



More Possibilities. The Scaffolding System.

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Semmes, AL 36575
Phone: (251) 649-7696
Toll-Free: (800) 226-7696
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Confidential Credit Application

Company Name, Physical address, Billing address, Contact Person, Phone, Fax, Fed. Tax I.D.

Business

Sole proprietorship/partnership, Corporation, State, Number of years in business, Purchasing Requirement

Corporate Officers

Name, Titel, Phone

Bank Reference

Address, Loan Officer

Trade References

Name, Address, Contact Person, Phone (repeated three times)

Signatures: (Name, Title, Date)

Personal Warranty Signature:

I do hereby personally guarantee payment of all accrued billings to the above listed business. I agree that I am personally liable for any and all money owed on this account. The above information is rendered to obtain credit from Layher Inc. Signatures acknowledge that I have read and understand and will comply with all Terms and Conditions as set forth in page 2 thru 3 of this application.

SALE OF GOODS TERMS AND CONDITIONS

1. Together with the terms and provisions provided on or attached to the face or reverse side of any delivery ticket describing goods which are sold subject hereto ("Delivery Ticket"), and the terms and provisions provided in any Layher credit application, these terms and conditions constitute an agreement ("Agreement") for sale of goods between Layher, Inc. ("Layher") and the Customer ("Purchaser") identified on the Delivery Ticket. Purchaser acknowledges that safe erection and use of the goods being sold hereby requires full compliance with Layher's separately printed Safety Guidelines, Erection Manual and Engineering Manual. [Further information regarding these guidelines and manuals may be obtained by contacting Layher or on the Internet at .]
2. The goods and the quantity of the goods that are the subject matter of this Agreement are as described on the Delivery Ticket and are made a part of this Agreement. The parties intend the description of the goods to be only for purposes of identification of the goods to this Agreement and not to be made part of the basis of this bargain.
3. Unless specifically provided to the contrary on the face of the Delivery Ticket, the place for delivery of the goods being sold hereunder is Layher's place of business and Layher shall tender the goods for delivery within a commercially reasonable time after the date hereof. Layher has the right to deliver all of the goods at one time or in one or more lots. The risk of loss of the goods will pass to Purchaser at the time that the goods are tendered for delivery to the Purchaser.
4. It is agreed that the goods will be delivered by Layher as set forth in this Agreement, and that payment is due upon receipt of the invoice therefor. In the event that payment in full is not received by Layher on or before 30 days from the date of the invoice, any unpaid balance shall bear interest at the lower of the rate of eighteen (18%) percent per annum or the then highest lawful rate until paid. The price for the goods that are the subject matter of this Agreement is as described on the Delivery Ticket. The parties agree that, in the event a price for the goods sold is not so described and is not thereafter definitely and precisely fixed and agreed upon by the parties prior to the first delivery, Purchaser will pay as a price the unit cost of each item sold under this Agreement as it appears on Layher's price list on the date of shipment multiplied by the number of units shipped.
5. Purchaser acknowledges that the goods are of a size, design, capacity, description and manufacture selected by the Purchaser, and Purchaser is satisfied that the goods are suitable and fit for its purposes. Layher shall not be liable to Purchaser for any loss, damage, or expense of any kind or nature caused, directly or indirectly, by the goods or the use or maintenance thereof or the failure or operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by an interruption of service or loss of use thereof or for any loss of business howsoever caused.
