

1. The terms hereof shall form part of and apply to all contracts entered into unless specifically excluded or amended by the parties, such exclusion or amendment to be in writing and signed on behalf of the parties.
2. Unless otherwise specifically stipulated in writing to the contrary by Formscaff, the terms hereof shall supersede and prevail over any terms and conditions contained in any documents submitted by the Customer.
3. The following specific provisions shall apply in the event that the transaction entered into between Form-Scaff and the Customer is the hire of goods, namely:
 - 3.1 Each hire shall be a separate contract governed by these terms.
 - 3.2 Unless otherwise stated in writing:
 - 3.2.1 all unit rates quoted are for a minimum hire period of one week;
 - 3.2.2 hire charges commence from the date of delivery;
 - 3.2.3 hire will be charged for on a weekly basis with invoices issued monthly for the charges for the period in question;
 - 3.2.4 monthly statements will reflect totals outstanding;
 - 3.2.5 further hire charges will be raised if goods are not returned to Form-Scaff within 48 hours of the advice of cessation of hire;
 - 3.2.6 where it is Form-Scaff's responsibility to collect goods after the completion of the hire, further hire charges will be raised together with any associated costs until such time as the hired equipment is placed in Form-Scaff's possession;
 - 3.2.7 all payments including payment for transport, if applicable, are to be made without any deduction whatsoever.
 - 3.3 Instances may arise where Form-Scaff will not supply goods on hire without the payment of a deposit, and in such event, the Customer will be required to lodge such deposit or deposits with Form-Scaff. On completion of the hire any outstanding credit in the books of Form-Scaff will be repaid to the Customer after deduction of all relevant costs and charges related to the hire. Form-Scaff's decision will be final in respect of all aspects relating to the terms hereof.
 - 3.4 Unless otherwise stated in writing the rental quoted is ex works and the Customer shall take delivery of the goods as soon as they are placed at the Customer's disposal at Form-Scaff's premises and pay all rentals and bear all risks attaching to the goods from the time when they have been so placed at the Customer's disposal.
 - 3.5 The risk in and to the goods shall pass to the Customer immediately upon delivery of the goods to the Customer. Notwithstanding the passing of risk, ownership in and to the goods shall at all times remain vested in Form-Scaff.
 - 3.6 The Customer shall keep the goods insured both against third party claims and against all risk, loss and damage for the full period of the hire with a registered insurer for such value as may be determined by Form-Scaff from time to time. The Customer shall further ensure that Form-Scaff'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 Form-Scaff proof of compliance with the obligations undertaken in terms of this clause and in addition exhibit and/or deliver to Form-Scaff such insurance policies as may be required to be effected in terms hereof.
 - 3.7.1 The Customer shall keep the goods in good order and at all times allow Form-Scaff and/or its agents and/or its servants to inspect the same.
 - 3.7.2 The Customer shall not use the goods for any purpose for which they were not intended or which may result in their being damaged and any direction which Form-Scaff might give to the effect that the goods shall not be used for any particular purpose shall be observed by the Customer.
 - 3.7.3 Failing compliance by the Customer with its obligations under 3.7.1 hereof, Form-Scaff shall be entitled to have effected any maintenance and/or repair to put the goods in good order and to recover the reasonable cost thereof from the Customer without prejudice to Form-Scaff's other rights.
 - 3.7.4 No alteration of or modification to the goods may be made by the Customer.
 - 3.7.5 The Customer shall keep the goods on the site agreed upon and shall not move the goods to any other site without the prior written consent of Form-Scaff first having been obtained.
 - 3.7.6 On the termination of the hire the Customer shall return the goods to Form-Scaff as received, cleaned and oiled and in sound condition, fair wear and tear alone excepted.
 - 3.7.7 The Customer shall not part with possession of the goods or any part thereof or otherwise deal therewith save as contemplated by this contract.
