

## 1. Definitions and Interpretations.

In this Agreement unless the contrary intention appears: - **"PA"** means EFS Enterprises Pty Ltd T/A Pilbara Access Management Solutions WA. ABN 84 813 215 378 includes its servants or agents, legal representatives, administrators, successors and/or permitted assignees; **'PA's Unit List Rate'** means the document headed 'Price List' which lists the current weekly hire rate charged for each item of equipment. In the event of any inconsistency, the price of the Quotation shall prevail; **"PA Hire Yard"** means the location where PA stores the Equipment; **"Customer"** means the person named on the Quotation or the Delivery Docket and includes its servants or agents, legal representatives, administrators, successors and/or permitted assignees. In the event of any confusion, the terms of the Delivery Docket shall prevail; **"Equipment"** means the Equipment set out in on the Quotation or the Delivery Docket. In the event of any confusion, the terms of the Delivery Docket shall prevail; **"Force Majeure"** means a circumstance beyond the control of PA that result in it being unable to perform or perform on time any of its obligations. Such circumstances could include [without being limited to them]: (a) acts of god, fire, explosions or any other natural disaster; (b) industrial disputes; 9c) Governments control or regulation; **"Period of Hire"** means the period from the Starting Date to the Termination Date; **"Price"** means the price set out on the Quotation, or if there is none specified, the price set out in PA's Unit List rate; **"Starting Date"** means the date upon which the Equipment Leaves PA's Yard; **"Termination Date"** means the date the Equipment is received by PA; **Interpretation** (c) money is in Australian currency.

## 2. Period of Hire and Minimum Hire.

The period of hire is for the period set out in the Quotation, commencing when the equipment leaves PA's yard and ending when the Equipment is returned to PA's yard. The minimum hire period is one week and the minimum hire value is \$200. The Equipment can only be returned to PA's yard during PA's Scaffold Yard hours specified on the delivery docket and on the prior notice set out in clause "Price".

## 3. Continuing Hire if the Equipment is not returned, or returned rejected because of Condition of Equipment.

All Equipment not returned to PA by the end of the contract to the customer at the then current weekly rate of PA until such time as it is returned. The Customer has a duty of care to notify PA if the equipment is likely to be, or has been exposed to Asbestos fibres or any other hazardous substance. Prior to the returning such material the customer must produce a certificate of hygiene from an accredited hygienist, stating that the equipment has been cleaned in accordance with the Occupational Health and Safety Act 1995 [or its successor], Occupational Health and Safety Plant regulations, and any other applicable code of practice. The customer shall not return, or seek to return, equipment that is not cleaned of all asbestos fibres and other hazardous particles or substances, or is not the Equipment of PA. It is agreed that PA, and that the hire continues on all Equipment until it is returned in a safe condition.

## 4. Price.

The price is the price listed on the Quotation or PA's Unit List Rate, and is payable 30 days after invoice. The price is calculated on a weekly hire basis of 7 days per week. The minimum hire is 1 weeks. The price is

calculated on the Customer giving 2 full working weekdays' notice that the equipment is available for picking up.

PA is not responsible for any loss or damage that might result to the Customer if the Customer gives less notice, and the hire period is not affected by that lesser notice. All transport for this Quotation is based on (a) the industry accepted and agreed hourly working week, and (b) loading or unloading time of one hour per site visit.

## 5. Additional Charges – Non Quotation Items.

Additional charges shall be incurred by the Customer for costs incurred in the preparation of information [such as calculations, computations, and fees incurred for site inspections by engineers or inspectors] not including in the Quotation. Where the Customer orders extra Equipment to that detailed on the Original Quotation, then these Terms apply to the supply of that extra Equipment.

## 6. Additional Charges –Transport Requirements.

Additional charges shall be incurred by the Customer at the rate shown on the Quotation or PA's unit list rate should (a) transport be required out of normal working hours, or (b) transport needed to deliver or pick up the Equipment exceeds the allowance, or (c) the loading /unloading time exceeds the allowance, or (d) there be delays due to inability [totally or in part] to access the Site, either for loading or unloading.

## 7. Continuing Hire or Additional Charges –Palletising Of Scaffold Equipment.

Equipment is delivered to site stacked in pallets, wire baskets or in the case of boards stacked in bundles no more than 5 planks wide and 10 planks high. Prior to arranging the transportation of equipment back to PA's Yard it is the customer's responsibility to ensure that it is stacked in pallets, wire baskets and in case of boards stacked in bundles. All equipment returned to PA's yard is to be stacked in this manner so that it can be unloaded safely with a forklift. PA reserves the right to refuse to pickup or unload equipment which is not correctly palletised, stacked or capable of being unloaded safely.

