

Terms & Conditions Of Sale And Supply – Unit Sales – August 2019

Where you (the Buyer) are acquiring goods and services from us (the Supplier) as a Consumer, the Australian Consumer Law automatically provides a range of consumer guarantees, including that goods will be of acceptable quality, fit for purpose, match the description or sample, and have spare parts and repair facilities reasonably available. In addition, there is a consumer guarantee that services will be provided with due care and skill, fit for any specified purpose, and provided within a reasonable time.

If the Supplier fails to comply with the consumer guarantees when supplying goods or services, the Consumer may be entitled to a remedy under the Australian Consumer Law. The consumer guarantees regime (including a Consumer's right to a remedy and a Supplier's liability for failure to comply with a guarantee) cannot be excluded, restricted or modified, except to the extent permitted under the Australian Consumer Law. These Terms and Conditions are therefore subject to, and will not apply to the extent that they exclude, restrict or modify, the consumer guarantees regime (except to the extent permitted under the Australian Consumer Law).

You (the Buyer) will be considered a Consumer (for the purposes of the consumer guarantees regime) where you acquire:

- goods or services that cost less than \$40,000; or
- goods or services that cost more than \$40,000 but are of a kind ordinarily acquired for domestic, household or personal use or consumption; or
- a vehicle or trailer primarily used to transport goods on public roads.

You (the Buyer) will not be considered a Consumer if goods are purchased to be resold or to be transformed into a product that is sold.

1. INTERPRETATION

1.1 In these Terms and Conditions:

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (as amended or replaced from time to time).

Buyer means the person named as the Buyer in the Order Form and includes any Related Entity of the Buyer that places an order with the Supplier for the manufacture of Goods.

Delivery Date means the date of delivery of the Goods as notified by the Supplier to the Buyer which may be varied by the Supplier at any time.

Goods means goods which the Supplier has agreed to supply to the Buyer as described in the Order Form and the Specifications in accordance with these Terms and Conditions.

MaxiTRANS Entity means any of MaxiTRANS Australia Pty Ltd ACN 081 151 699, Hamelex White (a division of MaxiTRANS Australia Pty Ltd), AZMEB Global Trailers (a division of MaxiTRANS Australia Pty Ltd), Lusty EMS Pty Ltd ACN 073 705 263 and Transport Connection Pty Ltd ACN 159 813 733.

Order means the form attached to these Terms and Conditions or any other order for Goods submitted by the Buyer and accepted by the Supplier under condition 3.1.

PPS Act means the *Personal Property Securities Act 2009* (Cth) and any regulation made at any time under the PPS Act (each as amended and replaced from time to time).

PPS Register means the national online register established under the PPS Act.

Purchase Price means the tax inclusive amount the Buyer must pay to the Supplier for the Goods as set out in the Order.

Related Entity, in the case of a Buyer that is a company, means a related entity as defined in the *Corporations Act 2001* (Cth) and, in the case of a Buyer that is an individual, means a company controlled by that individual or of which that individual is a director and each related entity as defined in the *Corporations Act 2001* (Cth) of the companies.

Specifications means the specifications of the Goods as described in the Order (if accepted by the Supplier) or the Quote (if accepted by the Buyer).

Supplier means the MaxiTRANS Entity that is supplying the relevant Goods to the Buyer.

Terms and Conditions means the terms and conditions of sale and supply set out in this document and includes any additional terms and conditions agreed in writing between the Supplier and the Buyer.

Terms used in these Terms and Conditions which are defined in the PPS Act have the same meaning given to them in the PPS Act.

2. ACCEPTANCE OF TERMS AND CONDITIONS

2.1 A binding contract is formed between the Buyer and the Supplier when the Buyer signs a copy of these Terms and Conditions and/or when the Buyer places an Order or otherwise authorises the Supplier to supply Goods. The contract consists of:

- these Terms and Conditions;
- the Order; and
- any other terms the Buyer and Supplier agree in writing

and in the event of an inconsistency between the terms of the above documents, the order of precedence is as set out above. There is only a contract to supply specified Goods if the Supplier agrees to provide those Goods in accordance with condition 3.1.

2.2 Where the Buyer places an Order for Goods which contains terms and conditions inconsistent with these Terms and Conditions, the Buyer's terms and conditions are excluded, and these Terms and Conditions apply to the Order.

