

Precision Scaffolding Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when using the Supplier’s website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.4 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.5 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.6 **“Labour”** or **“Candidate”** shall mean any individual sent by the Supplier to the Customer for employment by the Customer on a temporary, casual, or part-time basis.
- 1.7 **“Minimum Hire Period”** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Customer.
- 1.8 **“Price”** means the Price payable (plus any GST where applicable) for the Scaffolding and/or Scaffolding or Labour hire as agreed between the Supplier and the Customer in accordance with clause 6 below.
- 1.9 **“Scaffolding”** means all Scaffolding (including any accessories, such as hoist motors) supplied on hire to the Customer by the Supplier, at the Customer’s request from time to time, and:
(a) includes any installation, dismantling and transport of the Scaffolding (**“Services”**), any parts, accessories and/or consumables supplied by the Supplier to the Customer, either separately or deposited incidentally by the Supplier in the course of it conducting, or supplying to the Customer, the Scaffolding; and
(b) where the context so permits the terms ‘Scaffolding’ or ‘Services’ shall be interchangeable for the other.
- 1.10 **“Supplier”** means Precision Scaffolding Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Precision Scaffolding Pty Ltd.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
(a) they have read and understood the terms and conditions contained in this Contract; and
(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Scaffolding.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges and accepts that:
(a) the supply of Scaffolding on credit shall not take effect until the Customer has completed a credit application with the Supplier and it has been approved with a credit limit established for the account;
(b) in the event that the supply of Scaffolding requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery;
(c) following the handover of the certified Scaffolding to the Customer, it shall be the Customer’s responsibility to check the Scaffolding before each use. If the Scaffolding is deemed to be damaged, altered or appears unsafe it should not be used and the Supplier is to be notified;
(d) the Supplier reserves the right to remove the Scaffolding without prejudice should the Scaffolding be considered to be unsafe due to washout and/or erosion, upon such action this shall not be deemed to be a breach of Contract. The Supplier will not accept any claim for in respect of any consequential loss to the Customer that may result from such an event;
(e) when the Contract period for hire expires under this Contract, and payment is not forthcoming when due and payable, then the Supplier reserves the right (at their discretion) to leave the scaffolding assembled until such time as payment is effected and to charge the Customer all loss hire charges in accordance with clause 14.2(e);
(f) cantilevered scaffolds are included in the Price, unless otherwise stated or agreed in writing;
(g) variations to the Contract requested by the Customer that are subject to labour charges, shall be at the Supplier’s current hourly rate, unless otherwise stated at the time of the variation request;
(h) traffic/pedestrian management is to be supplied for the transportation of the Scaffolding or the erection/dismantling of the Scaffolding; and
(i) Services will be carried out during normal working hours, Monday to Friday between 7:00am and 3:30pm being an eight (8) hour shift.
- 2.5 The Supplier will:
(a) ensure that all completed standing scaffolds are tagged certifying that the scaffolds are complete and safe to use; and
(b) regularly inspect all standing scaffolds prior to the Services commencing as per the Health and Safety requirements.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.
- 3.2 In circumstances where the Customer is required to place an order for Scaffolding, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Scaffolding (whether they are made to order Scaffolding or not) ("**Customer Error**"). The Customer must pay for all Services it orders from the Supplier notwithstanding that such Services suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take delivery of such Services. The Supplier is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.

4. Change in Control

- 4.1 The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.

5. Credit Card Information

- 5.1 The Supplier will:
- (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by the Supplier;
 - (b) not disclose the Customer's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 22) or where required by law.
- 5.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Customer, any Scaffolding (or any part of them) supplied on hire that are lost or damaged or any other additional charges are due from the Customer which were not known at the time of the return of the Scaffolding, the Supplier is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.

