

AUSTRALIAN SCAFFOLDS & ACCESS PTY LTD GENERAL TERMS OF DELIVERY AND PAYMENT

1. Area of validity

These General Terms of Delivery and Payment shall apply exclusively to any legal transaction with business enterprises. Our General Terms of Delivery and Payment shall apply exclusively. They shall also apply to all future business transactions, even if they are not explicitly agreed again. Any deviating general terms of business or purchase which you may stipulate shall not be valid; they are herewith objected to.

2. Offer, confirmation of order

Our offers shall be subject to change and non-binding. Declarations of acceptance and orders shall require our confirmation in writing in order to be legally valid. The same shall apply to any additions, alterations or supplementary agreements. Our written confirmation of order shall determine the scope, content and pricing of every delivery.

3. Price basis

In the absence of any confirmation to the contrary, our valid prices at the time of conclusion of the contract shall apply, subject to GST at the applicable statutory rate. If more than 3 months elapse between the conclusion of the contract and the delivery and if there are any changes in wage, material and distribution costs, the net list prices or performance prices that are applicable at the time of delivery or completion shall apply, subject to GST at the applicable statutory rate. The prices stated in our price lists shall be deemed to be customary in the location and reasonable.

4. Scope of delivery

The scope of the delivery shall be solely as defined in our written confirmation of order. Partial deliveries and performance shall be permissible insofar as they are acceptable for you.

5. Payment period, cash discount

Unless there is any agreement to the contrary, our invoices shall be due within 14 days after the invoice date with 2% cash discount or within 30 days after the invoice date without deduction, irrespective of whether the invoice is passed on to any third parties or has been cleared for payment by third parties. If the delivery is delayed for reasons for which you are responsible, the invoice shall be issued with the notification of our readiness for delivery, but no earlier than the originally agreed delivery date. Cash discounts shall not be applicable if any due invoices are outstanding at the time when the discounted invoice amount is received. If you are in arrears with the payment of any of our invoices, all other outstanding invoices shall be immediately due for payment.

6. Rights of retention

You shall only be entitled to claim any rights of retention if your counterclaims have been granted in an enforceable ruling, are undisputed or have been recognised by us. In addition, however, you shall only be entitled to claim these rights insofar as your counterclaim is based on the same contractual relationship.

7. Prohibition of assignment

You are not entitled to assign any claims of any kind arising from our business relationship to third parties.

8. Debt collection authority

Our staff or our commercial agents shall be entitled to collect any debts insofar as they have been authorised to do so. This shall also apply to any sales from stock.

9. Transport, packaging, insurance and vehicle costs

Our prices are fundamentally deemed to be ex works without packaging. You will bear the transport, packaging, insurance and vehicle costs, unless noted elsewhere.

10. Credit for packaging materials

If we have previously charged for reusable transport equipment such as pallets, box pallets etc., we shall credit the corresponding amounts if they are returned to us promptly and for us free of any costs.

11. Costs of returns

Insofar as we recover any materials as a result of our reserved rights, you shall bear any costs which we incur. In individual cases, these costs may correspond to the net value of the goods at the time of collection. You shall be entitled to prove to us that these costs have not arisen or were less than the amount claimed.

12. Transfer of risks

Insofar as the risk has not already passed to you, the risk shall be transferred to you at the latest as follows:

13. Transfer of risk for collection, loading or handover

Either, at the time of collection, loading or handover to the haulage contractor or carrier, irrespective of whether we dispatch the goods, you collect them or whether we or you commission any third parties, and irrespective of whether the dispatch is carriage paid, freight collect or for a fixed charge, even if partial deliveries are made.

14. Transfer of risk in the event of a delay in acceptance

In the event of any delay in the above circumstances for which you are responsible, or insofar as you are in default of acceptance for other reasons, the risk shall pass to you with our notification of readiness to deliver.