3. ORDERS, QUOTES AND SPECIFICATIONS

3.1 Any Order submitted by the Buyer must be accepted in writing by the Supplier's authorised representative before it will bind the Supplier. Each Order confirmed or accepted by the Supplier will incorporate these Terms and Conditions.

3.2 The Buyer must verify the accuracy of any Order (including any applicable Specification) submitted by the Buyer to the Supplier. The Buyer must confirm any Quote provided by the Supplier is acceptable to the Buyer prior to accepting the Quote.

3.3 The Buyer must disclose in writing to the Supplier all information regarding the intended use of the Goods and any other information relevant to the manufacture of the Goods, including about any components the Buyer will supply to be fitted to the Goods.

3.4 The Supplier may make any changes to a Specification which are required to conform with any applicable safety, legal or other statutory requirements. The Supplier may make any changes to a Specification which do not materially adversely affect the quality or performance of the relevant Goods, by giving reasonable prior notice to the Buyer. If the Buyer does not agree to the change, it may cancel the Order or Quote. Condition 5 below relating to cancellations will apply to any costs, losses, charges and expenses incurred by the Supplier up to the date of cancellation.

3.5 If the Goods are supplied by the Supplier in accordance with Specifications provided by the Buyer, the Buyer will indemnify the Supplier and keep the Supplier indemnified against all losses, damages, costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim for infringement of any intellectual property rights of any other person which results from the Supplier's use of the Specifications.

4. PRICE AND PAYMENT

4.1 The Supplier may require the Buyer to pay a deposit of not more than 10% of the Purchase Price before commencing manufacture of the Goods. A deposit is non-refundable, except where the Buyer is entitled to a refund under the Australian Consumer Law, or where the Buyer terminates the agreement as a result of a breach by the Supplier. The Supplier's express or implied approval for extending credit to the Buyer may be withdrawn at any time.

4.2 Subject to condition 4.3, the Buyer agrees to pay the Supplier the Purchase Price less, as invoiced by the Supplier to the Buyer (a) on or before the Delivery Date; or (b) as set out in the Order Form.

4.3 Any agreement by the Supplier to supply Goods on credit terms may be cancelled or withdrawn without notice if any account is overdue at the absolute discretion of the Supplier.

4.4 If the Supplier has agreed to payment terms in condition 4.2(b), or otherwise to supply Goods on credit terms, and the Supplier:

- has reasonable grounds to believe that the Buyer may fail to pay an invoice within the period provided; or
- has not otherwise been provided with adequate assurance of payment within 14 days of written request,

then the Supplier may require the Buyer to pay the Purchase Price before the Delivery Date and the Supplier is not required to deliver the Goods until such time as the Purchase Price is received or adequate assurance of payment is provided to the Supplier's reasonable satisfaction.

4.5 The Supplier reserves the right to reasonably increase the Purchase Price to reflect any increase in the cost to the Supplier of supplying the Goods due to:

- any factor beyond the Supplier's control; or
- any change in delivery dates, quantities or specifications for Goods which the Buyer requests by notice in writing; or
- any delay caused by the Buyer's instructions or failure to give the Supplier adequate information or instructions.

Where the Supplier proposes to increase the Purchase Price, the Supplier will provide reasonable prior notice to the Buyer. If the Buyer does not agree to the change in the Purchase Price, it may cancel the Order or Quote. Condition 5 relating to cancellations will apply to any costs, losses, charges and expenses incurred by the Supplier up to the date of cancellation.

4.6 The Supplier has absolute discretion as to the manner in which it applies money it receives from the Buyer (including any Amount Overdue under condition 12).

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5. CANCELLATIONS AND DEFERRALS

- 5.1 When an Order is accepted by the Supplier, or a Quote is accepted by the Buyer, the Buyer and Supplier are bound by the Order or Quote. If the Buyer cancels or defers the Order or Quote, the Buyer will, at the Supplier's discretion, pay all reasonable costs, losses, charges and expenses incurred by the Supplier associated with any cancellation or deferral of the Order or Quote by the Buyer, including but not limited to, the Supplier's costs of:
- purchasing the materials to manufacture the Goods;
 - manufacturing the Goods;
 - reworking the Goods in order to re-sell the Goods;
 - selling the Goods at a lower price than the price in Supplier's quote to the Buyer as set out in the Order Form;
 - disposing of the Goods; and
 - any combination of these costs.

