

## **SOLIDSCAFF MANAWATU LTD – TERMS OF BUSINESS**

The following terms and conditions of trade are incorporated into every contract between the Customer and Solidscuff Manawatu Ltd (the Company) for the supply of services, unless otherwise specifically stated in writing by the Company.

The Solidscuff Manawatu Ltd Terms of business (in respect of Hireage and Sales), and as may be applicable Schedule II – Solidscuff Manawatu Ltd Special Terms and Conditions (in respect of Scaffolding, Safety nets) together with the Solidscuff Manawatu Ltd Quotation Acceptance, form the complete Terms of Engagement between the Customer and the Company and govern all contracts and dealings with the Company.

1. The Directors (in the case of a Company), or the Partners (in the case of a Partnership), or the Trustees (in the case of a Trust), or the individuals (in the case of Sole Traders or Private Individuals), are personally liable for all debts owing to the Company, and by signing the Solidscuff Manawatu Ltd Quotation Acceptance form, provide a personal guarantee of all moneys owing to the Company.
2. All obligations herein are joint and several. All obligations herein shall bind the Customer, their executors, administrators, successors and assigns.
3. The Company advises the Customer that it conducts its business under the terms of the Construction Contracts Act (2002).

### **Payments/Accounts/Dept collection**

1. Prior to any work commencing the Company requires a deposit payment, of 50% + GST of the erect and dismantle costs. The remaining 50% plus transport price and daily rental is invoiced and payable at final dismantle and return of equipment, along with any additional charges, damage, or non-return of equipment.
2. Payments are due as clause 4 above unless otherwise stated in the contract, payments are due within 7 days of invoice date. If the Customer supplies the Company a credit card number for payment of any charges, the Customer authorises the Company to process payments for any charges from the credit card during or after the term of hire, at the Company's discretion.
3. All amounts payable by the Customer are to be paid free and clear of, and (to the extent required by law) without deduction or withholding on account of any tax.

4. The Customer authorizes the Company at its sole discretion, to enter its interest in the Personal Property Securities Register and the customer hereby waives its right to be notified of any such registration of interest.
5. The Company reserves the right to correct any errors and omissions in relation to its quotations, payment claims or invoices.
6. If any amount due is not paid by the due date the Company may apply to the overdue amount a one-off 5% penalty charge. This penalty charge will be added to the previous overdue amount as at the due date and so will form a 'new' overdue amount.
7. The Company may also charge interest on any overdue balance from the due date to the actual date of payment, at a rate of 20% (twenty percent) per annum.
8. The Customer shall pay all costs directly and reasonably incurred by the Company in the enforcement and collection of any overdue amounts including any penalties, interest, legal fees, commissions or other associated collection charges.

### **Equipment Hireage**

1. All hired Goods offered by the Company are subject to equipment availability at the time of acceptance.
2. The hired Goods are and will at all times remain the sole and exclusive property of the Company, The Customer must not sublet the Goods to any other person.
3. The Company has the right of access to any site to which the hired Goods have been or are to be delivered and for any purposes connected with the hire transaction. When agreed site access is not available to the Company, additional costs associated with delay in delivery or collection of equipment, labour or materials will be charged to the Customer.
4. On site conditions not already identified or out of the Company's control (e.g. Asbestos, power, etc) may incur additional charges to the Customer.
5. Where a change to an agreed on site equipment placement area results in the Company incurring additional costs, these costs will be charged to the Customer.
6. The hired Goods must be located at the Customer's nominated site and not be removed from such site without the prior written consent of the Company.
7. The Customer must comply with all applicable laws, by-laws and regulations; take out and maintain all licenses; meet all operating expense relating to the use, operation and maintenance of hired Goods; and do so at its sole cost and expense. The Customer covenants and agrees to take all reasonable care in the housing, handling and operation

of the hired Goods so as to prevent damage to or loss or destruction of the hired Goods and in particular:

-to ensure that the hired Goods are used solely for the purposes intended by the manufacturer having regard to the capabilities and limitations of the hired Goods.

**8. The Customer must, at the expense of the Customer:**

-return the hired Goods in good working order, will neither abuse nor misuse the hired Goods, fair wear and tear resulting from proper use excepted;

- immediately notify the Company in the event that the hired Goods have been lost, stolen, damaged or destroyed or if the hired Goods are not operating in their proper manner

**9. Lost, Stolen, Damaged or Destroyed Goods: The Customer will:**

-pay any costs and expenses incurred by the Company to replace any hired Goods at market cost of the hired Goods (as determined by the Company), that result from loss, theft, damage or destruction of those hired Goods;

-pay any costs or expenses incurred by the Company to repair maintain alter or adjust the hired Goods if such repair, maintenance, alteration or adjustment is, in the sole determination of the Company (acting reasonably) due to the fault of the Customer (fair wear and tear resulting from proper use excepted); and

-ensure that, prior to taking delivery of the hired Goods, it has (at its own cost) insurance cover in place with a reputable insurer which provides for the full replacement value of the hired Goods and, if requested by the Company, will immediately provide evidence of the existence and currency of such insurance to the Company.

