

## 1. DEFINITIONS

In these conditions and in the Quotations the following expressions shall unless the context otherwise admits have the following meanings:-

'Hirers' shall mean the person, firm or company for whom the scaffolding and/or other structure as described in the Quotation is/are to be erected.

'Owners' shall mean the person, firm or company from whom the scaffolding and/or other equipment is/are to be hired in accordance with the terms of the Quotation and where the context so admits shall include their servants or agents and any sub-contractors and their servants or agents.

'Quotation' shall mean the Owners' invitation to the Hirers in respect of the hire, erection and dismantling of the scaffold and/or other structure.

'Contract' shall mean the Quotation, the Conditions of the Contract, the Hirers' written order and the Owners' acknowledgement thereof.

'Regulations' shall mean any applicable Australian Community, governmental, local and other competent authorities' laws, regulations and directives from time to time in force.

'Scaffold Structure' shall mean the scaffolding and/or other structure to be erected and any equipment provided for use in connection therewith in accordance with the terms of the Quotation, or as the same from time to time be varied in accordance with the Conditions.

'The Work' shall mean the work involved in the erection, alteration and dismantling of the Scaffold Structure by the Owners as described in the Quotation.

'Period of Hire' shall mean the period commencing on first delivery of materials and continuing for the entire period for which Hire charges are payable. Hire charges will continue to be payable until the Owners have received written instructions to dismantle and remove the Scaffold Structure or part thereof and a reasonable period to carry out these instructions has expired. In the event that the Owners receive such instructions to dismantle and remove different parts of the Scaffold Structure at different times there shall be deemed to be a separate Period of Hire for each such part.

## 2. DEFECTS

(a) The Owners shall use reasonable endeavours to ensure that the Scaffold Structure is soundly and adequately constructed for the purpose requested by the Hirers and that when constructed it will comply with any applicable Regulations. The Owners undertake to remedy at their own expense any defects in the Scaffold Structure drawn to their attention in writing which are due to faulty design (if Owners have designed the Scaffold Structure) or erection by the Owners or the use of defective equipment by the Owners.

(b) In the event that a defect arises out of the use or mis-use of the Scaffold Structure by the Hirers, their servants, agents, sub-contractors, or other persons for whom the Hirers are responsible, or as a result of any act of a third party the Owners undertake to remedy any such defects within a reasonable time of receipt of written notice from the Hirers specifying the defect. Any costs, expenses or loss of profit incurred by the Owners in respect of the same shall be reimbursed by the Hirers in accordance with the provisions of Clause 17 (Payment) heretofore.

(c) The Owners shall not be responsible for any defects in the Scaffold Structure arising out of or in connection with insufficient or incorrect information given to the Owners by or on behalf of the Hirers, or other third parties nor for any defects in the Scaffold Structure as a result of deficiencies of any building or structure in connection with which the Owners have undertaken the Work.

(d) The Owners shall not be liable in respect of the incompatibility of the Scaffold Structure with the requirements of the building or structure for and in connection with which the Owners have been engaged to do the Work. Any contractual terms which may be implied by law as to the quality or fitness for purpose of the whole or any part of the Scaffold Structure and/or other materials supplied by the Owners to the Hirers are hereby expressly excluded.

## 3. SAFETY

(a) The Hirers shall comply with and shall require their employees and other sub-contractors and their employees to comply with any conditions regarding safety set out in the Quotation and all other provisions as to safety which are to be observed by the Hirers or other sub-contractors under any applicable Regulations and without limiting the generality of the foregoing the Hirers shall ensure that all working platforms comply with all applicable Regulations at all times, that ground and/or base provided for the Scaffold Structure is adequate to support the loads to be applied without settlement including the provision of necessary spreaders, that provision and maintenance of adequate facilities for tying and any necessary statutory inspections are undertaken and that all necessary registers are completed.

(b) The Hirers shall by notice in writing, as soon as they become aware or should have become aware of such matters, provide the Owners with full details (including but not limited to details of any assessment or monitoring carried out by the Hirers, their employees, contractors, sub-contractors or agents and any material concerning with information or training) of any substances which are hazardous to health within the meaning of Regulation 2 (i) of the Control of Substances Hazardous to Health Regulations 1988 provided by and/or used by the Hirers, their employees, contractors, sub-contractors or agents in the performance of their duties under the Contract.

(c) The Owners shall be given such time as is reasonably practicable to carry out an assessment of the hazards and to establish any procedure which the Owners deem necessary to deal with such hazards.

(d) Any costs and expenses incurred by the Owners as a result of (c) above will be charged as an addition to contract.

