

# APPLICATION TO OPEN/CONTINUE TO OPERATE AN ACCOUNT

## SECTION A

NAME: \_\_\_\_\_ A.C.N.: \_\_\_\_\_

BUSINESS OR TRADING NAME: \_\_\_\_\_ A.B.N.: \_\_\_\_\_

PUBLIC COMPANY  PTY. LTD. COMPANY  TRUST  PARTNERSHIP  SOLE TRADER  OTHER

REGISTERED OFFICE: \_\_\_\_\_ Postcode \_\_\_\_\_

A.B.N. OF TRUST: \_\_\_\_\_ A.C.N. OF TRUSTEE: \_\_\_\_\_

PRINCIPAL PLACE OF BUSINESS: \_\_\_\_\_ Postcode \_\_\_\_\_

POSTAL ADDRESS: \_\_\_\_\_ Postcode \_\_\_\_\_

TELEPHONE No.: \_\_\_\_\_ FACSIMILE No.: \_\_\_\_\_ EMAIL ADDRESS: \_\_\_\_\_

MONTHLY CREDIT REQUIRED: \$ \_\_\_\_\_ PAYMENT METHOD: EFT  CREDIT CARD  OTHER

	NAME	ADDRESS	D.O.B.	DRIVER'S LIC.
NAMES AND ADDRESS(ES) OF				
DIRECTORS/PARTNERS				
SHAREHOLDERS				

## SECTION B

### TRADE REFERENCES:

	NAME	ADDRESS	TELEPHONE No.	FAX No.
1				
2				
3				

## SECTION C

I/We hereby apply to open/continue to operate an account with Waco Kwikform.

I/We acknowledge that I/we have read and understood the Terms and Conditions attached hereto. Should Waco Kwikform agree to supply me/us with equipment and/or services, then all such transactions will be subject to the Terms and Conditions unless Waco Kwikform agrees otherwise in writing.

I/We warrant and represent that all of the information set out in this application is true and correct and that I/We have not omitted or withheld any information which would or might be material to Waco Kwikform in making a decision to grant credit or supply equipment or labour to an intended customer.

I am/we are not aware of any facts or circumstances which, if made known to Waco Kwikform, would result in Waco Kwikform not opening an account for me/us or granting credit to me/us or agreeing to supply me/us with equipment and/or labour.

I/We hereby authorise Waco Kwikform to make such enquiries as it considers relevant or necessary to decide whether or not to accept this application.

I acknowledge and understand that:

- (a) Waco Kwikform collects personal information about me so that Waco Kwikform can provide me/us with its products and services. If Waco Kwikform does not collect my personal information, Waco Kwikform may be unable to provide me with its products or services;
- (b) Waco Kwikform may disclose my personal information to third parties and organisations that provide services to Waco Kwikform in connection with its business relationship with me. Waco Kwikform may disclose my personal information to regulatory bodies where this is required by law;
- (c) Waco Kwikform does not usually send personal information outside of Australia;
- (d) Waco Kwikform's Privacy Policy is available on its website, and sets out its approach to management of personal information, including how I can seek access to and correction of my personal information, and how to make a complaint about a breach of privacy; and
- (e) Waco Kwikform may use my personal information to let me know about products and services that Waco Kwikform thinks may be of interest to me. I may opt out of receiving marketing information at any time by using the contact details on this application form.

I have brought the information in the above paragraph to the attention of all individuals named above, who have the same privacy rights as I do in their dealings with Waco Kwikform.

**AUTHORISED OFFICER: Name** \_\_\_\_\_ **Date** \_\_\_\_\_

**Title** \_\_\_\_\_ **Signature** \_\_\_\_\_

**Witness Name** \_\_\_\_\_ **Witness Signature** \_\_\_\_\_

**SECTION D GUARANTEE AND INDEMNITY**

I/we unconditionally and irrevocably, as principal obligations and without the need for any prior demand to me/us:

- (a) guarantee to Waco Kwikform Limited ("Waco Kwikform") the due and punctual payment of all monies now, or at any time in the future, owing by the DEBTOR to Waco Kwikform; and
- (b) indemnify Waco Kwikform against any loss Waco Kwikform may suffer as a result of the failure of the DEBTOR, for any reason, to pay Waco Kwikform any money due to it.

This guarantee and indemnity is a continuing security and will not be affected by the death, incapacity, administration, bankruptcy or insolvency of the DEBTOR.

I/we waive any right I/we may have of first requiring Waco Kwikform to proceed against, or claim payment from the DEBTOR.

This guarantee and indemnity is given by me/us in consideration for Waco Kwikform having agreed to grant (or as the case may be having agreed to continue to grant) credit facilities to the DEBTOR or to allow the DEBTOR to pay off its debt to Waco Kwikform by instalments.

I/we acknowledge that the credit facilities with the DEBTOR may be varied or replaced from time to time, and I/we confirm that this guarantee and indemnity includes any amount payable under any credit facility as varied or replaced.

Where more than one person executes this guarantee and indemnity, our liability joint and several.

I/we charge in favour of Waco Kwikform all my/our interest in land and personal property held now or in the future (secured property) to secure payment of the monies, and the compliance with all obligations, provided by this guarantee and indemnity.

I/we consent to Waco Kwikform lodging for registration a mortgage, charge, or security interest (security instrument) and/or caveat over the secured property or any part of it.

I/we will immediately execute a security instrument as required by Waco Kwikform in respect of the secured property or any part of it and in the event that I/we fail to do so within a reasonable time of being so requested, then I/we irrevocably appoint any director or officer of Waco Kwikform to be my/our true and lawful attorney to execute and register such security instrument.

