

TERMS AND CONDITIONS



1. Definitions

Business Day means a day other than a Saturday, Sunday or a public holiday in New South Wales.

Consequential Loss means any loss or damage arising from a breach of contract or agreement (including breach of this contract), tort, or any other basis in law or equity including, but without limitation to, loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, indirect or remote or unforeseeable loss, loss of business reputation, future reputation or publicity, or any similar loss which was not contemplated by the parties at the time of entering this contract.

Customer means the customer (or any person acting on behalf of and with the authority of the customer) as described in the Invoice as provided by DWL to the Customer.

DWL means DWL Machinery (Aus) Pty Ltd (ABN 23 630 202 916), its successors and assigns or any person acting on behalf of and with the authority of DWL Machinery (Aus) Pty Ltd.

DWL Transit Insurance means the optional delivery insurance provided to the Customer by DWL at additional cost to the Customer.

Goods means all goods supplied by DWL to the Customer and are as described in any Invoice, Risk Management Report or any other documentation provided by DWL to the Customer.

GST means the goods and services tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Invoice means any tax invoice provided to the Customer by DWL specifying the sum of monies payable to DWL for supplying the Goods.

Price means all monies payable by the Customer to DWL for the supply of Goods as specified in the Invoice.

Risk Management Report means the report provided to the Customer that outlines the risks associated with the Goods and the risk treatments and prevention in place.

Services means all services supplied by DWL to the Customer (including in connection with the Goods) and includes any advice or recommendations.

WHS means all Statutory Requirements in connection with workplace health and safety including the *Work Health and Safety Act 2011* (NSW) and the WHS Regulation.

2. Acceptance

2.1 Upon payment being received by DWL from the Customer for the supply of Goods and Services pursuant to an Invoice, the Customer will be deemed to have accepted, and agreed to be bound by, these terms and conditions.

2.2 At the discretion of DWL, the Customer may pay a non-refundable deposit to secure the purchase of Goods for seven (7) days or as otherwise agreed by DWL. If the balance owing is not paid within that time and no security has been arranged in accordance with clause 7, the Customer forfeits the deposit amount and their right to the Goods.

2.3 Where more than one (1) Customer is referred to in an Invoice, the Customers will be jointly and severally liable for all payments of the Price.

2.4 The terms and conditions contained in this contract are legally binding and can only be amended with the written consent of DWL.

3. Price and Payment

3.1 Unless otherwise agreed between DWL and the Customer, full payment of the Price must be made by the Customer to DWL on the earlier of:

- (a) delivery of the Goods and Services to the Customer; and
- (b) the date specified in the Invoice as the due date for payment.

3.2 Payment by the Customer must be made by cash, bank cheque, credit card, electronic funds transfer or by any other method as agreed to between the Customer and DWL.

3.3 Unless otherwise expressly stated, GST and other taxes and duties that may be applicable will be added to the Price.

4. Warranty

4.1 To the extent permitted by law, all other warranties and guarantees whether express or implied that are not set out in this contract are excluded.

4.2 DWL does not provide this warranty in the following circumstances:

- (a) The Customer's misuses and/or abuses of the Goods or Services including (but not limited to) improper and unreasonable maintenance, care, treatment and use.
- (b) Changes or variations have been made to the Goods or Services which have not been made or authorised by DWL.
- (c) The Customer fails to comply with all reasonable instruction of DWL and the Risk Management Report with respect to the Goods or Services.
- (d) Damage is caused to the Goods due to acts of God including (but not limited to) natural disaster, storms, floods, earth-quakes etc.
- (e) Damage is caused to the Goods from plumbing, smoke, fire, vandalism, animals, application of chemicals etc.
- (f) Any acts or omissions of a third party adversely affect the Goods or Services.

4.3 The Customer accepts the Goods purchased in their current state of repair and condition at the time of sale with all defects and faults latent, patent or otherwise (if any).

