

General Conditions of Hire Page 1 of 7

**SGB-CAPE including SGB SCAFFOLDING SYSTEMS OSS (a division of WACO AFRICA (PTY) LTD)
SCAFFOLD M-POWER (PROPRIETARY) LIMITED (a subsidiary of WACO AFRICA (PTY) LTD)
SGB SCAFFOLDING SYSTEMS (A division of WACO AFRICA (PTY) LTD)
(that one of which shall be the contracting party being hereinafter referred to as “the Supplier”)**

GENERAL CONDITIONS OF HIRE

1. The period of contract hire begins on date of delivery and ends on date of collection of equipment. A portion of a week shall be charged as a full week.
2. Quotations and prices exclude Value Added Tax (VAT). VAT will be charged and be payable at the current rates, unless the Customer provides written proof of its exemption from payment of VAT.
3. Quotations are valid for 30 days from date of quotation and are subject to the Supplier having labour, equipment and transport available and being able to start work within 3 months of receipt of the Customer's official order. No equipment or services will be supplied without an official written order.
4. Any retention imposed by the Customer's principal shall not be withheld when payment is made, as the equipment does not form part of any permanent structure.
5. The Customer is responsible for all the Supplier equipment from the first day of delivery to the last day of collection. The Customer shall make good to the Supplier any damage to the Supplier's equipment whilst on site unless caused by the negligence or willful act or default of the Supplier or its employees. The Customer shall pay the cost of repair in respect of any such damage for which it is so responsible.
6. Unless the parties agree otherwise in writing, the Customer shall take delivery of the equipment at the Supplier's premises and shall return it to such premises.
7. If the parties agree the Supplier shall deliver, and take return of the equipment at a place other than the Supplier's premises, then:
 - 7.1 The Customer shall pay the transport charges as agreed in writing; and
 - 7.2 Delivery at the agreed place of delivery, shall constitute good delivery whether or not anyone acknowledges delivery on behalf of the Customer.
8. On delivery the Customer shall sign the Supplier's delivery note and a delivery note signed by the Customer or by someone purporting to sign on behalf of the Customer or by anyone else at the agreed place of delivery shall be proof, until the contrary is proved, of the delivery of the equipment listed thereon, in good condition.
9. The Supplier may deliver the equipment in more than one consignment in which event each consignment may be invoiced separately and the Hire Contract Period, the Hire Charges etc, in respect of each consignment shall be deemed to commence on date of delivery of such consignment.
10. The Customer shall erect and dismantle the equipment.
11. The Customer shall, both on delivery and regularly thereafter, inspect the equipment for defects.
12. Should any defect be discovered, the Customer shall forthwith
 - 12.1 Notify the Supplier thereof in writing.
 - 12.2 Take steps to ensure that the equipment does not constitute a danger to any person or property by reason of such defect, and
 - 12.3 Disengage the defective portion from the rest of the equipment.
13. Any advice given by the Supplier on the use of the equipment (including drawings, design and specifications) shall not confer any right of action on the Customer in the event of such advice being incorrect, unless the advice is given negligently and is in writing and signed by a registered professional engineer.
14. Any rights which the Customer and/or any third party may have over temporary buildings, plant, tools, equipment, equipment and materials on the site shall not extend to any of the items provided by the Supplier in connection with this contract, which remain the unencumbered property of the Supplier at all times. The Customer shall assist the Supplier to regain possession of the Supplier's property.
15. The Customer shall comply with and use its best endeavors to cause its employees and other sub-contractors and their employees to comply with all statutory regulations applicable. The Customer indemnifies and holds harmless the Supplier against all claims and proceedings and costs and expenses in connection therewith in respect of any injury or death of any person or damage to any property or any loss or damage caused by or arising out of the use or misuse of the Supplier equipment by any person other than the Supplier or its employees.
16. Should the Supplier contend that the Customer has failed to comply with any of its obligations in terms of this contract, the onus shall be and remain on the Customer to prove the contrary.
17. Customers are to complete and submit a CPF (Customer Particular Form) before commencement of supply of equipment or services. A period of approximately 3 (three) days shall be allowed for the credit check to be performed.
18. Unless otherwise stated in writing, all unit prices quoted are for a minimum hire period of 2 (two) weeks. Hire charges commence from the date of delivery, and will be charged for on a weekly basis with invoices issued monthly for the charges for the period in question. Monthly statements will reflect total outstandings. Further hire charges will be raised if equipment is not returned to the Supplier within 48 (forty eight) hours of the advice of cessation of hire. Where it is the Supplier's responsibility to collect equipment after the completion of such hire, further hire charges will be raised together with any associated costs until such time as the hired equipment is placed in the Supplier's possession. All payments including payment for transport, if applicable, are to be made without deduction unless specifically agreed in writing.
