

## Affordable Skid Steers Pty Ltd – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "AFF" shall mean Affordable Skid Steers Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Affordable Skid Steers Pty Ltd.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by AFF to the Client.
- 1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Equipment" shall mean all Equipment including any accessories supplied on hire by AFF to the Client (and where the context so permits shall include any supply of services) as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by AFF to the Client.
- 1.5 "Goods" shall mean all Goods supplied by AFF to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by AFF to the Client.
- 1.6 "Services" shall mean all Services supplied by AFF to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.7 "Price" shall mean the Price payable for the Goods as agreed between AFF and the Client in accordance with clause 4 of this contract.
- 2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**
- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts or where applicable.
- 2.2 Where the Client buys Goods as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 3. Acceptance**
- 3.1 Any instructions received by AFF from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by AFF shall constitute acceptance of the terms and conditions contained herein.
- 3.2 The Client acknowledges and agrees that upon the closing date for receipt of balance of payment, it will be issued in writing, a forty-eight (48) hour extension notice. In the event the Client does not pay the balance by the extended time allowed, then the Client agrees this shall result in a full forfeiture of any sums paid and the machine will immediately be re-listed for sale.
- 3.3 The Client acknowledges and agrees that in the event the Client needs to seek approval for financing, then the Client will have five (5) working days to organise this and make payment. The Client agrees that any balance paid will be forfeited and the machine will immediately be re-listed for sale.
- 3.4 AFF make no guarantee of the year of manufacture and the actual hours of the machine. To the best of AFF's knowledge, and at the time of the sale, these details are as displayed on the machine.
- 3.5 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments to the Client.
- 3.6 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of AFF.
- 3.7 The Client shall give AFF not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by AFF as a result of the Client's failure to comply with this clause.
- 3.8 Goods are supplied by AFF only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 4. Price and Payment**
- 4.1 At AFF's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by AFF to the Client in respect of Goods supplied; or
- (b) AFF's current price at the date of delivery of the Goods according to AFF's current price list; or
- (c) AFF's quoted Price (subject to clause 4.2) which shall be binding upon AFF provided that the Client shall accept AFF's quotation in writing within thirty (30) days.
- 4.2 AFF reserves the right to change the Price in the event of a variation to AFF's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances) shall be charged for on the basis of AFF's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At AFF's sole discretion a non-refundable deposit may be required.
- 4.4 At AFF's sole discretion:
- (a) payment shall be due on delivery of the Goods; or
- (b) payment shall be due before delivery of the Goods.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice, or by bank cheque, or by credit card (plus a service charge of up to three and a half percent (3.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and AFF.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 5. Transmission of Card Payment Policy**
- 5.1 Upon payment of cleared funds, client's credit card details will automatically be destroyed and not displayed further.
- 6. Delivery of Goods**
- 6.1 At AFF's sole discretion delivery of the Goods shall take place when:
- (a) the Client takes possession of the Goods at AFF's address; or
- (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by AFF or AFF's nominated carrier).
- 6.2 At AFF's sole discretion the costs of delivery are in addition to the Price.
- 6.3 In the event the Client gives any instructions to AFF for the supply of Goods and that the Client does not hold the Goods for a maximum period of twenty-four (24) hours. If in that time, no further contact has been made by the Client, or no effort has been made to take delivery of the Goods, AFF then reserves the right to supply those same Goods to any other Client.
- 6.4 All payments must be cleared in AFF's system prior to the dispatch of any items.
- 6.5 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.6 The failure of AFF to deliver shall not entitle either party to treat this contract as repudiated.
- 6.7 AFF shall not be liable for any loss or damage whatsoever due to failure by AFF to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of AFF.
- 7. Delivery Policy**
- 7.1 Collection/Delivery of Goods should take place within 72 Hours of cleared funds.
- 8. Risk**
- 8.1 If AFF retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, AFF is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by AFF is sufficient evidence of AFF's rights to receive the insurance proceeds without the need for any person dealing with AFF to make further enquiries.
- 8.3 Where the Client expressly requests AFF to leave Goods outside AFF's premises for collection or to deliver the Goods to an unattended location then such Goods shall be at the Client's risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.
- 9. Title**
- 9.1 AFF and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid AFF all amounts owing for the particular Goods; and
- (b) the Client has met all other obligations due by the Client to AFF in respect of all contracts between AFF and the Client.
- 9.2 Receipt by AFF of any payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then AFF's ownership or rights in respect of the Goods shall continue.
- (a) It is further agreed that where practicable the Goods shall be kept separate and identifiable until AFF shall have received payment and all other obligations of the Client are met; and
- (b) until such time as ownership of the Goods shall pass from AFF to the Client AFF may give notice in writing to the Client to return the Goods or any of them to AFF. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
- (c) AFF shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Client fails to return the Goods to AFF then AFF or AFF's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated, as the possessor of the Goods; and
- (e) the Client is only a bailee of the Goods and until such time as AFF has received payment in full for the Goods then the Client shall hold as AFF has received from the sale or disposal of the Goods, up to and including the amount the Client owes to AFF for the Goods, on trust for AFF; and
- (f) the Client shall not deal with the money of AFF in any way which may prejudice AFF's interest in the Goods; and
- (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of AFF; and
- (h) AFF can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that AFF will be the owner of the end products.
