

Impact Machinery Pty Ltd – Terms & Conditions of Trade

1.1	Definitions Contract means the terms and conditions contained hereinafter, together with any quotation, order, invoice or other document or 6.2 amendments expressed to be supplemental to this Contract. Supplier means Impact Machinery Pty Ltd, its successors and 6.3 assigns or any assignee or agent acting on behalf of and with the authority of Impact Machinery Pty Ltd. Customer means the person, entities or any person acting on behalf of and with the authority of the Customer, requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and: (a) if there is more than one Customer, is a reference to each Customer; and (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and (d) includes the Customer's executors, administrators, successors 7.1 and permitted assigns. Goods means all Goods or Services supplied by the Supplier to the Customer at the Customer's request from time to time (where 7.2 the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other). Confidential Information means information of a confidential nature whether oral, written or in electronic form including, but not limited to this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not 7.3 limited to, 'Personal Information' such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit 7.4 applications, credit history) and pricing details. Cookies means small text files stored on a user's computer. They are designed to hold a certain amount of data including Personal Information specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Customer does not want cookies to operate in the background when using the Supplier's website, then the Customer shall have the right to enable/disable the Cookies 8.1 first by selecting the option to enable/disable provided on the website, prior to the Customer's purchase of Goods. Price means the Price payable (plus any GST where applicable) for the Goods as agreed between the Supplier and the Customer in accordance with the terms of the Contract. GST means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" ("Cth").	to the Customer's nominated address even if the Customer is not 13.2 the Supplier's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price. The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be paid in accordance with the 13.3 provisions in these terms and conditions. Any time specified by the Supplier for delivery of the Goods is an estimate only and the Supplier will not be liable for any loss or 13.4 damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was agreed by both parties. The Supplier will not be liable if it is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to 13.5 charge a reasonable fee for redelivery and/or storage. Risk Risk of damage to or loss of the Goods passes to the Customer on 13.6 Delivery and the Customer must insure the Goods on or before Delivery. If any of the Goods are damaged or destroyed following delivery 13.7 prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries. If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an 13.8 unattended location, then such Goods shall be left at the Customer's sole risk. The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of the information provided by the Customer is inaccurate the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information and/or drawings. Specifications The Customer acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in the Supplier's or the manufacturer's literature or on the resulting product material are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by the Supplier and the Supplier does not warrant or make any representation or give any form of part of the Supplier, (which expressly states as such in writing by the Supplier. Access The Customer shall ensure that the Supplier has clear and free access to the work site at all times to enable them to deliver the 13.10 Goods. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, roads and/or concrete paved or grassed areas) unless due to the negligence of the Supplier. It is the responsibility of the Customer to ensure that access is sufficient to accept the delivery of the Goods to the site. The Customer to indemnify the Supplier against all costs incurred by the Supplier in recovering such vehicles in the event they become bogged or otherwise immovable. The Supplier and the Customer agree that ownership of the Goods shall not pass until: (a) the Customer has paid the Supplier all amounts owing to the Supplier; and (b) the Customer has met all of its other obligations to the Supplier. Receipt by the Supplier of any form of payment other than cash does not constitute payment until that form of payment has been honoured, cleared or recognised. It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 10.1, the Supplier and the Customer agree that the Goods and must return the Goods to the Supplier on request. (b) the Customer holds the benefit of the Customer's insurance of the Goods on the site for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed. (c) the Customer must not sell, dispose, or otherwise part with the Goods or any part thereof or otherwise part with the business and for market value. If the Customer sells, disposes 14.3 or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay to the Supplier the proceeds of the sale of the Goods on demand. (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer shall be deemed to have accepted the Goods for the benefit of the Supplier and must sell, dispose of or return the 14.4 resulting product to the Supplier as it so directs. (e) the Customer irrevocably authorises the Supplier to enter any premises where the Customer believes the Goods are kept and recover possession of the Goods. (f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred. (g) the Customer shall not grant or otherwise give away any interest in the Goods while they remain the property of the Supplier. (h) the Supplier may convert or process the Goods at the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer. Personal Property Securities Act 2009 ("PPSA") The Supplier and the Customer agree that the security charge statement, security agreement, and security interest has the meaning given to it by the PPSA. Subject to these terms and conditions in writing the 15. Customer acknowledges and agrees that these terms and 15.1 conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (including but not limited to the Customer's rights in the Goods) to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer. (a) promptly sign any further documents and/or provide any further 15.2 information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require for the purposes of the PPSA. (b) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register. (c) register any other document required to be registered by 15.3 the PPSA; or (d) rectify a defect in a statement referred to in clause 15.2. (e) (i) and upon demand reimburse, the Supplier for all 15.4 expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby; (c) not register a financing charge statement in respect of a 16.1 security interest without the prior written consent of the Supplier; (d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral in respect of a third party without the prior written consent