

Precision Scaffolding Pty Ltd – Terms & Conditions of Trade

<p>15.9 Subject to any express provisions to the contrary (including those contained in clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>15.10 Only to the extent that the hire of the Scaffolding exceeds a two (2) year hire period with the rental rate of clause 15 applying as a maximum in the term of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 15 will apply generally for the purposes of the PPSA.</p> <p>16. Security and Charge</p> <p>16.1 In consideration of the Supplier agreeing to supply the Scaffolding, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets owned or controlled by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>16.2 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.</p> <p>16.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.</p> <p>17. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")</p> <p>17.1 The Customer agrees, prior to signing the Handover Certificate, to 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.</p> <p>17.2 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).</p> <p>17.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>17.4 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.</p> <p>17.5 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the value permitted by section 64 of Schedule 2.</p> <p>17.6 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.</p> <p>17.7 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:</p> <ol style="list-style-type: none"> limited to the value permitted by section 64 of Schedule 2; limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Scaffolding; otherwise negated absolutely. <p>17.8 Subject to this clause 17, returns will only be accepted provided that:</p> <ol style="list-style-type: none"> the Customer has complied with the provisions of clause 17.1; and the Supplier has agreed that the Scaffolding are defective; and the Scaffolding are returned within a reasonable time at the Customer's cost (if that cost is not significant); and the Scaffolding are returned in as close a condition to that in which they were delivered as is possible. <p>17.9 Notwithstanding clauses 17.1 to 17.8 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:</p> <ol style="list-style-type: none"> the Customer failing to properly maintain or store any Scaffolding; the Customer using the Scaffolding for any purpose other than that for which they were designed; 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; the Customer failing to follow any instructions or guidelines provided by the Supplier; fire war and tear, any accident, or act of God. <p>17.10 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.</p> <p>18. Intellectual Property</p> <p>18.1 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 unless the Customer has obtained the designs, drawings and documents to be used without the express written approval of the Supplier.</p> <p>18.2 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.</p> <p>18.3 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.</p> <p>19. Default and Consequences of Default</p> <p>19.1 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.</p> <p>19.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).</p> <p>19.3 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 19 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.</p> <p>19.4 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:</p> <ol style="list-style-type: none"> 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; the Customer has exceeded any applicable credit limit provided by the Supplier; 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 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer. <p>20. Cancellation</p> <p>20.1 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Scaffolding to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.</p> <p>20.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel Delivery of Scaffolding or the supply of Labour at any time before the Scaffolding or the supply of Labour are due to be provided 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 either the Scaffolding or the supply of Labour. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>20.3 In the event that the Customer cancels Delivery of the Scaffolding or the supply of Labour, less than twenty four (24) hours, prior to the installation date then the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>20.4 Cancellation of orders for Scaffolding made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>21. Privacy Policy</p> <p>21.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 21.3, 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 IIC 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</p>	<p>"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 (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.</p> <p>21.2 Notwithstanding clause 21.1, 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:</p> <ol style="list-style-type: none"> IP address, browser, email client type and other similar details; tracking website usage and traffic; and 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"). <p>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.</p> <p>21.3 The Customer agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's licence details, contact details (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by the Supplier.</p> <p>21.4 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:</p> <ol style="list-style-type: none"> to assess an application by the Customer; and/or to notify other credit providers of a default by the Customer; and/or 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 to assess the creditworthiness of the Customer including the Customer's recent credit history in the preceding two years. <p>21.5 The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>21.6 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):</p> <ol style="list-style-type: none"> the provision of Scaffolding; and/or analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Scaffolding; and/or processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or enabling the collection of amounts outstanding in relation to the Scaffolding. <p>21.7 The Supplier may give information about the Customer to a CRB for the following purposes:</p> <ol style="list-style-type: none"> to obtain a consumer credit report; allow the CRB to create or maintain a credit information file about the Customer including credit history. <p>21.8 The information given to the CRB may include:</p> <ol style="list-style-type: none"> Personal Information as outlined in 21.3 above; name of the credit provider and that the Supplier is a current credit provider to the Customer; whether the credit provider is a licensee; type of consumer credit; 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); notice 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 Customer no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details following discharge (e.g. dates of payments); information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement; advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150). <p>21.9 The Customer shall have the right to request (by e-mail) from the Supplier:</p> <ol style="list-style-type: none"> a copy of the Personal Information about the Customer retained by the Supplier about the credit; request that the Supplier correct any incorrect Personal Information; and that the Supplier does not disclose any Personal Information about the Customer for the purpose of direct marketing. <p>21.10 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 in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.