6. Price and Payment

- 6.1 At the Supplier's sole discretion the Price shall be either:
- (d) as indicated on any invoice provided by the Supplier to the Customer upon placement of an order for Scaffolding; or
 - (a) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of sixty (60) days.
- 6.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled Services and/or specifications of the Scaffolding (including, but not limited to, working drawings, preparation of information (such as calculations, computations and fees incurred for site inspections by engineers or inspectors), additional transport (including where required out of normal working hours, or where delivery (including unloading and/or loading) exceeds the allowance thereof), any variation as a result of unforeseen circumstances, such as poor weather conditions, limitations to accessing the site and safety considerations (e.g. overhead hazards, etc.), prerequisite work by any third party not being completed, any relocation and/or alteration to working platforms and/or hop up brackets (or the Scaffolding entirely), or as a result of any increase to the Supplier in the cost of materials and labour, or any Government or regulatory body imposing or increasing fees, etc.) will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 At the Supplier's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Services, in accordance with any quotation provided by the Supplier or as notified to the Customer prior to the placement of an order for Services.
- 6.4 Time for payment for the Scaffolding being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:
- (a) on delivery of the Scaffolding;
 - (b) for approved credit account holders either, seven (7) days following the end of the month in which a statement is posted to the Customer's address or address for notices or thirty (30) days following the date of any invoice; or
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.
- 6.5 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Supplier.
- 6.6 The Supplier may in its discretion allocate any payment received from the Customer towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Scaffolding.
- 6.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify the Supplier in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Supplier investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Supplier placing the Customer's account into default and subject to default interest in accordance with clause 20.1.

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- 6.8 The Customer acknowledges and agrees that the Customer's obligations to the Supplier for the supply of Scaffolding on hire or provision of the Services shall not cease until:
- (a) the Customer has paid the Supplier all amounts owing for the hire of the Scaffolding; and
 - (b) the Customer has met all other obligations due by the Customer to the Supplier in respect of all contracts between the Supplier and the Customer.
- 6.9 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Supplier's rights in respect of the Scaffolding, and this Contract, shall continue.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Scaffolding/hire of the Scaffolding. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery

- 7.1 Delivery of the Scaffolding ("**Delivery**") is taken to occur when:
- (a) the Scaffolding has been installed at the Customer's nominated site even if the Customer is not present at the address. In the event the Customer (or a representative thereof) is not present at the time of Delivery, the Supplier's delivery docket remains prima facie evidence of such; or
 - (b) the Customer (or their nominated carrier) collects the Scaffolding from the Supplier's premises; the Scaffolding must be inspected to evaluate quantity and condition by the Customer (or their nominated carrier) on arrival in the Supplier's yard to evaluate the quantity and condition of the Scaffolding.
- 7.2 Return of the Scaffolding ("**Return**") will be completed when the Scaffolding has been dismantled and accepted by the Supplier, by their off-hire docket, after an inspection has been undertaken to evaluate the quantity and condition of the Scaffolding. Where the Scaffolding is returned by the Customer's nominated carrier, the Scaffolding returned shall be counted in the Supplier's yard and the off-hire docket issued to the Customer shall be conclusive proof of the Return of the quantities of Scaffolding listed thereon, but not of its condition at the time of Return. In all cases the inspection in the Supplier's yard will be deemed the only legal proof of the quantity and condition of Scaffolding returned.
- 7.3 Unless otherwise specified by the Supplier in writing, the cost of Delivery is included in the Price.
- 7.4 Any time specified by the Supplier for Delivery is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Scaffolding to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Scaffolding as agreed solely due to any action or inaction of the Customer then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Scaffolding at a later time and date.