15. Securities

Until all claims or receivables which we have against you now or in the future on any legal grounds have been met, you grant us the following securities:

a. Reservation of title

All goods supplied by us shall remain our property until all claims arising from the business relationship have been completely paid and fulfilled. This shall also apply to disputed and/or conditional claims or receivables. You shall be entitled to have disposal of the goods in the normal course of business operations as long as you are not in arrears with payment.

b. Extended reservation of title

You fully assign to us in advance by way of security all claims or receivables related to the goods arising from a resale or on any other legal grounds. We herewith accept the assignment. Insofar as we include our claims or receivables in a current account relationship with you, the advance assignment shall also apply to the corresponding claim for payment of the balance.

16. Authorisation for collection of accounts, revocation of direct debit authorisation, no other assignment, notification in the event of any third party claims.

We herewith grant you a revocable authorisation to collect the assigned claims or receivables for our account in your own name. This authorisation for the collection of accounts may only be revoked if you are in arrears with your payment obligations or if we become aware of any protest against cheques or bills of exchange, any cessation of payments or any negative information about you. You shall not be entitled to make any assignment to any other parties. You shall be entitled to collect these claims or receivables as long as you meet your payment obligations. You must inform us immediately of any seizure or any other interventions by third parties which affect our property or rights.

17. Details of customers

If we so demand, you shall be obliged to provide us with details of your individual claims or receivables to third parties which have been acquired as stipulated in subsection 12.3, to inform your purchasers of the assignment and to instruct them only to make payments to us. We shall be entitled at any time to notify the purchasers of the assignment and to collect the claims or receivables ourselves.

18. No authorisation to collect in the event of insolvency

This authorisation to collect receivables shall be deemed to have been revoked if any application is made for bankruptcy proceedings to be initiated against your assets or for you to make a declaration in lieu of oath.

19. Release of securities

You shall be entitled to demand the partial or complete release of securities if their realisable value exceeds the secured claims or receivables by 20%.

20. Authority to collect goods

To secure our property rights, including the event of any arrears of payment, you grant to us or to any third parties commissioned by us the right to enter your property or premises at any time in order to collect the products and other goods delivered to you and to recover any products and other goods which are our property. The same shall apply if our products and other goods need to be collected from your customers.

To prevent unnecessary costs, you agree to this process and you explicitly consent to this procedure.

You shall be obliged to reimburse us for all expenses and costs which we incur in connection with the enforcement of our claims for the surrender or collection of our material.

21. Warranty

For any defects in the delivery, we shall be liable without prejudice to subsection 13 as follows, to the exclusion of any further claims:

22. Requirement to give notice of obvious and apparent defects

Obvious and apparent defects, short deliveries and mistaken deliveries shall be notified promptly in writing on the consignment note, quoting the number of the delivery note; otherwise, any enforcement of warranty claims shall be excluded.

23. Requirement to give notice of defects that are not obvious

Defects that are not obvious shall be deemed to have been approved if they have not been notified to us in writing, quoting the number of the delivery note, promptly after detection, but at the latest 14 days after the transfer of risk. To comply with this period, it shall be sufficient if the notification is sent in time.

24. Burden of proof for notices of defect, reimbursement of expenses

You shall bear the full burden of proof for all circumstances which justify any claim. If a defect notice is incorrectly submitted, you shall reimburse all expenses incurred by us.

25. Remediation, subsequent delivery, late subsequent fulfilment

In the event of defects, at our own discretion we shall initially either remedy the defects or supply defect-free replacement goods. If the subsequent fulfilment fails, you shall be entitled at your own discretion to demand a price reduction or revoke the contract. In the event of minor defects, the remedies of revocation and refusal of acceptance or receipt shall not apply.

You shall have a right of revocation if we are unable to meet your claim to subsequent fulfilment by delivering defect-free replacement goods within four weeks. Over and above this right, you shall not be entitled to any further claims, not even for compensation for any damage or loss caused by the delay.

26. Use according to instructions, compliance with maintenance work and tests

Your claims are also on the assumption that our parts have been used according to the instructions by technically qualified personnel, that any prescribed or necessary maintenance work and tests have been carried out and that the technical regulations for scaffolding have been complied with or adhered to, including, without limitation, for erection, planning and all relevant technical, official or statutory requirements for the specific use.

