

TERMS AND CONDITIONS



These Terms and Conditions ('Terms') apply to all quotations, sales, deliveries and supplies of goods and services by DWL Machinery (Aus) Pty Ltd (ABN 23 630 202 916) ('DWL', 'we', 'us', 'our') to the Customer. The Customer agrees that by paying any part of the Invoice, taking possession of Goods or otherwise instructing DWL to proceed, the Customer has read, understood and agrees to be bound by these Terms.

1. Definitions and Interpretation

1.1 In these Terms, unless the context requires otherwise:

- (a) 'Business Day' means a day other than a Saturday, Sunday or public holiday in New South Wales.
- (b) 'Consequential Loss' means any indirect, special, punitive, incidental or consequential damages or losses of any kind whatsoever, whether foreseeable or not, including but not limited to loss of revenue; loss of profits; loss of business opportunity; loss of goodwill; loss of production; denial of access to markets; damage to reputation or future reputation; and costs or expenses incurred in connection with any of the foregoing.
- (c) 'Customer' means any person or legal entity purchasing Goods or Services from DWL and where there is more than one Customer, they are jointly and severally liable.
- (d) 'Goods' means all machines, parts, accessories, attachments and equipment (including brand new machines and refurbished machines) supplied by DWL to the Customer as described in any Invoice, Risk Management Report or documentation provided by DWL.
- (e) 'GST' has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (f) 'Invoice' means any tax invoice or pro forma invoice issued by DWL specifying the Price and applicable charges.
- (g) 'Price' means all amounts payable by the Customer to DWL for the Goods and Services, inclusive of GST, duties and any other charges.
- (h) 'Refurbished Machine' means any machinery described as 'used,' 'second-hand,' 'pre-owned,' 'reconditioned,' or 'refurbished,' and which is not sold as brand new.
- (i) 'Risk Management Report' means a report issued by DWL to the Customer identifying the known or anticipated hazards, safety risks or compliance considerations associated with the Goods.
- (j) 'Services' means all services supplied by DWL to the Customer, including inspections, repairs, refurbishments, installation, advice, recommendations, delivery arrangements and related activities.
- (k) 'WHS' means all workplace health and safety obligations under the *Work Health and Safety Act 2011* (NSW), WHS Regulation and other relevant State and Commonwealth legislation.

1.2 References to 'including' are not exhaustive and mean 'including without limitation'.

2. Acceptance and Application

- 2.1 These Terms apply to every sale, supply or delivery of Goods and Services by DWL to the Customer and override any prior terms issued by DWL or the Customer unless expressly agreed in writing.
- 2.2 The Customer warrants that all information provided to DWL for the purposes of purchasing Goods or Services is complete, accurate and not misleading.
- 2.3 Where the Customer purchases both brand new machines and refurbished machines, the Customer acknowledges and agrees that:
 - (a) Brand new machines may be supplied with manufacturer warranties, subject to any specific exclusions notified in writing.
 - (b) Refurbished machines are sold 'as-is,' subject only to any express warranty provided in writing by DWL and are likely to display wear, cosmetic damage and prior usage.
- 2.4 The Customer is deemed to have accepted these Terms on the earlier of:
 - (a) Making payment of any amount specified in an Invoice.
 - (b) Taking possession or delivery of the Goods.
 - (c) Providing any written or verbal instruction to DWL to supply the Goods or Services.
- 2.5 These Terms may only be amended by a written instrument executed by DWL's authorised representative.

3. Quotations, Orders and Deposits

- 3.1 Any quotation issued by DWL is valid for the period stated in the quotation or if no period is stated, for seven (7) days from the date of issue.
- 3.2 DWL reserves the right to withdraw or vary a quotation at any time before accepting an order.
- 3.3 DWL may, in its absolute discretion, require a non-refundable deposit from the Customer to secure Goods, especially in the case of:

- (a) Refurbished Machines that are reserved specifically for the Customer.
- (b) Imported or custom-ordered Goods.

3.4 If the Customer fails to pay the balance of the Price within the agreed timeframe or fails to arrange security acceptable to DWL, the Customer forfeits the deposit and any rights to the Goods.