## 4. INSURANCE

(a) Subject to the provisions of Clause 8 (Injury or Damage to Premises) the Owners shall indemnify the Hirers against all sums for which the Hirer shall become liable for or damages or compensation for bodily injury to or death of any person or for damage to any property real or personal provided the same be caused by the negligence of the Owners in carrying out the Work provided nevertheless that the Owners shall be entitled to conduct in the name of the Hirers and to control all claims or proceedings relating to such injury, death or damage. In the event of any such occurrence immediate notice must be given to the Owners and confirmed in writing to the Owners' office. No admission, offer, promise of payment or indemnity shall be made by the Hirers without the Owners' consent in writing, any such admission, promise or indemnity made without the Owners' written consent may prejudice the Hirers' right to indemnify under this Condition.

(b) The Owners undertake to keep in force at all material times policies of insurance in respect of their liabilities under sub-paragraph (a) of this Clause 4 (Insurance) and hereby undertake within a reasonable time from receipt of a written request to do so, to produce evidence of the extent of cover.

(c) Except as provided in Clause 4 (a) above the Hirers shall indemnify the Owners against any loss, damage, claims or proceedings, whether or not the Owners are strictly liable and against any costs or expenses arising out of or in connection therewith in respect of any injury to or death of any person or damage to any property real or personal arising out of this Contract. The Hirers shall effect and keep in force at all material times policies of insurance in respect of their liabilities under this sub-paragraph (c).

## 5. CANCELLATION

Once the Hirers' order has been duly accepted by the Owners' written acknowledgement cancellation by the Hirers will only be accepted at the sole discretion of the Owners, and subject to the Owners being indemnified by the Hirers against all charges for work carried out and all expenses incurred relating to the cancelled order prior to the acceptance of the cancellation and against any loss, including loss of profit, which may be occasioned by such cancellation.

## 6. EXTRA WORKS

Any repair, addition, alteration, adaptation or variation required to the Scaffold Structure will only be carried out by the Owners and upon receipt of written instructions from the Hirers and at the Hirers' expense. Separate prices will be submitted for any such work by the Owners which prices in cases where the work has already been carried out will be deemed to be accepted by the Hirers unless queried in writing within fourteen (14) days from the date of such prices being submitted. The Hirers undertake not to carry out or cause or permit to be carried out any repair, addition, alteration, adaptation or variation to the Scaffold Structure or to interfere with it in any way other than as specifically provided in these Conditions or in the Quotation. Any breach of this undertaking shall entitle the Owners, to determine the Contract immediately in writing and, without prejudice to any rights or remedies already accrued to the Owners under this Contract or at law, the Hirers shall pay any additional costs or expenses incurred by the Owners arising out of or in connection with such breach.

## 7. DAYWORK

Minor alterations only to the Scaffold Structure as existing from time to time as required by the Hirers will be carried out on a Daywork basis. Where any Work is carried out on such a basis the total number of hours booked shall be shown on the Owners' daily time records and counter-signed by the Hirers' representative. Such hours will be chargeable at the Daywork Rate stated in the quotation.

## 8. INJURY OR DAMAGE TO PREMISES

Notwithstanding the provisions of Clause 4 (a) where the erection, alteration or dismantling of the Scaffold Structure involves Work on or adjacent to roofs or other fragile surfaces of any premises in respect of which the Scaffold Structure is required the Owners shall not be liable for any damage caused to such roofs or surfaces where damage is inevitable or reasonably to be expected if the Work is to be carried out in accordance with the specifications provided nevertheless that the Owners shall use reasonable endeavours to minimise the extent of such damage. Subject as aforesaid the Owners shall be responsible for injury or damage to the said premises (only where the Hirers have provided and maintained, where applicable, adequate protection against such damage or injury) and only where such injury or damage can be shown to have been caused by the negligence or wilful act or default on the part of the Owners, their servants or sub-contractors or other persons for whom the Owners are responsible, provided always that in any such case the Owners shall receive notification in writing within seven (7) days of the occurrence of the injury or damage and shall be allowed to inspect the same and themselves to arrange for its repair or making good if the Owners deem that to be appropriate.

## 9. OWNERSHIP OF MATERIALS

Any right which the Hirers' employers might otherwise possess under the terms of any contract between the Hirers and such employers over temporary buildings, plant, tools, equipment, goods and materials on site shall not extend to affect the ownership of any items provided by the Owners in carrying out the Work, which items shall remain the unencumbered property of the Owners at all times.