8. Access and Installation

- 8.1 The Customer shall ensure that:
- (a) the Supplier has clear and free access to the nominated site to enable the Supplier to install and/or dismantle the Scaffolding, and the Supplier agrees at the time of completion thereof to carry out in a reasonable way the clean-up of the site where scaffolding was installed. Furthermore, it is acknowledged that it is unreasonable to expect the clean-up to restore the site to its pre-existing condition, especially in the event where existing grass has died off due to the covering of base blocks to establish foundation support for the Scaffolding, such damage will remain the Customer's responsibility;
 - (b) where Scaffolding is installed on concreted areas, patios, driveways, timber decks, lower level roof areas or other structures that suitable coverings are put in place to help prevent any marking/staining of the finished product. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways, lower level roofs, and concreted or paved or grassed areas) unless due to the negligence of the Supplier; and
 - (c) the nominated site is cleared and ready for installation of the Scaffolding prior to Delivery, and that the foundations upon which the Supplier is to install the Scaffolding is sufficiently firm and otherwise suitable to safely carry the structure and the load to be put on it without subsidence. The Customer will be liable to the Supplier for any loss, costs or damages which the Supplier may suffer or incur by reason of the Customer's failure to carry out its obligations hereunder if the Supplier is unable or unwilling to install the Scaffolding due to the site not being cleared and ready as aforesaid. Nevertheless, the Customer shall be liable to pay the costs of the hire of the Scaffolding on the terms stated herein.
- 8.2 Unless the Customer instructs/directs otherwise, the Supplier shall place the Scaffolding at the nominated site at the nearest clear area to the roadside. The Supplier shall not be liable for any damages incurred by the Customer or any third party (including damage to property) in following any instructions/directions of the Customer to deliver the Scaffolding elsewhere at the site. In all cases, the Customer agrees to indemnify the Supplier against any claims whatsoever made against the Supplier that arise out of the placement and/or re-positioning of the Scaffolding (including, but not limited to, any re-positioning of the Scaffolding for safety requirements where such has been installed by any other third party).
- 8.3 Where the Scaffolding is not installed by the Supplier, the Customer shall ensure that Scaffolding is erected and dismantled by qualified persons. A suitable qualified person shall be the holder of any certificate of competency or license that may be required by any legislation or local regulatory authority for the purpose of the installation or the dismantling of the Scaffolding.

9. Installation and Dismantling of Scaffolding

- 9.1 Where the Supplier is required to install the Scaffolding the Customer warrants that the structure of the premises or Scaffolding in or upon which these Scaffolding are to be installed is sound and will sustain the installation and work incidental thereto and the Supplier shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.

