

# CONDITIONS OF HIRE

## 1. Definitions

- 1.1. "ACCESS" means Access Scaffolding (Vic) Pty Ltd ABN 94 111 177 952, Access Scaffolding (SA) Pty Ltd ABN 88 120 447 501 and Access Scaffolding (TAS) Pty Ltd ABN 63 155 188 391.
- 1.2. The 'Hirer' means any person, company, corporation or Government instrument (including the personal representatives and permitted assigns and a person or corporation entitled or required by law to administer the Hirer's affairs) who shall hire or rent any equipment from ACCESS.
- 1.3. "Goods" means any Goods supplied by ACCESS to the Hirer (or ordered by the Hirer but not yet supplied) including, and in no way limited to, scaffolding and scaffolding related products.
- 1.4. "Services" means any services provided by ACCESS to the Hirer.
- 1.5. "Price" means the cost of Goods and/or Services as agreed between ACCESS and the Hirer

## 2. Application

- 2.1. These terms and conditions apply to all Goods and Services referred to in this Hire Agreement hired from ACCESS and are in addition to any terms and conditions of credit where the Hirer has been granted an account facility with ACCESS.
- 2.2. The Hirer acknowledges having read and understood these terms and conditions and agrees that ACCESS' supply of the Goods and/or services are subject to these terms and conditions.

## 3. Ownership

- 3.1. The Goods remain at all times the property of ACCESS and the Hirer acknowledges that its use and possession of the Goods is pursuant to these conditions.
- 3.2. The Hirer shall not pledge, mortgage, sell or lease the Goods or in any way deny ACCESS' ownership of the Goods.

## 4. Payment

- 4.1. The Hirer shall make all payments due under this Hire Agreement within 7 days of the date of the invoice as cleared funds at the address shown on ACCESS' invoice or by payment into ACCESS' nominated account, unless arranged in advance with ACCESS.
- 4.2. The Hirer will not claim or attempt, any set-off against the Price for whatsoever reason, and whether or not ACCESS is indebted to the Hirer.
- 4.3. If the Goods are not returned by 3.30pm on the last day of hire, then the Hirer will pay additional rent until Goods are returned, calculated on a daily basis at the rate contained in this Hire Agreement.
- 4.4. Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:
  - 4.4.1. there is non-payment of any sum by the due date;
  - 4.4.2. ACCESS forms the view that the Hirer will not pay any sum by its due date;
  - 4.4.3. the Hirer is bankrupted or enters administration, liquidation or receivership;
  - 4.4.4. a Court judgment is entered against the Hirer and remains unsatisfied for seven (7) days;
  - 4.4.5. any material adverse change in the financial position of the Hirer.
- 4.5. Interest accrues on any amount owing after the due date at the rate of 15% per annum, calculated daily from the first day overdue until payment.
- 4.6. The Hirer shall pay (on a full indemnity basis) any and all expenses, disbursements, collection costs and legal costs which ACCESS has incurred or is liable to pay, in connection with the enforcement of any rights and/or preservation of any rights contained in this contract.
- 4.7. For the purposes of clause 4.6 the Hirer acknowledges that collection costs may be calculated on a commission basis at a percentage rate of up to 20% of the amount due and expressly agrees to pay for those expenses as liquidated damages on demand, irrespective of whether (a) ACCESS is not liable to pay the collection agent the commission, until the Hirer has made payment of the Hirer's overdue debt (or any portion thereof) and/or (b) the amount of work actually performed by the collection agent before the Hirer makes a payment for an overdue debt.
- 4.8. Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until it results in ACCESS receiving cleared funds for the entire amount of the negotiable instrument.

## 5. Privacy Act 1988 (As Amended)

- 5.1. Access Scaffolding collects personal information about the Hirer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy and its Credit Reporting Policy. Both of these policies may be located at [www.accessscaffolds.com.au](http://www.accessscaffolds.com.au). A hardcopy of these policies can also be provided to the Hirer free of charge, upon request.
- 5.2. The Privacy Policy sets out: the personal information ACCESS collects; how ACCESS collects and uses this information; how the Hirer may access or correct it; and how the Hirer may make a complaint in respect of ACCESS's management of the information;
- 5.3. The Credit Reporting Policy sets out: the types of credit related personal information ACCESS collects; how it is collected, why it is collected; how ACCESS may use and disclose the credit related personal information, including the credit reporting bodies to which ACCESS is likely to disclose the Hirer's credit related personal information to; and how a complaint may be made in respect of ACCESS's management of the credit related personal information.
- 5.4. By the Hirer providing instructions to ACCESS for the supply of Goods, the Hirer is consenting to ACCESS collecting, handling, using, disclosing and otherwise dealing with the Hirer's personal information (including credit related personal information) in accordance with the terms of ACCESS's Privacy Policy, its Credit Reporting Policy and in accordance with Australia's privacy laws.