6. The goods sold under this Agreement are warranted free from defects in workmanship and materials for thirty (30) days. **LAYHER MAKES NO OTHER AFFIRMATION OF FACT OR PROMISE RELATING TO THE GOODS BEING SOLD THAT HAS BECOME ANY BASIS OF THIS BARGAIN. FURTHER, LAYHER HAS MADE NO AFFIRMATION OF FACT OR PROMISE RELATING TO THE GOODS BEING SOLD THAT HAS CREATED OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE GOODS WOULD CONFORM TO ANY SUCH AFFIRMATION OR PROMISE. NO SAMPLE OR MODEL HAS BEEN MADE PART OF THE BASIS OF THIS AGREEMENT OR HAS CREATED OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE ALL OF THE GOODS WOULD CONFORM TO ANY SAMPLE OR MODEL EXHIBITED BY LAYHER. LAYHER DISCLAIMS ANY WARRANTY OF MERCHANTABILITY WITH RESPECT TO THE GOODS SOLD BY THIS AGREEMENT. LAYHER DISCLAIMS ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSES WHATSOEVER WITH RESPECT TO THE GOODS BEING SOLD UNDER THIS AGREEMENT. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE OF THIS AGREEMENT. LAYHER DISCLAIMS ANY IMPLIED WARRANTIES WITH RESPECT TO THE GOODS.**
7. Purchaser represents and warrants that it shall erect, maintain and use the goods in a safe and proper manner; comply with all applicable laws, ordinances, rules, regulations and orders of any public authority (including, but not limited to, all federal Occupational Safety and Health Act ("OSHA") and State regulations) having jurisdiction for the safety of persons or property; comply with all scaffolding standards articulated by the American National Standards Institute (including ANSI Standard A10.8-1998); comply with Layher's separately printed Safety Guidelines, Erection Manual and Engineering Manual; and provide and ensure the proper use of appropriate safety equipment, including but not limited to, nets, lanyards, belts, ropes, and grabs. From time to time after the sale upon request by Layher, Purchaser shall mark the goods with safety information and warnings, at Purchaser's sole expense and in such manner as Layher may request, and shall promptly replace any such information or markings, which are removed, worn, defaced or destroyed. Purchaser agrees to indemnify and hold Layher free and harmless from any and all claims, actions, proceedings, damages, and liabilities, including attorney's fees and costs, for loss, damage, or personal injury arising from or connected with Purchaser's possession, erection, use, transportation, storage, operation, maintenance, assembly, repair, dismantling, and sale or other disposition of the goods, including loss or damage which results from non-compliance with any portion of this paragraph, and from claims which are caused, or claimed to be caused, in whole or in part by the goods or by the liability or conduct (including active, passive, primary or secondary) of Layher, its agents or employees, or anyone for whose acts any of them may be liable. The parties hereby agree that Layher shall only be liable or responsible for actions of willful misconduct.
8. Purchaser hereby assigns and grants to Layher, its successors and assigns, a security interest in the goods that are the subject of this Agreement ("Collateral") to secure the payment of the price therefor; any and all obligations under any agreements by and between the parties (whether now existing or made in the future); any costs and expenses incurred by Layher in the collection and enforcement of this Agreement or any other indebtedness of Purchaser; and all liabilities of Purchaser to Layher now existing or later incurred, matured or unmatured, direct or contingent, and any renewals and extensions of and substitutions for such liabilities. Purchaser shall bear the costs of collections, including, but not limited to, attorney's fees, expenses, and court costs, and same will bear interest from the date incurred at the lower of the rate of eighteen (18%) percent per annum or the then highest lawful rate. Layher at all times shall have a perfected security interest in the Collateral that shall be prior to any other interest therein. Purchaser shall do all acts and things, and shall execute and file all instruments (including Security Agreements, Financing Statements, Continuation Statements, etc.) requested by Layher to