27. Representations in sales literature

Our sales literature does not contain any quality descriptions nor any assured characteristics. Our confirmation of order shall be exclusively applicable. Insofar as we refer to approvals or certification, this means that our products and other goods meet the requirements for the respective approval or certification to the required extent and subject to the requirements stipulated by the approval or certification.

This does not mean that our products and other goods will meet the requirements of the specific use designated by you simply on the basis of the approval or certification.

Details provided about a certification or approval shall not release you from your duty as the user to inform yourself about all technical and statutory requirements for the structural design, structural stability, application or use.

Our products and other goods must always be used by you in compliance with the specific structural requirements, the local circumstances and the specific requirements of public authorities or the law.

28. Defective instructions for assembly and use

Any defective instructions for assembly and use shall be deemed to be only a minor and slight violation of our obligations. Here, you shall only be entitled to

the delivery of defect-free operating instructions if the proper use of our parts would otherwise not be possible.

29. Legal consequences of a grossly negligent or wilful violation of obligations

You shall only be entitled to further claims if we have violated any obligation deliberately or by gross negligence. Any compensation claims for the violation of cardinal contractual obligations, if caused by slight negligence, shall be limited to the foreseeable damage that is typical in contracts of this type. We shall not be liable for slightly negligent violations of minor contractual obligations.

30. Expiry by limitation

Claims for material defects which are not based on a purchase of consumer goods shall expire by limitation one year after the collection, delivery, hand-over or notification of readiness for forwarding at the latest, unless we are open to allegations of fraud.

31. Limitations of liability and expiry by limitation

The above limitations of liability and expiry by limitation shall not apply to claims arising from product liability, the loss of life, physical injury or damage to health. This shall be without prejudice to the statutory limitations of liability.

32. Rights of recourse

Any rights of recourse of you as the purchaser against us at the supplier shall only exist insofar as you have not made any agreements with your customer which go beyond the statutory claims for defects.

33. Used products

The contractually agreed condition of any used goods shall be the condition at the time of purchase. Any wear and tear in keeping with the duration of the use of such goods shall not constitute any violation of major contractual obligations. Otherwise, any warranty for material defects is excluded.

34. Binding written information

Any information provided by our staff by word of mouth shall be deemed to be voluntary services. Any statements made by our staff by word of mouth shall only be legally binding with our written confirmation.

35. Binding delivery periods, delivery dates

Our delivery periods and dates shall only be binding if we have confirmed them as binding in writing. We object to any fixed period or deadlines which you may stipulate.

36. Statement of delivery periods, delivery dates, scope of delivery

Our written confirmation of order shall be solely binding for the delivery periods, delivery dates and scope of delivery. Delivery periods or delivery dates stated by us shall otherwise be non-binding and shall represent the provisional date of dispatch or collection of the goods from our factory in Riverstone NSW.

37. Compliance with delivery periods, delivery dates

A delivery period or delivery date that has been confirmed in writing shall be deemed to have been complied with if we have notified you of the availability, completion or readiness for dispatch of the goods by the delivery date or the end of the delivery period, if the goods have left our factory or been handed over to the carrier, haulage contractor or any other party designated to carry out the dispatch in such a way that under normal circumstances the delivery can be expected to be in time.

38. Requirement for compliance with any periods or dates

Compliance with any periods or dates shall be subject to the following cumulative conditions: that you have provided all documents, any necessary approvals and releases and any plans in good time that you have made the agreed payments in time and in full and that you are not in arrears with any payments. If this is not the case, the periods or dates shall be extended in accordance with the delay for which you are responsible.

39. Extension of any periods in the event of force majeure

If we are unable to comply with any periods or dates because of force majeure, e.g. strike or lockout, the contractual periods or dates shall be appropriately extended.

40. Delayed delivery

We shall be considered to be in arrears with the delivery if you have set us a reasonable extension period at the earliest 2 days after the non-binding delivery date or the non-binding delivery deadline, and this period has elapsed without any result. Any liability ensuing from this shall be restricted to wilful or grossly negligent violations of contract.

