



Trading Terms and Conditions

**FOR THE SUPPLY OF GOODS AND SERVICES
WAVERLEY FORKLIFTS PTY LTD (ACN 632 889 742)**

1. PARTIES

The Supplier: WAVERLEY FORKLIFTS PTY LTD (ACN 632 889 742)

The Customer _____

2. DEFINITIONS

- (a) The Supplier is Waverley Forklifts Pty Ltd (ACN 632 889 742) of 74 Ricketts Road in the state of Victoria.
- (b) The Customer is the party or any person acting on behalf of and with the authority of the Customer for whom the Order is provided.
- (c) The Order shall be defined as any request for the provision of Goods and/or Services by the Customer with the Supplier which has been accepted by the Supplier.
- (d) The Goods are the products and/or components and/or equipment provided by the supplier.
- (e) The Services are all the delivery and/or supply of Goods by the Supplier, including any advice or recommendations on product design.
- (f) The Price is the amount invoiced for Goods supplied.
- (g) Indirect, Special or Consequential loss or damage includes:
 - (i) any loss of income profit or business;
 - (ii) any loss of goodwill or reputation;
 - (iii) any loss of value of intellectual property.
- (h) Invoices include invoices for Goods supplied.
- (i) Major failure is Goods that are unsafe and/or substantially unfit for normal purpose and cannot be reasonably be made unfit within a reasonable time
- (j) Security interest as defined in Section 12 of the Personal Property Securities Act 2009 (Cth)
- (k) "Security Agreement", "Commingled Goods", "Collateral", "Financing Change Statement" is defined under Section 10 of the Personal Property Securities Act 2009 (Cth)

3. GENERAL

- (a) These Terms and Conditions together with the Supplier's written or verbal quotation and the Supplier's Credit Application Form forms this Agreement.
- (b) Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions and may not be varied unless expressly agreed by the Supplier in writing. In the event that an inconsistency exist and/or arises between these terms and the Order is acknowledged between the parties that the Terms and Conditions will prevail.
- (c) No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed and dated by the Supplier
- (d) The Terms and Conditions are binding on the Customer, his/hers heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- (e) In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations
- (f) Where more than one Customer completes this Agreement each shall be liable jointly and severally.
- (g) If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these Terms and Conditions.
- (h) The failure to the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision
- (i) The Customer acknowledges that the Supplier may detail these Terms and Conditions on its website. In this event, the Terms and Conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have any notice of any such Terms and Conditions and/or amendments.
- (j) These Terms and Conditions must be read in conjunction with the Supplier's Credit Application Form.

4. PLACEMENT OF ORDERS

- (a) Orders placed by the Customer with the Supplier will be considered valid when placing the Order by telephone.
- (b) The Customer must provide the Supplier with a Purchase Order before any Goods or Services are provided.
- (c) Any written Quotation given by the Supplier shall expire thirty (30) days after the date of the written quotation. Quotations may also be provided to the Customer by verbal communication over the telephone.
- (d) All prices are based on taxes and statutory charges current at the time of Quotation. Should these vary during the period from the date of the Quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

5. PRICE

- (a) At the Supplier's sole discretion the Price shall be either:
 - (i) As detailed on invoices provided by the Supplier to the Customer in respect of Goods supplied or Services Provided; or
 - (ii) The Supplier's quoted Price as for the Order - Subject to clause 5(b).
- (b) The Supplier reserves the right to change the Price in the event of a variation to the Supplier's Order, and notice will be provided in writing by the supplier within a reasonable time.

6. SUPPLY AND DELIVERY OF GOODS & SERVICES

- (a) The supplier reserves the right to :
 - (i) Decline requests for any Goods requested by the customer.
 - (ii) Cancel or postpone the delivery of Goods at their discretion.
- (b) Delivery of the Goods shall be deemed to be complete when the Goods are collected by the customer or are delivered to the customer or to the carrier as nominated by the Supplier and/or Customer.
- (c) If the Customer fails to make all arrangements necessary to take delivery of the Goods the Customer shall, at the discretion of the Supplier, be liable for a Non Delivery Fee and the Supplier shall be entitled, also at its discretion, to charge a reasonable fee for redelivery and storage.
- (d) Unless specified by the Supplier in contrary to the Order, the Supplier does not warrant that it will be capable of providing the Goods at specific times requested by the Customer during the term of this Agreement.
- (e) Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Goods and of satisfying the Customer's expectation of these Goods.
- (f) In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Customer as to the nature and scope of the Goods to be provided.
- (g) Nothing in the above clause shall affect the Supplier's right to exercise its own judgement and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.
- (h) The Supplier may agree to provide, on request from the Customer, additional Goods not included or specifically excluded in the Quotation/Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Goods includes, but is not limited to, alterations, amendments, and any additional visits by the Supplier after provision of the Goods at the request of the Customer.