4.4 The Customer accepts that any description of Goods or Services included in advertising are not exact, accurate or complete and the Customer has the sole responsibility to verify all information prior to payment of the Invoice.

4.5 DWL will make all reasonable endeavours to establish the year of manufacture of any Goods. The Customer is responsible to determine the exact year of manufacturer of the Goods.

4.6 The Customer accepts that DWL is not responsible for meeting the quarantine requirements set by the Western Australia border nor any International standard.

4.7 Subject to the Australian Consumer Law and any other applicable laws, DWL do not warrant that the Goods and Services are fit for the purposes intended by the Customer.

4.8 The Customer is responsible for ensuring that the Goods comply with their relevant WHS legislation in their state or territory before using the Goods in their workforce.

5. Delivery of Goods

5.1 Delivery of the Goods will be deemed to have taken place on the Customer taking possession of the Goods.

5.2 The Customer has a right to possession of the Goods upon payment of the Invoice.

5.3 As soon as possible after the date of the invoice issued, DWL will provide the Customer with a customised Risk Management Report which must be signed by the Customer to acknowledge the potential risks associated with the Goods and Services.

5.4 A Customer who has not received their Risk Management Report has the duty to request in writing an additional copy be provided to them, otherwise it will be assumed by DWL that the report has been received and read. The Risk Management Report is deemed served from the time the electronic message is sent from the DWL system.

5.5 The Customer may take possession of the Goods on an agreed Business Day either by:

- (a) the Customer's personal transportation in which case Customers must:
 - (i) ensure that the load will legally and safely fit on the personal transportation; and
 - (ii) correct and adequate load restraint is used; and
 - (iii) the personal transportation is maintained and is roadworthy; or
- (b) by delivery of the Goods to an agreed address by DWL; or
- (c) as otherwise agreed by the parties.

5.6 From the Invoice date, the Customer has the option to pay for DWL Transit Insurance or invest in independent insurance for the delivery of Goods. DWL will not be liable for any damage occurred during transport of Goods.

5.7 The Customer is responsible for any additional delivery charges in the event that the delivery address is incorrect, extra waiting times or any other costs incurred by the transporter.

5.8 The failure of DWL to deliver will not entitle either party to treat these Terms as repudiated.

5.9 DWL will not be liable for any loss damage or compensation whatsoever due to failure by DWL to deliver the Goods and Services promptly or at all.

5.10 In accordance with clause 4, the Customer must inspect the Goods and must prior to payment of the Invoice (time being of the essence) notify DWL in writing of any alleged defect, damage or failure to comply with the description or Risk Management Report.

5.11 The Customer must afford DWL an opportunity to inspect the Goods (as the case may be) within a reasonable time prior to delivery if the Customer believes the Goods (as the case may be) are defective in any way.

5.12 For defective Goods (as the case may be), the Customer must request in writing and DWL may agree in writing that the Customer is entitled to reject these Goods. DWL's liability is limited to either (at the DWL's discretion):

- (a) replacing the Goods;
- (b) repairing the Goods (except where the Customer has acquired Goods as a 'consumer' within the meaning of Australian Consumer Law set out in clause 4.3); or
- (c) refunding the Goods.

5.13 Any claim for defective Goods without prior written acceptance by DWL will not be reimbursed.

5.14 In the event of defective Goods, the Customer is responsible for the return of the equipment for repair, exchange or refund.

6. Risk and Title

6.1 All risk for the Goods and Services passes to the Customer on delivery.

6.2 DWL and the Customer agree that ownership of the Goods will not pass until:

- (a) the Customer has paid DWL all amounts owing for the particular Goods in full; and
- (b) the Customer has met all other obligations due by the Customer to DWL.

6.3 Receipt by DWL of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then DWL's ownership and rights in respect of the Goods will continue.