3.5 DWL may refuse to accept any order in its discretion, including where the Customer has an overdue account or a history of default.

4. Price and Payment

- 4.1 The Price for the Goods and Services will be as stated in the Invoice.
- 4.2 Unless otherwise expressly agreed, full payment is due on the earlier of:
 - (a) Delivery of the Goods to the Customer; or
 - (b) The due date specified in the Invoice.
- 4.3 Payment must be made in Australian dollars by:
 - (a) Cash;
 - (b) Bank cheque;
 - (c) Electronic funds transfer; or
 - (d) Credit card (surcharges may apply).
- 4.4 All amounts payable by the Customer are exclusive of GST unless stated otherwise.
- 4.5 Where applicable, GST, duties, levies or other charges imposed by law will be added to the Price.
- 4.6 Payment is not deemed received until cleared in DWL's nominated account.
- 4.7 If any amount is overdue, DWL may:
 - (a) Charge interest at 2% per calendar month on all overdue amounts, calculated daily until paid;
 - (b) Suspend or cancel further deliveries; and
 - (c) Recover all reasonable costs incurred by DWL in collecting overdue amounts, including legal costs on a solicitor and own client basis.

5. Delivery, Risk and Title

- 5.1 Delivery is deemed to occur:
 - (a) When the Customer or their agent takes possession of the Goods; or
 - (b) When the Goods are delivered to the delivery address specified by the Customer.
- 5.2 Risk in the Goods passes to the Customer immediately upon delivery.
- 5.3 Title to the Goods does not pass to the Customer until:
 - (a) DWL has received full payment of all amounts due; and
 - (b) The Customer has met all other obligations under these Terms.
- 5.4 Until title passes, the Customer holds the Goods as fiduciary bailee and must:
 - (a) Store the Goods separately and clearly identify them as DWL's property;
 - (b) Not remove any identification numbers or labels;
 - (c) Maintain the Goods in good condition and insured against all risks;
 - (d) Not pledge, encumber or otherwise deal with the Goods without DWL's consent.
- 5.5 DWL may, without prejudice to any other rights, enter the Customer's premises or any other place where the Goods are stored to repossess them.

6. Insurance

- 6.1 The Customer is responsible for insuring the Goods against all risks from the time risk passes under clause 5.2.
- 6.2 At the Customer's option, DWL Transit Insurance may be arranged prior to delivery for an additional cost.
- 6.3 DWL accepts no liability for any damage, loss or destruction occurring during transit, unless the Customer has paid for DWL Transit Insurance and the claim is accepted by the insurer.

7. Warranties and Liability

Brand New Machines

- 7.1 Brand new machines may carry manufacturer warranties. DWL will, to the extent permitted by law, pass through any manufacturer warranty and assist the Customer in lodging claims.
- 7.2 DWL's obligations under any express warranty are subject to:
 - (a) The Customer providing written notice of any defect within the warranty period;
 - (b) The Customer complying with all maintenance instructions and recommendations;

- (c) The Customer returning the Goods to DWL's nominated address for assessment.

Refurbished Machines

7.3 Refurbished machines are sold strictly 'as-is,' with all defects, faults and wear and tear, whether patent or latent, except to the extent that any statutory guarantees cannot be excluded under the Australian Consumer Law.

7.4 The Customer acknowledges that refurbished machines may have:

- (a) Evidence of prior use, corrosion, wear or cosmetic damage;
- (b) Replacement or reconditioned parts;
- (c) Limited or no manufacturer warranty coverage.

General Disclaimers

7.5 To the extent permitted by law:

- (a) All warranties, guarantees and conditions not expressly stated in these Terms are excluded.
- (b) DWL does not warrant that any Goods are fit for any particular purpose.
- (c) DWL does not warrant that any Goods comply with specific laws, standards or regulations unless confirmed in writing.

7.6 DWL is not liable for any damage or defect arising from:

- (a) Improper or unreasonable use, installation or maintenance;
- (b) Alteration or modification without DWL's prior consent;
- (c) Acts of God, natural disasters or external causes;
- (d) Acts or omissions of third parties;
- (e) Use of non-genuine or unauthorised parts.