41. Right of revocation

In the event of any protest against cheques or bills of exchange, cessation of payments, negative information We shall be entitled to revoke the contract if we learn of any protest against cheques or bills of exchange, any cessation of payments or any negative information about you.

42. Lump sum compensation claim

If we revoke the contract for these reasons, we shall be entitled to a lump sum compensation of 20% of the net order value. You shall be entitled to prove to us that we have not incurred any such loss, or that any loss incurred was less than this amount. You shall not be entitled to claim any other rights.

43. Options in the event of technical or material procurement difficulties for which we are not responsible

In the event of unforeseeable technical or material procurement difficulties for which we are not responsible, we shall be entitled to revoke the contract. In this case, there shall be no other unilateral or mutual claims.

44. Copyright, rights of disposal and exploitation, transmission of documents and data to third parties

We reserve without limitation all rights to all documents and all information which we have given to you, including, without limitation, offers, cost estimates, technical drawings, all illustrations and plans, especially our rights of disposal and exploitation under property and copyright law.

All documents and data belonging to us may only be made accessible or handed over to third parties, copied, duplicated or transferred to a data medium in whole, in part or in extracts with our prior written consent.

45. Significance of illustrative or drawn representations, details of the structural design, structural stability, designated use or purpose

Any illustrative or drawn representations of the possible or actual use of our parts are only by way of example and serve only to illustrate the possible applications. They shall not constitute any legally binding assurance in relation to their type or their possible or permissible application or use.

Any details or representations of the structural design, erection, planning, securing, structural stability, designated use or application shall only be regarded as examples, and are therefore non-binding. Any such details or representations shall not release you from your duty as the user to inform yourself about all technical and statutory requirements for the structural design, erection, planning, securing, structural stability or the designated application or use.

Our products and other goods must always be used by you in compliance with the specific structural requirements, the local circumstances and the specific requirements of public authorities or the law.

You shall be obliged to comply with and adhere to all relevant technical, public authority or statutory requirements for the specific application.

We explicitly point out that you alone, as the user of our products and other goods, are responsible for the safe erection, modification, dismantling and stability of the products, the type, selection, implementation and testing of the fixing materials, compliance with the relevant standards, the technical regulations for scaffolding, the generally accepted engineering principles for the planning, erection and implementation of scaffolding, and for compliance with all public authority regulations and statutory provisions, including without limitation all provisions imposed by the building inspectorate or under building law, the regulations for safety in the workplace, giving special attention to the accident prevention regulations.

In addition, you as the user of the ORIGINAL LAYHER products and other goods shall be responsible for using them for the designated purpose and ensuring the operational safety of the scaffolding, proper marking and identification and for testing.

If any scaffolding is erected in deviation from the normal configuration, you shall be responsible for ensuring that structural stability is documented or certified according to the necessary extent, e.g. by providing execution plans for the individual case, supplemented by your assessment according to professional experience.

This shall also be supplemented by the details provided in our instructions for assembly and use.

46. Mixed use of ORIGINAL LAYHER products

All details or representations in our product brochures shall only apply to the exclusive use of ORIGINAL LAYHER products. Our products are designed, produced and configured in their functions exclusively for use with other Layher products. ORIGINAL LAYHER products differ in their structural design, material and production processes from the products of other manufacturers or imitation products.

We are unable to make any statement concerning any use of LAYHER products in other systems or mixed with other products. This shall also apply to any use of copies of ORIGINAL LAYHER products.

We therefore accept no liability if our ORIGINAL LAYHER products are used mixed with other products. In this respect, you shall indemnify us against all claims by any third parties.

Insofar as we make any statements with regard to product features, possible applications, structural design details, erection variants, anchoring options, application techniques, technical data or compliance with statutory regulations or standards, in each case these statements shall only apply to ORIGINAL LAYHER products or their exclusive use.

47. Privacy, security

We record your personal data only for the purpose which you specify when you make them available. Your personal data will be used only within Australian Scaffold.

You agree and authorise us to process, store and analyse the data which we receive in connection with the business relationship in compliance with the relevant data protection regulations.