## 10. DAMAGED MATERIALS

The Hirers shall be responsible for and shall make good to the Owners any loss of or damage to the Scaffold Structure or any part thereof whilst on the site unless such loss or damage be caused by the negligence or wilful act or default of the Owners, their servants, agents or sub-contractors or other persons for whom the Owners are responsible. The Hirers shall pay the full replacement value of the Scaffold Structure or any part thereof not returned for which they are

responsible and the cost of repair of any damage for which they are responsible. The making of any payment as aforesaid shall not operate to pass to the Hirers any title in the Scaffold Structure or any part thereof which has been lost and in the event of such equipment being discovered the Hirers shall take all practical steps to secure the prompt return thereof to the Owners.

## 11. INCREASED COSTS

(a) Insofar as the Quotation includes the cost to the Owners of employing labour it is based upon the rates of wages and other emoluments payable by the Owners to work people engaged on the erection of scaffolding in accordance with the rules or decisions of the National Joint Council for the Building Industry or such other rules and conditions as are applicable and current at the date of Quotation. Insofar as the Quotation relates to the price of materials or equipment it is based upon the market price of any materials or equipment currently payable at the date of the Quotation and insofar as the Quotation includes the cost of operating any transport it is based upon the costs calculated in accordance with the rates published by the Road Haulage Association current at the date of the Quotation.

(b) Where the Quotation provides for the price to be subject to fluctuation:-

(1) any increases or decreases in the Owners' costs of employing labour as aforesaid which are consequent upon changes in he said rules or decisions or upon any change in or the imposition of any new statutory taxes, levies or contributions payable by the Owners in respect of work people engaged upon or in connection with the Work shall be a net addition to or deduction from the price quoted,

(2) if at any time after the date of the Quotation the market price of any materials or equipment increases or decreases, or if the cost of operating any necessary transport increases or decreases (as indicated by the rates from time to time published by the Road Haulage Association), then where appropriate a fair addition to or deduction from the price or prices payable by the Hirers shall be paid or allowed by the Owners.

(c) Unless otherwise stated the Quotation is based upon the assumption that the Work will be continuous and carried out during normal working hours and that a premium payment for any overtime, night or weekend work requested by the Hirers shall constitute a net addition to the price quoted.

(d) Notwithstanding sub-paragraphs (a) - (c) above, the Owners reserve the right to vary the Quotation at any time and for any reason without notice and, unless otherwise agreed in writing, the applicable prices shall be those on the date on which the Scaffolding Structure and/or other materials are supplied to the Hirers or any labour and transport used.

## 12. PERMITS

(a) The Hirers shall be responsible at their own cost for obtaining and during the currency of the Work maintaining all consents, licences or permits required in connection with the Work from any third-party or under any Regulations from time to time in force affecting the carrying out of the Work and shall produce particulars of all such consents, licences or permits to the Owners before the commencement of the Work.

(b) The Hirers shall be responsible for supplying, fixing and maintaining any warning lamps and warning notices that may be required under the provisions of any Regulations, or otherwise during the Period of Hire.

(c) Without prejudice to the rights of the Owners under any other Condition herein the Hirers shall indemnify the Owners in respect of any loss, claim or expense incurred by the Owners due to the failure on the part of the Hirers to fulfil their obligations under sub-paragraphs (a) and (b) of this Condition.

(d) Where compliance with the terms of any consent, licence or permit referred to in sub-paragraph (a) of this Clause 12 (Permits) involves the Owners in additional expense beyond that which could reasonably have been foreseen at the date of the Quotation the proper amount of such additional expense shall be added to the price payable by the Hirers.

## 13. DELAYS

(a) Any delay or performance date or period given by the Owners either before or after the Contract is given by them in good faith but the Owners shall not be liable for any failure or delay in respect of such delivery or performance date or period or for any loss or damage arising in connection therewith.

(b) The Owners shall not be responsible for and shall have no liability in respect of delays due to any industrial dispute or any cause beyond their reasonable control including but not limited to acts of God, act or restrictions of civil or other authorities, acts of any other third party, fire, inclement weather, non-availability or late delivery of materials, non-availability of necessary labour or transport, explosion or civil disturbance. If any delay shall occur as envisaged in this Condition the Owners shall be entitled to a fair and reasonable extension of time for executing and completing the Works and shall be entitled to recover all extra costs and expenses arising as a result of the delay and the extension of time.

(c) If, in the sole opinion of the Owners, a delay under paragraph (b) above is a prolonged delay the Owners may, in their sole discretion, terminate the whole or any part of the Contract or extend the time for delivery or for performance of their obligations hereunder.

(d) It shall be a condition precedent to the consideration of any claim by the Hirers against the Owners in respect of delay, and to any liability of the Owners for such delay, that written details of the alleged delay be received by Owners within seven (7) days of the occurrence thereof.