## 8. Continuing hire or Additional Charges –Uncleaned Equipment.

Additional charges shall be incurred by the Customer should (a) the Equipment not have been cleaned by the Customer prior to the return to PA, or (b) all mortar, render, epoxy, paint or other applied finishes have not been removed prior to the return to PA; and PA agrees to accept the return of the Equipment in that condition. However, it is expressly agreed that PA may refuse to accept the return of Equipment in such condition, and that the Hire continues, at PA's Unit List Rate, until the Equipment is returned cleaned to the reasonable satisfaction of PA. If the equipment has been exposed to Asbestos fibres and/or other hazardous substances, it is expressly agreed that PA **may and will** refuse to accept such materials unless PA has received a certificate of hygiene from an accredited hygienist as noted above.

## 9. Additional Charges –Damaged Equipment Requirements.

Additional charges shall be incurred by the Customer should the Equipment be damaged and need to be repaired by PA. This will be charged at the then current rates of PA for repairs.

## 10. Interest on Late Payments

The customer shall pay interest on any money overdue during the period of default at a rate 2% higher than the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 as at the date of the default and the Price is altered accordingly.

## 11. Increase in Charges.

Increased charges shall be incurred by the Customer in the event of any Government or regulatory body imposing or increasing charges. Without limiting the generality, the Customer is liable for any, Goods and Services Tax or Sale Tax that might be imposed on the hire of the Equipment.

## 12. Delivery of Equipment and Delivery and Return Dockets.

PA's Delivery and Return dockets are prima facie evidence of (a) the quantity, and (b) the identity of the Equipment delivered or returned, and (c) the address of, and (d) date of delivery or return. The Customer is responsible, at its own cost, for providing a representative to check the accuracy of PA's Delivery and Return dockets. The customer agrees (a) that PA shall be able to deliver or accept return of the Equipment whether or not a representative of the Customer is present at the time of delivery or return, and (b) that should there be no customer representative present at the time of delivery or return, PA's Delivery or Return docket remains prima facie evidence of delivery or return; (c) the Customer hires and is responsible for the Equipment even if delivered by PA in the absence of a customer representative. No claims in respect of the Equipment delivered or returned shall be made by the customer 45 days after the date of the delivery or return of Equipment.

## 13. Customer solely responsible for Site Readiness and Site Suitability and Ongoing Site Suitability.

The Customer shall be responsible for (a) giving any local or other authorities any necessary notice of its intention to erect Equipment or to have Equipment erected; (b) payment of all fees in connection with those approvals; (c) the readiness of the site – matters such as that the site is cleared, is ready for the erection of the Equipment, that the foundations upon which the Equipment is to be erected are sufficiently firm and otherwise suitable safely to carry the Equipment and the load to be put on it without subsidence, that there is sufficient clearance for the Equipment and where necessary sufficient and safe power supply; (d) ensure that the supporting surface or structure is capable of withstanding the loads imposed by the Equipment prior to its use; (e) the inspection of Equipment every 7 days or immediately after severe storms or other adverse conditions, and the implementation of actions required as a result of those inspections. If PA is requested by the Customer to erect the equipment, then such erection shall be deemed to commence immediately after delivery of the Equipment. The Hire Period commences as set out in clause "Period of Hire and Minimum Hire".

## 14. Customer's Liability for Transport

The Customer is responsible: (a) to arrange transport, and therefore is deemed to have requested PA to act as its Agent for the purposes of arranging the transportation of Equipment; (b) for loss and damage to the equipment from that time and until the equipment is returned to PA's yard.

## 15. Customer not to relocate the Equipment

The Customer shall not move or relocate the Equipment from the address on the PA delivery docket without the prior written consent of PA. If the Customer breaches this Clause, then the Customer shall be liable to PA for the reasonable costs incurred by PA in locating the Equipment. PA may also in its sole discretion treat the Equipment as lost or damaged. The date that PA became aware of the re-location is deemed the date that the loss is reported to PA.

## 16. Mixing Materials

Under the Scaffolding guidelines it is not permissible to mix parts from different prefabricated scaffolding systems unless the supplier approves of the mix and gives certain guarantees.

You do not have our approval for mixing our scaffolding systems with any other system not supplied to you by us. If you do have your own stock of Kwikstage, Wedgelock or Milsystem scaffolding, or you are hiring such systems from other scaffolding companies, then you do not have our approval to mix the scaffolding hire from us with other such scaffolding. If you mix our scaffolding with other scaffolding not supplied by us we give no guarantee that:

- The components mixed are a compatible size and strength
- The components mixed have compatible deflection characteristics
- The fixing devices are compatible
- The mixing does not lessen the strength, stability, rigidity or suitability of the scaffold.

We will only permit mixing of the scaffolding system where the equipment is either supplied by us or has been maintained through our quality assurance programme.