## 6. Location

- 6.1. The Hirer shall ensure that ACCESS has clear access to the hire location for the delivery of Goods.
- 6.2. For scaffolding, the Hirer shall ensure that the site is cleared and ready for erection of the scaffolding if ACCESS is to erect the scaffolding. The Hirer will ensure that the foundations upon which ACCESS will erect the scaffolding is suitable to accommodate the erected scaffolding and the Hirer is liable to ACCESS for any costs, or damages which ACCESS may suffer or incur by reason of the Hirer's failure to carry out their obligations hereunder.
- 6.3. The Hirer is responsible for obtaining any consents or permits required for the Goods and/or erection of the scaffold and shall be responsible for the payment of any fees associated with such consents or permits.
- 6.4. Where the Hirer erects the scaffolding, the Hirer warrants that the erection shall be carried out in accordance with the requirements of the law, be erected by suitably qualified and licensed scaffolders, and be used in accordance with the requirement of the law.
- 6.5. The Hirer shall be solely responsible for the use of the Goods (including scaffolding).
- 6.6. The hirer shall not remove the Goods or any part of the Goods from the hire location.
- 6.7. The Hirer will ensure that its representative will be present at the hire location for the delivery of the Goods and will sign the delivery docket confirming the delivery of the Goods.
- 6.8. If the Hirer's representative is not present at the hire location at the time of delivery, the hire docket may be signed by the delivery driver, and the signed docket will be conclusive proof of delivery of the Goods.
- 6.9. ACCESS shall have the right to inspect the Goods at the hire location at any time and without notice to the Hirer.
- 6.10. The Hirer shall not erect any scaffolding in such a way as to make the scaffolding fixture to the hire location.
- 6.11. ACCESS shall make every reasonable effort to deliver the Goods to the hire location on the specified date (if required) but shall not be liable to the Hirer in any way for any delay in the delivery of the Goods.

## 7. Risk

- 7.1. Risk in the Goods passes to the Hirer upon delivery or collection from ACCESS.
- 7.2. The Hirer shall effect and maintain adequate insurance in respect of the Goods, the Hirer's use of the Goods, and public liability for the Goods from the date of delivery or collection to the date of return of the Goods to ACCESS.
- 7.3. The Hirer shall be solely responsible for any damage caused to the Goods during the hire term, whether or not the damage occurs for reasons beyond the control of the Hirer.

- 7.4. The Hirer shall be solely liable for any loss or damage caused or contributed to by the Goods and the Hirer shall indemnify, and keep indemnified, ACCESS against any and all claims, demands or losses howsoever arising from the Hirer's use or possession of the Goods, including but not limited to the delivery, on site storage, erection, use and continued stability of the Goods.
- 7.5. The Hirer acknowledges that ACCESS does not warrant that the Goods are suitable for the purpose which the Hirer proposes to use the Goods, nor that the hire location is suitable for the erection and use of the scaffolding.
- 7.6. The Hirer shall ensure that the Goods are kept in the same condition it was delivered, fair wear and tear excepted. Any damage to the Goods during the hire term will be paid by the Hirer as a liquidated debt to ACCESS for the full retail cost of the damaged Goods.

#### **8. Default**

- 8.1. Should the Hirer be declared bankrupt, enter into an arrangement with its creditors, have a manager, receiver or liquidator appointed; or breach any of the terms of the Hire Agreement of these Conditions, then ACCESS may do any or all of the following at its absolute discretion, at any time and without notice to the Hirer.
- 8.1.1. Immediately terminate the Hire Agreement;
- 8.1.2. Recover possession of the Goods. The Hirer hereby authorises ACCESS, its employees and agents to enter the Hirer's premises or work site for the purposes of the Condition, and to remove the Goods at any time after the Hirer's default with such minimum force as may be reasonably necessary.
- 8.1.3. Take the balance of any hire payment held by ACCESS for the entire term without adjustment;
- 8.1.4. Commence court proceedings against the Hirer for the full value of the Goods as liquidated debt plus costs and interest so entitled under this Hire Agreement; or
- 8.1.5. Take any other action or exercise any other right that may be available to ACCESS.
- 8.2. Recovery of the Goods shall not affect the right of ACCESS to take action, or to recover any damages against the Hirer.