 - 3.7.8 In the event of the goods being lost or damaged or should the Customer fail to return the goods to Form-Scaff on termination of the contract of hire for whatever reason, the Customer shall be liable to pay to Form-Scaff, Form-Scaff's then current full catalogue price for such lost or damaged goods as liquidated damages, as well as all other loss or damages sustained by Form-Scaff of whatsoever nature, including depreciation of and/or the cost of repairs required to be made to the goods and the expenses incurred by Form-Scaff in obtaining possession of the goods.
 - 3.7.9 At the end of each hire period written notification of any Sale by Loss invoices to be raised for equipment not returned due to loss, shall be furnished by the Customer within 7 working days of the hire period ending and an official order number is to be supplied in writing by the Customer. The Sale By Loss invoice shall be payable within 30 days from date of invoice, Failure to pay within the 30 day period will result in hire charges being re-instated for outstanding equipment and will be payable. Under no circumstances will any hire invoice be credited prior to the Sale By Loss Invoice being paid or the hire charges being re-instated due to an order number not being received within the 7 working day period.
 - 3.8 All risks of loss, damage, destruction or otherwise in and to the goods shall pass to the Customer upon delivery to the Customer and all costs of delivery and installation of the goods and insurance in transit shall be borne and paid by the Customer.
 - 3.9 The Customer shall not without the written consent of Form-Scaff first having been obtained do or omit to do anything which renders the goods liable to attachment, encumbrance, hypothec or any lien. The Customer shall forthwith upon the signature of this agreement notify Form-Scaff in writing of the site upon which the goods will be kept and of the name and address of any landlord of such site.
 - 3.10 Should the Customer default in the punctual payment on due date of any amount payable in respect of the hire of the goods 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 Form-Scaff shall have the right and without notice to immediately cancel this contract in respect of the hire of the goods and to demand that the Customer forthwith return, at its own expense, any goods already delivered to the Customer, failing which Form-Scaff shall have the right to take whatever action it deems necessary to enforce its rights in terms hereof. The foregoing rights of Form-Scaff shall be without prejudice to, and in addition to, or alternatively to, any other rights or claims of Form-Scaff in law.
 - 3.11 On the termination of the hire for whatever reason the Customer shall at its own expense return the goods to Form-Scaff at its address shown overleaf or such other address as Form-Scaff may designate for such purpose. The rental provided for herein shall be payable from the time of delivery of the goods as above until they are received by Form-Scaff at its said or such designated address, unless otherwise stated in writing.
 - 3.12 Where the goods or any of them are collected by Form-Scaff or are returned by the Customer and the Customer fails to provide for the checking with Form-Scaff of the goods then the Return Note subsequently issued by Form-Scaff to the Customer setting out the goods received by Form-Scaff shall be final and conclusive as to the goods so received by Form-Scaff and shall be binding upon the Customer.
4. The following specific provisions shall apply in the event that the transaction entered into between Form-Scaff and the Customer is the sale of goods, namely:
 - 4.1 Each sale shall be a separate contract governed by these terms.
 - 4.2 Unless otherwise stated, the prices quoted are ex works and the Customer shall take delivery of the goods as soon as they are placed at the Customer's disposal at Form-Scaff's premises and shall bear and be liable for all charges and risks in and to and in respect of the goods from the time when they have been so placed at the Customer's disposal provided that the goods have been clearly set aside or otherwise identified as the contract goods.
 - 4.3 Notwithstanding delivery of the goods and the transfer of the possession thereof to the Customer, ownership of the goods shall remain vested in Form-Scaff until the whole of the purchase price thereof shall have been paid. The risk in the goods shall, however, pass to the Customer immediately upon delivery.
 - 4.4 The goods are offered by Form-Scaff subject to their availability.
 - 4.5 In the event of there being any increase in the costs of manufacture of the goods to Form-Scaff by reason of any increase in wages, or the prices charged to Form-Scaff by its suppliers or otherwise, between the date of the quotation and the date of delivery, such increase shall be payable by the Customer.

