

Transit Group (WA) Pty Ltd (ACN 125 041 750) – Terms and Conditions of Trade

1 Definitions and interpretation

1.1 Definitions

Additional Charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Company's then current prices; and
- (b) expenses incurred by the Company, at the Customer's request or reasonably required as a result of the Customer's conduct.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Customer means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

Company means Transit Group (WA) Pty Ltd (ACN 125 041 750) trading as Transit Group WA and its successors and assigns.

Encumbrance means any:

- (a) security interest under the PPSA or security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, title retention, arrangement or flawed asset arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a profit a prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgement, or any agreement to create any of them or allow them to exist.

Guaranteed Money means all money which:

- (a) at any time; and
- (b) for any reason or circumstance whatsoever; and
- (c) whether at law, in equity, under statute or otherwise; and
- (d) whether or not of a type within the contemplation of the Company or Guarantor at the date of this agreement,

the Customer is or may become actually or contingently liable to pay to the Company, whether alone or jointly with another person, including all money payable by the Customer in connection with the credit conditions of this agreement.

Guarantor means that person (or persons) or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.

Goods means any goods supplied by the Company including those supplied in the course of providing Services.

GST means a tax imposed under the A New Tax System (Goods and Services Tax) Act 1999.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Loss includes, but is not limited to, costs (including party to party legal costs and the Company's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order means a purchase order for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

PPS Law means:

- (a) the Personal Property Security Act 2009 (Cth) (PPS Act) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

Price shall mean the cost of the Goods or Services as agreed between the Company and the Customer subject to clause 4 of this agreement.

Quote means a written description of the Goods or Services to be provided, an estimate of the Company's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

Services means the services to be provided by the Company to the Customer in accordance with a Quote and these terms and conditions.

Works means any works agreed to and conducted by the Company for the Customer, including but not limited to the provision of Goods and/or Services.

1.2 Interpretation

In these terms and conditions, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Company's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms and conditions;
- (d) a reference to a party to these terms and conditions or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these terms and conditions; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (ii) in all other cases, must be done on the next Business Day.

2 General

(a) These terms and conditions apply to all transactions between the Customer and the Company relating to the provision of Goods and Services. This includes all Quotes, contracts and variations. These terms and conditions take precedence over terms and conditions contained in any document of the Customer or elsewhere.

(b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.

(c) The Company may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.

3 Acceptance of Terms

3.1 Acceptance

Any instructions received by the Company from the Customer for the supply of Goods and/or Services and/or the Customer's acceptance of Goods and/or Services supplied by the Company shall constitute acceptance of the terms and conditions contained in this agreement.

3.2 Customer Liability

Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.

3.3 Irrevocable

(a) Upon acceptance by the Customer, these terms and conditions are irrevocable and can only be rescinded in accordance with this agreement or with the written consent of the manager of the Company.

(b) None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing, nor is the Company bound by any such unauthorised statements.

4 Scope of Works

4.1 Quote

The Company will provide the Customer with a quote prior to the commencement of any Works, with such Quote to consist of:

(a) Estimate of time;

(b) Price;

4.2 Time Frame Estimate

An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Company.

4.3 Acceptance of Quote

Following provision of a Quote to the Customer, the Company is not obliged to commence work until the Quote has been accepted by the Customer. This occurs by the Customer providing the Company with a Work Order/ Purchase Order within thirty (30) days of the Customer receiving the Quote from the Company or by the Customer issuing instructions for the Company to proceed with the proposed Goods and Services.

4.4 Right to Amend

The Company reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Company will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these terms and conditions.

4.5 Reasonable Expenses

The Customer shall reimburse the Company for any additional expenses reasonably incurred by the Company as a consequence of supplying Goods and/or Services outside the Perth Metropolitan Area. Such expenses shall include but are not limited to travel, accommodation, meals, drinks, laundry, communications, delivery and transportation expenses.

4.6 GST

The Company and the Customer agree to comply with their obligations in relation to the GST Act and any other applicable legislation governing GST.

5 Delivery of Goods/Services

5.1 Delivery

(a) At the sole discretion of the Company, delivery of the goods shall take place when:
(i) the Customer takes possession of the Goods at the Company's address; or
(ii) the Customer takes possession of the Goods at the Customer's nominated address.
(b) Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these terms and conditions.

5.2 Damage to Goods

If any Goods are damaged, destroyed or stolen during or after delivery and prior to payment received by the Company, the Company is entitled to payment in full and for any other monies owed to the Company.