</p> <p>21.11 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 make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.</p> <p>22. Confidentiality</p> <p>22.1 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).</p> <p>23. Compliance with Laws</p> <p>23.1 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.</p> <p>23.2 The Customer shall obtain (at the expense of the Customer) all licenses, permits and approvals that may be required for the Services.</p> <p>24. Service of Notices</p> <p>24.1 Any notice given under this Contract shall be deemed to have been given and received:</p> <ol style="list-style-type: none"> by handing the notice to the other party, in person; by leaving it at the address of the other party as stated in this Contract; by sending it by registered post to the address of the other party as stated in this Contract; by handing the notice to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission; if sent by email to the other party's last known email address. <p>24.2 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.</p> <p>25. Trusts</p> <p>25.1 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 ("Trust") then whether or not the Supplier may have notice of the Trust, the Customer covenants with the Supplier as follows:</p> <ol style="list-style-type: none"> the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund; the Customer has full and complete power and authority under the Trust 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 or 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; the Customer will not 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: <ol style="list-style-type: none"> the removal, replacement or retirement of the Customer as trustee of the Trust; any alteration to or variation of the terms of the Trust; any advancement or distribution of capital of the Trust; or any resettlement of the trust property. 	<p>terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Scaffolding/Labour).</p> <p>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.</p> <p>26.4 The Customer cannot licence or assign without the written approval of the Supplier.</p> <p>26.5 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.</p> <p>26.7 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.</p> <p>26.8 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.</p> <p>26.9 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.</p> <p style="text-align: center;">Additional Terms & Conditions Labour Hire Only</p> <p>27. Services</p> <p>27.1 The Supplier undertakes to:</p> <ol style="list-style-type: none"> use its best endeavours to provide suitably qualified Candidates to undertake work duties in compliance with the Customer's requirements; make the payment of all amounts due to the Candidate under the terms of any relevant industrial instrument or contract; 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; deduct the requisite amounts of income tax, fringe benefits tax, payroll tax and all other applicable deductions as required by Australian law; ensure payment of any other statutory taxes, superannuation contributions and/or levies as required by Australian law; and maintain workers compensation insurance for all Candidates, except where state laws specify otherwise. <p>27.2 The Supplier's quotation shall specify:</p> <ol style="list-style-type: none"> the Services to be provided by each Candidate; the hours per Candidate of each Candidate; the commencement and termination dates of the Services; the location where Services shall be performed; and the Price payable by the Customer for the Services. <p>27.3 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, travel or tool allowances) shall be on-charged to the Customer accordingly.</p> <p>27.4 The Customer acknowledges that only lunch breaks shall be deducted from total hours charged by the Supplier to the Customer.</p> <p>27.5 The Customer acknowledges and agrees that the Customer's obligations to the Supplier for the supply of Services shall not cease until:</p> <ol style="list-style-type: none"> the Customer has paid the Supplier all amounts owing for the particular Services; 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. <p>28. Customer's Responsibilities / Agreements</p> <p>28.1 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.</p> <p>28.2 It is the responsibility of the Customer to:</p> <ol style="list-style-type: none"> provide supervision of Candidates to ensure that work is carried out to a satisfactory standard; and provide Candidates with appropriate information, supervision and training to enable them to work safely; and 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 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 ensure that the Candidate complies with all statutory and other obligations that are applicable pursuant to Australian law (including but not limited to, Work Health and Safety legislation) applicable to employers and otherwise to treat Candidates as if they were employed by the Customer; and 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 (a) 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 properly maintain plant and equipment; and 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. <p>28.3 The Customer agrees that:</p> <ol style="list-style-type: none"> 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; 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; it will immediately notify the Supplier of any injury sustained by the Candidate; 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. <p>28.4 The Customer acknowledges that:</p> <ol style="list-style-type: none"> 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 as if they were to be for any of their own employees; 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. <p>28.5 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.</p> <p>28.6 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.</p> <p>29. Employees of the Supplier</p> <p>29.1 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.</p> <p>29.2 The Customer agrees that if clause 29.1 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.</p>
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