7. Security and Charge

7.1 Despite anything to the contrary contained herein or any other rights which DWL may have:

- (a) the event the Customer cannot pay the Invoice upfront and at DWL's discretion, where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to DWL to secure all amounts and other monetary obligations payable under this contract. The Customer acknowledges and agrees that DWL will be entitled to lodge where appropriate a caveat, which caveat will be withdrawn once all payments and other monetary obligations payable hereunder have been met;
- (b) should DWL elect to proceed in any manner in accordance with this clause, the Customer indemnifies DWL from and against all DWL's costs and disbursements including legal costs on a solicitor and own client basis; and
- (c) the Customer agrees to irrevocably nominate constitute and appoint DWL as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 7.1.

8. Default and Consequences of Default

8.1 If the customer:

- (a) defaults in payment of any Invoice when due;
 - (b) the performance of any obligation imposed on it under these Terms; and/or
 - (c) breaches any warranty or representation contained in this contract,
- the Customer must indemnify DWL from and against all liability, claims, losses, damages, costs and fines and disbursements incurred by DWL

in connection with that default (including, without limitation, pursuing the debt including legal costs on a solicitor and own client basis and the DWL's collection agency costs). For the avoidance of doubt, DWL does not have to incur an expense or cost before claiming the benefit of the indemnity provided under this clause.

8.2 Without prejudice to any other remedies DWL may have, if at any time the Customer is in breach of any obligation (including those relating to payment) DWL may suspend or terminate the supply of Goods to the Customer and any of its other obligations under this contract. DWL will not be liable to the Customer for any loss or damage the Customer suffers because DWL has exercised its rights under this clause

9. Cancellation Policy

9.1 DWL may cancel this contract or cancel delivery of the Goods and Services at any time before the Goods and Services are delivered by giving written notice to the Customer. On giving such notice DWL will repay to the Customer any sums paid in respect of the Price. DWL will not be liable for any loss or damage whatsoever arising from such cancellation.

9.2 In the event that the Customer cancels delivery of Goods and Services, the Customer will be liable for any loss incurred by DWL (including, but not limited to, any loss of profits) up to the time of cancellation.

10. Compliance with Laws

10.1 The Customer and DWL will comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities (**Authorities**) that may be applicable to the Goods and Services.

10.2 DWL does not guarantee or warrant the registrability, road worthiness or legal compliance of the Goods to which the Goods and Services have been applied and will not be liable for any loss or damage suffered by the Customer in that respect.

10.3 The Customer can request that DWL facilitate a third party assessment of the vehicle(s) to which the Goods and Services have been applied at the cost of the Customer. This request may result in the variation of the Price.

11. General provisions

11.1 The terms of this contract do not affect any rights the Customer has under the *Competition and Consumer Act 2010* (Cth).

11.2 If any provision of this contract is held to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

11.3 This contract will be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

11.4 DWL will not be under any liability whatsoever to the Customer for any Consequential Loss.

11.5 In the event of any breach of these Terms by DWL, the remedies of the Customer will be limited to damages which under no circumstances must exceed the Price of the Goods and Services.

11.6 DWL will be discharged from all liability whatsoever in connection with the Goods and Services unless proceedings are served within three (3) months from delivery of the particular Goods and Services.

11.7 The Customer will not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by DWL nor to withhold payment of any invoice because part of that invoice is in dispute.

11.8 DWL may license or sub-contract all or any part of its rights and obligations without the Customer's consent. DWL may assign any or all of DWL's rights and obligation under this contract to a third party without the Customer's consent.

11.9 The Customer agrees to DWL providing any personal information to a third party when the provision relates to the Customer's use of the DWL website or purchase of Goods.

11.10 No modification amendments or other variation of this contract will be valid and binding on DWL unless made in writing and duly executed by and on behalf of DWL.

11.11 Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

11.12 The failure by DWL to enforce any provision of these terms and conditions will not be treated as a waiver of that provision, nor will it affect DWL's right to subsequently enforce that provision.