sale (as applicable) and recover the full amount owing to Company together with any interest and costs.

9:2 The Hirer must, to the extent reasonably possible, hold the Goods supplied by Company separately from other Goods held by the Hirer and marked in a way that makes it clear that they are Company's property.

The Company may, without prejudice to any of its other rights and without notice, retake and resume possession of any of the Goods and for that purpose, by its employees or agents, enter the Hirer's premises, or any other such place as the Goods may be, without liability for trespass or any resulting damage, if:

(a) there is a breach of any contract between Company and the Hirer (including a breach of these Terms and Conditions); or

(b) the Hirer parts with possession of any of the Goods without the prior authorisation of the Company.

9:3 The Company may take any action it deems appropriate to recover the Goods and any monies owing to it by the Hirer irrespective of the fact that the Company shall retain title to the Goods.

10. Waiver

Failure by the Company to enforce these Terms and Conditions shall not be construed as a waiver of any of the Company's rights.

11. Disputes

If a dispute arises between the parties in relation to or in connection with these Terms and Conditions or any Quotation or Invoice, either party may give to the other, notice in writing of the nature of the dispute and set out the action required to resolve the dispute. If the dispute is not resolved within 14 days of the notice, same shall be referred to mediation by a person to be mutually agreed upon, or failing agreement, a person

appointed by the President of the Law Institute of Victoria. Nothing in this clause shall prevent the Company commencing legal proceedings to enforce any claim for payment of monies due pursuant to any Invoice or Quotation.

12. Delivery

12:1 The Hirer cannot reject the Goods due to short delivery.

12:2 If the Goods are delivered to the Hirer in more than one delivery, acceptance of any partial delivery will not relieve the Hirer of its obligation to accept further deliveries of the balance of Goods supplied by the Company to the Hirer pursuant to a Quotation.

12:3 The Company will make every endeavour to adhere to the dates given for delivery of the Goods but will accept no liability for failure to do so, irrespective of the grounds for any such failure.

12:4 The Hirer shall make no claim against the Company in respect of any loss or damages allegedly arising out of any short delivery of Goods by the Company, any delay in delivery of Goods by the Company or any failure by the Company to supply Goods to the Hirer.

13. Prices

13:1 Subject to clause 1.2 of these Terms and Conditions, prices stated in any Quotation or may be subject to change by the Company without notice.

13:2 Unless otherwise stated in writing, hire rates are based on a minimum hire period of two (2) weeks.

13:3 The Hirer shall be liable for all charges upon placing an Order for the Goods, irrespective of whether the Goods are unavailable or cannot be used or provided due to events described in Clause 16.

14. Insurance

All Goods delivered to the site are at the Hirer's risk and the Hirer indemnifies the Company against all loss, claims, damages, actions and liability in this regard. The Hirer shall ensure that the Goods are adequately insured from the time of delivery under an appropriate policy which will be made available for the Company's inspection upon request. The interests of the Company as the owner of the Goods shall be noted on the insurance policy which shall provide an indemnity against loss and damage to the Goods and public risk to the value of \$20,000,000.

15. Conditions of the Goods

The Hirer shall not damage any signs affixed to the Goods during the period of hire or remove any displays of Company name, address or any other details, nor affix any signs unless authorised by the Company beforehand in writing. Consistently with the Hirer's intended use of the Goods, the Hirer must keep the Goods in such condition as the Goods were in when supplied, or in such closest condition as can be reasonably maintained.

16. Delay or Non-Performance

The Company shall not be responsible for delays in completion of or failure to complete any project or job in relation to which the Goods are hired from the Company arising from any act, omission or default beyond the Company's reasonable control, including but not limited to civil commotion, industrial disputes, strikes, lock-outs, epidemics, inclement weather, war, fire, accidents, government intervention or Acts of God.

17. Return of Goods

At the expiration or termination of any hire period, all Goods shall be returned to the Company in good condition pursuant to clause 14. The Hirer shall on demand pay for any Goods damaged or not returned at the then prevailing replacement cost for the affected Goods. Until payment is made Hire charges will continue to accrue on Goods not returned in addition to all expenses and costs incurred by the Company due to any shortage or losses.

18. Transfer of Goods

18:1 The Goods must remain in the Hirer's possession during the Hire period and at the site specified for delivery and must not be transferred to any other location without the prior consent in writing of the Company, which consent shall be at the absolute discretion of the Company.

18:2 The Hirer must not sell or offer the Goods for sale, loan, re-hire or deal in any way with the Goods without the prior written consent of the Company, which consent shall be at the absolute discretion of the Company.