- 5.2 The Supplier will provide the Buyer with an invoice setting out the costs associated with the cancellation or deferral of the Order or Quote and the Buyer will pay the amount set out in the invoice within 7 days of the date of the invoice.

6. CHANGES TO SPECIFICATIONS

- 6.1 The Buyer may request a change to the Specifications by submitting to the Supplier a Customer Change Form available from the Supplier (**Requested Change**).
- 6.2 The Supplier will review the Requested Change and, if the Requested Change is approved by the Supplier, will inform the Buyer of any changes to the Purchase Price, Delivery Date and/or Specifications of the Goods (**Requested Change Proposal**).
- 6.3 If the Buyer accepts the Requested Change Proposal, the Order or Quote will be deemed to have been amended in accordance with the Requested Change Proposal.

7. DELIVERY

- 7.1 The Supplier will deliver the Goods to the Buyer by the Buyer collecting the Goods at the Supplier's premises on the Delivery Date or, if another place for delivery is agreed by the Supplier, by the Supplier's delivery to that place.
- 7.2 If the Buyer does not collect the Goods, or the Buyer does not provide the Supplier with forwarding instructions sufficient to enable it to deliver the Goods on the Delivery Date the Supplier may impose a reasonable charge for storage of the Goods. Storage charges must be paid by the Buyer within 7 days of the date of an invoice by the Supplier.
- 7.3 Subject to condition 9, if the Buyer fails to pay for and/or collect the Goods within 30 days of the Delivery Date, the Supplier will be entitled to sell the Goods. If the Buyer has paid for part of the Goods, the Supplier will refund the amount paid, less the Supplier's reasonable costs, losses, charges and expenses incurred by the Supplier in connection with the Buyer's failure to pay for or collect the Goods.
- 7.4 Where the Supplier agrees to deliver the Goods other than at the Supplier's premises, the Buyer must pay the Supplier's costs for transport, packaging and insurance.

8. TITLE

- 8.1 Title to the Goods will not pass to the Buyer until the Purchase Price and all other amounts payable to the Supplier have been paid in full.
- 8.2 Until title to the Goods has passed to the Buyer in accordance with this condition 8, if the Buyer has taken delivery of the Goods, the Buyer holds the Goods as fiduciary bailee of the Supplier and the Buyer agrees to store the Goods separately so that the Goods are identifiable as the Supplier's property. The Buyer has the right to sell the Goods in the ordinary course of trade if the Buyer accounts to the Supplier for all payments, including payments by third parties, in accordance with the Buyer's fiduciary relationship.
- 8.3 The risk of loss or damage to the Goods passes to the Buyer on the Delivery Date.

9. EXCUSABLE DELAYS

- 9.1 A party is not liable for any delay in, or failure to comply with, these Terms and Conditions (other than the payment of money) where the failure was due to any cause beyond that party's reasonable control (such as forces of nature, industrial action or inaction by a government agency).

10. EXCLUSIONS AND LIMITATIONS

- 10.1 Nothing in these Terms and Conditions operates to exclude, restrict or modify the application of any provision, condition or warranty, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute, where to do so would contravene that statute, or cause any part of this condition to be void (**Non-excludable Obligations**).
- 10.2 Except in relation to Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from these Terms and Conditions.
- 10.3 Except in relation to Non-excludable Obligations, the Supplier will have no liability for any loss, harm, damage, cost or expense (including legal fees), or any special, indirect or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data) arising directly or indirectly under or in connection with the supply of the Goods,

whether by way of indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity.

- 10.4 Except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability to the Buyer for a failure to comply with any Non-excludable Obligation (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law) is limited to the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired, or payment of the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired.