We take no responsibility whatsoever for any equipment failure where you have mixed our scaffolding with that of others.

## 17. Customer's Liability for Equipment [including Insurance]

The customer is responsible for the equipment from the time the Equipment leaves PA's yard. The customer is responsible: (a) for the use of the Equipment during the Period of Hire; (b) to arrange Insurance to cover the loss of, or damage to, the equipment for any cause whatsoever during the Period of Hire, which includes while in transit; (c) to make available for PA's inspection on request, the insurance cover arranged on the customer's Plant and Equipment and/or General Property Policy; (d) to ensure that there is no defacing or removal of PA's ownership marking on the Equipment; (e) to ensure that there are no dealings with the equipment by the Customer which are inconsistent with PA's ownership of it.

## 18. Customer's liability for Lost or Damaged Equipment

Any equipment lost or damaged during the Period of Hire shall be charged by PA until the equipment is repaired or its value paid to PA by the Customer. If Equipment is lost or damaged beyond economical repair, then the customer agrees to pay PA the value of the Equipment as set out in PA's price list current as at the day the loss is reported to PA. Until PA receives payment for lost Equipment, or equipment damage beyond economical repair, hiring charges shall continue to accrue. Until

PA receives a return of the repaired equipment that had been damaged, hiring charges shall continue to accrue.

## 19. Customer's Liability for Drawings, Specifications, Inspections and Maintenance

Where the Customer does not engage PA to either erect or dismantle [or both] the Equipment, the Customer must ensure (a) that all scaffold drawings will be designed in accordance with the AS1576 – parts 1,2,3&4, and 9b) the scaffold is erected, dismantled, inspected, and maintained in accordance with those standards [or any update or replacement current at the time] and AS/NZS 4576:1995 – Guidelines for scaffolding [or any update or replacement current at the time], and (c) that the work is carried out by holders of a valid Corticated of Competency as a Scaffolder who have received the information, instruction, training and supervision stipulated by Section 21 (e) of the Occupational Health and Safety act 2004 (Act No – 107/2004) [or its successor].

## 20. PA's Right to Inspect

PA reserves the right at all times to during the period of hire to inspect the Equipment hired by the Customer wherever it might be.

## 21. Customer's Assignment and Credit Facilities

The customer's credit facility shall remain in the name as stated by the Customer on PA's application for credit facilities and shall not be changed without prior written consent of PA. The Customer shall notify PA prior to any change in the legal entity, structure, management or control of the Customer's business and PA is not bound to accept that change and afford any facilities or Equipment to the proposed new owners.

## 22. Customer's Indemnity to PA

The Customer hereby indemnifies PA for any loss, costs or damages that PA incurs as a consequence of the Customer's failure to carry out its obligations under any clause of this Agreement.

## 23. PA's liability to Customer

PA, subject to the Trade Practices Act, shall not be liable to the Customer in contract, tort or otherwise, for any loss howsoever caused which may be suffered or incurred, or which may arise directly or indirectly, in respect of the Equipment or the provision of services (including without limitation any delay in delivery, failure, man faction, defect or deterioration of the Product or any of them). To the extent permitted by law the liability of PA in respect of all conditions and warranties

Whatsoever implied in favour of the Customer (including but not limited to all conditions and warranties implied by Division 2 of Part v of the trade practices Act 1974 as amended shall be limited to: (a) in the case of goods, the replacement value or repair of such goods or the cost of having such goods replaced or repaired; and (b) in the case of services, the supplying of such services again or the payment of the cost of having such services supplied again. Save where otherwise provided by condition implied into these terms pursuant to any Federal or other legislation, any defect must be notified by the Customer to PA within 6 months of the date of supply. If defect is not so notified it shall not be accepted as a matter upon which the Customer may bring a claim. PA

shall not be liable for any delay or failure to perform its obligations if such is due to Force Majeure or where it arises by reason of non-payment of monies to it by the Customer [see clause "No Obligation to Supply a Defaulting Customer"].

## 24. Resolution of Claims

If a dispute arises either party may give written notice specifying the dispute. On receipt of that notice, the parties must endeavour in good faith to resolve the dispute expeditiously either between themselves or using mediation. Should mediation ensue, the parties must jointly appoint a mediator and agree upon the mediator's remuneration. If the parties fail to agree on the appointment and remuneration within 5 days of service of the notice, then there shall not be any mediation. Each party must pay an equal share of the cost of the mediation to the mediator. If the dispute is not resolved within 10 days after the mediator is appointed or any other time that the parties agree to in writing, the mediation ceases. Each party may then institute its own Court proceedings relating to the dispute. Nothing in these clauses shall prevent a party from seeking urgent equitable relief before an appropriate Court, or PA taking proceedings for unpaid monies.