19. Termination

19:1 In the following instances the Company will be at liberty to immediately terminate any contract between it and the Hirer pursuant to

any Order or Invoice without the Company being liable for any costs or penalties:

- (a) The Hirer is a company and an application is made to wind up the Hirer or a receiver, receiver and manager, official manager, agent for mortgagee, liquidator or an administrator is appointed in respect of any part of the Hirer's property, or an Inspector is appointed to investigate any of its affairs; or
- (b) the Hirer makes an arrangement or composition with its creditors or proposes to do so; or
- (c) the Hirer is unable to pay its debts as they fall due; or
- (d) the Hirer ceases or threatens to cease to carry on its business; or
- (e) the Hirer has execution levied against any of its assets; or
- (f) the Hirer has a mortgagee enter, or seek to enter in possession of any of its assets.

Upon termination, the Company shall be entitled to retake possession of the Goods in the manner outlined in clause 9.

20. Power of Attorney

The Hirer appoints the Company or its employees or agents as attorney of the Hirer for the purpose of recovery of the Goods and for carrying out any other actions required to give effect to the obligations of the Hirer pursuant to these Terms and Conditions.

21. Personal Property Securities Register ("PPSR")

21:1 The Hirer acknowledges and agrees that these Terms and Conditions is the accepted and adopted security agreement between the parties. Unless otherwise stated, a term contained in these Terms and Conditions that is defined in the PPSA (but not otherwise defined herein) has the meaning given to it in the PPSA.

21:2 The Hirer acknowledges that it obtains no legal or equitable interest in the Goods pursuant to any Order, Invoice or these Terms and Conditions.

21:3 The Hirer shall not register or attempt to register any security interest or assist or allow any third party to register any security interest over the Goods. In the event that the Company should wish to register a security interest over the Goods, the Hirer shall do all things reasonably required, including execution of any documents, to ensure that the Company has a continuously perfected security interest (as defined in the PPSR) created in the Goods.

21:4 The Hirer acknowledges and agrees that these Terms and

Conditions create and that the Company has a Security Interest for the purposes of the PPSA in all Goods and any proceeds previously supplied or that will be supplied in the future by the Company to the Hirer, including but not limited to the lease of any goods by the Company to the Hirer.

21.5 The Hirer acknowledges and agrees that this Security Interest is registrable in the Personal Property Securities Register and this Security Interest secures all moneys owing by the Hirer to the Company under these Terms and Conditions or otherwise.

21.6 The Hirer grants to the Company, where and when applicable, a Purchase Money Security Interest (PMSI) to the extent that it secures payment of the amounts owing in relation to the relevant Goods in accordance with, and to the extent prescribed by, section 14 of the PPSA.

21.7 The Hirer acknowledges and agrees the Security Interest is a continuing and subsisting interest in the Goods with priority over any registered or unregistered general (or other) Security Interest and any unsecured creditor.

21.8 The Hirer acknowledges that the Security Interest over the Goods or their proceeds arising under this clause 21 is a PMSI under the PPSA to the extent that it secures payment of the amounts owing in relation to the Goods.

21.9 The Hirer will do everything reasonably required of it by the Company to enable the Company to register its Security Interest with the priority the Company requires and to maintain those registrations including:

(a) signing any documents and/or providing any information which the Company may reasonably require to register a financing statement or a financing change statement in relation to a Security Interest; or

(b) correcting a defect in a statement referred to in clause 20.9(a).

21.10 The Security Interests arising under this clause 20 will be perfected by the Company prior to or when the Hirer obtains possession of the Goods and the parties confirm they have not agreed that any Security Interest arising under this clause 21 attaches at any later time.

21.11 The Company does not need to give the Hirer any notice under the PPSA (including notice of the financing statement or verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

21.12 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the Security Interests created under these Terms and Conditions, the

Hirer agrees that sections 95, 96, 120, 121(4), 123, 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply to the enforcement of the Security Interest(s).

21.13 The Hirer agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPSA) or any other person, any Information of the kind described in section 275(1) of the PPSA including the security agreement between the Company and the Hirer.

21.14 The Hirer agrees to keep and maintain all Goods free of any charge, lien, or Security Interest except as created under these Terms and Conditions and not otherwise to deal with the Goods in a way that will, or may, prejudice the rights of the Company under these Terms and Conditions or the PPSA.

21.15 The Hirer irrevocably grants to the Company the right to enter any premises or property of the Hirer or any premises where the Goods are located without notice, and without being in any way liable to the Hirer or any other person, if the Company has cause to exercise any of its rights under the PPSA, including those in this clause 21.15 and the Hirer agrees to indemnify the Company against any such liability.

21.16 The Hirer must notify the Company immediately in writing if the Hirer changes its name and address for service, contact details or if there are any changes to data required to register a financing statement under the PPSA in respect of these Terms and Conditions, any Order or Invoice.

