



TERMS & CONDITIONS OF SALE

1. This agreement sets out the terms and conditions that apply when you the Applicant (“you” or “your”) decide to purchase products and services from WBS Henderson Limited (“we”, “us” and “our”). You agree to be bound by these terms and conditions and acknowledge that you understand the nature of the terms and conditions contained herein.

Use of Information

2. You agree that we may obtain information about you in order to assess your credit worthiness and to enforce any rights under this agreement including but not limited to performance of any credit, PPSR, property, company and other related checks and you hereby agree to sign any documents or do anything necessary to enable us to perform the above checks.
3. You may access any information that we hold about you and ask us to correct any mistakes (if any) in it.

Products and Services

4. In this agreement “Products” and “Services” means and includes without limitation the following:

Products: Timber and Hardware products, all products that are marked as having been supplied by us to you, products marked as having been supplied by us or that are stored by you in a manner that enables them to be identified as having been supplied by us, any charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of the products by us to you, and the supply of any associated products and accessories identified in any account application, proposal, job authorization form, email, quotation, invoice issued by us to you or with any verbal agreement with you, those documents deemed to be incorporated into and form part of our agreement with you; and

Services: Hire trailer services, advice, and all other services incidental, reasonably necessary or identified in the provision of the above Products, any account application, proposal, job authorization form, email, quotation, invoice issued by us to you or with any verbal agreement with you, those documents deemed to be incorporated into and form part of our agreement with you.

Price

5. The price is the cost of the Products and Services as agreed between you and us, together with any disbursements or additional costs we may incur on your behalf incidental to the provision of the Products and Services. We reserve the right to vary the price in accordance with any variation in exchange rates, cost of labour, materials, freight and insurance, customs duties, goods and services tax and other duties, imposts and surcharges and any other expenses incurred or arising due to circumstances beyond the control of us between acceptance of the order and delivery.
6. Where no price is stated in writing or agreed to orally, or there is a dispute as to the price the Products and Services shall be deemed to be sold at the current amount as such Products and Services are sold by us at the time of the agreement and shall be invoiced accordingly. The price may be increased by an amount of any reasonable increase in the cost of supply of the Products and Services that is beyond the control of us between the date of the agreement and delivery of the Products.
7. Unless otherwise stated in writing all prices include goods and services tax.

Payment and Interest

8. Unless otherwise agreed, payment for the Products and Services shall be made in full on or before the date of our invoice issued to you (“Due Date”). Payment shall be due immediately on delivery except where credit terms have been agreed in writing. Interest will be charged on any amount owing after the due date at the rate of 10% per month, or part month calculated from the Due Date. The charging of interest shall not prejudice any other rights and remedies in respect of any default by you in failing to make payment by the Due Date.
9. If payment is not made in full to us by the Due Date, any expenses, disbursements, legal or debt recovery costs incurred by us in the enforcement of any rights contained in this agreement shall be paid by you. You agree that we shall be entitled to refuse to accept any further orders or deliver goods should its terms of payment not have been met and paid in full. Credit for any future deliveries may be withdrawn at our sole discretion.

Quotation

10. Where a quotation is provided by us to you for the Products and Services, unless agreed otherwise the quotation shall be valid for seven (7) days from the date of issue of the quote (unless specifically stated to the contrary), and the quotation will be inclusive of Goods and Services tax (unless specifically stated to the contrary).

11. We reserve the right to alter the quotation because of circumstances beyond our control, and you agree to pay for any additional cost of such Products and Services.

Delivery

12. You agree to inspect the Products immediately upon delivery and shall give notice to us of any Products that are damaged, defective, short delivered or otherwise not in accordance with the agreement before signing a delivery slip (if any) or within twenty-four (24) hours after delivery if no such delivery slip is signed. No claim whatsoever whether in respect of the Products, consequential or indirect loss or damage or otherwise howsoever shall be made on us thereafter. A delivery slip signed and acknowledged as aforesaid shall be valid for all purposes whether signed and acknowledged by you personally or by any partner, spouse, director, shareholder, secretary, agent, employee or subcontractor of you. All products delivered onto your site will require to be sighted and signed by you in the manner above.
13. If where access is limited or unsuitable, or where adequate space for the delivery is not available, and you require delivery off-road and or on site, we may upon site inspection or delivery unload Products either on site, or where convenient, we are not liable for crane hire or any other costs associated with the delivery, unloading or inspection of site. You agree that you are liable for any towing charges incurred and for any damage to property during the course of delivery (including the delivery vehicle itself) whether or not the negligence of us, its agents or employees contributed in any way to such damage.
14. Delivery of Products shall be deemed complete when we give possession of the Products directly to you or possession of the Products are given to a carrier, courier, or other bailee for purposes of delivery to you. The Products will be delivered to your nominated store or premises.
15. The time agreed for delivery shall not be an essential term of this agreement unless you give written notice to us making time of the essence.
16. Risk in the Products shall pass from us to you when they are delivered to you.

Agency

17. You authorise us to contract either as principal or agent for the provision of Products that are the matter of this agreement. Where we enter into an agreement of this type, it shall be read with and form part of this agreement and you agree to pay any amounts due under that agreement.

