

TERMS & CONDITIONS OF TRADE



TRANSPORT & WASTE
SOLUTIONS AUSTRALIA

1. Definitions

- 1.1 "Seller" shall mean **Transport and Waste Solution Pty Ltd** and its successors and assigns.
- 1.2 "Buyer" shall mean the buyer or any person or Seller acting on behalf of and with the authority of the buyer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer if a Limited Liability Buyer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Services as defined supra).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Services and/or Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.3 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3. Goods

- 3.1 The Goods shall be as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Seller to the Buyer.
- 3.2 In the case of second hand Goods the Buyer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Seller as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

4. Price And Payment

- 4.1 At the Sellers sole discretion;
 - (a) The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
 - (b) The Price of the Goods shall be the Seller's quoted Price, which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's quotation within thirty (30) days; or
 - (c) The Price shall be the Seller's current price at the date of delivery of the Goods according to the Sellers current Price list.
- 4.2 At the Sellers sole discretion, a deposit may be required. The deposit shall be an amount equivalent to 20% of the purchase price of the Services / Goods and shall become immediately due and payable.
- 4.3 The Seller may by giving notice to the Buyer at any time up to 5 days before delivery increase the Price of the Goods to reflect any increase in the cost to the Seller beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties,

provisions of any Acts, By-Law, Order or Regulation of any parliament, municipality or local authority enacted after the date of contract between the Buyer and Seller and the cost of labour, materials and other manufacturing costs).

- 4.4 Time for payment for the Services/Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated, then payment shall be on delivery of the Services/Goods.
- 4.5 The Seller may withhold delivery of the Goods until the Buyer has paid for them, in which event payment shall be made before the delivery date.
- 4.6 At the Seller's sole discretion for approved Buyers payment may be due 30 days from the invoice date.
- 4.7 Payment will be made by cash on delivery, or by cheque, or by bank cheque or by credit card any other method as agreed to between the Buyer and the Seller.
- 4.8 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

5. Delivery Of Goods

- 5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Sellers address.
- 5.2 Where there is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.
- 5.3 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
- 5.4 Where there is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.
- 5.5 The Seller may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5.8 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 2 months of the delivery date.

6. Risk

- 6.1 If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. The Seller will apply the insurance proceeds as follows:
 - (i) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;
 - (ii) second, in payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under the terms and conditions or otherwise;
 - (iii) third, in payment of any other sums payable to the Seller by the Buyer on any account;
 - (iv) fourth, any balance is to be paid to the Buyer.
 - (v)

7. Defects

- 7.1 The Buyer shall inspect the Goods on delivery or installation and shall within seven (7) days of

delivery or installation notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods and installation within a reasonable time following delivery. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

8. Return of Goods

- 8.1 For defective Goods which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods or refunding the price provided that:
- (a) the Buyer has complied with the provisions of clause 7.1;
 - (b) the Seller will not be liable for Goods which have not been stored or used in a proper manner.
- 8.2 At the Seller's Sole discretion for approved Buyers the Seller may accept the return of Goods for a refund of the Price provided that the request is in writing within 7 days of delivery of the Goods and the Buyer pays a restocking fee of \$30.
- 8.3 Goods must be returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.
- 8.4 The return of Special Orders for credit will not be accepted by the Seller.

9. Warranty

- 9.1 Subject to the conditions of warranty set out in Clause 9.2 the Seller warrants that if any defect in any Goods or workmanship manufactured by the Seller becomes apparent and is reported to the Seller within twelve (12) months for electrical system or two years (2) structural system of weighing of the date of delivery (time being of the essence) then the Seller will (at the Sellers sole discretion) repair the defect or replace the Goods
- 9.2 The conditions applicable to the warranties given by Clause 9.1 are:
- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - i) Failure on the part of the Buyer to properly maintain the Goods; or
 - ii) Failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or
 - iii) Any use of the Goods otherwise than for any application specified on a quote or order form; or
 - iv) The continued use of the Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - v) Fair wear and tear on the Goods including damage due to exposure to salt water and/or any accident, or act of God.
 - (b) The warranty shall cease, and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship/Goods are repaired, altered or overhauled without the Seller's consent.
 - (c) In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Buyers claim.
- 9.3 For Goods not manufactured by the Seller the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

11. Buyers Disclaimer

- 11.1 The Buyer hereby disclaims any right to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller.

12. Default & Consequences Of Default

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of our solicitors' costs of collection.
- 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 12.4 If any account remains unpaid at the end of the second month after supply of the Services or Goods, the following shall apply: An immediate amount of \$30 shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 In the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then
 - (i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

13. Title

- 13.1 It is the intention of the Seller and agreed by the Buyer that property in the Goods shall not pass until:
- (a) The Buyer has paid all amounts owing for the particular Goods; and
 - (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 13.2 It is further agreed that:
- (a) The Buyer shall not deal with the money of the Seller in any way which may be averse to the Seller.
 - (b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
 - (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - (d) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
 - (e) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
 - (f) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

14. Security and Charge

- 14.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- (a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee, our solicitors as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Seller and/or
 - (d) shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

15. Cancellation

- 15.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 If the Buyer for any reason cancels the contract under these terms and conditions then the Buyer shall be liable for all costs, expenses and losses (including loss of profit) what so ever cause to the Seller resulting from the cancellation. Cancellation will only be accepted upon the payment of all costs and expenses incurred by the Seller in the execution of the Buyer's order up to the date of the cancellation.

16. Privacy Act 1988

- 16.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 16.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) To assess an application by Buyer;
 - (b) To notify other credit providers of a default by the Buyer;
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
 - (d) To assess the credit worthiness of Buyer and/or Guarantor/s.
- 16.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
- (a) provision of Services & Goods;
 - (b) marketing of Services and or Goods by the Seller, its agents or distributors in relation to the

- Services and Goods;
 - (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Services/Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
 - (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.
- 16.5 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Buyer; and or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

17. Lien & Stoppage in Transit

- 17.1 Where the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
- (a) a lien on the Goods;
 - (b) the right to retain them for the Price while the Seller is in possession of them;
 - (c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale;
 - (e) the foregoing right of disposal.

18. Unpaid Sellers rights to dispose of Goods

- 18.1 In the event that:
- (a) the Seller retains possession or control of the Goods; and
 - (b) payment of the Price is due to the Seller; and
 - (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this agreement; and
 - (d) the Seller has not received the Price of the Goods, then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

19. Intellectual Property

- 19.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller and shall only be used by the Buyer at the Seller's discretion.
- 19.2 Conversely, in such a situation, where the Buyer has supplied drawings, the Seller in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller). Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.
- 19.3 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyers order.

20. General

- 20.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 All Services/Goods supplied by the Seller are subject to the laws of New South Wales and the Seller takes no responsibility for changes in the law which affect the Services/Goods supplied.
- 20.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.

- 20.4 The Buyer shall not set off against the Price amounts due from the Seller.
- 20.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 20.6 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer of such change.
- 20.7 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Services and or Goods.

Neither party shall be liable for any default due to any act of god, war, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control.