

# Complete Scaffold

## General Terms Conditions and site management

### Section 1- Charges

1. The Contract price quoted has been determined on the basis that the scaffolding will be hired for a minimum contract period as stated in the quote. In the event of this contract terminating for any reason whatsoever, prior to the end of the period stated there will be no reduction in hire charges.
2. If the term of the contract exceeds the periods stated, then hire will continue to be charged for the items of equipment on the site. The hire rate be the per week thereafter rate stated if the structure is fully erected or if the equipment has been returned then the rate will be reduced accordingly depending on the items of equipment on site.
3. The hire period will commence from the date of the hand over, or with a staged erection from first delivery to site until the date we are notified by hirer as scaffold being off hired. All Off Hire requests to be sent to admin@completescaffold.com.au
4. Charges for any extra work will be \$80.00 + GST per man hour if required.
5. Scaffold **DOES NOT** get automatically **dismantled** at the end of the quoted hire period. It is the **responsibility of the hirer to notify us** when they have finished with the scaffold, and that they require it to be dismantled and removed from site. Complete Scaffold will issue an off-hire number if requested which should be recorded by the hirer.

### • Section 2 – Equipment

#### Site Management

- The customer is responsible for site management for open or closed working platforms as per Safework NSW permitted scaffold configurations
- The customer is responsible to inform each individual using the scaffold of each platform status

#### Structural Alterations

- Structural Alterations required to the scaffold should be performed by Complete Scaffold employees or their contractors only.
- Structural Alterations may be defined as:  
The removal, alteration, repositioning or re-configuration of the following scaffold components: Scaffold ties, transoms, ledgers, tube and fitting work including spurs and struts, handrails and stopends, working platforms, transoms ledgers, face braces, end braces, hopup brackets, tie/spreader bars, raker tubes, raker bays.
- If the removal, alteration, repositioning or re-configuration of scaffold components is to be made by a scaffolder who is not an employee or sub-contractor of Complete Scaffold, then Complete Scaffold must be informed of any alteration, so they can inspect and clear work completed to confirm it complies with AS 4576 and 1576 as our duty of care.
- Should the builder or contractor decide to alter, dismantle or re-erect any part or the entire scaffold he must do so in conjunction with a work method statement.

#### Site Access and Foundations

- The Customer shall ensure that the Site is cleared and ready for erection of the scaffold and sufficient space is available for delivery.
- the foundations and/or ground upon which Complete Scaffold is to erect scaffold are sufficiently firm and otherwise suitable to safely support the equipment and imposed loads without subsidence
- Safe access is to be provided for man and materials from delivery point to position of planed scaffold.
- Distance between agreed delivery point and position of planned scaffold shall be no more than 30m (unless otherwise agreed in writing) A variation to labour charges will apply for additional handling of materials beyond the 30m.

#### Scaffold Loading

| Duty category of Scaffold | Maximum concentrated load |
|---------------------------|---------------------------|
| Per platform per bay      | per platform per bay      |
| Light- 225kg              | 100kg                     |
| Medium- 450kg             | 150kg                     |
| Heavy- 675kg              | 200kg                     |

Materials stacked on the scaffold work platform shall not exceed the height of the kickboard or mesh guard.

### **Access through scaffold work platforms**

- Persons working upon scaffold platform where materials are stacked shall have an access through the scaffold of no less than 2 planks.
- Persons who are working upon a scaffold platform where there are no materials stacked and are using hand tools only shall have access through the scaffold of no less than 2 scaffold planks.
- Access through a scaffold work platform shall not be impeded by building debris and rubbish but shall remain clean and tidy at all times.

### **Hopup or stage brackets**

- Hopup brackets/stage brackets must never have the tie/spreader bar removed
- Hopup brackets/stage brackets must never have building materials stacked upon the scaffold planks they are supporting, as hopup brackets are not designed to support material loads.

### **Gin wheels**

- Gin wheels that are attached to scaffold must comply with AS 4576

### **Formwork and Scaffold**

- No part of the scaffold shall be used to support formwork or false work

### **Demolition Scaffold**

- Any scaffold that is erected around and tied into any building or structure that is to be demolished must be dismantled progressively with the demolition of the building or structure- the scaffold shall never be allowed to free stand higher than 2m above the demolition work
- Any scaffold component that is damaged during the course of demolition work shall be paid for by the client
- Any materials stacked on scaffold during demolition must not exceed the maximum Heavy Duty loading per platform per bay of 675kg with a maximum concentrated load of 200kg per platform per bay or as per design load rating (whichever is less).