establish, maintain and continue said perfected security interest, including, without limitation, giving Layher prior written notice of any interstate or inter-provincial change of location of the Collateral at any work site, place of business, storage facility, or other location, and shall promptly on demand, pay all costs and expenses of filing and recording, including the costs of any searches deemed necessary by Layher from time to time to establish and determine the validity and the continuing priority of the security interest of Layher, and also pay all other claims and charges that in the opinion of Layher might prejudice, imperil or otherwise affect the Collateral or its security interest therein. Purchaser appoints Layher or its designee its attorney-in-fact to execute any financing statements or other documents or instruments deemed necessary or appropriate by Layher to keep the security interest granted herein fully perfected in all jurisdictions in which the Collateral is located, and to sign Purchaser's name on the same. This power, being coupled with an interest, is irrevocable until all of Purchaser's obligations to Layher have been fully satisfied. Purchaser shall not create, incur, assume or suffer to exist any mortgage, lien, pledge or other encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the Collateral and Purchaser represents and agrees that there does not now exist any lien, security interest or encumbrance in favor of any person other than Layher with respect to the Collateral, and that Purchaser shall defend, at Purchaser's own cost, any action, proceeding or claim affecting the same.
9. Purchaser has the right and, upon request, will be provided an opportunity to inspect the goods at any time during the period which begins when the goods are ready for shipment and ends twenty-four hours after the time the goods are tendered to Purchaser or, if Layher is required or authorized to send the goods to the Purchaser, twenty-four hours after the time of their arrival. Failure to inspect the goods within the time frame provided shall constitute a waiver of Purchaser's right of inspection. Purchaser shall notify Layher in writing of Purchaser's rejection of the goods by the expiration of the inspection period. Purchaser's failure to timely reject the goods shall constitute its unequivocal acceptance thereof. In the event Purchaser rejects any of the goods sold by this Agreement, Purchaser agrees not to resell or dispose of the rejected goods in any manner, and will hold the goods without charge to Layher, until the time that Layher may reasonably arrange for transportation. Should Purchaser sell the goods, the sale shall be deemed an unequivocal acceptance of the goods. Purchaser must pay the price in the manner set forth in this Agreement, regardless of whether such time is prior to any inspection.
10. The exclusive remedies of Purchaser under this Agreement are (a) the return of conforming goods to Layher and the reimbursement of the purchase price from Layher; and (b) the replacement of nonconforming goods or parts. In the event of a breach or repudiation of this Agreement by Layher, Purchaser shall not be entitled to any consequential damages as defined in the Bus. & Com. C. — Sales. It is the intent of the parties that Purchaser's said remedies are the sole remedies available to Purchaser and not cumulative of those provided by the Bus. & Com. C. — Sales.
11. This Agreement was executed in Harris County, Texas, by reason of the acceptance thereof by Layher at its executive offices. The parties acknowledge that the transaction that is the subject matter of this Agreement bears a reasonable relation to the State of Texas and agree that the law of Texas will govern their rights and duties. The parties specifically intend that the provisions of the law of Texas cited as "Bus. & Com. C. — Sales" will control all aspects of this Agreement and its interpretation, and that all definitions contained in such law will be applicable herein except when this Agreement expressly provides otherwise. The terms of this Agreement are intended by the parties as a final expression of their Agreement with respect to such terms.