7.7 The Customer acknowledges and agrees that any descriptions, photographs, illustrations or specifications in DWL advertising materials, quotations or website are approximations only, provided for general guidance and do not form part of any contract or warranty unless expressly confirmed in writing.

7.8 Where DWL supplies any Goods or Services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, DWL's liability for a failure to comply with a guarantee under the Australian Consumer Law is limited, to the maximum extent permitted by law, to one or more of the following (as DWL determines):

- (a) In the case of Goods:
 - (i) The replacement of the Goods or the supply of equivalent goods;
 - (ii) The repair of the Goods;
 - (iii) The payment of the cost of replacing the Goods or acquiring equivalent goods;
 - (iv) The payment of the cost of having the Goods repaired.
- (b) In the case of Services:
 - (i) The supplying of the Services again;
 - (ii) The payment of the cost of having the Services supplied again.

7.9 Without limiting any other provision of these Terms, DWL excludes all liability for any Consequential Loss, even if DWL knew or ought reasonably to have known of the possibility of such loss.

7.10 Notwithstanding any other provision of these Terms, to the maximum extent permitted by law, DWL's cumulative liability for all claims, damages, expenses or liabilities arising out of or in connection with the Goods or Services supplied under these Terms will not exceed the total Price paid by the Customer in respect of the Goods and Services to which the claim relates.

8. Inspection, Acceptance and Returns

8.1 The Customer must inspect the Goods immediately on delivery and before use.

8.2 Prior to payment of the Invoice (time being of the essence), the Customer must notify DWL in writing of any:

- (a) Alleged defects or damage;
- (b) Failure to comply with the description in the Invoice or Risk Management Report; or
- (c) Non-conformity of quantity or specification.

8.3 If the Customer does not provide such notice prior to payment, the Customer is deemed to have accepted the Goods as being in accordance with these Terms.

8.4 The Customer must afford DWL a reasonable opportunity to inspect the Goods alleged to be defective.

8.5 If DWL agrees in writing that the Goods are defective, DWL may, at its option:

- (a) Replace the Goods;
- (b) Repair the Goods; or
- (c) Refund the Price paid for the defective Goods.

8.6 Goods returned without DWL's prior written consent will not be accepted and any costs of storage, handling, transport or re-delivery will be at the Customer's expense.

8.7 DWL reserves the right to charge the Customer a handling fee of up to 15% of the Price of any Goods accepted for return (except where the return is due to DWL's error or breach).

9. Delivery Arrangements

9.1 Delivery times and dates are estimates only and are not binding on DWL.

9.2 DWL will use reasonable endeavours to deliver the Goods by the estimated date but is not liable for any delay.

9.3 The Customer acknowledges that delivery may be affected by factors beyond DWL's control, including freight delays, supplier shortages, industrial action and weather events.

9.4 The Customer is responsible for:

- (a) Ensuring that adequate access, equipment and personnel are available to receive the Goods;
- (b) All unloading costs and risk; and
- (c) Ensuring compliance with relevant transport laws, including load restraint and vehicle suitability if collecting Goods.

9.5 If delivery is delayed by the Customer's act or omission, DWL may store the Goods at the Customer's risk and cost and delivery will be deemed to have occurred on the date the Goods were made available.

9.6 Any additional costs arising from an incorrect delivery address, lack of access or delay in acceptance of delivery will be charged to the Customer.

9.7 DWL will not be liable for any loss or damage whatsoever due to failure by DWL to deliver the Goods (or any part of them) promptly or at all.

10. Risk Management and WHS Compliance

10.1 As soon as reasonably practicable after the Invoice date, DWL will provide the Customer with a Risk Management Report for the Goods.

10.2 The Customer must sign the Risk Management Report to acknowledge receipt and understanding of the risks associated with the Goods.

10.3 If the Customer does not receive the Risk Management Report, the Customer must request a replacement copy in writing. The Risk Management Report is deemed served when DWL sends it electronically to the Customer's nominated email address.