11. TERMINATION

- 11.1 If:
- the Buyer materially breaches any of these Terms and Conditions and the breach cannot be remedied within a reasonable amount of time; or
 - the Buyer ceases to carry on a business; or
 - the Buyer is unable to pay its debts as they become due, is presented with a winding-up petition or if any step is taken to appoint a receiver, receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, or an administrator to the Buyer's assets, operations or business; or
 - the Supplier believes that one of the events stated in condition 11.1(a)-(c) has occurred or there is a material risk that one of those events will occur,
- then subject to Part 5 of the *Corporations Act 2001* (Cth), all amounts owed by the Buyer to the Supplier will become immediately due and payable and the Supplier may:
- terminate this agreement and any agreement to supply under these Terms and Conditions (which if as a result of an event in condition 11.1(a), may be terminated by at least 7 days written notice, or in any other event, immediately by written notice);
 - suspend any further supply of Goods or services;
 - cancel any discounts provided to the Buyer for early payment;
 - recover and resell any Goods in which title remains with the Supplier; and/or
 - set-off any amount owed by the Buyer against any amount owing to the Supplier.

- 11.2 The Buyer may terminate this agreement by giving 7 days written notice to the Supplier if the Supplier materially breaches any of these Terms and Conditions and the breach cannot be remedied within a reasonable amount of time. In the event of termination pursuant to this clause, then subject to Part 5 of the *Corporations Act 2001* (Cth), all amounts owned by the Buyer to the Supplier will become immediately due and payable and the Supplier may recover and resell any Goods in which title remains with the Supplier.

- 11.3 Termination of this agreement or suspension of the supply of Goods or services does not affect any accrued rights or remedies of the Supplier.

12. FAILURE TO PAY

- 12.1 If the Buyer fails to pay any amount under this agreement on the day it is due (including any amounts which become immediately due and payable under condition 11.1) (**Amount Overdue**):
- the Buyer will pay interest on the Amount Overdue at the rate fixed from time to time under the *Penalty Interest Rates Act 1983* (Vic) for the period from the day the amount fell due until the date of payment;
 - the Buyer will pay all of the Supplier's costs of recovering payment of the Amount Overdue as invoiced by the Supplier to the Buyer;
 - the Supplier may appropriate any payment made by the Buyer on any other account in payment of the Amount Overdue.

- 12.2 The Buyer agrees that the Supplier has a security interest over all of the Buyer's property in its possession until the Amount Overdue and all other amounts due have been paid in full.

13. INTELLECTUAL PROPERTY

- 13.1 All patents, trademarks, copyrights, designs, know-how, trade secrets, improvements and any other intellectual property (**Intellectual Property**) in the Goods remain the sole property of the Supplier at all times and the Buyer agrees that it will not infringe any of the Supplier's Intellectual Property rights.
- 13.2 All drawings, technical specifications and Intellectual Property supplied or made available to the Buyer by the Supplier are subject to copyright and strictly confidential. The Buyer must not:
- communicate any details of any drawings or technical specifications to any third party without the Supplier's prior written consent; or
 - make any copies of or use the drawings or technical specifications for any purpose other than expressly authorised in writing.

14. TAXES

- 14.1 In this condition 14, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that act.
- 14.2 If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this condition 14.2 (GST exclusive consideration) is