5.3 Unattended Premises

If the Customer requests the Company to deliver goods to unattended premises or to an unattended location, they shall be left at the Customer's sole risk.

5.4 Delivery Date

If a delivery date for delivery of Goods and/or Services is nominated, the Company shall take all reasonable steps to dispatch the Goods and/or Services on or about that date. However, the Company does not make any warranty or promise that the Goods and/or Services will be available on that date. In the event that the Company is unable to deliver the Goods and/or Services on that date, the Company will not be liable for any loss, including any consequential loss, for failure or delay in delivery due to any cause whatsoever.

6 Acceptance of Goods & Services

6.1 Supply of Goods Only

Where the Company is to supply Goods only without Installation Service, Acceptance of the Goods shall be deemed to occur when the goods have passed from the Company to the Customer or its agent and then seven (7) consecutive days have elapsed in which no valid Fault Report on the Goods has been received by the Company.

6.2 Supply of Goods with Installation

Except as otherwise specified below, where the Company is to supply Goods in conjunction

with an Installation Service for the Goods, Acceptance of the Goods and installation Service shall occur when Installation of the Goods is completed and then seven (7) consecutive days have elapsed in which no valid Fault Report on the Goods or Installation Service has been received by the Company.

6.3 Acceptance of Services

Acceptance of Services other than services for Installation of Goods also supplied by the Company shall occur after the elapse of seven (7) consecutive days in which no valid Fault Report on the Service supplied by the Company is received by the Company.

6.4 Loss or Damage of Goods

Notwithstanding the above Terms, in the event Goods are lost or damaged after the risk of loss or damage has passed to the Customer but before Acceptance has occurred by way of one of the above Terms, Acceptance of the Goods shall be deemed to have occurred prior to the time of the loss or damage.

6.5 Fault Reports

These Terms require the Customer to make Fault Reports to the Company in certain circumstances. Fault Reports must refer to a Failure which actually occurred, be made to the Company within seven (7) days of the occurrence of the failure, be given in accordance with the requirements for Notice and must contain: the name of the Customer, the identify of the Goods or Service in which the Failure has occurred, the date of occurrence of the Failure, documentary evidence of the Failure such as copies of screen displays or printed reports, a description of the events leading up to the Failure. Fault Reports not made in accordance with this Term may be disregarded by the Company and will not delay Acceptance of any Goods and/or Services.

7 Title and Risk

7.1 Risk in Goods

Risk in Goods passes to the Customer immediately upon delivery.

7.2 Title in Goods

(a) Property and title in Goods supplied to the Customer under these terms and conditions does not pass to the Customer until all money (including money owing in respect of other transactions between the Company and the Customer) due and payable to the Company by the Customer have been fully paid.

(b) Where Goods are supplied by the Company to the Customer without payment in full, the Customer:

(i) is a bailee of the Goods until property in them passes to the Customer;

(ii) irrevocably appoints the Company to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Company with respect to the Goods under applicable law;

(iii) must be able upon demand by the Company to separate and identify as belonging to the Company Goods supplied by the Company from other goods which are held by the Customer;

(iv) must not allow any person to have or acquire any security interest in the Goods;

(v) agrees that the Company may repossess the Goods if payment is not made within [number] days (or such longer time as the Company may, in its complete discretion, approve in writing) of the supply of the Goods; and

(vi) the Customer grants an irrevocable licence to the Company or its agent to enter the

Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies the Company for any damage to property or personal injury which occurs as a result of the Company entering the Customer's premises.

7.3 Title in New Goods

(a) Where Goods are supplied by the Company to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Company in respect of those Goods, and:

- (i) the Customer makes a new object from the Goods, whether finished or not;
- (ii) the Customer mixes the Goods with other goods; or
- (iii) the Goods become part of other goods (New Goods),

the Customer agrees with the Company that the ownership of the New Goods immediately passes to the Company. The Customer will hold the New Goods on trust for the Company until payment of all sums owing to the Company whether under these terms and conditions or any other contract have been made. The Company may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Company.

(b) For the avoidance of doubt, under paragraph 7.3(a), the ownership of the New Goods passes to the Company at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.

7.4 Sale of Goods

(a) Despite paragraph 7.2(b), the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that:

- (i) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale, less any GST, on trust for the Company in a separate account, until all amounts owed by the Customer to the Company have been paid; or
- (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Company upon the Company giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Company as its attorney.