10.4 The Customer warrants and acknowledges that:

- (a) It is responsible for ensuring that any machinery or equipment purchased complies with WHS laws applicable in its state or territory before use in any workplace;
- (b) Refurbished Machines may not comply with current safety standards without modification or retrofitting;
- (c) The Customer will carry out all necessary inspections, certifications or modifications to satisfy WHS obligations.

10.5 DWL does not warrant or represent that any Goods, including refurbished machinery, are fit for any specific purpose or compliant with any specific regulatory requirement unless confirmed in writing.

11. Security, Charge and Retention of Title

11.1 Despite delivery and passing of risk, title to all Goods remains with DWL until:

- (a) The Customer has paid all amounts owing to DWL in full; and
- (b) The Customer has fulfilled all other obligations under these Terms.

11.2 Until title passes, the Customer must:

- (a) Hold the Goods as bailee and fiduciary agent for DWL;
- (b) Keep the Goods separate from other property and properly stored, protected and insured;
- (c) Not sell, lease, pledge, transfer or otherwise deal with the Goods except in the ordinary course of business.

11.3 In the event of default or non-payment by the Customer:

- (a) DWL may enter any premises where the Goods are stored to retake possession without liability for trespass;
- (b) The Customer irrevocably appoints DWL as its attorney to do all things necessary to protect DWL's rights, including signing any document and lodging any caveat or security interest.

11.4 Where the Customer owns land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of its interest in such property in favour of DWL to secure all obligations under these Terms.

11.5 The Customer acknowledges DWL's entitlement to lodge a caveat over such property and agrees that DWL's rights to recover moneys secured by any charge are not limited by any moratorium or other restriction under any law.

11.6 The Customer must indemnify DWL for all costs incurred by DWL in exercising its rights under this clause, including legal fees on a solicitor and own client basis.

12. Default and Consequences

12.1 If the Customer:

- (a) Fails to pay any amount when due;
 - (b) Breaches any warranty or obligation under these Terms;
 - (c) Becomes insolvent, bankrupt or subject to external administration;
- then, without limiting any other right, DWL may:
- (i) Suspend or terminate any contract with the Customer;
 - (ii) Enforce any security interest or charge;
 - (iii) Retake possession of any Goods for which title has not passed;
 - (iv) Recover all costs, losses and expenses incurred, including debt recovery fees, legal fees, storage costs and interest.

12.2 The Customer indemnifies DWL against all claims, losses, damages, liabilities, costs and expenses incurred by DWL arising directly or indirectly from any breach by the Customer.

13. Cancellation

13.1 DWL may cancel any contract or order for Goods and Services by written notice to the Customer if:

- (a) The Customer defaults in payment or performance of any obligation;
- (b) DWL reasonably believes the Customer is insolvent or at risk of insolvency;
- (c) Supply of the Goods becomes impracticable due to circumstances beyond DWL's reasonable control.

13.2 If DWL cancels under clause 13.1, DWL will refund any amounts paid by the Customer for undelivered Goods but will not be liable for any consequential loss or damages arising from the cancellation.

13.3 The Customer may not cancel an order once DWL has accepted it, except with DWL's written consent and on terms that the Customer indemnifies DWL for any loss, including but not limited to:

- (a) Costs incurred by DWL in fulfilling or preparing to fulfil the order;
- (b) Any loss of profit on the order;
- (c) Costs of storage or re-stocking.

13.4 Where the Customer cancels delivery of the Goods and Services, the Customer remains liable for all amounts due and any costs, expenses or losses incurred by DWL as a result.

14. Compliance with Laws and Regulations

14.1 The Customer warrants that:

- (a) It will comply with all applicable laws, regulations and industry standards relating to the purchase, installation, use, operation and maintenance of the Goods, including but not limited to:
 - (i) Work Health and Safety legislation;
 - (ii) Environmental protection laws;
 - (iii) Roadworthiness and vehicle registration requirements.
- (b) It has made its own enquiries to ensure the Goods are suitable and compliant for their intended use.

14.2 DWL does not warrant that any Goods (including refurbished machines) comply with any particular regulatory standard, unless DWL has expressly stated in writing that the Goods meet that standard.

14.3 Upon request by the Customer, DWL may assist in arranging a third-party inspection or certification of the Goods, at the Customer's cost. Any assistance provided is without liability and does not constitute a warranty or representation of compliance.