### **Loss or Damage**

- You agree that you will be responsible and liable for damage due to misuse or overloading of the equipment; mysterious disappearance or wrongful conversion of the equipment; loss or damage in contravention of the condition of this agreement; loss or damage from use in violation of any statutory laws and regulations; loss of tools, accessories; damage caused inherent in the use of the equipment; loss or damage relating from the lack of normal servicing of equipment; loss or damage in use while or while being carried over water.
- You must have appropriate insurance to cover your liability under these conditions. You must provide us with a copy of such insurance, if requested.

### **Section 3 – Cost Recovery**

Any expenses, costs or disbursements incurred by Complete Scaffold in recovering any outstanding monies including debt collection fees and Solicitor costs shall be paid by the customer, plus any out-of-pocket expenses.

## Complete Scaffold Terms and Conditions of Hire

### 1 Definitions

- 1.1 "Owner" shall mean Complete Finish Pty Ltd T/A Complete Scaffold, its successors and assigns or any person acting on behalf of and with the authority of Complete Finish Pty Ltd T/A Complete Scaffold.
- 1.2 "Hirer" shall mean the Hirer or any person acting on behalf of and with the authority of the Hirer.
- 1.3 "Equipment" shall mean all Equipment (including any accessories) supplied on hire by the Owner to the Hirer (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Owner to the Hirer.
- 1.4 "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Owner to the Hirer.
- 1.5 "Price" shall mean the cost of the hire of the Equipment as agreed between the Owner and the Hirer.

### 2 Acceptance

- 2.1 The Hirer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Hirer places an order for, or accepts delivery of, the Equipment.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Hirer and the Owner.
- 2.3 The Hirer acknowledges and accepts that the Equipment must at all times display the Owners business name and details for the purposes of ownership. It is the Hirer responsibility to ensure permission where applicable from any relevant authorities and/or project manager on site to display such certain advertising.

### 3 Price and Payment

- 3.1 At the Owner's sole discretion, the Price shall be either:
  - (a) as indicated on invoices provided by the Owner to the Hirer in respect of Equipment supplied on hire; or
  - (b) the Owner's quoted Price (subject to clause 3.3) which shall be binding upon the Owner provided that the Hirer shall accept in writing the Owner's quotation within thirty (30) days.
- 3.2 Unless otherwise stated the period of hire is for a minimum of four (4) weeks.
- 3.3 The Owner reserves the right to change the Price in the event of a variation to the Owner's quotation. Variations will be charged for on the basis of the Owner's quotation, and will be detailed in writing, and shown as variations on the Owner's invoice. The Hirer shall be required to respond to any variation submitted by the Owner within ten (10) working days. Failure to do so will entitle the Owner 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.
- 3.4 At the Owner's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this contract, which shall be refunded to the Hirer by within thirty (30) days of the return of the Equipment, provided that the Hirer has complied with their obligations hereunder. The deposit may be used to offset any applicable charges payable by the Hirer under clause 5.3, and any outstanding balance thereof shall be due as per clause 3.5.
- 3.5 Time for payment for the Equipment being of the essence, the Price will be payable by the Hirer on the date/s determined by the Owner, which may be:
  - (a) on delivery of the Equipment; or
  - (b) for approved Hirers made by instalments in accordance with the Owner's payment schedule; or
  - (c) due thirty (30) days following the end of the month in which a statement is posted to the Hirer's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Hirer by the Owner.
- 3.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply) or by any other method as agreed to between the Hirer and the Owner.
- 3.7 The Hirer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Hirer by the Owner nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Hirer must pay to the Owner an amount equal to any GST the Owner must pay for any supply by the Owner under this or any other agreement for the hire of the Equipment. The Hirer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Hirer pays the Price. In addition, the Hirer 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.
- 3.9 Receipt by the Owner 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.

### 4 Delivery

- 4.1 Delivery of the Equipment ("**Delivery**") is taken to occur at the time that the Owner (or the Owner's nominated carrier) delivers the Equipment (in the case of scaffolding, where it is installed and hand-over certificate is issued) to the Hirer's nominated address, even if the Hirer is not present at the address. In the event the Hirer (or a representative thereof) is not present at the time of Delivery, the Owner's delivery docket remains prima facie evidence of such.
- 4.2 Return of the Equipment ("**Return**") will be completed when:

- (a) in the case of scaffold hire, the scaffolding has been dismantled; and/or
  - (b) the Equipment is accepted by the Owner, by their off-hire receipt.
- 4.3 At the Owner's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 4.4 The Owner may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.5 Any time specified by the Owner for delivery of the Equipment is an estimate only and the Owner will not be liable for any loss or damage incurred by the Hirer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that the Owner is unable to supply the Equipment as agreed solely due to any action or inaction of the Hirer, then the Owner shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.