LEASE TERMS AND CONDITIONS

1. **LEASE** These provisions, the "Rent to Own" Lease Agreement, all Lease Schedules ("Schedules") incorporating the terms of this Agreement, the terms and provisions provided in any Layher credit application, the terms and provisions provided on or attached to the face or reverse side of any delivery ticket describing equipment which is subject to this Agreement, and any exhibits, riders, and amendments hereto or to the Lease Agreement or the Lease Schedules are collectively referred to herein as the "Lease".
2. **RENTAL TERM** Rental term for the items of equipment ("Equipment") described in this Lease commences: (a) if delivered to or for Lessee via a third party carrier, the date such item is duly delivered by Layher to the carrier, (b) if delivery is made by Layher itself without the use of a third party carrier, the date of delivery to Lessee, (c) if the Equipment is picked up by Lessee or Lessee's agent from Layher, the date the Equipment is picked up. Unless taken "off rental", each item of Equipment shall continue to be subject to Rent until the expiration of the term. From time to time and on an item by item basis, Lessee, at its election, may take an item of Equipment "off rental". If an item of Equipment is taken "off rental", Lessee shall pay Rent for such item up to and including the date such item of Equipment is taken "off rental", but this Lease thereafter be terminated as to such item and no further Rent will be due for any such item. For the purpose of this Lease, Equipment is "off rental" the day Lessee returns the Equipment to Layher's place of business during regular business hours. LESSEE SHALL SECURE EQUIPMENT AGAINST THEFT OR UNAUTHORIZED USE.
3. **USE OF EQUIPMENT** Lessee shall use the Equipment exclusively in the normal course of its business, shall not make any alteration in the Equipment, and shall not alter, deface, cover-up or conceal any numbering, lettering, insignia or labels displayed on the Equipment. Lessee shall remain fully liable to Layher for all obligations imposed on Lessee herein even if Lessee rents or subleases the Equipment, in whole or in part, to one or more third parties. Without limiting the foregoing, Lessee shall ensure that Lessee's non-monetary obligations under the Lease are performed whether Lessee has possession of the Equipment or not. **Any such sublease, rental agreement or other agreement shall be subject to and subordinate to the rights of Layher under this Lease** As further security for Lessee's obligations to Layher hereunder, Lessee agrees to grant to Layher a first priority security interest in all of Lessee's right, title, and interest, in and to any sublease, rental agreement or other agreement relating to the Equipment or any item of Equipment and all rights of the Lessee to exercise any right, remedy or option thereunder. Lessee shall exercise due care in the use and maintenance of the Equipment, keeping it in good repair and in a condition equivalent in all respects to that in which it was received by Lessee, ordinary wear and tear resulting from proper use of the Equipment excepted.
4. **INSPECTION** Lessee shall inspect the Equipment immediately upon receipt for defects or shortages, and if it notes any defects requiring replacement of the Equipment or shortages, it shall give prompt notice to Layher specifying the defects, shortages or other objections to the condition or number of the Equipment and Layher shall replace said items of Equipment promptly at its cost, including cost of freight and delivery. If no written notice is received by Layher within two (2) days of Lessee's receipt of the Equipment, Layher shall have no responsibility to replace the Equipment and Lessee agrees that it shall be conclusively presumed, as between Layher and Lessee that Lessee has fully inspected and acknowledged that the Equipment was and is in good condition and repair, that there were no shortages, and that Lessee is satisfied with and has accepted and retained the Equipment in such good condition and repair. LESSEE REPRESENTS AND AGREES THAT LESSEE: (a) SHALL INSPECT ALL EQUIPMENT AT INTENDED LOCATION PRIOR TO ANY USE BY LESSEE OR LESSEE'S EMPLOYEES; AND (b) SHALL ESTABLISH AND MAINTAIN A PROGRAM FOR CONTINUING AND REGULAR INSPECTIONS OF ALL EQUIPMENT THROUGHOUT THE TERM.
5. **DISSATISFACTION WITH LEASED EQUIPMENT** If Equipment subject to lease is, or becomes, defective or unfit because of accident, obsolescence, OR ANY OTHER CAUSE WHATSOEVER, or Lessee desires to cease the use of the Equipment for any reason whatsoever, LESSEE'S SOLE RIGHT AND REMEDY SHALL BE THE RETURN OF THE EQUIPMENT TO LAYHER AND THE TERMINATION OF THIS LEASE. In the event that Equipment is returned, Lessee shall be liable for both the transportation costs incurred and the Rent that would accrue with respect to such Equipment over the unexpired term.