48. Securities Act

This is a payment claim made under the Building and Construction Industry Security of Payment Act 1999 NSW.

General Rental Terms

The General Terms of Delivery and Payment, of any ORIGINAL LAYHER products and other goods rented from us shall be subject to the following provisions.

1. Subject of the contract, offer, rental period, rental prices, costs

1.1 Subject of the contract

This rental contract grants you the right to use ORIGINAL LAYHER products and other goods for the agreed duration and for the designated purpose in Australia.

1.2 Rental offer subject to change

Rental offers are non-binding and subject to change. They are subject to the proviso that corresponding rental material is available when the rental period begins.

1.3 Rental period

1.3.1 The rental period shall be agreed in the contract. It shall begin on the day delivery leaves our yard in Riverstone NSW.

1.3.2 Unless there is any agreement or confirmation to the contrary, rental contracts are concluded for a minimum rental period of 4 weeks. Our rental prices refer to a rental period of 4 weeks unless there is any agreement or confirmation to the contrary. Any 4-week period or part of such a period shall be charged in full.

1.4 Rental price

1.4.1 The rental prices shall be calculated from the date of delivery dispatch or collection. All subsequent rental periods shall be invoiced in advance for a period of 4 weeks unless there is any agreement or confirmation to the contrary. Rental invoices shall be payable prior to delivery or collection unless noted elsewhere.

1.4.2 Our rental prices that are valid for the respective rental period shall apply and shall be subject to GST at the applicable statutory rate. In the event of an increase in the rental prices, you shall be entitled to an extraordinary right of termination if you have objected to the price increase in writing without delay. The prices stated in our price lists shall be deemed to be customary in the location and reasonable.

1.5 Costs of transport, packaging, insurance

You shall bear the costs of transport, packaging and insurance of the ORIGINAL LAYHER products and other goods to the place of deployment unless noted elsewhere.

1.6 Arrears of payment, authority to collect goods

1.6.1 If you are more than 14 days in arrears with your payment obligations, we shall be entitled to revoke all rental contracts with you immediately without notice and to enforce the immediate handover of all rented items to us. In this case you shall not be entitled to any right of retention.

1.6.2 In the event of a notice of termination, we shall be entitled to take immediate possession of and collect the ORIGINAL LAYHER products and other goods rented by you either in whole or in part at our discretion. In addition to that in this case, either we or any third parties commissioned by us shall be entitled to enter your property or your business premises in order to collect the ORIGINAL LAYHER products and other goods rented by you. The same shall apply if our ORIGINAL LAYHER products and other goods need to be collected from your customers.

1.6.3 To prevent unnecessary costs, you are in agreement with this process and you explicitly consent to this procedure.

2. Your duties as the renting party

2.1 Acceptance

You shall be obliged to carry out acceptance of the rented goods. You shall confirm to us at our discretion in writing that you have taken over the rented goods properly and that they are fully functional without restriction, e.g. on a delivery note, consignment note or confirmation of receipt. The rented goods shall be inspected by you promptly after receipt to ensure that they are complete and free from defects. Any defects or short deliveries shall be notified promptly; otherwise the enforcement of any claims shall be excluded.

2.2 Use of the rented goods, instructions for assembly and use shall be obliged to comply with all requirements for the use of the ORIGINAL LAYHER products and other goods rented from us and to carry out any necessary registration or obtain any approvals for the use of the rented goods. You shall take out the necessary insurance at your own expense.

2.3 No mixing

2.3.1 You shall use the rented goods exclusively with other ORIGINAL LAYHER products and other goods. We explicitly point out that any mixing of ORIGINAL LAYHER products and other goods with products from other manufacturers or copies of our products is not covered by the purpose of the rent.

2.3.2 You indemnify us against any liability which results from any mixed use of ORIGINAL LAYHER products and other goods.

2.4 Use for the designated purpose, costs of maintenance and repairs

You undertake to use the rented goods exclusively for the designated purpose. You must maintain the rented goods in a contractual condition and carry out any repairs at your own expense. This shall not release you from your obligations of the rental contract, especially the obligation to pay the rental price.