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- 9.2 The Supplier shall not be held responsible for any damage to the Scaffolding or delays to Delivery caused by outside agents. Where the Customer requests the Supplier to repair such damage then the Supplier reserves the right to charge the Customer for any costs incurred in rectifying such damage.
- 10. Affixation of Scaffolding to Land or Buildings**
- 10.1 If the Scaffolding or any part thereof is affixed to any land or buildings pursuant to this Contract, and the land or buildings are or become the subject of a mortgage or charge whether under the PPSA or otherwise at law, then the Customer shall, without first receiving any request from the Supplier, obtain the written acknowledge of the mortgagee or chargehold (as the case may be) that:
- (a) the Scaffolding or any part thereof is not a fixture for the purposes of the mortgage or charge;
 - (b) that the mortgagee or chargeholder will not make any claim in relation to the Scaffolding or any part therefore; and
 - (c) that the mortgagee or chargeholder will permit the Supplier (whether or not there has been any default under the mortgage or charge) to enter upon the land or buildings and to remove the Scaffolding or part thereof.
- 11. Inspection of Scaffolding**
- 11.1 The Customer hereby grants the Supplier (including its employees, duly authorised agents or representatives) the right, at all times, upon the Supplier giving to the Customer reasonable notice and without unduly interfering with the Customer's business or operations, to:
- (a) enter onto the site(s) where the Scaffolding or any part thereof may be located; and
 - (b) inspect the state of repair or condition of the Scaffolding; and/or
 - (c) carry out any such tests on the Scaffolding as may be reasonably necessary including, but not limited to, health and safety tests or inspections; and/or
 - (d) observe the use of the Scaffolding by the Customer; and/or
 - (e) do any act, matter or thing which may be required at law or to otherwise protect the Supplier's rights or interests in the Scaffolding.
- 12. Risk**
- 12.1 The Supplier retains property in the Scaffolding nonetheless; all risk for the Scaffolding passes to the Customer on Delivery.
- 12.2 The Customer accepts full responsibility for the safekeeping of the Scaffolding and indemnifies the Supplier for all loss theft or damage to the Scaffolding howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer.
- 12.3 The Customer will insure, or self-insure, the Supplier's interest in the Scaffolding against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Scaffolding. Furthermore, the Customer will not use the Scaffolding nor permit it to be used in such a manner as would permit an insurer to decline any claim. A certificate of currency is to be provided by the Customer's insurer prior to installation noting clear title to the Scaffolding remains vested with the Supplier at all times.
- 12.4 The Customer accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Scaffolding during the hire period and whether or not arising from any negligence, failure or omission of the Customer or any other persons.
- 13. Hire Period**
- 13.1 The hire period shall commence from the date the Scaffolding is delivered to the Customer or to the site determined by the Customer (in accordance with clause 7) and will cease when returned to the Supplier's premises.
- 13.2 It shall be the Customer's responsibility to provide the Supplier with seven (7) days written notice that the Scaffolding is available for return.
- 14. Customer's Responsibilities**
- 14.1 The Customer shall:
- (a) maintain the Scaffolding as is required by the Supplier;
 - (b) inspect all Scaffolding every thirty (30) days, or immediately after severe storms or other adverse conditions;
 - (c) not move the Scaffolding once placed in position by the Supplier, except with the express approval of the Supplier. Any relocation of the Scaffolding shall attract an additional fee, and all risk for the performance of such shall rest with the Customer (as per clause 8.2);
 - (d) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident in connection with the Scaffolding. The Customer is not absolved from the requirements to safeguard the Scaffolding by giving such notification;
 - (e) satisfy itself prior to taking possession of the Scaffolding that the Scaffolding is suitable for its purposes;
 - (f) use the Scaffolding safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by the Supplier or posted on the Scaffolding;
 - (g) ensure that all persons installing or using the Scaffolding are suitably instructed in its safe and proper use, and where necessary, hold a current certificate of competency and/or are fully licensed;
 - (h) comply with all occupational health and safety (OHS) laws relating to the Scaffolding and its use;
 - (i) keep the Scaffolding in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Scaffolding;
 - (j) not alter or make any additions to the Scaffolding including but without limitation defacing or erasing any identifying mark, plate or number on or in the Scaffolding or in any other manner interfere with the Scaffolding;
 - (k) employ the Scaffolding solely in its own work and not permit the Scaffolding of any part thereof to be used by any other party for any other work;
 - (l) ensure all overhead power likely to cause a hazard or adversely affect the installation of Scaffolding is turned off prior to the installation of the Scaffolding;
 - (m) ensure that no digging or excavation work is performed near or under the Scaffolding during the installation or once the Scaffolding has been installed;
 - (n) not exceed the recommended or legal load and capacity limits of the Scaffolding;

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- (o) not use or carry any illegal, prohibited or dangerous substance on the Scaffolding;
 - (p) not fix any of the Scaffolding in such a manner as to make it legally a fixture forming part of any freehold; and
 - (q) on termination of the hire, deliver up the Scaffolding complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to the Supplier.
- 14.2 Immediately on request by the Supplier the Customer will pay:
- (a) the new list price of any Scaffolding, accessories or consumables that are for whatever reason destroyed, written off or not returned to the Supplier;
 - (b) all costs incurred in cleaning the Scaffolding;
 - (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Scaffolding;
 - (ii) wilful or negligent actions of the Customer or the Customer's employees;
 - (iii) vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Scaffolding by the Customer;
 - (d) any costs incurred by the Supplier in dismantling the Scaffolding and returning it to the Supplier's premises if the Customer does not return the Scaffolding to the Supplier's premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so;
 - (e) any lost hire fees the Supplier would have otherwise been entitled to for the Scaffolding, under this, or any other hire contract; and
 - (f) any insurance excess payable in relation to a claim made by either the Customer or the Supplier in relation to any damage caused by, or to, the Scaffolding whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or the Supplier's.
- 14.3 The Supplier may terminate this Contract, without being liable for damages for doing so, if:
- (a) the Customer defaults in the punctual payment of any monies due;
 - (b) the Customer fails to observe or perform any condition in this, or any other uncompleted, hire contract between the Supplier and the Customer;
 - (c) the Customer is declared bankrupt, or an official manager is appointed to any of the Customer's assets;
 - (d) the Customer applies to take benefit of any law for the relief of bankrupt or insolvent debtors, compounds with their creditors, or makes an assignment of their remuneration for their benefit.
- 14.4 In the circumstances of clause 14.3 where payment of hire charges exceed sixty (60) days, then at ninety (90) days the Supplier shall be entitled to enter upon the Customer's site and remove the Scaffolding from the site, without prejudice to any arrears in hire charges or other sums due to the breach if the Customer's obligations or for damages that may arise from any event, and from then the Supplier shall be freed and discharged from all actions, suits, claims, demands by or obligations to the Customer under or by virtue of this Contract.
- 15. Title to Scaffolding**
- 15.1 The Scaffolding is and will at all times remain the absolute property of the Supplier.
- 15.2 If the Customer fails to return the Scaffolding to the Supplier then the Supplier or the Supplier's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Scaffolding is situated and take possession of the Scaffolding, without being responsible for any damage thereby caused.
- 15.3 The Customer is not authorised to pledge the Supplier's credit for repairs to the Scaffolding or to create a lien over the Scaffolding in respect of any repairs.
- 16. Personal Property Securities Act 2009 ("PPSA")**
- 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Scaffolding and Services that have previously been supplied and that will be supplied in the future by the Supplier to the Customer, and the proceeds from such Scaffolding.
- 16.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 16.2(a)(i) or 16.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Scaffolding charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Scaffolding in favour of a third party without the prior written consent of the Supplier;
 - (e) immediately advise the Supplier of any material change in its business practices of selling Scaffolding which would result in a change in the nature of proceeds derived from such sales.
- 16.4 The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 16.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Customer must unconditionally ratify any actions taken by the Supplier under clauses 16.2 to 16.5.