7.5 Registration of Personal Property Security Interest

(a) Where Goods are supplied by the Company to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Company in respect of those Goods, the Customer acknowledges that the Company has a right to register and perfect a personal property security interest.

(b) If:

(i) a PPS Law applies or commences to apply to these terms and conditions or any transaction contemplated by them, or the Company determines (based on legal advice) that this is the case; and

(ii) in the Company's opinion, the PPS Law:

- (A) does or will adversely affect the Company's security position or obligations; or
- (B) enables or would enable the Company's security position to be improved without adversely affecting the Customer,

the Company may give notice to the Customer requiring the Customer to do anything (including amending these terms and conditions or execute any new Terms and Conditions) that in the Company's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 7.5(b)(ii)(A) or improve the security position as contemplated in paragraph 7.5(b)(ii)(B). The Customer must comply with the requirements of

that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in the Company's opinion the Company's security position or obligations under or in connection with these terms and conditions have been or will be materially adversely affected, the Company may by further notice to the Customer cancel these terms and conditions. If this occurs, the Customer must pay to the Company any money owed to the Company by the Customer immediately.

8 Damage to Premises

(a) The Customer acknowledges that whilst the Company will take every care to avoid damage to the Customer's property during installation (where installation is part of the Order), the Company shall have no liability whatsoever to the Customer in the event that any damage should occur.

9 Defects/Returns

9.1 Customer to Inspect Goods

The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with these terms and conditions and free from any defect or damage.

9.2 Defective Goods

For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods provided that:

- (a) the Customer has complied with the provisions of clause 9.1;
- (b) the Goods are returned at the Customer's cost within seven (7) days of the delivery date;
- (c) however,
- (d) the Company will not be liable for Goods which have not been stored or used in a proper manner.

9.3 Handling Fee

The Company may (in its discretion) accept the Goods for credit but this may incur a handling fee of 20% of the value of the returned Goods plus any freight.

9.4 Special Order

Any Goods made to special order or Customer specification or non-catalogue items are under no circumstances acceptable for credit or return. Cancellation of orders for special or non-catalogue items will not be accepted once these orders are in production.

9.5 Customer Liability

The Company accepts no liability for the failure on the part of the Customer to follow any instructions or guidelines provided by the Company, and it is the responsibility of the Customer to check the Goods supplied for compliance with AS/NZ standards.

10 Price and Payment

10.1 Price of Goods/Services

At the Company's sole discretion;

- (a) The Price shall be as indicated on invoices provided by the Company to the Customer in

respect of Goods supplied and/or Services rendered; or

(b) The Price of the Goods/Services shall (subject to clause 4.2) be the Company's quoted Price which shall be binding upon the Company provided that the Customer shall accept in writing the Company's quotation within thirty (30) days of the date on the quotation.

10.2 Variation of Price

The Company may by giving notice to the Customer (verbally or otherwise) at any time before delivery increase the Price of the Goods to reflect any variation from the plan of scheduled works or specifications beyond the reasonable control of the Company which increase the cost of the Goods/Services by more than 10% of the quoted Price.

10.3 Time for Payment

Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods/Services.

10.4 Cancellation of Order

At the Company's sole discretion a charge of 20% of the quoted Price may be charged for cancellations once the order has been processed and ordered.

10.5 Form of Payment

Payment will be made 30 days from date of invoice by direct credit, as agreed to between the Customer and the Company.

10.6 Taxation

The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Company.

11 Default and Consequences

11.1 Non-payment

In the event the Customer fails to pay the Company within thirty (30) days of the issue of an invoice the Customer shall pay all credit agents' fees and charged incurred by Company and additionally Company shall:

- (a) Suspend or terminate the supply of further Goods and/or Services including Goods and/or Services required by any warranties;
- (b) Issue Notice to the Customer demanding immediate payment or return of any Goods relating to the payment; and
- (c) within seven (7) days of receipt of such Notice the Customer shall either:
 - (i) return to the Company all Goods the property of the Company, notwithstanding that the Goods may have been incorporated into some other product and/or may be necessary for the operation of the Customer's business; and
 - (ii) including any and all copies of Company's software made by the Customer; and/or
 - (iii) Pursue and affect any other remedies, which may be available to the Company to recover the debt, and it is agreed that all debt collection costs and legal fees will be deemed to be recoverable from the Customer; and

12 Warranty of Goods and Services

The Company warrants that standard manufacturers' warranties for any supplied Goods

remain in effect unless either through the installation or by some act of the Customer on its behalf the manufacturer's warranty is voided.