## 5 Equipment Hire

- 5.1 The Hirer shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment, pledge the Owner's credit for repairs to the Equipment, nor be entitled to take a lien over the Equipment.
  - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
  - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Owner to the Hirer;
  - (d) ensure that all persons operating the Equipment are suitably instructed in the Equipment's safe and proper use and where necessary that the operator holds a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to the Owner upon request;
  - (e) comply with all work health and safety laws relating to the Equipment and its operation;
  - (f) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Owner (or the Owner's designated employee);
  - (g) keep the Equipment 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 Equipment;
  - (h) use the Equipment solely for the Hirer's own works and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
  - (i) satisfy itself at commencement that the Equipment is suitable for its purposes;
  - (j) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Owner or posted on the Equipment;
- 5.2 Returns:
- (a) the date upon which the Hirer advises of such shall in all cases be treated as a full day's hire;
  - (b) the Hirer must provide the Owner with three (3) full working days' notice that the Equipment is available for collection;
  - (c) the Return to the Owner's premises must be completed during normal business hours.
  - (d) in the event the Equipment is not returned to the Owner by the end of the specified hire period, the Hirer will be charged at the Owner's then current daily rate until such time as the Equipment is returned.
  - (e) the Hirer must not submit the Equipment for Return if it has not been cleaned (including all asbestos fibres and other hazardous particles or substances such as mortar, render, epoxy or other applied finishes, etc.).
- 5.3 Immediately on request by the Owner the Hirer will pay:
- (a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to the Owner;
  - (b) all costs incurred in cleaning the Equipment;
  - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
  - (d) the cost of repairing any damage to the Equipment caused by wilful or negligent actions of the Hirer or the Hirer's employees;
  - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Owner's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer;
  - (f) any costs incurred by the Owner in picking up and returning the Equipment to the Owners premises if the Hirer does not return the Equipment to the Owners premises or any pre-agreed pickup location when it was originally agreed that the Hirer would do so.
  - (g) any lost hire fees the Owner would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
  - (h) any insurance excess payable in relation to a claim made by either the Hirer or the Owner in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Hirer and irrespective of whether charged by the Hirer's insurers or the Owner's.
- 5.4 The Hirer accepts full responsibility for the safekeeping of the Equipment and the Hirer agrees to insure, or self insure, the Owner's interest in the Equipment and agrees to indemnify the Owner 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 or persons arising out of the use of the Equipment. Further the Hirer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

**6 Access**

- 6.1 The Hirer shall ensure that the Owner has clear and free access to the work site at all times to enable them to undertake the works. The Owner shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Owner.
- 6.2 It is the responsibility of the Hirer to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by the Owner.

**7 Compliance with Laws**

- 7.1 The Hirer and the Owner shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
- 7.2 The Hirer shall obtain (at the expense of the Hirer) all licenses and approvals that may be required for the works.
- 7.3 The Hirer agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

**8 Default and Consequences of Default**

- 8.1 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 one half percent (2.5%) per calendar month (and at the Owner's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 8.2 If the Hirer owes the Owner any money the Hirer shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Owner's contract default fee, and bank dishonour fees).
- 8.3 Further to any other rights or remedies the Owner may have under this contract, if a Hirer has made payment to the Owner by credit card, and the transaction is subsequently reversed, the Hirer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Owner under this clause 8 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Hirer's obligations under this agreement.

**9 Privacy Act 1988**

- 9.1 The Hirer agrees for the Owner to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Hirer in relation to credit provided by the Owner.
- 9.2 The Hirer agrees that the Owner may exchange information about the Hirer with those credit providers and with related body corporates for the following purposes:
  - (a) to assess an application by the Hirer; and/or
  - (b) to notify other credit providers of a default by the Hirer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Hirer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Hirer including the Hirer's repayment history in the preceding two years.
- 9.3 The Hirer consents to the Owner being given a consumer credit report to collect overdue payment on commercial credit.
- 9.4 The Hirer agrees that personal credit information provided may be used and retained by the Owner for the following purposes (and for other agreed purposes or required by):
  - (a) the provision of Equipment; and/or
  - (b) analysing, verifying and/or checking the Hirer's credit, payment and/or status in relation to the provision of Equipment; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Hirer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 9.5 The Owner may give information about the Hirer 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 Hirer including credit history.
- 9.6 The information given to the CRB may include:
  - (a) personal information as outlined in 9.1 above;
  - (b) name of the credit provider and that the Owner is a current credit provider to the Hirer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Hirer'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, 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 Hirer no longer has any overdue accounts and the Owner 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 Owner, the Hirer has committed a serious credit infringement;
  - (h) advice that the amount of the Hirer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 9.7 The Hirer shall have the right to request (by e-mail) from the Owner:
  - (a) a copy of the information about the Hirer retained by the Owner and the right to request that the Owner correct any incorrect information; and
  - (b) that the Owner does not disclose any personal information about the Hirer for the purpose of direct marketing.