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- 16.9 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16.10 Only to the extent that the hire of the Scaffolding exceeds a two (2) year hire period with the right of renewal shall clause 16 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 16 will apply generally for the purposes of the PPSA.
- 17. Security and Charge**
- 17.1 In consideration of the Supplier agreeing to supply the Scaffolding and/or provide its Services, the Customer grants the Supplier a security interest by way of a floating charge (registerable by the Supplier pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Customer or owned by the Customer in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Scaffolding and/or Services under this Contract and/or permit the Supplier to appoint a receiver to the Customer in accordance with the *Corporations Act 2001* (Cth).
- 17.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 17.3 In the event that the Customer defaults or breaches any term of this Contract and as a result, the security provided in clauses 15.1, 16.2 and 17.1 as applicable, is deemed insufficient by the Supplier to secure the repayment of monies owed by the Customer to the Supplier, the Customer hereby grants the Supplier a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Customer now, or owned by the Customer in the future, to secure the performance of the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 18. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")**
- 18.1 The Customer must, prior to signing the Handover Certificate, inspect the Scaffolding on Delivery, and must within seven (7) days of such time notify the Supplier in writing with photographic evidence of any evident defect/damage, shortage in quantity, or failure to comply with the order description or quotation. The Customer must notify any other alleged defect in the Scaffolding as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow the Supplier to inspect the Scaffolding.
- 18.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 18.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Scaffolding. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6 If the Supplier is required to replace the Scaffolding under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Scaffolding.
- 18.7 If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Scaffolding is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Supplier at the Supplier's sole discretion;
 - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Scaffolding;
 - (c) otherwise negated absolutely.
- 18.8 Subject to this clause 18, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 18.1; and
 - (b) the Supplier has agreed that the Scaffolding are defective; and
 - (c) the Scaffolding are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Scaffolding are returned in as close a condition to that in which they were delivered as is possible.
- 18.9 Notwithstanding clauses 18.1 to 18.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Scaffolding;
 - (b) the Customer using the Scaffolding for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of the Scaffolding after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by the Supplier;
 - (e) fair wear and tear, any accident, or act of God.
- 18.10 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.
- 19. Intellectual Property**
- 19.1 Where the Supplier has designed, drawn or developed Scaffolding for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- 19.2 The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 19.3 The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Scaffolding which the Supplier has created for the Customer.