13 Liability

13.1 Limited Liability

Notwithstanding anything to the contrary, the Company's liability shall be ultimately limited in accordance with section 68 of the Trade Practices Act 1974 (Cth) to, at the Company's discretion:

(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 of acquiring equivalent Goods; or
- (iv) The payment of the cost of having the Goods repaired, and

(b) In the case of Services:

- (i) The supplying of the Services again; or
 - (ii) The payment of the cost of having the Services supplied again,
- so that to the greatest extent permitted by Law, the Company shall not be liable for any special, indirect or consequential loss or damage whether caused by the negligence of the Company or its agents or any of its servants howsoever caused.

14 Guarantee and Indemnity

14.1 Personal Guarantee

In the event that the Customer is a company either incorporated in Australia or overseas (Entity), such entity is required under this Agreement to provide a personal Guarantee by assuming the role of guarantor to this Agreement (Guarantor).

14.2 Condition of Agreement

The Guarantor hereby acknowledges that it is a condition of the Customer entering into this Agreement that the Guarantor gives the guarantee as set out in this clause 14 and that the Guarantor has received valuable consideration.

14.3 Guarantee and Indemnity

- (a) The Guarantor unconditionally and irrevocably guarantees to the Company the due and punctual payment by the Customer of payments due to Company.
- (b) As a separate undertaking the Guarantor indemnifies the Company against all liability or loss and any costs incurred by the Company in respect of any breach or non performance by the Customer of any of the Customer's obligations hereunder.
- (c) It is agreed between the Guarantor and the Company that the guarantee in 14.3(a) and indemnity in 14.2(b) are principal obligations and shall not be treated as ancillary to or collateral with any other obligation howsoever created and are in addition to and not in substitution for any other guarantee which the Customer may hold.

14.4 Enforcement

This guarantee and indemnity may be enforced against any Guarantor without first having recourse to any security or guarantee or taking any other steps or proceeding against the Customer or any other Guarantor and the Guarantor waives any right it has to require otherwise.

15 Variation

Any modification to these Terms shall not be binding or effective unless agreed to in writing signed by a director of the Company.

16 Termination

Both the Customer and the Company may, should the other party become insolvent, without prejudice to any other legal remedies available to the party, immediately Terminate any Contract ensuing from these Terms by Notice to the other party. For the purpose of this Term, insolvent shall mean "not able to pay all its debts as and when they become due" and shall carry the same interpretation as that phrase in section 95A (2) of the Corporations Act 2001 (Cth).

17 Notice

(a) Any Notice required to be given under these Terms shall be duly given when:

(i) Passed to an agent of the party where such agent has acknowledged receipt of the Notice in writing; or

(ii) Emailed to a party to the last known email address of that party when the sender's email system confirms the time of sending of the email (unless the sender receives a delivery failure notification indicating the email has not been delivered to the addressee); or

(iii) Sent by facsimile to the last known facsimile receiver of the party where such transmission is shown on the activity report of the transmitting facsimile machine as transmitted without error to the telephone number of the destination facsimile machine.

(b) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by fax to the fax number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery or sent to a party to the last known email address of that party when the sender's email system confirms the time of sending of the email (unless the sender receives a delivery failure notification indicating the email has not been delivered to the addressee).

(c) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the fifth Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

18 Dispute Resolution

(a) If a dispute arises between the Customer and the Company, the following procedure applies:

(i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.

(ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.

(iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.

(b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon

as possible and in any event within [insert number] Business Days (or other period as agreed).

(c) Unless otherwise agreed by the parties, where any dispute cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these terms and conditions. This paragraph survives termination of these terms and conditions.

(d) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms and conditions.

(e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

19 Miscellaneous

(a) These terms and conditions are governed by the laws of Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.

(b) These terms and conditions and any Quotes and written variations agreed to in writing by the Company represent the whole agreement between the parties relating to the subject matter of these terms.

(c) These terms and conditions supersede all oral and written negotiations and communications by and on behalf of either of the parties.

(d) In entering into these terms and conditions, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Company or any of its employees or agents relating to or in connection with the subject matter of these terms and conditions.

(e) If any provision of these terms and conditions at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.

(f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.