(e) The Owners shall not under any circumstances whatsoever be liable in any way for any loss of revenue, loss of profit, loss of contracts or other special, indirect or consequential loss or damage suffered by the Hirers and/or any other person or party which arises out of or as a result of any delay in delivery or performance or from any extension of time.

## 14. DETERMINATION OF CONTRACT

(a) If the Hirers fail to pay any sum due under this Contract in accordance with the terms of the Quotation and these Conditions the Owners may, but without prejudice to any other rights or remedies, forthwith determine the Contract and remove all their equipment from the site. In the event of default in payment by the Hirers the latter shall, so far as they lawfully can, assist the Owners to resume possession of all their equipment.

(b) If the Hirers are unable to provide adequate security under Clause 17 (d) heretofore or they become bankrupt or commit an act of bankruptcy or make or enter into any deed of arrangement, assignment or composition with their creditors or being a company an order is made or an effective resolution is passed for the winding-up or an encumbrancer takes possession or a receiver (whether administrative or otherwise) is appointed of the whole or the major part of the assets or undertaking or an administrator is appointed or distress, execution or other legal process is levied or enforced or sued upon or against the whole or the major part of the assets and is not discharged, paid out, withdrawn or removed within 14 days, or the company stops or threatens to stop payment of its due debts or ceases or threatens to cease to carry on its business or a substantial part of its business or is deemed for the purpose of S123 Insolvency Act 1986 (or any statutory modification to re-enactment thereof) to be unable to pay its debts or compounds or proposes or enters into any re-organization or special arrangement with its creditors generally, then the Owners may, but without prejudice to any other rights or remedies, forthwith on written notice determine the Contract and remove all their equipment from the site.

(c) Where the Scaffold Structure is hired for use by the Hirers on or in connection with a contract for the construction, reconstruction, repair or maintenance of any works or buildings and the occurrence of any such event as aforesaid results in the determination of the employment of the Hirers under that contract or if the Hirers shall be expelled from the site of the works under that contract for any reason whatsoever, the Owners may upon request in writing being made by the Hirer's employer under such contract within seven days after the date of such determination or expulsion, and upon the said employer undertaking to pay all hire charges in respect of the Scaffold Structure as from the last mentioned date, hire the Scaffold Structure to the employer for the remainder of the period during which the same was to be hired to the Hirers upon the same terms as are contained in this Contract and the employer shall in such case be entitled to permit the use of the Scaffold Structure by any other contractor employed by him for the purpose of completing the works in question.

## 15. WELFARE

The Hirers will provide all welfare facilities required by the Regulations including, but not limited to Construction (Health and Welfare) Regulations 1966 as are amended or any statutory modification or replacement thereof for the time being in force, for their own and the Owners' employees without charge to the Owners. The Hirers will furnish to the Owners the relevant certificate in regard thereto from the approved Register F 2202.

## 16. INSTRUCTIONS

Any order or instruction required to be given to the Owners by the Hirers or their duly authorised agents shall be given in writing, or if given orally shall be confirmed in writing and received by the Owners within seven (7) days. The Owners shall not be liable for the consequences of any inaccuracies or misunderstandings which might result from any order or instruction not having been given in writing or so confirmed.

## 17. PAYMENT

(a) Payment shall be made for Scaffold Structure and/or other materials and equipment delivered, any labour utilised or transportation provided within fourteen (14) days of the submission of an invoice for the same from the owners to the Hirers.

(b) In the event of the Hirers failing to pay any such invoice within the specified period then the amount so outstanding shall be subject to interest at a rate equivalent to 3% per annum above the base lending rate and shall accrue from the due date of payment until the date when payment is actually received by the Owners.

(c) If payment of any invoice of the Owners is overdue, notwithstanding sub-paragraph (b), the Owners shall be entitled to suspend execution of the Work and any work on any other contract then subsisting between the Owners and the Hirers or to withhold delivery of or remove any Scaffold Structure and/or any other materials and equipment or the previous of any necessary labour or transportation until payment of the sum due (including any interest payable) is made in full.

(d) If the Hirers shall, in the sole opinion of the Owners be unable or likely to be unable to pay any sums it owns to the Owners, the Owners shall (without prejudice to any other rights or remedies they may possess) be entitled to demand security prior to delivery of any Scaffold Structure and/or other materials or equipment or the provision of any necessary labour or transportation, either by pre-payment or bank guarantee, notwithstanding any terms of payment previously agreed.

(e) No retention or discount shall be deducted from any payments made by the Hirers to the Owners.