I/We acknowledge and understand that:

- (a) Waco Kwikform collects personal information about me/us so that Waco Kwikform can provide the Debtor with its products and services. If Waco Kwikform does not collect my/our personal information, Waco Kwikform may be unable to provide the Debtor with its products or services;
- (b) Waco Kwikform may disclose my/our personal information to third parties and organisations that provide services to Waco Kwikform in connection with its business relationship with me/us and the Debtor. Waco Kwikform may disclose my/our personal information to regulatory bodies where this is required by law;
- (c) Waco Kwikform does not usually send personal information outside of Australia;
- (d) Waco Kwikform's Privacy Policy is available on its website, and sets out its approach to management of personal information, including how I/we can seek access to and correction of my/our personal information, and how to make a complaint about a breach of privacy; and
- (e) Waco Kwikform may use my/our personal information to let me/us know about products and services that Waco Kwikform thinks may be of interest to me/us. I/We may opt out of receiving marketing information at any time by using the contact details on this application form.

I/We agree that Waco Kwikform may obtain and use a consumer credit report or commercial credit report a credit reporting body to assess whether to accept me/us as a guarantor for commercial credit applied for by the Debtor, and in connection with collecting overdue payments covered by this guarantee. These reports may include credit information, and information concerning my/our commercial activities, credit activities or credit worthiness.

For the purposes of this Guarantee and Indemnity "the DEBTOR" means the company or business whose name and details appear in section A of this form.

In witness whereof this Guarantee & Indemnity was signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

**Signature of Witness** \_\_\_\_\_ **Signature of Guarantor** \_\_\_\_\_

**1. NAME:** \_\_\_\_\_ **NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_ **ADDRESS:** \_\_\_\_\_

**Signature of Witness** \_\_\_\_\_ **Signature of Guarantor** \_\_\_\_\_

**2. NAME:** \_\_\_\_\_ **NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_ **ADDRESS:** \_\_\_\_\_

# TERMS AND CONDITIONS

## 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 (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 disclosure 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 additional costs or expenses not specifically provided for in this Sale/Hire Contract including without limitation any 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.
- 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 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 Westpac Banking Corporation on an unsecured overdraft in excess of one hundred thousand dollars. A certificate by any bank manager of any branch of Westpac 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 in relation to any defective Goods those Goods are returned to the Company within the said period and the Company in its sole and unfettered opinion is satisfied that the Goods were defective at the time of delivery.
- 7.2 Nothing contained in any Hire Contract or sale Contract shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding restricting or modifying the application in relation to the supply of the Goods of all or any of the provisions of the Competition Consumer Act 2010 (or any amendments to that Act) or any relevant State or Territory statute which by law cannot be excluded, restricted or modified PROVIDED THAT to the extent that any such 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 the replacement of the Goods or the supply of equivalent Goods, and in the case of services, to the re supply of the services.
- 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;
  - (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 shall be under no liability to the Buyer/Hirer for any loss or for damage to persons or property or for death or injury except to the extent 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.
  - (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 whatsoever or for any loss of profits 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. 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 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.

## **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. 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. 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 and are subject to change without notice. Where the prices quoted are at individual rates, the price to be charged will be the rate operated at the time of the Goods first hire. In the case of lump sum Hire Contracts, unless otherwise stated in writing, the price will be adjusted in accordance with the rise and fall formula laid down by the National Cost Adjustment Provision 1 (NCAP1) for the State or Territory in which the Hire Contract is carried out. 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 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 even if the Goods are unavailable or cannot be used due to events described in clause 15.
- (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 an increased price reflecting the change will be charged from the date the change comes into effect.
- 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**
- The Company shall be at liberty to cancel this Hire Contract at any time 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 totally at the expense of Hirer to enter upon Hirer's site with workmen and equipment and remove the Goods 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.
- 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 facia 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 hire 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.
- 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.
- 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 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. 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 a guarantee has been given in writing by the Company to deliver or commence erection within a specified time. 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.

## 23. PRICES

- 23.1 The prices stated in any quotation are current and are subject to change without notice. Where the prices quoted are at individual rates, the price to be charged will be the rate operative at the time of delivery of the Goods. Quotations for erection and dismantlement are based on an "all up all down" basis unless stated otherwise. Buyer shall be liable for additional labour and transport costs resulting from any variations requested by it.
- 23.2 All prices are net ex-branch or depot store unless otherwise stated in writing.

## 24. DEFAULT IN PAYMENT

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 Sales Contract or suspend delivery of Goods hereunder and where it still retains title to the Goods hereunder, retake possession of them.

## 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 Customer shall be responsible for obtaining all necessary or requisite approvals from Council, Local Government Authority or any other authority.
  - (b) The Customer 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 Customer 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 Customer shall be responsible for ensuring that there are adequate tying positions for equipment as required.
  - (f) Buyer/Hirer shall pay for any additional costs involved in deviations between drawings or data supplied by it and actual on site requirements;
  - (g) Buyer/Hirer shall pay for any 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 Customer will at its cost supply all carnage and hoisting facilities as and when required for the erection, movement and dismantling of equipment.

### 28. EFFECT OF DEFAULT

If the Customer defaults under this Agreement then Waco 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 Waco or the Customer under this Agreement until Waco 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 Waco to recover from the customer any moneys payable hereunder or any damages suffered as a result of the breach of this agreement by the Customer.

### 29. VARIATIONS

All variations shall be requested in writing and shall only be effected by Waco 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 Waco.
- (b) Should the performance of Waco'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.