14.4 The Customer indemnifies DWL against all claims, demands, losses, liabilities, costs and expenses arising from any failure by the Customer to comply with applicable laws or regulations.

15. Privacy and Use of Information

15.1 The Customer acknowledges and agrees that DWL may collect, store, use and disclose personal information (including names, contact details, credit information and purchase history) for the purposes of:

- (a) Processing orders and payments;
- (b) Providing the Goods and Services;
- (c) Managing DWL's relationship with the Customer;
- (d) Performing credit checks and enforcing debts;
- (e) Marketing products and services (unless the Customer opts out).

15.2 DWL may disclose the Customer's personal information to:

- (a) Third-party contractors, suppliers or logistics providers engaged to provide Goods and Services;
- (b) Credit reporting agencies and debt collection agencies;
- (c) DWL's professional advisers and insurers;
- (d) Any person or entity to whom DWL is required or authorised by law to disclose personal information.

15.3 The Customer consents to DWL collecting, using and disclosing personal information in accordance with DWL's Privacy Policy, which is available upon request or from DWL's website.

15.4 If the Customer does not provide the requested personal information, DWL may not be able to supply the Goods and Services.

16. Limitation of Liability

16.1 To the fullest extent permitted by law:

- (a) DWL will not be liable for any Consequential Loss arising out of or in connection with the supply of the Goods and Services, including but not limited to loss of profits, loss of production or loss of business opportunity, even if DWL was advised of the possibility of such loss.
- (b) DWL's total liability under or in connection with any contract, whether in contract, tort (including negligence), statute or otherwise, is limited to an amount equal to the Price paid by the Customer for the relevant Goods and Services.
- (c) The Customer must take all reasonable steps to mitigate any loss or damage.

16.2 Where any law (including the Australian Consumer Law) implies any guarantee, warranty or condition that cannot be excluded by agreement, DWL's liability is limited to the maximum extent permitted by law.

17. Force Majeure

17.1 Neither party is liable for any failure or delay in performing any obligation under these Terms if such failure or delay is caused by an event beyond the reasonable control of that party, including but not limited to:

- (a) Acts of God;
- (b) Fires, floods, storms, earthquakes or other natural disasters;
- (c) War, acts of terrorism, riots or civil unrest;
- (d) Strikes, lockouts, industrial disputes;
- (e) Government action or embargo;
- (f) Epidemic or pandemic.

17.2 If an event of force majeure occurs:

- (a) The affected party must notify the other party in writing as soon as reasonably practicable;
- (b) The obligations of the affected party are suspended for the duration of the event;
- (c) Either party may terminate the contract by notice in writing if the event continues for more than 90 days.

18. General Provisions

18.1 Failure by DWL to enforce any provision of these Terms will not be treated as a waiver of that provision, nor will it affect DWL's right to enforce that provision subsequently.

18.2 If any provision of these Terms is held to be invalid, void, illegal or unenforceable, that provision will be deemed deleted but the remaining provisions will remain in full force and effect.

18.3 DWL may assign or subcontract any of its rights and obligations under these Terms without the Customer's consent. The Customer must not assign any of its rights without DWL's prior written consent.

18.4 These Terms constitute the entire agreement between DWL and the Customer regarding the supply of Goods and Services and supersede all prior negotiations, representations, warranties, understandings and agreements.

18.5 No variation or modification of these Terms will be binding unless recorded in writing and signed by DWL.

18.6 The Customer must pay all amounts due without any set-off, deduction, withholding or counterclaim.

18.7 Any notice required to be given must be in writing and delivered by hand, email or pre-paid post to the recipient's address specified in the Invoice or otherwise notified.

18.8 These Terms are governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

19. Acknowledgement

19.1 The Customer acknowledges and agrees that:

- (a) It has read and understood these Terms in full;
- (b) It has had the opportunity to obtain independent legal advice before agreeing to these Terms;
- (c) In purchasing refurbished machines, the Customer accepts all risks associated with prior use, wear and tear and suitability for purpose;
- (d) It is responsible for ensuring the Goods comply with all laws and regulations applicable to their use.