19. The risk in and to the equipment shall pass to the Customer immediately upon delivery of the equipment to the Customer. Notwithstanding the passing of risk, ownership in and to the equipment shall at all times remain vested in the Supplier, it being recorded that the equipment shall under no circumstances be sold or be deemed to have been sold to the Customer.
20. Should any deliveries be delayed, hindered, prevented or interfered with by any circumstances whatsoever outside the Supplier's control, the time or times for such deliveries shall be extended until the lapse of a reasonable period after the

- cessation of the said circumstances, and the Supplier shall not be liable for any claim, loss or damage caused by such delay.
21. Subject to the provisions of clause 20 above, short deliveries will be made up, and damaged or defective equipment replaced by the Supplier to the Customer, if they are noted by the Customer at the time of delivery thereof on the delivery note, and a claim is made by the Customer on the Supplier within 2 (two) days from the date thereof and if (in the case of equipment claimed to be damaged or defective) within a period of 7 (seven) days, the Customer returns such equipment to the Supplier and the Supplier is satisfied (and on which it will be the sole judge) in regard thereto. Save as aforesaid, the Supplier shall not be under any liability whatsoever in respect of short deliveries or damaged or defective equipment, or for any loss or damage which the Customer may claim was caused thereby and the Customer will be deemed to have received all the equipment in a good and proper condition.
22. Under no circumstances whatsoever shall the Supplier at any time be liable for any damages or loss or for any claims for consequential loss or damage which may be sustained by the Customer or for any claims made by any other person whatsoever, in connection with this contract and/or the use of the equipment, and the Customer hereby further indemnifies the Supplier against all such claims.
23. The Customer shall not be entitled to cede or assign its rights or obligations in terms of this contract without the written consent of the Supplier first having been obtained.
24. The Customer agrees that the Supplier may cede or transfer its rights under this contract, and its ownership in the equipment hereby hired and insofar as such may be necessary, agrees upon such cession or transfer to hold the equipment on the basis that ownership therein has passed to the cessionary or transferee subject otherwise to the terms of this contract, and to the extent to which this clause may be construed as a stipulation alteri in favour of such cessionary or transferee, the Customer agrees that the acceptance of cession of this contract by the cessionary or transferee shall constitute an acceptance by the cessionary or transferee of the benefits arising out of this clause.
25. The Customer shall keep the equipment insured both against third party claims and against all risk, loss and damage for the full period of this contract with a registered insurer for such value as may be determined by the Supplier from time to time. The Customer shall further ensure that the Supplier's interest is endorsed on the insurance policy and the Customer shall pay all insurance premiums punctually and shall at all times comply with all the conditions of the insurance policy. The Customer shall forthwith on request exhibit and/or deliver to the Supplier proof of compliance with the obligations undertaken in terms of this clause and in addition exhibit and/or deliver to the Supplier such insurance policies as may be required to be effected in terms hereof.
- 26.
- 26.1 The Customer agrees to keep the equipment in good order and condition and at all times to allow the Supplier and/or its agents and/or its servants to inspect the same.
- 26.2 The Customer shall not use the equipment for any purpose for which they were not intended or which may result in their being damaged and any direction which the Supplier might give to the effect that the equipment shall not be used for any particular purpose shall be observed by the Customer.
- 26.3 Failing compliance by the Customer with its obligations under 26.1 hereof, the Supplier shall be entitled to have effected any maintenance and/or repair to put the equipment in good order and to recover the reasonable cost thereof from the Customer without prejudice to the Supplier's other rights.
- 26.4 The Customer shall not remove the equipment from the site to which it was delivered.
- 26.5 No alteration of or modification to the equipment may be made by the Customer.
- 26.6 In the event of the equipment being lost or damaged or should the Customer fail to return the equipment to the Supplier on termination of this Contract of Hire for whatever reason, the Customer shall be liable to pay to the Supplier, the Supplier's then current full catalogue price of such lost or damaged equipment as liquidated damages, as well as all other loss or damages sustained by the Supplier of whatsoever nature, including depreciation of and/or the cost of repairs required to be made to the equipment and all the expenses incurred by the Supplier in obtaining possession of the equipment. Should the equipment subsequently be found in the Customer's possession, the Supplier shall be notified in writing and the Supplier shall repurchase such equipment at a reasonable value, taking into account the condition and usefulness of the equipment.
27. All risk of loss, damage, destruction or otherwise in and to the equipment shall pass to the Customer upon delivery to the Customer and all costs of delivery and installation of the equipment and insurance in transit shall be borne and paid for by the Customer.