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- increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- 14.3 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with condition 14.2.
- 14.4 Any consideration to be paid or provided for a supply made under or in connection with this agreement, unless specifically described in this agreement as GST inclusive, does not include an amount on account of GST.
- 15. PRIVACY**
- 15.1 The parties agree to be bound by all applicable Australian privacy legislation. The Buyer consents to the Supplier's use and disclosure of personal information of the Buyer or any of the Buyer's directors, officers, principal, guarantors, employees or agents for the purposes of obtaining and/or maintaining a commercial and/or consumer credit report and for registering and amending financing statements under the PPS Act.
- 16. PPS ACT**
- 16.1 These Terms and Conditions constitute a security agreement.
- 16.2 The Buyer grants to the Supplier a security interest in the Goods and their proceeds, as security for payment of the Purchase Price and all other amounts payable by the Buyer to the Supplier and for the Buyer's performance of its other obligations to the Supplier.
- 16.3 The Buyer agrees:
- (a) at the Supplier's request, to promptly do all things (including signing any documents) and provide all assistance and information necessary to ensure that the Supplier has a perfected first ranking security interest enforceable against third parties in all Goods (and the proceeds of those Goods) supplied by the Supplier; and
- (b) that the Supplier may register a financing statement or financing change statement at the Buyer's cost and do anything else required to perfect its security interest in the security interest granted under these Terms and Conditions.
- 16.4 The Buyer waives its right to receive notice from the Supplier of any verification statement under section 157 of the PPS Act.
- 16.5 The following provisions of the PPS Act do not apply: section 95 (notice of removal of accession); subsection 121(4) (enforcement of liquid assets); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal); paragraph 132(3)(d) (contents of statement of account); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 16.6 To the extent permitted by law, the Buyer will indemnify the Supplier on demand, for all costs and expenses incurred in connection with:
- (a) registering or maintaining a financing statement or financing change statement relating to the security interest that is created or provided for by these Terms and Conditions; and
- (b) enforcing these Terms and Conditions, including any security interest that is created or provided for by these Terms and Conditions.
- 16.7 The Supplier reserves all rights and powers it may have in addition to those conferred under the PPS Act.
- 16.8 The Buyer must not:
- (a) create, or permit to be created, any security interest over, or respect of its rights in, the Goods including any replacement part or other time that is incorporated into or attached to any Goods (other than that created under these Terms and Conditions and in all its assets in favour of a bank or similar financial institution); or
- (b) to change any of its details as set out in the Account Application Form without notifying the Supplier at least 10 business days prior to doing so.
- 16.9 The Buyer represents and warrants to the Supplier that:
- (a) all information provided to the Supplier is true, correct and complete; and
- (b) the Goods are not purchased for personal, domestic or household purposes.
- 16.10 The Buyer repeats each representation and warranty in condition 16.9 each time the Supplier supplies Goods to the Buyer, with reference to the facts and circumstances at the time such Goods are supplied.
- 16.11 Despite condition 16.8, if the Buyer permits a security interest to be registered over the Goods (other than an all asset security interest in favour of a bank or financial institution), the Buyer must do, at its own expense, everything reasonably necessary to remove the security interest from the PPS Register.
- 16.12 The Supplier is irrevocably authorised to enter any premises where the Goods are kept and to use the name of the Buyer and to act on its behalf, if necessary, to recover possession of the Goods and seize the Goods in accordance with the PPSA without liability for trespass or any resulting damage.
- 17. GENERAL**
- 17.1 The Supplier may sub-contract the supply or delivery of the Goods, the carrying out of any services and/or the delivery of Goods.
- 17.2 No waiver by the Supplier of any breach of these Terms and Conditions by the Buyer will be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- 17.3 A term or part of a term of these Terms and Conditions that is illegal or unenforceable may be severed from these Terms and Conditions and the remaining terms or parts of the terms of these Terms and Conditions continue in force.
- 17.4 Neither party may assign these Terms and Conditions, or any rights under these Terms and Conditions, without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 17.5 These Terms and Conditions and the other documents referred to in them constitute the entire agreement between the parties as to their subject matter.
- 17.6 These Terms and Conditions are governed by the law applicable in Victoria and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria.
- 19. NOTICES**
- 19.1 If a party gives a notice to the other party under this Agreement, it must be:
- (a) in writing;
- (b) directed to the recipient's address specified in the Contract Details or as advised from time to time; and
- (c) hand-delivered or sent by pre-paid post or by e-mail to that address.
- 19.2 A notice given in accordance with condition 19.1 is taken to be received:
- (a) if hand-delivered, on delivery;
- (b) if sent by pre-paid post, 3 days after the date of posting for local or interstate mail and 7 days after the date of posting for international mail;
- (c) if sent by e-mail, the earlier of:
- (i) when the sender receives an automated message confirming delivery; or
- (ii) 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, but where that time is after 5.00pm in the place of receipt or on a day that is not a business day in the place of receipt, the notice will be deemed to have been given at 9.00am on the next business day in the place of receipt.
- I/we agree to be bound solely by these Terms and Conditions and I/we further agree that any terms and conditions of purchase that may be incorporated in any Order, Quote or any other document delivered by me/us, will unless those Terms and Conditions are agreed to in writing by the Supplier's duly authorised representative, have no legal effect. I/we warrant that I/we have all necessary approvals and authorisations to execute these Terms and Conditions for and on behalf of the Buyer.
- Company Name and ABN:.....
- Name & Position:.....
- Signed:.....
- Date:.....
- MaxiTRANS Australia Pty Ltd
346 Boundary Road
Derrimut Vic 3030
Ph: (03) 8368 1155 Fax: (03) 8368 1156