20. Default and Consequences of Default

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Customer owes the Supplier any money, the Customer shall indemnify the Supplier from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Customer would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under these terms and conditions, internal administration fees, the Supplier's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 20.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Customer has made payment to the Supplier, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 20.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by the Supplier;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

21. Cancellation

- 21.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply or purchase of Scaffolding and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 21.2 If the Supplier, due to reasons beyond the Supplier's reasonable control, is unable to deliver any Scaffolding and/or Services to the Customer, the Supplier may cancel any Contract to which these terms and conditions apply or cancel Delivery of Scaffolding and/or Services at any time before the Scaffolding and/or Services are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Scaffolding and/or Services. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 The Customer may cancel Delivery of the Scaffolding and/or Services by written notice served within forty-eight (48) hours of placement of the order. If the Customer cancels Delivery in accordance with this clause 21.3, the Customer will not be liable for the payment of any costs of the Supplier, except where a deposit is payable in accordance with clause 6.3. Failure by the Customer to otherwise accept Delivery of the Scaffolding and/or Services shall place the Customer in breach of this Contract.
- 21.4 Cancellation of orders for Scaffolding made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Privacy Policy

- 22.1 All emails, documents, images, or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 22.3, and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Supplier that may result in serious harm to the Customer, the Supplier will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to the Supplier in respect of Cookies where the Customer utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Supplier when the Supplier sends an email to the Customer, so the Supplier may collect and review that information ("collectively Personal Information")
- If the Customer consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Customer may manage and control the Supplier's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.3 The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or

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- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 22.4 The Customer consents to the Supplier being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 22.5 The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Scaffolding; and/or
- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Scaffolding; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Scaffolding.
- 22.6 The Supplier may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 22.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 22.3 above;
- (b) name of the credit provider and that the Supplier is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults (provided the Supplier is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 22.8 The Customer shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the Personal Information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information; and
- (b) that the Supplier does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 22.9 The Supplier will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 22.10 The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 23. Confidentiality**
- 23.1 The Supplier and the Customer agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).
- 24. Compliance with Laws**
- 24.1 The Customer and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any occupational health and safety (OHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 24.2 The Customer shall obtain (at the expense of the Customer) all licenses, permits and approvals that may be required for the Services.
- 25. Service of Notices**
- 25.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 25.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 26. Trusts**
- 26.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Customer covenants with the Supplier as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust,

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the trustees and the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;

- (c) the Customer will not during the term of the Contract without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

27. General

- 27.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in Victoria. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 27.3 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 27.4 The Customer cannot licence or assign without the written approval of the Supplier.
- 27.5 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 27.6 The Customer agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Scaffolding to the Customer.
- 27.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the Supplier, once the parties agree that the Force Majeure event has ceased.
- 27.8 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 27.9 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 27.10 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.

Additional Terms & Conditions Labour Hire Only

28. Services

- 28.1 The Supplier undertakes to:
- (a) use its best endeavours to provide suitably qualified Candidates to undertake work duties in compliance with the Customer's requirements;
 - (b) make the payment of all amounts due to the Candidate under the terms of any relevant industrial instrument or contract;
 - (c) make the payment of all leave entitlements (including, but not limited to, annual leave, sick leave, parental leave and long service leave) if the Candidate is a fulltime employee;
 - (d) deduct the requisite amounts of income tax, fringe benefits tax, pay roll tax and all other applicable deductions as required by Australian law;
 - (e) ensure payment of any other statutory taxes, superannuation contributions and/or levies as required by Australian law; and
 - (f) maintain workers compensation insurance for all Candidates, except where state laws specify otherwise.
- 28.2 The Supplier's quotation shall specify:
- (a) the Services to be provided by each Candidate;
 - (b) the job description of each Candidate;
 - (c) the commencement and termination dates of the Services;
 - (d) the location where Services shall be performed; and
 - (e) the Price payable by the Customer for the Services.
- 28.3 The Supplier must be advised by the Customer of any specific site or project allowances which may be applicable. All such allowances (including, but not limited to, meal, travel or tool allowances) shall be on-charged to the Customer accordingly.
- 28.4 The Customer acknowledges that only lunch breaks shall be deducted from total hours charged by the Supplier to the Customer.
- 28.5 The Customer acknowledges and agrees that the Customer's obligations to the Supplier for the supply of Services shall not cease until:
- (a) the Customer has paid the Supplier all amounts owing for the particular Services; and
 - (b) the Customer has met all other obligations due by the Customer to the Supplier in respect of all contracts between the Supplier and the Customer.