28. Insofar as payment by the Customer is concerned, time is of the essence. All payments required to be made shall be made at the Supplier's place of business and unless otherwise specified and agreed in writing, payments are due 30 (thirty) days from date of invoice. In the event of the Customer failing to pay any amount to be paid by it in terms of this agreement on due date, it shall then be obliged to pay to the Supplier an additional amount in respect of interest at the rate of 2% above the prime overdraft rate charged by the Standard Bank of South Africa Limited at date of default and in addition, should the Supplier refer the matter to its attorneys for collection of such overdue monies or for any claim whatsoever, the Customer shall bear and be liable for all legal charges thus incurred by the Supplier as between the Supplier and its own attorney and shall further be liable for collection charges on such overdue payment payable by the Supplier to its attorneys and for any tracing agents charges and other disbursements necessarily incurred by the Supplier in tracing or endeavouring to trace the Customer or the equipment if he changes his address or removes the equipment without notice to the Supplier and in collecting and/or endeavouring to collect overdue monies or the equipment.
29. The Customer consents in terms of Section 45(1) of the Magistrate's Court Act No. 32 of 1944 as amended in respect of any proceeding which may be instituted against it by the Supplier arising out of or in connection with this contract, to the jurisdiction of any Magistrate's Court which at the time of such proceedings has jurisdiction over it in terms of Section 28(1) of the said Magistrate's Court Act. Notwithstanding the foregoing, the Customer specifically agrees that the Supplier may in its discretion disregard the foregoing consent to jurisdiction and institute any proceedings arising out of or in connection with this contract in the High Court of South Africa having jurisdiction.
30. No warranty on the part of the Supplier as to the condition, state or quality of the said equipment or as to their fitness for any purpose has been or is given or implied.
31. The Customer hereby appoints its address overleaf as its domicilium citandi et executandi for all purposes incidental to or arising out of this contract.
32. The Customer shall not without the written consent of the Supplier first having been obtained do or omit to do anything which renders the equipment liable to attachment, encumbrance, hypothec or any lien. The Customer shall forthwith upon the signature of this agreement notify the Supplier in writing of the site upon which the equipment will be kept and of the name and address of any landlord of such site.
33. All specifications, illustrations, drawings, diagrams, price lists, dimensions, delivery dates and performance figures furnished by the Supplier, and representations in regard thereto, are approximate and are furnished for information purposes only, and unless specifically General Conditions of Hire Page 5 of 7 guaranteed by the Supplier in writing shall not form part of this contract nor bind the Supplier in any way whatsoever.

34. Should the Customer default in the punctual payment on due date of any amount payable in respect of the hire of the equipment or default in the punctual observance or performance of any of its other obligations or undertakings hereunder or commit an act of insolvency as defined in the Insolvency Act, then the Supplier shall have the right and without notice to immediately cancel this contract in respect of the hire of the equipment and to demand that the Customer forthwith return, at its own expense, any equipment already delivered to the Customer, failing which the Supplier shall have the right to take whatever action it deems necessary to enforce its rights in terms hereof. The rights of the Supplier shall be without prejudice to and in addition to, or alternatively to any other rights or claims of the Supplier in law³⁵. On the termination of the hire hereunder on whatever grounds, the Customer shall at its own expense return the equipment to the Supplier at its address shown overleaf or such other address as the Supplier may designate for such purpose. The rental provided for herein shall be payable from the time of delivery of the equipment as above until they are received by the Supplier at its said or such designated address.
36. Where the equipment is collected by the Supplier or is returned by the Customer and Customer fails to provide for the checking with the Supplier of the equipment then returns note subsequently issued by the Supplier to the Customer setting out the equipment received by the Supplier shall be final and conclusive as to the equipment received by the Supplier and binding upon the Customer.
37. A certificate under the hand of any director, any manager or secretary of the stating that any particular sum or sums is/are due and payable by the Customer to the Supplier in terms of this contract or stating the amount of any costs, charges or expenses taken into account in determining the amount of any claim in favour of the Supplier against the Customer in terms of this contract shall be admissible in any court of law and conclusive proof of the contents thereof and shall constitute a liquid document for the purposes of summary judgment or provisional sentence.
38. No relaxation or indulgence granted by the Supplier to the Customer shall be deemed to be a waiver of any of the Supplier's rights in terms hereof nor shall any such relaxation or indulgence be deemed to be a novation of any of the terms and conditions of this contract. This contract constitutes the entire contract between the parties. No agreement at variance with the terms and conditions of this contract shall be of any force or effect unless in writing and signed by the parties hereto.