6. **DISCLAIMER OF WARRANTIES** Lessee acknowledges that: **LAYHER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE EQUIPMENT, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE EQUIPMENT OR WORKMANSHIP IN THE EQUIPMENT, NOR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LAYHER SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO LESSEE OR ANY THIRD PARTY, FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED HEREUNDER, WHETHER IN AN ACTION BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, OR BENEFITS OF USE OR LOSS OF BUSINESS, EVEN IF LAYHER IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS LEASE WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES, IS INTENDED BY THE PARTIES TO BE SEVERABLE FROM ANY OTHER PROVISION AND IS A SEPARABLE AND INDEPENDENT ELEMENT OF RISK ALLOCATION AND IS INTENDED TO BE ENFORCED AS SUCH.**
7. **TITLE** Title to all Equipment shall remain at all times in Layher.
8. **DEFAULT** Without limiting the rights and remedies provided to Layher in the Lease, if Lessee fails to pay any installment of Rent or other payment required under the Lease when due and payable or if Lessee in any way fails to observe, keep or perform any other provision of the Lease, Layher shall have the right to exercise, concurrently or separately, any one or more of the following remedies: Upon written notice to Lessee cancel the Lease and, at Layher's election, any other leases or agreements between the parties; Determine immediately due and payable all sums due and to become due hereunder for the full term of the Lease; Without notice to Lessee, repossess the Equipment wherever found, with or without legal process; In its sole discretion, re-lease or sell any or all of the Equipment at a public or private sale on such terms and notice as Layher shall deem reasonable and recover from Lessee all damages owed to Layher, including but not limited to Rent, the Stipulated Loss Value of the Equipment as of the Rent payment date immediately preceding Lessee's date of default, all commercially reasonable costs and expenses incurred by Layher in the repossession, recovery, storage, repair, sale, re-lease or other disposition of the Equipment, including reasonable attorneys' fees and costs incurred in connection therewith, interest on any amounts due at the lower of the rate of eighteen (18%) percent per annum or the then highest lawful rate until paid; or Exercise any other right or remedy which may be available to it under the Uniform Commercial Code or any other applicable law;
9. **TERMS OF PAYMENT** If any Rent or other payment obligation under this Lease shall be unpaid for more than five (5) days after the due date thereof, Lessee shall pay on demand, as a late fee and/or overhead charge, but not as interest, on amounts not paid when due, the greater of one hundred dollars (\$100.00) or an amount equal to five percent (5%) of any such unpaid amount, but in no event to exceed maximum lawful rate. Additionally, Lessee shall pay on any such amount not paid when due interest at the lower of the rate of eighteen (18%) percent per annum or the then highest lawful rate until paid
10. **ATTORNEY'S FEES** Lessee agrees to pay Layher all costs and expenses, including collection charges and attorney's fees, in enforcing the terms of this agreement.
11. **LOADING AND UNLOADING** Loading and unloading of the items of Equipment in Layher's yard shall be supervised and directed by Lessee who assumes all responsibility therefor. Lessee agrees to indemnify and hold Layher harmless from any and all liability for loss, damage or other injury which occurs while items of Equipment are being loaded or unloaded.
12. **INDEMNIFICATION** Lessee shall indemnify and hold Layher harmless from and against all claims, losses, liabilities (including negligence, tort and strict liability), damages, judgments, suits, and all legal proceedings, and any and all costs and expenses in connection therewith (including attorneys' fees and expenses) arising out of or in any manner connected with the manufacture, distribution, purchase, financing, ownership, delivery, rejection, non-delivery, possession, erection, use, transportation, storage, operation, maintenance, assembly, repair, dismantling, return or other disposition of the Equipment or with this Lease, including, without limitation, (a) claims for injury to or death of persons and for damage to property, (b) claims which are caused, or claimed to be caused, in whole or in part by the Equipment or by the liability or conduct (including active, passive, primary or secondary) of Layher, its agents or employees, or anyone for whose acts any of them may be liable and the