3. Transfer of risk

In relation to the transfer of risk, e.g. if the goods are accidentally lost by loss or theft or if they deteriorate accidentally by damage, the provisions in the above Section I. General Terms of Delivery and Payment, No. 11, 11.1 and 11.2 shall apply accordingly, and collection shall be deemed to be the same as handover.

4. Place of deployment

The places of deployment shall be notified to us on demand. If we are not informed of a place of deployment in spite of a warning of termination, this shall entitle us to terminate the rental contract without notice and to claim compensation.

5. Warranty

5.1 In the event of any defects in the rented goods at the time of handover, we shall provide warranty for material deficiencies by either repairing the defects or supplying defect-free replacement goods. You shall be entitled to reduce the rental price if two attempts at repairing the defects or supplying replacement goods fail. We shall be entitled to supply a technically and economically equivalent ORIGINAL LAYHER product instead of the rented product.

5.2 The provisions of the above Section I., General Terms of Delivery and Payment, No. 13 shall apply accordingly.

6. Liability

You shall be liable for all damage which arises during the use of the rented goods.

7. Rights to return goods, remediation of defects

7.1 Return of goods

After the end of the contract, the renting party shall be obliged to return the rented goods to our registered place of business in Riverstone NSW unless noted elsewhere in full, free from any contamination, insured and at its own cost and risk.

7.2 Return delivery note, manner of return

Unless noted elsewhere you undertake to return all rented ORIGINAL LAYHER products and other goods with a delivery note quoting our delivery data. You shall return the rented goods in such a way that they can be unloaded by us with a fork-lift truck without any extra work and expense and transported on the company premises. If this is not done, you shall reimburse us for the extra work and expense. You shall be entitled to prove to us that we have not incurred any such extra expense, or that any extra expense was less than the amount charged by us.

7.3 Deterioration, deviations from the condition when delivered

Any deterioration of the rented goods at the end of the rental period, or any deviation from the condition when delivered, shall be at your expense unless they are due to the designated use or would have occurred through the designated use. You shall bear any costs of cleaning or repair. Insofar as we consider that parts cannot be repaired or the repair cost exceeds the net list price, we shall be entitled to refuse to accept the return of damaged rented goods, and instead to demand compensation for the amount of the net list price. You shall be entitled to prove to us that we have not incurred any such loss, or that any loss was less than the amount charged. This shall also apply if you have made technical changes to the rented goods.

7.4 Rented goods which no longer exist or are defective

If any rented goods no longer exist at the time when they are to be returned or taken back, or if they are defective as defined in No. 7.3, we shall invoice you for these goods at the respective net list price. You shall be entitled to prove to us that we have not incurred any such loss, or that any loss was less than the amount charged.

7.5 Cleaning or repair costs

Any necessary cleaning or repair costs shall be charged to you at reasonable and customary costs.

7.6 Extent to which goods are taken back

We shall only take back the ORIGINAL LAYHER products and other goods which we provided to you under the respective rental contract.

7.7 Late return of goods

7.7.1 If you, as the renting party, do not return the goods which are the subject of the contract after the expiry or termination of the rental period, or if you do so late, we shall be entitled to demand a usage charge equivalent to the agreed rental price as compensation for the time for which we are deprived of the goods. The right to claim compensation for further damage or loss is reserved.

7.7.2 Any continued use of the rented goods shall not lead to an extension of the rental contract. We herewith object in advance to any implicit extension of the rental contract. For the duration of any continued use, the valid rental price shall be charged as compensation for use. This stipulation of compensation for use is customary in the location and reasonable.

8. Premature termination

If you fail to comply with major obligations or do not do so in time or in full, we shall be entitled to terminate the contract without notice. Without prejudice to any further claims, you shall remain obliged to pay the rental price for the remaining term of the rental contract or until the next possible termination date.

9. Purchase

If you decide to purchase the rented goods when the rental contract ends, you shall be granted a discount on the purchase price in keeping with customary market practices. The obligations arising from the rental contract shall remain in force until the amount due to take over the goods has been paid in full.