- 10. Personal Property Securities Act 2009 ("PPSA")**
- 10.1 In this clause:
- (a) financing statement has the meaning given to it by the PPSA;
- (b) financing change statement has the meaning given to it by the PPSA;
- (c) security agreement has the meaning given to it by the PPSA created between the Client and AFF by these terms and conditions; and
- (d) security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:
- (i) all Goods previously supplied by AFF to the Client (if any);
- (ii) all Goods that will be supplied in the future by AFF to the Client.
- 10.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which AFF may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
- (b) indemnify, and upon demand reimburse, AFF for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereto;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of AFF;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of AFF; and
- (e) immediately advise AFF of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 AFF and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions. The Client hereby waives its rights to receive notices under sections 95, 118, 124, 130, 131 and 132A of the PPSA.
- 10.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by AFF, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client shall unconditionally ratify any actions taken by AFF under clauses 10.3 to 10.5.
- 11. Security and Charge**
- 11.1 Despite anything to the contrary contained herein or any other rights which AFF may have however:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client 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 AFF or AFF's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that AFF (or AFF's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met;
- (b) should AFF elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify AFF from and against all AFF's costs and disbursements including legal costs on a solicitor and own client basis;
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate and constitute and appoint AFF or AFF's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.
- 12. Defects**
- 12.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) 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 within a reasonable time following delivery. If the Buyer believes the Goods are defective in any way, if the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. 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 except where the Buyer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 13. Returns**
- 13.1 Returns will only be accepted provided that:
- (a) the Buyer has complied with the provisions of clause 12.1; and
- (b) the Seller has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Buyer's cost within thirty (30) days of the delivery date; and
- (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 13.2 The Seller may (at their sole discretion) accept the return of Goods for credit but this may incur a handling fee of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 13.3 Non-stocklist items or Goods made to the Buyer's specifications are under no circumstances acceptable for credit or return.
- 14. Warranty**
- 14.1 The warranty shall be the current warranty provided by ELITE warranty group if taken the term of warranty will be stated on invoice. AFF shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by ELITE warranty group.
- 14.2 Any after sale issues, will need to be addressed directly with ELITE warranty group (0800 956 763). As ELITE is separate company, AFF shall have no involvement regarding such a claim.
- 14.3 In the case of second hand Goods, the Client 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 AFF as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. AFF shall not be responsible for any loss or damage to the Goods, or caused by the Goods, any part thereof however arising.
- 15. Default and Consequences of Default**
- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at AFF's sole discretion such interest shall compound monthly at such rate) after as well as before any judgment.
- 15.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by AFF.
- 15.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify AFF from and against all costs and disbursements incurred by AFF in pursuing the debt including legal costs on a solicitor and own client basis and AFF's collection agency costs.
- 15.4 Without prejudice to any other remedies AFF may have, if at any time the Client is in breach of any obligation (including those relating to payment) AFF may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. AFF will not be liable to the Client for any loss or damage the Client suffers because AFF has exercised its rights under this clause.
- 15.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) and ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied as an administration fees which sum shall become immediately due and payable.
- 15.6 Without prejudice to AFF's other remedies at law AFF shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to AFF shall, whether or not due for payment, become immediately payable in the event that:
- (a) a more favourable offer becomes overdue, or in AFF's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client 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 Client or any asset of the Client.
- 16. Cancellation**
- 16.1 AFF may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice AFF shall repay to the Client any sums paid in respect of the Price. AFF shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by AFF (including, but not limited to, any loss of profits) up to the time of cancellation.
- 16.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.
- 17. Privacy Act 1988**
- 17.1 The Client and/or the Guarantor's (herein referred to as the Client) agree for AFF to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by AFF.
- 17.2 The Client agrees that AFF may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application for credit by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client.
- 17.3 The Client understands that information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 17.4 The Client consents to AFF being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.5 The Client agrees that personal credit information provided may be used and retained by AFF for the following purposes (and for other purposes as shall be agreed between the Client and AFF or required by law from time to time):
- (a) the provision of Goods; and/or
- (b) the marketing of Goods by AFF, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts owing to the Client's account in relation to the Goods.
- 17.6 AFF may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client;
- (c) to provide information to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
- (b) details concerning the Client's application for credit or commercial credit and the amount requested;
- (c) advice that Client is a current credit provider to the Client;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of AFF, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by AFF has been paid or otherwise discharged.
- 18. Equipment Hire**
- 18.1 The Equipment shall at all times remain the property of AFF and is returnable on demand by AFF. In the event that the Equipment is not returned to AFF in the condition in which it was delivered AFF retains the right to charge the Price of repair or replacement of the Equipment.
- 18.2 The Client agrees to the credit reporting agency may include:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
- (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other document or file relating to the Equipment.
- (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by AFF to the Client.
- 18.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to indemnify AFF against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 19. General**
- 19.1 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.
- 19.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 19.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 19.4 AFF shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by AFF of these terms and conditions.
- 19.5 In the event of any breach of this contract by AFF the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 19.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by AFF nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.7 AFF may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.8 The Client agrees that AFF may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which AFF notifies the Client of such change. Except where AFF supplies further Goods to the Client and the Client accepts such Goods, the Client shall be under no obligation to accept such changes.
- 19.9 Neither party shall 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.
- 19.10 The failure by AFF to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect AFF's right to subsequently enforce that provision.
20. Operation Manual must be read in full prior to operation of all machinery.
21. If a machine is picked up from AFF a brief instruction of machine operation will be given, although Clause 20 shall still apply.

Please note that a larger print version of these terms and conditions is available from AFF on request.