- 4.6 Whilst the Customer is indebted to Form-Scaff in respect of the purchase price of the goods:
- 4.6.1 the Customer agrees to keep the goods in good order and at all times to allow Form-Scaff and/or its agents and/or its servants to inspect the same;
- 4.6.2 the Customer shall at its own expense keep the goods properly insured for their full value against loss or damage through fire, accident, theft and other risks designated by Form-Scaff;
- 4.6.3 the Customer shall at no time without the written consent of Form-Scaff store or keep the said goods in any premises in consideration for the payment of any storage charges or rental or other consideration, and upon the Customer applying for such written consent Form-Scaff shall itself be entitled to take possession of the said goods and store to keep the same and recover from the Customer reasonable charges or rental or other consideration for so doing;
- 4.6.4 the Customer shall not use the goods for any purpose for which they were not intended;
- 4.6.5 failing compliance by the Customer with its obligations in terms of 4.6.1 or 4.6.4 Form-Scaff shall be entitled to have effected any maintenance and/or repair to put the goods in good order and to recover the reasonable cost thereof from the Customer without prejudice to Form-Scaff's other rights;
- 4.6.6 the Customer shall be responsible for all losses of or damage to the goods and Form-Scaff shall not be liable or in any way responsible for any loss of or damage thereto arising from any cause whatsoever including Form-Scaff's negligence, and the Customer shall give Form-Scaff immediate notice in writing of any loss of or damage to the goods.
- 4.7 Should the Customer default in the punctual payment on due date of the purchase price payable in respect of any goods or default in the punctual observance or performance of any of its other obligations or undertakings then Form-Scaff shall have the right to immediately institute action for payment of the amount due or for specific performance alternatively to cancel the contract in respect of the sale of any such goods and to demand that the Customer forthwith return, at its own expense, any goods already delivered to the Customer and not paid for or not fully paid for to Form-Scaff and should the Customer fail to do so then Form-Scaff will have the right to apply to any competent court for an ex parte order for repossession of such goods. Any such action taken by Form-Scaff shall be without prejudice to Form-Scaff's rights to recover all loss or damages sustained by Form-Scaff whether in respect of damage and/or depreciation and/or repairs required to be made to the goods so recovered or otherwise.
5. Should any deliveries be delayed, hindered, prevented or interfered with by any circumstances whatsoever outside Form-Scaff'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 Form-Scaff shall not be liable for any claims, loss or damage caused by such delay.
6. Subject to the provisions of clause 5 above, short deliveries will be made up, and damaged or defective goods shall be replaced by Form-Scaff, 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 within two days from the date thereof and if in the case of goods claimed to be damaged or defective, within a period of seven days the Customer returns such goods to Form-Scaff and Form-Scaff is satisfied that such goods are defective or damaged (in respect of which its decision shall be final and binding). Save as aforesaid Form-Scaff shall not have any liability whatsoever in respect of short deliveries or damaged or defective goods, 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 goods in a good and proper condition.
7. Under no circumstances whatsoever shall Form-Scaff at any time be liable for any damages or loss whatever or howsoever arising 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 goods, and the Customer hereby further indemnifies Form-Scaff against all such claims.
8. The Customer shall not be entitled to cede or assign its rights or obligations in terms of this contract without the written consent of Form-Scaff first having been obtained.
9. The Customer agrees that Form-Scaff may cede or transfer its rights under this contract and its ownership in the goods and to any third party and agrees upon such cession or transfer to hold the goods on the basis that the 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 alter in favour of such cessionary or transferee, the Customer agrees that the acceptance of cession of this contract by the cessionary or the transferee shall constitute an acceptance by the cessionary or transferee of the benefits arising out of this contract.