7. PAYMENT AND CREDIT POLICY

- (a) Any reference to Customer shall include all Customers, unless it refers to a specific group of customers.
- (b) For credit purposes, the two main groups of Customers are Non-Account Customers and Account Customers

(C) NO ACCOUNT CUSTOMERS

- (i) The Customer must make full payment of the Price upon provision of the Goods and/or completion of the Services.

(D) ACCOUNT CUSTOMERS

- (i) Thirty (30) day account Customers must make full payment to the Supplier within thirty (30) days from the date of issue of invoice(s) for the Goods and/or Services.

(E) CREDIT

- (ii) Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed Credit Application Form.
- (iii) Any credit granted may be revised by the Supplier at any time and at its discretion.
- (iv) The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these Terms of Conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and / or the Customer committing an act of insolvency.

- (v) The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

8. GOODS & SERVICES TAX

- (a) GST refers to Goods and Services tax under the Goods and Services Act 1999 ("GST Act") and terms used herein have the meanings contained within the GST Act.
(b) It is hereby agreed between the Customer and the Supplier that the consideration for the Supplier expressed in this Agreement is exclusive for the Suppliers liability of GST.
(i) On sale: (a) The Customer will pay to the Supplier, in addition to the total purchase Price, the amount payable by the Supplier of GST on the taxable supply made by the Supplier under this agreement;
(b) The Supplier shall deliver to the Customer a Tax Invoice for the supply in a form which complies with the GST ACT and regulations.

9. DEFAULT

- (a) Invoices issued by the Supplier shall be due and payable upon the provision of Goods and / or upon completion of the Services for Non-Account Customers and invoices issued by the supplier shall be due and payable within thirty (30) days of the date of issue for Account Customers ("Default Date") depending on terms agreed with the Supplier.
(b) If the Supplier does not receive the Outstanding Balance for the Price on or before the Default Date, the Supplier may, without prejudice to any other remedy it may have, forward the Customer outstanding amount to a debt collection agency for further action. The Customer acknowledges and agrees that:
(i) After the Default Date, the Outstanding Balance shall include, but not limited to, all applicable fees and charges under the Agreement.
(ii) The Supplier may, in its discretion, calculate interest at the rate of 12% per annum for all monies due by Customer to the Supplier.
(iii) In the event of the Customer being in default of the obligation to pay and the overdue account is then referred to a debt collection and / or law firm for collection and the agency charges commission on a contingency basis the Customer shall be liable to pay as a liquidated debt, the commission payable by the Supplier to the agency, fixed at the rate charges by the agency from time to time as if the agency has achieved 100% recovery and the following formula shall apply:
Original Debt x 100
Commission = 100 – Commission % charged by the agency (including GST)
(iv) In the event where the Supplier or the Supplier's agency refers the overdue account to a lawyer the Customer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

10. RISK & LIABILITY

- (a) The Customer will ensure when placing Orders that there is sufficient information to enable the Supplier to execute the Order.
(b) The Supplier takes no responsibility if the specifications are wrong or inaccurate and the customer will be liable in that event for the expenses incurred by the Supplier for any work required to rectify the Order.
(c) The Customer is responsible for ensuring that the Supplier is made aware of any special requirements pertaining to the Order and the Supplier relies upon the integrity of the information supplied to it.
(d) The Supplier takes no responsibility and will not be liable for any damages or costs resulting in the Goods being faulty as a consequence of insufficient information provided by the Customer.
(e) The Supplier takes no responsibility for representations made in relation to the Goods or any delay in the delivery of the Goods made by a third party or third party manufacturer.
(f) The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from:
(i) Any claims in respect of faulty or defective design of any Goods supplied.
(ii) Any loss incurred as a result of delay, or failure to provide the Goods or to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.
(g) The Supplier does not represent that it will carry out any Services and/or provide and/or deliver any Goods unless it is included in the quote. (h) The Customer accepts risk in relation to the Goods when the Goods pass to his care and/or control.