29. Customer's Responsibilities / Agreements

- 29.1 The Customer agrees that they shall supply to the Supplier (on the day specified by the Supplier) a duly authorised timesheet to enable the Supplier to pay the Candidate when due.

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- 29.2 It is the responsibility of the Customer to:
- (a) provide supervision of Candidates to ensure that work is carried out to a satisfactory standard; and
 - (b) provide Candidates with appropriate information, supervision and training to enable them to work safely; and
 - (c) provide Candidates with workplace specific and job specific induction if necessary. This induction is to be completed before the Candidate commences work with the Customer; and
 - (d) familiarise the Candidate with the Customer's operations, facilities, policies and procedures, and properly inform the Supplier of any specific requirements of the job which the Candidate will be required to undertake; and
 - (e) provide safe working conditions and to comply with all statutory and other obligations that are applicable pursuant to Australian law (including, but not limited to, Occupational Health and Safety legislation) applicable to employers and otherwise to treat Candidates as if they were employed by the Customer; and
 - (f) effect and maintain insurance cover in respect of any claims which may be made against the Customer by a Candidate that arises as a result of the Customer's occupation of premises, and otherwise in respect of any act or omission in respect of machinery, equipment or vehicle(s) used by the Candidate, and to indemnify the Supplier against any such claims; and
 - (g) properly maintain plant and equipment; and
 - (h) provide where a Candidate may be required to 'stand down' because of adverse weather conditions a minimum 'stand down' payment of not less than four (4) hours per Candidate, unless an alternative minimum payment has been agreed between the Supplier and the Customer in writing.
- 29.3 The Customer agrees that:
- (a) it will not request a Candidate to engage in any works or use any equipment that a Candidate is unfamiliar with, or unqualified to use or perform, or have not received adequate training for;
 - (b) they will immediately notify the Supplier of any variation of duties given to a Candidate that may affect the remuneration payable to the Candidate or may involve additional risk to the Candidate;
 - (c) it will immediately notify the Supplier of any injury sustained by the Candidate;
 - (d) any working environment in which a Candidate is placed during the period of the engagement will comply with all applicable equal opportunity legislation or regulations. The Customer agrees to immediately notify the Supplier if a Candidate is involved in a sexual harassment or discrimination claim during the performance of the Services.
- 29.4 The Customer acknowledges that:
- (a) they remain responsible for controlling the manner, time and place in which the Candidate shall carry out their duties as assigned by the Customer and that in doing so the Customer shall be liable for all acts and omissions of the Candidate the same as they would be for any of their own employees;
 - (b) the Supplier makes no representation or guarantee that any Candidate will achieve a certain level of performance, achieve a certain outcome, solve a particular problem or attain a specific goal.
- 29.5 In no circumstances shall the Supplier be liable for any personal injury resulting in injury or death, loss and/or damage or expense arising out of, or caused by, any act or omission of a Candidate whether or not any such act or omission is negligent, and the Customer acknowledges and agrees to indemnify the Supplier against all such liability whether alleged or proved. The Customer is to include all Candidates in the Customer's own public liability insurance cover.
- 29.6 If any event arises which is likely to lead to any dispute or claim, the Customer must notify the Supplier of the same within thirty (30) days of the event. If the Customer shall fail to comply with this provision then all Services provided by the Supplier shall be deemed to have been provided in accordance with these terms and conditions, and free from any disputes or claims.
- 30. Employees of the Supplier**
- 30.1 The Customer agrees not to employ, contract, subcontract or utilise in any way an employee or past employee of the Supplier (other than through the Supplier) for a period of no less than twelve (12) months after that employee's last employment with the Supplier.
- 30.2 The Customer agrees that if clause 30.1 is contravened the Supplier will be able to invoice the Customer at its current hourly rate the hours that the employee has been employed, contracted, subcontracted or utilised in any way by the Customer and agrees to pay said invoice in accordance with the standard payment terms contained in this Contract.