- 9.8 The Owner will destroy personal information upon the Hirer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 9.9 The Hirer can make a privacy complaint by contacting the Owner via e-mail. The Owner will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Hirer is not satisfied with the resolution provided, the Hirer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## **10 Title**

- 10.1 The Equipment shall at all times remain the property of the Owner and is returnable on demand by the Owner.
- 10.2 If the Hirer fails to return the Equipment to the Owner then the Owner or the Owner's agent may (as the invitee of the Hirer) enter upon and into land and premises owned, occupied or used by the Hirer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 10.3 In the event that the Equipment is not returned to the Owner in the condition in which it was delivered the Owner retains the right to charge the Hirer the full cost of repairing the Equipment. In the event Equipment is not returned at all and the Owner is unable to repossess the Equipment as per clause 10.2 then the Owner shall have right to charge the Hirer the full cost of replacing the Equipment.

## **11 Personal Property Securities Act 2009 ("PPSA")**

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Hirer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all Equipment and/or collateral (account) – being a monetary obligation of the Hirer to the Owner for Services – that has previously been supplied and that will be supplied in the future by the Owner to the Hirer.
- 11.3 The Hirer 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 Owner 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 11.3(a)(i) or 11.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Owner 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 Equipment charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Owner;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of the Owner; and
- 11.4 The Owner and the Hirer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Hirer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Hirer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by the Owner the Hirer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Hirer must unconditionally ratify any actions taken by the Owner under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

## **12 Security and Charge**

- 12.1 In consideration of the Owner agreeing to supply Equipment, the Hirer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Hirer either now or in the future, to secure the performance by the Hirer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Hirer indemnifies the Owner from and against all the Owner's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Owner's rights under this clause.
- 12.3 The Hirer irrevocably appoints the Owner and each director of the Owner as the Hirer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Hirer's behalf.

## **13 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 13.1 The Hirer must inspect the Equipment on delivery and must within seven (7) days of delivery notify the Owner in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Hirer must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Hirer must allow the Owner to inspect the Equipment.
- 13.2 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).
- 13.3 The Owner acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

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## Complete Finish Pty Ltd T/A Complete Scaffold - Terms & Conditions

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- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Owner makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. The Owner's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Hirer is a consumer within the meaning of the CCA, the Owner's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If the Owner is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then the Owner may refund any money the Hirer has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and consumables which have been provided to the Hirer which were not defective.
- 13.7 If the Hirer is not a consumer within the meaning of the CCA, the Owner's liability for any defect or damage in the services or Equipment is:
- (a) limited to the value of any express warranty or warranty card provided to the Hirer by the Owner at the Owner's sole discretion;
  - (b) limited to any warranty to which the Owner is entitled, if the Owner did not manufacture the Equipment;
  - (c) otherwise negated absolutely.
- 13.8 Notwithstanding clauses 13.1 to 13.7 but subject to the CCA, the Owner 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 Hirer failing to properly maintain or store any Equipment;
  - (b) the Hirer interfering with the Equipment in any way without the Owner's written approval to do so;
  - (c) the Hirer using the Equipment for any purpose other than that for which it was designed;
  - (d) the Hirer continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (e) the Hirer failing to follow any instructions or guidelines provided by the Owner;
  - (f) fair wear and tear, any accident, or act of God.

### 14 Building and Construction Industry Security of Payments Act 1999

- 14.1 At the Owner's sole discretion, if there are any disputes or claims for unpaid Equipment and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 14.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

### 15 General

- 15.1 The failure by the Owner to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Owner's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which the Owner has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 15.3 The Owner shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Owner of these terms and conditions (alternatively the Owner's liability shall be limited to damages which under no circumstances shall exceed the Price of the Equipment hire).
- 15.4 The Hirer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Hirer by the Owner nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.5 The Hirer agrees that the Owner may amend these terms and conditions by notifying the Hirer in writing. These changes shall be deemed to take effect from the date on which the Hirer accepts such changes, or otherwise at such time as the Hirer makes a further request for the Owner to provide Equipment to the Hirer.
- 15.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 15.7 The Hirer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.