11. WARRANTY

- (a) The Supplier warrants that the rights and remedies to the Customer in this Agreement for warranty against defects are in addition to other rights and remedies of the Customer under any applicable Law in relation to the goods and services to which the warranty relates.

WARRANTY OF SERVICES

- (b) The Supplier warrants that if any defect in any Service provided by the Supplier becomes apparent and is reported to the Supplier with thirty (30) days of the provision of the Services (time being of the essence) and then the Supplier will (at the Suppliers sole discretion) remedy the defective Service.
(c) If any Service provided by the Supplier are repaired, altered or overhauled by the Customer or caused to be repaired, altered or overhauled by the Customer without the Supplier's consent, the warranty shall cease and the Supplier shall thereafter in no circumstance be liable under the terms of the warranty.
(d) In respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in replacing the defective Goods or remedying the defective Services or in properly assessing the Customer's claim. The Supplier will use its best endeavours to assist the customer with the claim.
(e) Where the Customer has complied with the conditions of warranty for defective Services, the Supplier's liability is limited to rectifying and/or remedying the defective Services

WARRANTY FOR GOODS

- (f) The warranty for Goods supplied shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods. The Supplier will use his best endeavours to assist the Customer with any claim with respect of the Goods.
(g) The Customer continues to be responsible for all amounts owing to the Supplier in the event that any Goods are supplied on the basis that a manufacturer's warranty is in place and it subsequently becomes known to the parties that the warranty is void or inapplicable.
(h) The Supplier warrants:
(i) Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law.
(j) You are entitled to a replacement or refund for a major failure and compensation for any other reasonably unforeseeable loss or damage. You are also entitled to have the Goods replaced or repaired if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
(k) Warranty for Goods shall only cover the cost of Goods. The Customer acknowledges that additional costs incurred, such as labour and/or freight, must be borne by the Customer.

CLAIMS MADE UNDER WARRANTY

- (l) Subject to clause 12(b) of this Agreement claims for warranty should be made in one of the following ways.
(i) The Customer must send the claim in writing together with proof of purchase to the Supplier's business address stated in clause 2(a) of this Agreement.
(ii) The Customer must email the claim together with the proof of purchase to the Supplier to serviceadmin@waverleyforklifts.com.au
(iii) The Customer must contact the Supplier on the Supplier's business number (03 8540 4000)
(m) Goods where a claim is made are to be returned to the Supplier or are to be left in the state and conditions in which they were delivered until such time as the Supplier or its agent has inspected to the Goods. Such inspection is to be carried out within a reasonable time after notification.

12. RETENTION OF TITLE

- (a) While the risk in Goods shall pass on delivery and/or supply (including all risks associated with unloading), legal and equitable title in the Goods shall remain with the Supplier until full payment of all Goods supplied by the Supplier to the Customer is made. Pending such payment the customer:
(i) Shall hold the Ballee for the Supplier and shall return the Goods to the Supplier if so requested.
(ii) Agrees to hold the Goods at the Customer's own risk and is liable to compensate the Supplier for all loss or damage sustained to the Goods whilst they are in the Customer's possession.
(iii) The Customer should store the Goods separately and in such a manner that it is clearly identified as the property of the Supplier and keep the Goods insured to full replacement value.
(iv) The Customer should not allow any person to have or acquire security interest in the Goods whilst the Goods are in the Customer's possession.
(v) The Customer may sell and/or use the Goods in the ordinary course of business.
(vi) If the Goods are resold before all monies are paid to the Supplier, the Customer shall hold the proceeds of sale in a separate identifiable account on trust for the Supplier and promptly account the Supplier for those proceeds in payment for the Price for the Goods.
(b) The Supplier is authorised to enter the Premises or the premises where the Customer stores the Goods without liability for trespass or any resulting damage in retaking possession of the Goods until the accounts owed to the Supplier by the Customer are fully paid.
(c) Notwithstanding the provisions above, the Supplier shall be entitled to issue legal proceedings to recover the Price of the Goods.

13. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) ("PPSA")

- (a) The Customer acknowledges that these Terms and Conditions will constitute a Security Agreement which creates a security interest in favour of the Supplier over all present and after acquired Goods and/or Services supplied by the Supplier to the Customer to secure the payment of the Price or any other amount owing under this agreement from time to time including future advances.
(b) The Customer acknowledges that by accepting these Terms and Conditions and by virtue of the retention of title clause as provided in Clause 13, the security interest is a purchase money security interest ("PMSI") as defined under Section 14 of the PPSA for all present, after acquired Goods and/or Services including any Commingled Goods.
(c) The security interest will continue to apply as an interest in the Collateral for the purposes of PPSA with priority over registered or unregistered security interest.
(d) The Supplier may register the security interest as PMSI on the Personal Property Securities Register ("PPSR") under the PPSA without providing further notice to the customer. (e) The Customer agrees the Supplier is not required to disclose information pertaining to the Supplier's security interest to and interest party unless required to do pursuant PPSA or under the general law.
(f) The Customer agrees and undertakes:
(i) To sign any documents and/or provide further information reasonably required by the Supplier to register Financing Statement or Financing Statement on the PPSR;
(ii) To indemnify the Supplier for all expenses and/or costs incurred by the Supplier in registering a Financing Statement or Financing Change Statement on PPSR including the costs of amending, maintaining, releasing and enforcing any security interests in the Goods;
(iii) Not to register and/or make a demand to alter a Financing Statement in the Collateral without prior written consent of the Supplier;
(iv) To provide the Supplier within 7 days written notice of any change or proposed change to Customer's business name, address, contact details or any other changes to the Customer's details registered in the PPSR;

- (v) To waive any rights of enforcement under Section 115 of the PPSA for Collateral not used predominantly for personal, domestic or household purposes
- (vi) To waive any rights to receive Verification Statement in respect of any Financial Statement under Section 157 of the PPSA.

14. TERMINATION & CANCELLATION

CANCELLATION BY SUPPLIER

- (a) The Supplier may cancel any Order to which these Terms and Conditions apply or cancel delivery of Goods at any time before the Goods are delivered provided by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.
- (b) Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
 - (i) Any money payable to the Supplier becomes overdue; or
 - (ii) The Customer becomes insolvent, convenes a meeting with its creditors, or makes an assignment for the benefit of its creditors; or
 - (iii) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

CANCELLATION BY CUSTOMER

- (c) Any Order cannot be cancelled by the Customer unless expressly agreed to the Supplier in writing.
- (d) In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
- (e) If the Customer places an Order with the Supplier and the Supplier places an Order with a third party Supplier to meet the Customer's request, the Customer shall be liable for the Price of the Goods ordered if the Customer cancels the Order and the Goods have already been dispatched.

15. SET-OFF

- (a) The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment. (b) The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off

16. INSURANCE

- (a) The Supplier is not liable to provide any insurance cover for the Goods. It is the Customer's responsibility to effect whatever insurance cover he requires at his own expense.

17. AGREED USE

- (a) The Customer acknowledges that they Customer may forfeit any right if any, he may have against the Supplier if:
 - (i) The Goods are applied for any other use to which the Goods are not intended for and/or not in accordance with any applicable manual;
 - (ii) Any alteration to the Goods is carried out other than in accordance with intended alterations and/or the Goods are not repaired by an authorised repairer.
- (b) The Customer further acknowledges sole responsibility for any damage or injury to property or person caused by using the Goods in any way and shall indemnify in full the Supplier, its servant and its agents in relation to all such claims.

18. PRIVACY ACT 1988

- (a) The Customer and/or the Guarantor/s agrees;
 - (i) For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.
 - (ii) That the Supplier may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.
 - (iii) The Customer consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1) (h) Privacy Act 1988)

19. JURISDICTION

- (a) This Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.

20. ENTIRE AGREEMENT

- (a) These Terms and Conditions as defined in clause 3(a) constitute the whole Agreement made between the Customer and the Supplier.
- (b) This Agreement can only be amended in writing signed by each of the parties.
- (c) All prior discussions and negotiations are merged within this document and the Supplier expressly waived all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.
- (d) Nothing in these Terms and Conditions is intended to have the effect of contravening and applicable provisions of the Competition And Consumer Act 2010 or the Fair Trading Acts in each of the States and Territories of Australia