parties hereby agree that Layher shall only be liable or responsible for actions of willful misconduct., (c) claims suits or proceedings commenced by anyone in which Layher is a named party for which Layher is alleged to be liable or responsible as a result of or arising out of the Equipment, or any alleged act or omission by Layher, and (d) claims relating to latent or other defects in the equipment whether or not discoverable by Layher, even though such injuries, damages, or claims be caused by the sole negligence or fault of Lessee or Layher or the joint negligence or fault of both. It is the intention of the parties that such indemnity shall also encompass any liability which may arise from the distribution of a defective product, including design, manufacturing or marketing defects.. Lessee agrees to give Layher prompt notice of any such claim or liability. In the event that an action is commenced naming Layher as a party, Layher may elect to defend said action on its own behalf and Lessee agrees that it shall be liable for all costs, expenses and attorney's fees incurred by Layher in such defense. **PURPOSE OF THIS CLAUSE** It is the purpose of this clause to shift the risk of all claims relating to the Equipment to Lessee during the entire term of the Lease.
13. **SAFETY REGULATIONS** Lessee shall (a) erect, maintain and use the Equipment in a safe and proper manner; (b) comply with all applicable laws, ordinances, rules, regulations and orders of any public authority, including, but not limited to, all federal Occupational Safety and Health Act ("OSHA") and State regulations, having jurisdiction for the safety of persons or property; (c) comply with all scaffolding standards articulated by the American National Standards Institute (including ANSI Standard A10.8-1998), (d) provide and ensure the proper use of appropriate safety equipment, including but not limited to, nets, lanyards, belts, ropes, and grabs; and (e) comply with any guidelines promulgated by Layher with respect to the Equipment, its manner of erection or use. Lessee shall, at a minimum, comply with the provisions of Layher's Safety Guidelines, Erection Manual, Engineering Manual, and all safety provisions described herein. Lessee agrees to indemnify and hold Layher free and harmless from any and all claims, actions, proceedings, damages, and liabilities, including attorney's fees and costs, for loss, damage, or personal injury arising from or connected with Lessee's possession, use, and return of the Equipment, including loss or damage which results from non-compliance with any portion of this paragraph, or from non-compliance with any law, regulation or other safety order.
14. **SAFETY EQUIPMENT** Lessee acknowledges that LAYHER DOES NOT PROVIDE, RENT, OR SELL SAFETY EQUIPMENT of any type including, but not limited to, nets, lanyards, belts, ropes, and grabs. Lessee agrees to OBTAIN, PROVIDE AND USE all safety equipment, and to indemnify and hold Layher free and harmless from any liability which results from non-compliance with this paragraph.
15. **CARTAGE** Lessee shall pay all shipping and delivery charges and other expenses incurred in connection with the Equipment. Time spent by Layher personnel locating items of Equipment, dismantling, loading, etc., will be charged at Layher's then current hourly rate.
16. **WAIVER OF SUBROGATION** Lessee hereby waives all rights in and to any and all claims of subrogation that it may have against the Layher which are within the power of Lessee to waive.
17. **EXECUTION OF LEASE** This Lease was executed in the State of Texas (by Layher having counter-signed it in Texas) and is to be performed in the State of Texas (by reason of payments required to be made to Layher in Texas). This Lease is binding when duly executed by a proper officer or agent of Layher and when duly executed by a proper officer of Lessee, or by any employee, agent, teamster, or other person authorized by Lessee, orally or in writing, to execute said lease upon Lessee's behalf. **ACKNOWLEDGMENT OF RECEIPT BY LESSEE'S EMPLOYEE, AGENT, TEAMSTER OR OTHER AUTHORIZED PERSON SHALL CONCLUSIVELY CONSTITUTE LESSEE'S AGREEMENT TO THIS LEASE.**
18. **ENTIRE AGREEMENT** The Lease constitutes the entire understanding or agreement between Layher and Lessee and there is no understanding or agreement, oral or written, which is not set forth herein. This Lease may not be amended except by a writing signed by Layher and Lessee and shall be binding upon and inure to the benefit of the parties hereto, their permitted successors and assigns.
19. **APPLICABLE LAW** This lease shall in all respects be governed by, and construed in accordance with, the laws of the State of Texas, including all matters of construction, validity and performance. page 3 of 3