## 25. PA's Right to Terminate

PA shall further be at liberty to terminate this agreement at any time without notice to the Customer, and without being liable in any respect whatsoever for damages for doing so, where

:- (a) the Customer is more than 30 days in arrears with payments due to PA; (b) the Customer ceases to, or threatens to cease to, carry on business; (c) the Customer changes legal entity, structure, management or control without the prior written consent of PA; (d) the Customer commits a breach of this or any other Agreement between PA and either the Customer or any company, person or entity related to or associated with the Customer; (e) the Customer being a Company, enters into liquidation either voluntarily or otherwise; (f) a Receiver and Manger or Administrator is appointed to any of the Customer's undertakings or assets; (g) the Customer proposes or makes any composition or arrangement with its creditors; (h) an Official Manger is appointed in respect of the Customer or Scheme of Arrangement is entered into by the Customer with its creditors; or (i) the customer being an individual or the customer being a number of individuals, any one or more of such individuals becoming bankrupt or applying to take benefit of any lawful relief of bankrupts or insolvent debtors or compounds with his, her or their creditors or making any assignment of their remuneration for the benefit of creditors.

## 26. PA's Rights on Termination

Upon termination, PA (a) may repossess the Equipment. The Customer hereby provides all necessary permissions to PA to do that, and indemnifies PA from any liability arising from entry onto the land and removal of the Equipment. The cost of repossession and transport to PA's yard shall be paid by the Customer. Repossession does not affect the right of PA to recover monies owing to it; (b) may continue to charge the hiring fee at its then existing rates until Equipment is

Returned to PA's yard; (c) may prevent the Customer from moving the Equipment from site to any other site except PA's yard; (d) may charge for any necessary cleaning or repair work; (e) be regarded as discharged from any further obligations under this Agreement; and (f) pursue any

## Terms and Conditions of Hire

additional or alternative remedies provided by law. PA shall not be liable by reason of termination or expiration of this Agreement to the Customer for compensation, reimbursement or damages on account of any loss or prospective profits on anticipated sales, or on account of expenditures, investments, leases or other commitments relating to the business or goodwill of the Customer, or any consequential loss incurred by the Customer or customers of the Customer. Any covenants, conditions and provisions that are capable of having effect after termination shall remain in full force and effect following termination.

### 27. Waiver

Any failure by PA to enforce any clause of this Agreement, or any forbearance, delay or waiver of its rights under indulgence granted by it to the Customer will not be construed as a waiver of its rights under this Agreement.

### 28. Severability

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions that shall be deemed deleted.

### 29. Survival of Agreement

Subject to any provision to the contrary, this Agreement shall endure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but shall not endure to the benefit of any other persons. The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

### 30. Variation

The provision of this Agreement shall not be varied, except by agreement in writing signed by the Parties.

### 31. Authority

The Parties to the Agreement each warrant to the other that they have obtained all necessary authorities and consents to enable them to enter into the Agreement and to be bound thereby and to perform their obligation hereunder.

### 32. Notices

Notices under this Agreement may be delivered by hand, by mail or by facsimile to the addresses given in the Quotation or Delivery Docket.

### 33. Governing Law

This Agreement takes effect, is governed by, and shall be construed in accordance with the laws of the State of Western Australia and each party hereby unconditionally submits to the jurisdiction of the Courts of Western Australia, Australia and of any Court competent to hear appeals there from.

### 34. Sale Transactions (excluding lost equipment invoiced as a sale)

Property in the equipment shall pass to the Customer at the time the equipment is paid for in full by the Customer, unless otherwise agreed to in writing by PA. (b) Until PA has received payment in full for the equipment, the Customer shall hold the equipment as bailee for PA. The Customer may deal with the equipment in the ordinary course of its

business. If the equipment or part thereof is resold by the Customer, before payment by the Customer to PA, the Customer shall hold such part of the proceeds of any such sale as represents the unpaid sale price on trust for PA in a separate, identifiable account, and shall forthwith pay such amount to PA; (c) all risks in respect of the equipment will be borne by the Customer from the time the equipment ceases to be in the actual possession of PA; (d) equipment purchased from PA shall be identified, or held in a manner, which enables it to be distinguished from items purchased from other suppliers. The Parties agree that PA shall not be obliged to retake possession or accept the return of the Equipment in mitigation of its damages. Payments made by credit card will attract an additional charge of 2% of the purchase price.

### 35. No obligation to supply a defaulting customer.

The customer acknowledges that its obligations to make payments to PA as and when they fall due are of paramount importance. Therefore, in the event that a Customer is in default with any payments due to PA, then PA may refuse to continue supply on any Orders [and not just the Order on which there is default] by the Customer. If the customer does not remedy the default, PA may terminate all Orders with it by the Customer [see clause "PA rights on termination"].