of the Supplier; (e) immediately advise the Supplier of any material change in its 16.2 business practices of selling the Goods which would result in a change in the nature of the Goods and the terms and conditions of the Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by the Customer. (f) the Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA. (g) the Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA. (h) Unless otherwise agreed in writing by the Supplier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA. (i) The Customer is irrevocably appointing any actions taken by the Supplier under clauses 11.3 to 11.5. Subject to any express provisions to the contrary (including those contained in the PPSA), these terms and conditions are intended to have the effect of contracting out of any of the provisions of the PPSA. Security and Charge In consideration of the Supplier agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance of the Customer's obligations under these terms and conditions (including, but not limited to, the payment of any money). The Customer irrevocably appoints the Supplier from and against all the Supplier's costs and disbursements including legal costs on a 16.3 solicitor and own client basis incurred in exercising the Supplier's rights under this clause. The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA) The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Supplier in writing of any 16.4 evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other defect/damage/damage by the Supplier in writing of any defect/damage or any such defect becomes evident. Upon such notification the Customer must allow the Supplier to inspect the Goods. Under applicable State, Territory and Commonwealth Law (including, without limitation, the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees). The Customer expressly acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees. The Supplier expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods or the availability of any services. These warranties is 16.7 limited to the fullest extent permitted by law. If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2. If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Goods. If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is: (a) limited to the value of any express warranty or warranty card provided in writing to the Customer by the Supplier at the Supplier's sole discretion; (b) limited to any warranty to which the Supplier is entitled, if the Supplier does not intend to limit the Goods; (c) otherwise negated absolutely. Subject to this clause 13, returns will only be accepted provided that: (a) the Customer has complied with the provisions of clause 13.1; and (b) the Supplier has agreed that the Goods are defective; and (c) the Goods are returned within a reasonable time at the 16.8 Customer's expense (if that is not a condition of sale); and (d) the Goods are returned in as close a condition to that in which they were delivered as is possible. Notwithstanding anything to the contrary in this clause 13, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of: (a) the Customer failing to properly maintain or store any Goods; 16.9 (b) the Customer using the Goods for any purpose other than that for which they were designed; (c) the Customer continuing the use of any Goods after any defect (including any defect that is not apparent to a 16.10 reasonably prudent operator or user; (d) the Customer failing to follow any instructions or guidelines provided by the Supplier; (e) fair wear and tear, accident, or act of God. In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to 17.1 delivery and that it has accepted the Goods and that the extent of 17.1 permitted by law no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, including any implied warranty of fitness for purpose, is excluded. The Customer acknowledges and agrees that the Supplier has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 13.10. The Supplier does not warrant that any of its non-defective Goods for return in which case the Supplier may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law. Interest on overdue invoices shall accrue daily from the date when 18.1 payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's discretion such interest shall compound monthly at such rate) after as well as before any judgment. If the Customer owes the Supplier any money the Customer shall indemnify the Supplier against any disbursement and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank charges). Further to any other rights or remedies the Supplier may have under this Contract, if a Customer has made payment to the Supplier, and the transaction is subsequently reversed, the Customer shall be 19.1 liable for the amount of the reversed transaction, in addition to any 19.1 further costs incurred by the Supplier under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or otherwise in breach of law. 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 if: (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment of such money as it falls due; (b) the Customer has exceeded any applicable credit limit provided by the Supplier; (c) the Customer becomes insolvent, convenes a meeting with its 20. creditors or proposes or enters into an arrangement with its 20. creditors; or (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer. Cancellation Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or cancel all or any part of the Customer's order. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its right to suspend or cancel its order. The Supplier 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 Customer. On giving such notice the Supplier shall not be liable for any money paid by the Customer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation. Notwithstanding that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct 21.1 or indirect) by the Supplier as a direct result of the cancellation. Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed. Privacy Policy All emails, documents, images or other recorded information held or 21.2 used by the Supplier is Personal Information, as defined and regulated by the Privacy Act 1988 and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal 21.3 Information. The Supplier's privacy policy is available on the Supplier's website at www.impactmachinery.com.au/privacy-policy . The Supplier is bound by the Part III of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDP) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Law and the General Data Protection Regulation ("GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data 21.4 breach or disclosure of Personal Information, it will immediately notify the Supplier that may result in serious harm to the Customer, the Supplier will notify the Customer in accordance with 21.5 the Act and/or the GDPR. Any release of such Personal Information will be in accordance with the Act and the GDPR (where relevant) 21.6 and must be approved by the Customer by written consent, unless subject to an operation of law. Notwithstanding clause 21, privacy limitations will extend to the Supplier in relation to the Customer's Personal Information where the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such 21.7 as IP