#### **9. Return of Goods**

- 9.1. The Hirer shall return all Goods to ACCESS premises between the hours of 7:30am and 3.30pm Monday to Friday.
- 9.2. The Hirer may request ACCESS to collect the Goods. Such request must be made at least two (2) clear working days prior to the collection being made. Unless otherwise arranged, the cost of collection will be in addition to the Price.
- 9.3. Upon return, or collection, the Hirer and ACCESS or their respective representatives, must complete a return docket. If the Hirer's representative is not present upon collection, the return docket may be signed by the delivery driver of ACCESS' representative and the signed return docket will be conclusive proof of the Goods returned or collected.
- 9.4. For the purpose of calculating the Price, the Goods will be in possession of the Hirer between the time of delivery and the time of return or collection, as shown upon the delivery and return dockets.
- 9.5. Any damaged Goods, or Goods that ACCESS is notified are lost, shall be charged to the Hirer at their manufacturer's retail price for the replacement of the relevant Goods.
- 9.6. For the purpose of these Conditions, "damage" to the Goods includes any removal, defacing, obscurement or marking of any plates or inscriptions on the Goods indicating ACCESS' ownership.
- 9.7. Hiring of any lost Goods continues in accordance with condition 4.3 until such time as the Hirer notifies ACCESS that the Goods, or any part of it, is lost.

#### **10. Liability**

- 10.1. All implied conditions, warranties and undertakings are expressly excluded to the extent permitted by law.
- 10.2. Where the Goods are of a kind other than Goods ordinarily acquired for personal, domestic or household use, then ACCESS's liability is limited, at its option, to anyone or more of the following:
- 10.2.1. the replacement or supply of the equivalent of the Goods;
- 10.2.2. the repair of the Goods;
- 10.2.3. the payment of the costs of replacing the Goods or acquiring their equivalent; or
- 10.2.4. the payment of the costs of having the Goods repaired.
- 10.3. Where the Services are of a kind other than Services ordinarily provided for personal, domestic or household use, then FSS' liability is limited, at its option, to any one or more of the following:
- 10.3.1. the provision of the equivalent Services;
- 10.3.2. the provision of the Services;
- 10.3.3. the payment of the costs of providing the Services or providing their equivalent; or
- 10.3.4. the payment of the costs of having the Services provided.
- 10.4. Subject to the Hirer's rights under Schedule 2 of the Competition and Consumer Act 2010 ("CCA"), ACCESS shall not be liable for:
- 10.4.1. any loss or damage of any kind whatsoever, arising from the Goods and/or Services, including consequential loss whether suffered or incurred by the Hirer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Goods and/or Services; and
- 10.4.2. the Hirer shall indemnify ACCESS against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of ACCESS or otherwise, brought by any person in connection with any matter, act, omission, or error by ACCESS, its agents or employees in connection with the Goods and/or Services.

#### **11. General**

- 11.1. The Hire Agreement and these Conditions are governed by the laws of the State in which ACCESS is registered.
- 11.2. Any charges or duties payable upon the Hire Agreement shall be at the sole cost of the Hirer.
- 11.3. The Price is exclusive of GST and Stamp Duty unless otherwise noted on the Hire Agreement.
- 11.4. If any of these Conditions are found to be invalid or unenforceable then that condition, or part thereof, shall be severed, and the remaining Conditions shall continue in full force and effect.
- 11.5. Should ACCESS take action against the Hirer for any breach of these Conditions, or for any other reason arising from the Hire Agreement, then ACCESS' costs of and incidental to such action shall be payable by the Hirer, and in the case of legal costs, calculated on a full indemnity basis.
- 11.6. Where the Hirer is a corporation or a trust, ACCESS may require a personal guarantee from an individual associated with the Hirer on terms suitable to ACCESS before delivering the Scaffolding.
- 11.7. ACCESS shall bear no responsibility or liability and shall in no way be accountable to the Hirer for any loss or damage suffered by the Hirer howsoever arising from ACCESS exercising its rights under these Conditions or generally from the hire of the scaffolding of the Hirer, and ACCESS shall be entitled to rely upon this condition in bar of any action, claim or demand brought by the Hirer against ACCESS.