**10. The Customer will give three days notice of intention to return the hired Goods or request pickup ex-site. Failure to so inspect and confirm the quantities and general condition and repair of the hired Goods being returned will in no way limit the Customer's liabilities in respect of this contract. The decision, by the Customer, to return the hired Goods to the Company before the end of the agreed hire period does not enable the Customer to claim a refund or reduction of the Contract Price or any other charge.**

**11. At all times in the case of the Hireage the Customer must:**

-keep full and complete records of the Goods;

-return the Goods if requested to do so by the Company following non-payment of any amount owing by the Customer to the Company or non-fulfilment of any other

obligation of the Customer to the Company, without limiting any other right the Company may have

- give the Company the right to inspect the Goods or any part of them at all reasonable times

## **Conditions**

### **Liability:**

1. Insofar as the Company may be liable to the extent permitted by law , the total liability of the Company whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or noncompliance of any Goods or any other breach of the Company's obligations is limited to the lesser of:

- the price of the relevant Goods;
- the cost of repairing or replacing the defective Goods; or
- the actual loss or damage suffered by the Customer.

2. If the Customer makes a claim in writing to the Company in relation to the Services provided, the Company may, at its discretion, re-perform the Services, or refund the purchase price of those services to the Customer, provided that:

- the claim must be made in writing to the Company within seven days of date of delivery; and
- the Company must be given a reasonable opportunity to inspect the Goods.

3. Except where statute expressly requires otherwise, the Company is not liable in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.

4. While the Company will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or Service provided by the Company in relation to the Goods or their use or application, the Company does not accept any liability or responsibility in response to that advice, recommendation, information, assistance or Service.

5. indemnify the Company for and against any liabilities, losses, damages, claims, costs or expenses of whatever kind and nature incurred by the Company as a result of the Customer failing to take the action required under this clause..

**Default:** If, the Customer fails to pay any amount owing on the due date or is in breach of any other terms and conditions of this contract or any other contract between the Customer and the Company, and such default continues for three days.

-the Customer has an execution levied against it, becomes bankrupt or insolvent, or commits any act of bankruptcy or enters into or attempts to enter into any compromise or arrangement with its creditors (voluntary, informal or otherwise) or in the case of a company, does any act which would render it liable to be liquidated or have a receiver or statutory manager appointed over its property or if it has a liquidation order made against it or passes or attempts to pass a resolution for liquidation or is a party to the appointment of a liquidator or has a manager or receiver appointed over the whole or any part of its property or undertaking;

-the Company believes the Goods to be at risk for any reason whatsoever, including but not limited to the manner in which the Goods are used, or adverse weather or work conditions,

-the Goods are damaged lost, stolen or destroyed,  
then:

- the Contract Price and any other amounts outstanding with the Company together with any penalties and interest payable , will immediately become due and payable

- the Company may retake possession of any of the Goods provided to the Customer and for that purpose may, without notice, directly or by its agents, enter the premises where the Goods may be situated. In such event all costs and expenses incurred by the Company in the recovery of the Goods are to be paid by the Customer; and the Company may cancel any outstanding order with the Customer or all or any part of any contract with the Customer which remains unperformed in addition to and without prejudice to its other remedies. The rights of the Company under this paragraph are exercisable without prejudice to all other rights and remedies of the Company in consequence of the default or defaults of the Customer. The Company will not be liable for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person arising from termination of the contract or repossession of the Goods.

**Indemnity:** The Customer fully and completely indemnifies the Company against any and all claims, actions, suits, proceedings, costs, expenses, damages and liability, including (without limitation) all legal fees arising out of or connected with or resulting from any breach by the Customer of its obligations under this contract or as a result of injury to any person or property caused by or in connection with the use by the Customer of the Goods (including without limitation the manufacture, selection,

delivery possession, use, operation or return of the Goods) whether arising in law or equity.

**Privacy:** The Customer irrevocably authorises the Company to collect any information that it (at its sole discretions) determines it requires in relation to this contract (including, but not limited to, any information required order for it to undertake its credit or other enquiry about the Customer and to update its records from time to time) from any person or other entity. The Customer authorises the Company to disclose to any third party details of this application and any subsequent dealings that the Customer has or may have with the Company. The Customer acknowledges that to the extent provided under the Privacy Act 1993 the Customer is entitled to have access to and to request correction of any of the information that the Company has collected and that it holds about them pursuant to this application for credit. The Customer agrees to notify the Company of any changes to the particulars provided within this application.

**Force Majeure:** The Company will not be liable for any delay alteration or failure to perform its obligations under this contract if occasioned by any event beyond the Company's control ('force majeure'). The performance of the Company's obligations under this contract will be suspended for the period of any delay due to force majeure. Any additional costs incurred by the Company due to events beyond its control are payable by the Customer.

**Company Expenses:** The Customer will pay the costs and expenses including the legal fees incurred by the Company in exercising any of its rights or remedies or enforcing any of the terms, conditions or provisions of this contract.

No variation or waiver of these terms and conditions will be recognised or binding on the Company unless that variation is in writing and signed by the Company.

All obligations in this contract are joint and several and will bind the Customer, their executors, administrators, successors and permitted assigns.

This agreement is subject to and covered by the laws of New Zealand.



**Terms of Business acceptance**

Client/company name

SolidScaff Manawatu LTD

A handwritten signature in black ink that reads "PHIKU".

Name: \_\_\_\_\_

Philip Hiku

Position: \_\_\_\_\_

Managing Director

Date: \_\_\_\_\_