address, browser, email client type and other similar details; (a) IP address, browser, email client type and other similar details; (b) tracking website usage and traffic; and (c) location data (where applicable) when the Supplier sends an email to the Customer, so the Supplier may collect and use the information ("collectively Personal Information") 21.8 If the Customer consents to the Supplier's use of Cookies, the Supplier will not disclose or use the information for any other purpose unless the Customer may manage and control the Supplier's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser or adjusting browser settings. The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes: (a) to identify other credit providers of a default by the Customer; and/or (b) to notify other credit providers of a default by the Customer; and/or (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or (d) to assess the creditworthiness of the Customer including the customer's credit history and the Customer's credit score (as defined by the Australian Bureau of Consumer Credit Reporting and Credit Reference). The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit. The Customer agrees that personal credit information provided may be used for the following purposes (and for other agreed purposes or required by): (a) the provision of Goods; and/or	(b) analysing, verifying and/or checking the Customer's credit, current and/or status in relation to the provision of Goods; and/or (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or (d) the collection of amounts outstanding in relation to the Goods. The Supplier may give information about the Customer to a CRB for the following purposes: (a) to obtain a consumer credit report; (b) allow the CRB to create or maintain a credit information file about the Customer including credit history. The Supplier consents to the CRB having access to: (a) Personal Information as outlined in 16.3 above; (b) name of the credit provider and that the Supplier is a current credit provider; and (c) whether the credit provider is a licensee; (d) type of consumer credit; (e) details concerning the Customer's application for credit or commercial credit (including a date of commencement/termination of the credit account and the amount requested); (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments); (g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement; (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150). The Customer shall have the right to request (by e-mail) from the Supplier: (a) a copy of the Personal Information about the Customer retained by the Supplier and the right to request that the Supplier correct any Personal Information that is inaccurate or incomplete; (b) that the Supplier does not disclose any Personal Information about the Customer for the purpose of direct marketing. The Supplier will destroy Personal Information upon the Customer's request if the Customer is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law. If the Customer wishes to opt out of receiving direct marketing by contacting the Supplier via e-mail, The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au . Dispute Resolution In the event of a dispute between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days of receipt of the notice either party may refer the dispute to arbitration, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the parties are unable to resolve the dispute within the notice in writing delivered by hand or sent by certified mail to the other party refer dispute to arbitration. Any arbitration shall be referred to a sole arbitrator to be nominated by the President of the Institute of Arbitrators in Australia; and (b) Australia Rules for the Conduct of Commercial Arbitration. Unpaid Supplier's Right of Retention Where the Customer has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been paid for such services, the Supplier may retain the item until the Supplier shall have, until all monies owing to the Supplier are paid. (a) the right on the item; and (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods. The Supplier's right of retention despite the commencement of proceedings, or judgment for any monies owing to the Supplier having been obtained against the Customer. Service of Notices The Supplier gives notice under this Contract shall be deemed to have been given and received: (a) by handing the notice to the other party, in person; (b) by leaving it at the address of the other party as stated in this Contract; (c) by sending it by registered post to the address of the other party as stated in this Contract; (d) sent by email to the Supplier to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission; (e) sent by email to either party's last known email address. Any notice that is posted or otherwise delivered has been served, unless the notice is shown, at the time when by the ordinary course of post, the notice would have been delivered. If the Customer at any time upon or subsequent to entering in to this Contract is acting in the capacity of trustee of any trust ("Trust") then the Customer consents to the Supplier as follows: (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the Trust's creditors; (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might diminish the right of indemnity of the Customer; (c) the Customer will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events: (i) the removal, suspension or retirement of the Customer as trustee of the Trust; (ii) any alteration to or variation of the terms of the Trust; (iii) any advancement or distribution of capital of the Trust; or (iv) any resettlement of the trust property. General The failure by either party to enforce any provision of these terms and conditions shall not constitute a waiver of the provisions of this Contract and shall affect that party's right to subsequently enforce that provision. 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. These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the Brisbane Courts in that state. Subject to clause 13 the Supplier shall not under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods). The Supplier may licence and/or assign all or any part of its rights and obligations under this Contract without the Customer's consent. The Customer cannot licence or assign without the written approval of the Supplier. The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to the Supplier's sub-suppliers without the authority of the Supplier. The Customer agrees that the Supplier may amend their general terms and conditions, including any future contracts, and the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide goods to the Customer. Neither party shall be liable for any default due to any act of God, war, terrorism, riot, riot, industrial action, fire, flood, storm, pestilence, or any other cause beyond the control of either party, regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any restrictions on the export or import of Goods (including worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. Both parties warrant that they have the power to enter into this Contract and that they have obtained necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
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