39. It is expressly agreed that neither the Customer nor any person on its behalf will, at any stage during the subsistence of this contract or thereafter, acquire ownership of the equipment and after termination of this contract, will not retain possession, use or enjoyment of the equipment, in pursuance of the provisions hereof. Ownership of the equipment shall at all times continue to vest in the Supplier.
40. The risk in the equipment shall pass to the Customer upon delivery, who shall bear every risk of loss, damage or destruction to the equipment of whatsoever kind and howsoever caused until such time as the Customer has placed the Supplier in possession of the equipment upon termination of this contract.
41. The Customer undertakes that, having taken delivery of the equipment, it will maintain the equipment in a state of good order and repair, including wear and tear to the equipment and to any accessories, parts or equipment which may be affixed to the equipment and/or replace any parts or accessories which require replacement. Any addition, renewal or replacement shall for this and all purposes under this contract, be deemed to form part of the equipment and be subject to the provisions of this contract. The Customer shall furthermore, at its own expense, regularly maintain and service the equipment according to the Supplier's specifications. The Supplier or its agent shall at all times during the currency of this contract, be entitled to inspect the equipment and should the equipment, in the opinion of the Supplier, not have been properly maintained at any time during the currency of this contract, the Supplier shall, without prejudice to any of its other rights under this contract, be entitled to put it in good and proper order and repair at the Customer's expense, who shall make payment of the cost thereof to the Supplier upon demand.
42. The Customer hereby acknowledges that the Supplier has given to the Customer no warranties or guarantees of any kind whatsoever, whether express or implied, nor made any representations, whether as to the quality, state, condition or fitness for any purpose of the equipment or any part thereof or as to any other matter or thing whatsoever. The Customer further acknowledges that no agent, servant, representative, director or other person who may act for the Supplier has the authority to make any verbal representation, statement, warranty or guarantee which has any binding effect on the Supplier. 43. the Supplier shall not be responsible at any time for any loss or damage of whatsoever nature and whether general or special and no matter how caused, in any way arising or flowing from or connected with or related to any defect in the equipment or to the inability of the Customer to make use of the equipment, whether such inability is complete or partial.
44. The Customer undertakes that it will:
 - 44.1 subject to the provisions of 26.6, on the termination of this contract, return the equipment to the Supplier at its address as stated in this contract or at such address as it may in writing direct, at the Customer's own expense, in the same condition as received. The Customer shall not be entitled to compensation of any nature in respect of any improvements or repairs whether necessary or otherwise, which it may have effected to the equipment;
 - 44.2 devote special care and attention to the equipment while in its custody and especially while using the same, commensurate with the care and attention of a reasonable owner, acting reasonably, would devote thereto;
 - 44.3 give the Supplier immediate notice in writing posted by pre-paid registered post to its aforesaid address, of any change of its business address.
45. The equipment shall at all times remain the property of the Supplier and the Customer undertakes that at all times it will protect and defend at its own cost and expense, the title of the Supplier, from and against all claims, liens and legal processes of creditors of the Customer and shall keep the equipment free and clear from all such claims, liens and processes. The equipment shall, despite the manner of its attachment to any building at any time, not accede to such building. Upon the termination of this contract, whether by effluxion of time or otherwise, the equipment shall be returned unencumbered by the Customer at its sole expense to the Supplier at such place as the Supplier may in writing designate.
46. The provisions of 26.6 shall apply mutatis mutandis in the event that the Customer shall, with the prior written consent of the Supplier, sell any of the equipment to a customer.
47. Notwithstanding any express or implied provisions of this contract to the contrary, any latitude or extension of time which may be allowed by the Supplier to the Customer in respect of any payment provided for herein, or any indulgence shown by the Supplier to the Customer, shall not prejudice the rights of the Supplier under this contract nor be deemed to be a waiver of the Supplier's rights and in particular, the Supplier's right at any time and without notice, to require strict and punctual compliance with all the terms of this contract, nor be construed as a novation of this contract.
48. This document sets out and constitutes the entire agreement between the parties as to the subject matter hereof and the Customer acknowledges that there are no collateral oral agreements or conditions in any way varying this contract. It is further agreed that no agreement in any way varying the terms and conditions of this contract, and no consensual cancellation hereof shall be of any force or effect unless contained in writing and signed by the Supplier and the Customer. The parties further confirm that this document correctly reflects the nature of the agreement between them, and the intention of the parties.
49. This contract is personal to the Customer and its rights or obligations herein may not be ceded, transferred, assigned or delegated without the prior written consent of the Supplier having been obtained thereto.
50. These terms shall apply to and govern any future agreements of hire by the Supplier to the Customer.