Title, Ownership and Security (Personal Property Securities Act 1999)

18. Title in any Products supplied by us passes to you only when you have made payment in full for all Products and Services provided by us and all other sums due to us by you on any account whatsoever. In consideration of us supplying the Products and Services to you, you agree by signing this agreement that you grant us a first ranking security interest (whether registered or unregistered), financing statement and/or a purchase money security interest in all Products supplied now and in the future together with all enforcement costs in accordance with section 36(b) of the Personal Property Securities Act 1999, and to sign and deliver any documents as necessary. You agree that any proceeds of the sale of any Products by you of the Products or the entitlement to payment for the Products shall be subject to the security interest hereby created without the further need for action by us and acknowledge that you have received valuable consideration from us and agrees it is sufficient.
19. We shall not be liable for any costs, damages, expenses or losses incurred by you or any third party (which you indemnify us in respect of) as a result of this action, nor be liable in contract or tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. We may either resell any repossessed Products and credit your account with the net proceeds of sale after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and credit your account with the invoice, value thereof less such sum as we reasonably determine on account of wear and tear, depreciation, obsolescence, loss or profit and costs. Where Products are retained by us pursuant to this clause, you waive your right to receive notice under section 120 of the Personal Property Securities Act 1999 ("PPSA") and to object under section 121 of the PPSA. You hereby waive the right to receive a verification statement for the purposes of section 148 of the PPSA. You agree that you will not have any rights under sections 116, 117(1)(c), 119, 120(2), 125, 129 and 131 of the PPSA, and waive your rights to object under section 121 and to redeem under section 132.

Default

20. You give us irrevocable authority to enter any premises or site occupied by you or on which the Products are situated at any reasonable time after Default by you or before Default if we believe a Default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. You hereby agree to indemnify us against all costs associated and incurred in relation to your Default.
21. The term "Default" means:

- (a) any non-payment of any sum by the due date; or
 - (b) where any Products are seized by any other creditor of you or any other creditor intimates that it intends to seize Products; or
 - (c) you intimate you will not pay any sum by the due date; or
 - (d) any Products in your possession are materially damaged while any sum due from you to us remains unpaid; or
 - (e) you are bankrupt or put into liquidation or a receiver is appointed to any of your assets or a landlord distrains against any of your assets; or
 - (f) a Court judgement is entered against you and remains unsatisfied for seven (7) days; or
 - (g) any material adverse change in the financial position of you.
22. If the Credit Contracts and Consumer Finance Amendment Act 2014 applies to any transaction between us and you, you have the rights provided in that Act despite anything contained this agreement of terms and conditions of trade.

Limitation of Liability

23. The Consumer Guarantees Act 1993, Fair Trading Act 1986, Contract and Commercial Law Act 2017, Commerce Act 1986, Building Act 2004 (including the Building Code) and other statutes may imply warranties, conditions and guarantees upon us which cannot be by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions, guarantees or terms imposed on us, our liability shall where it is allowed be excluded, or if not be able to excluded only apply to the minimum extent required by the relevant statute. Except as otherwise provided, we shall not be liable for any loss or damage of any kind whatsoever including consequential or indirect loss, whether suffered or incurred by you whether in contract or tort (including negligence) or otherwise and whether such loss or damage arises directly or indirectly from Products and Services provided by us to you, and you hereby indemnify us against all claims and losses of any kind, whatsoever, however caused or arising, and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of us or otherwise, brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the Products and Services.
24. The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire Products or Services from us for the purposes of a business in terms of section 2 and 43 of this Act.

Copyright

25. You agree that we own the copyright in all designs, drawings, systems, solutions, specifications, trademarks, patents and creations arising in connection with all Products and Services supplied by us.

Privacy

26. You authorise us to use any information we hold about you (whether now or in the future) for any purpose in relation to our usual business functions and activities, collect any information about you from any banker, creditor, adviser to you or credit reporting agency, and to disclosure information about you to any reporting agency or creditor or prospective creditor of you.

Cancellation

27. In addition to any other entitlements we reserve the right to cancel or suspend by notice to suspend or cancel our agreement with you for the supply of Products or Services if you fail to pay any monies owing after the due date. Any cancellation or suspension will not affect our claim for monies due at the time of cancellation or suspension, damages for any breach of your obligations to us under this agreement, and any other legal rights we have.

Return and Credits

28. Products will only be considered for return where they are faulty or defective, and in the case of defects discoverable upon examination of the Products within seven days of delivery of the Products. Any Products returned to us without our prior approval shall nevertheless be paid for by you. We may in our sole discretion return the Products to you at your expense.
29. Any agreed returns (where the product is neither defective nor faulty) are to be delivered to our branch where you purchased the product and at your cost. Any agreed return of product (where the product is neither defective nor faulty) may be subject to a restocking fee calculated at 15% of the selling price of those Products being restocked.

30. Any agreed returns (where the product is neither defective nor faulty) will result in a store credit held for the purchase of further products for a period of 6 months from the date the store credit is raised. At the expiry of that 6 month period, all claims are extinguished and that store credit is cancelled. No further claim may be made for those returned products.

Miscellaneous

31. We are not liable for any delay or failure to perform our obligations, if the cause of such delay or failure is beyond our control.
32. If we fail to enforce any of these terms and conditions, it shall not be considered to be a waiver of any of our rights or obligations under this agreement.
33. If any of these terms and conditions are invalid, void, illegal or unenforceable, the existence, legality and enforceability of the remaining terms and conditions shall not be affected, prejudiced or impaired.
34. If there is any variance between these terms and conditions and any terms and conditions contained in any proposal or quotation made by us to you, then the terms and conditions contained in the proposal or quotation shall prevail.
35. For the avoidance of doubt, where possible the terms and conditions contained in this agreement prevail over any statute.
36. Any variance of terms and conditions contained herein shall be varied only by writing and agreement by you and us.