10. Insofar as payment by the Customer is concerned, time is of the essence. All payments required to be made by the Customer shall be made at Form-Scaff's place of business and unless otherwise specified and agreed in writing, payments are due 30 (thirty) days from date of statement. 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 Form-Scaff an additional amount in respect of interest at the rate of 2% above the prime overdraft rate charged by Form-Scaff's principal Commercial Bankers in South Africa from time to time and in addition, should Form-Scaff refer the matter to its attorneys for collection of such overdue moneys or for any claim whatsoever, the Customer shall bear and be liable for all legal charges thus incurred by Form-Scaff as between Form-Scaff and its own attorney and shall be further liable for collection charges on such overdue payment payable by Form-Scaff to its attorneys and for any tracing agents charges and other disbursements necessarily incurred by Form-Scaff in tracing or endeavouring to trace the Customer or the goods if the Customer changes its address or removes the goods without notice to Form-Scaff and in collecting and/or endeavouring to collect overdue moneys on the goods.
11. Form-Scaff shall be entitled to appropriate any payments received from or on behalf of the Customer to any indebtedness of the Customer to Form-Scaff and whether in terms of this contract or from whatsoever other cause arising.
12. 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 proceedings which may be instituted against it by Form-Scaff 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 Form-Scaff 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.
13. No warranty on the part of Form-Scaff as to the condition, state or quality of the said goods or as to their fitness for any purpose has been or is given or implied.
14. The Customer hereby appoints its address overleaf as its domicilium citandi et executandi for all purposes incidental to or arising out of this contract.
- 15.1 All illustrations, diagrams, price lists, delivery dates and performance figures furnished by Form-Scaff in regard thereto, are approximate and are furnished for information purposes only, and unless specifically recorded by Form-Scaff in writing to the contrary, shall not form part of this contract nor bind Form-Scaff in any way whatsoever.
- 15.2 Any drawings and/or specifications furnished by Form-Scaff are for information purposes only, unless such drawings and/or specifications are marked as being "for construction", and are signed off by an authorized Form-Scaff technical representative. Form-Scaff will only accept responsibility for the work done by it in respect of any drawings or specifications if such drawings or specifications are marked and signed as aforesaid, and then only if such drawings and/or specifications are exactly followed and complied with by the customer. Any deviations of whatsoever nature or extent made by the customer (or any of its agents) from the drawings and/or specifications will absolve Form-Scaff from all liability of whatsoever nature in respect of or arising from the drawings and/or specifications, which liability shall in such case have been assumed by the customer.
16. A certificate under the hand of any director, any manager or secretary of Form-Scaff stating that any particular sum or sums is/are due and payable by the Customer to Form-Scaff 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 Form-Scaff against the Customer in terms of this contract shall be admissible in any court of law and constitute prima facie proof of the contents thereof and shall constitute a liquid document for the purposes of summary judgment or provisional sentence.
17. No relaxation or indulgence granted by Form-Scaff to the Customer shall be deemed to be a waiver of any of Form-Scaff'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 agreement 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.
18. Where any payment is effected by cheque or by electronic transfer or where any cheque is sent in the post, all risks arising from the use of a cheque, electronic transfer or the use of the post shall lie with the Customer who shall be liable for all damages/losses sustained as a result thereof.
19. The Customer hereby acknowledges and agrees that information concerning the credit worthiness of the Customer may be disclosed by Form-Scaff to any registered credit bureau and/or any other suppliers. The Customer hereby acknowledges and agrees that Form-Scaff shall be entitled to obtain information concerning the Customer from any registered Credit Bureau or other suppliers of the Customer.
20. In the case of the termination or rescission of the contract, whether at the instance of the Customer or Form-Scaff or of both the Customer and Form-Scaff, the Customer shall not be entitled to any allowance, credit, return or set-off of any payments or deposits previously made which shall be forfeited to and retained by Form-Scaff without prejudice to the rights of Form-Scaff to recover any damages suffered by it.
21. In the event that it has been agreed that the goods are to be railed or transported by an independent carrier, the railways, or the carrier, as the case may be, shall be the Customer's agent and delivery to the railways or the carrier shall be deemed to be delivery to the Customer.