22. Indemnity

To the maximum extent permitted by law, the Hirer shall indemnify the Company against:

(a) any claim made against the Company by any third party in respect of any loss, damage, death or injury arising from the conduct of the Hirer (including its servants, agents and representatives) or of any third party (including any Erector/Installer of Goods) ;

(b) all losses and costs which the Company may incur due to the Hirer being in breach of its obligations pursuant to these Terms and Conditions or any contract with any third party;

(c) all costs, losses, claims, damages or demands arising out of any action required by the Company to recover the Goods or enforce its Security Interests in accordance with these Terms and Conditions; and

(d) any breach of applicable laws or regulations by the Hirer.

23. Privacy & Financial Information

23.1 The Hirer acknowledges and consents to the use by the Company and its employees, officers and agents for the purpose of supplying the Goods to the Hirer any personal information for the purposes of assessing and approving any Credit Application of the Hirer and any personal information in respect of, but not limited to, the Hirer's credit history. The Hirer consents to the Company obtaining reports in relation to same or for general marketing purposes and otherwise in accordance with the privacy policy of the Company from time to time, which is available upon request.

23.2 Other than in the circumstances allowed under relevant privacy Laws of the State of Victoria or its privacy policy, the Company will not disclose any personal information of the Hirer to other parties. The Hirer may contact the privacy officer of the Company at any time to access or change any personal information provided by it to the Company.

23.3 The Hirer irrevocably authorizes the Company to seek and use any reports from a credit reporting agency of its choosing containing personal information about the directors of the Hirer, where the Hirer is a company, or the personal information of the Hirer where the Client is a sole proprietor, in relation to the collection of any monies owing by the Hirer to the Company to the maximum extent permitted by Law. The Hirer consents to the Company giving any information relating to the collection of any outstanding amounts to any credit reporting agency to the maximum extent permitted by Law.

23.4 The Hirer will provide any and all necessary instructions and/or authorities required by the accountants of the Company, debtor insurers and bankers to enable the Company to make investigations from time to time into the Hirer's trading and financial position.

23.5 The Hirer's details, including the value of the Hirer's custom with the Company will be added to the database of the Company and will be used by the Company:

- (a) to identify the Hirer;
- (b) to provide the Goods to the Hirer, including the process of any application for or granting credit to the Hirer and the management and administration of the supply of Goods to the Hirer;
- (c) to provide the Hirer with information about the Goods;
- (d) to undertake risk assessment management in respect of the Hirer;
- and
- (e) to gather data and disclose data to third parties, such as:

- (i) credit reporting agencies; and
- (ii) financial institutions.

24. Charge

The Hirer, and where the Hirer is a company each of its directors jointly and severally hereby charge all property, both equitable, legal, present or future in respect of any monies that may be owing to the Company under these Terms and Conditions. The Hirer hereby authorizes the Company or its solicitors to execute any consent form as the Hirer's attorney for the purpose of registering a mortgage or caveat over any real property owned by the Hirer, any of the company or Trustee or sole trader or partnership (as applicable) at any time or to register any Security Interests over the Hirer's assets and the company/trustee, sole trader, partnership (as applicable) with any applicable regulatory body. All costs, including but not limited to all legal costs on a full indemnity basis, stamp duty and any applicable fees or charges payable on the mortgage, caveat or registration of Security Interests will be payable by the Hirer.

25. General

25.1 If any provision of the Agreement is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

25.2 The Company may license or sub-contract all or any part of its rights and obligations under the Agreement without the Hirer's consent.

25.3 The Company reserves the right to review these Terms and Conditions at any time and from time to time. After any such review, any change of these Terms and Conditions decided upon by the Company will take effect from the date on which the Company notifies the Hirer of such change.

25.4 If the Hirer continues to trade with the Company after the date of any notification referred to in clause 25.3 is received or become effective, the Hirer will be deemed to have agreed to the altered Terms and Conditions.

25.5 A waiver of any right or power under these Terms and Conditions will only be valid if given in writing by the party granting the waiver.

25.6 These Terms and Conditions supersede all prior representations, arrangements and agreements between the parties in relation to its subject matter and forms the entire agreement between the parties to the maximum extent permitted by law.

25.7 Each provision of these Terms and Conditions capable of having

effect after termination shall survive termination of the Terms and Conditions or any other agreement between the parties, and shall not merge on such termination.

25.8 These Terms and Conditions and any other agreement between the Company and the Hirer shall be governed by and the Hirer agrees to submit to the Laws of the State of Victoria and the PPS Act and the parties consent to the exclusive jurisdiction of the Courts of the State of Victoria and their Courts of Appeal.

ACCEPTANCE OF TERMS AND CONDITIONS:

I warrant and represent that I have read, understood and agree to be bound by these Terms and Conditions and that I have the requisite authority to bind the Hirer to same.

Print Name

Signature

Date