



Commercial Credit Application & Terms of Trading Agreement

BUSINESS DETAILS

Company / Business Name:

Trading Name:

Postal Address:

Delivery Address:

Phone:

Accounts Contact:

Title:

eMail:

Phone:

Are you trading as:

Public / Private Company

ABN:

ACN:

Partnership

Sole Trader

Date Business Commenced:

Anticipated Purchases (\$):

Type of Business:

Name, address & date of birth of Sole Trader, all partners or Director;



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BANK REFERENCE

Name:

Account Number:

Branch:

Phone:

Contact Name:

TRADE CREDIT REFERENCE

Name:

Phone

Name:

Phone

Name:

Phone

INTERNAL USE ONLY



Commercial Credit Application & Terms of Trading Agreement

GUARANTEE (TO BE SIGNED BY THE OWNER / DIRECTOR / PROPRIETORS)

To: AWD Equipment Sales Pty Ltd at 25 Garner Place, Ingleburn NSW 2565 (Registered Office)

IN CONSIDERATION of you having at my / our request agreed to supply and/or continue to supply to;

AT;

Herein called "the purchaser"

With services from time to time WE HEREBY JOINTLY AND SEVERALLY agree with you as follows:

1. We will be answerable and responsible to you for the due payment by the purchaser of the cost and interest charges payable for all services and/or goods so supplied by AWD Equipment Sales Pty Ltd.
2. This agreement shall be a continuing guarantee for all payments in respect of services and/or goods so supplied to you by the purchaser
3. You shall be at liberty without notice to us at any time without in any way discharging us from our liability hereunder to grant time or other indulgence to the purchaser and accept payment from the purchaser in cash or by means negotiable instruments and to treat us in all respects as though we were jointly and severally liable with the purchase to you instead of being merely surety for the purchaser.
4. We declare this guarantee irrevocable and not influenced by a change in constitution of the purchaser.

SIGNATURE OF GUARANTOR

SIGNATURE OF GUARANTOR

PRINT NAME

PRINT NAME

DATE

WITNESS



Commercial Credit Application & Terms of Trading Agreement

TRADE CREDIT TERMS

The above information is furnished for the purpose of establishing a credit account with AWD Equipment Sales Pty Ltd.

I/We fully understand that should a credit account be granted the settlement terms are that all invoices will be paid within 7 days of the date of the invoice unless agreed otherwise in writing by both parties.

I/We agree that AWD Equipment Sales has the right to charge a default charge on all accounts not paid within the above terms at a rate as determined by the Bank of Queensland Indicator Lending Rate effective from time to time plus 2% per annum calculated on daily balances of amounts and capitalised daily.

I/We hereby certify that the above information is true and correct at the date of this application.

I/We agree that any change to any of the above particulars is subject to written acceptance by the Credit Manager of AWD Equipment Sales Pty Ltd.

I/We further agree that the acceptance of any cheque does not constitute acceptance of any change of any aforesaid particulars.

I/We agree that all costs related to recovery of debts incurred, shall be my/our sole responsibility. These costs include any commissions paid to a debt recovery agent.

I/We fully understand the attached Terms and Conditions and have DETACHED and retained them for future reference.

1. AGREEMENT THAT AWD EQUIPMENT SALES PTY LTD MAY SEEK CONSUMER CREDIT INFORMATION (SECTION 18K (1) (b), PRIVACY ACT 1988)

If AWD Equipment Sales Pty Ltd considers it relevant to assessing my/our application for commercial credit, I/We agree to AWD Equipment Sales Pty Ltd obtaining from a credit reporting agency a credit report containing personal credit information about me/us in relation to commercial credit provided by AWD Equipment Sales Pty Ltd.

2. EXCHANGING INFORMATION WITH OTHER CREDIT PROVIDERS (SECTION 18N (1) (b), PRIVACY ACT 1988)

I/We agree to AWD Equipment Sales Pty Ltd obtaining personal information about me/us from other credit providers, whose names I/we may have provided for AWD Equipment Sales Pty Ltd of that may be named in a credit report, for the purpose of assessing my/our application for commercial credit made to AWD Equipment Sales Pty Ltd

3. AGREEMENT TO A CREDIT PROVIDER BEING GIVEN A CONSUMER CREDIT REPORT TO COLLECT OVERDUE PAYMENTS ON COMMERCIAL CREDIT (SECTION 18K (1) (h) PRIVACY ACT 1988)

I/We agree that AWD Equipment Sales Pty Ltd may obtain a consumer credit report about me/us from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by me/us days of the date of the invoice unless agreed otherwise in writing by both parties.

I/We agree that AWD Equipment Sales has the right to charge a default charge on all accounts not paid within the above terms at a rate as determined by the Bank of Queensland Indicator Lending Rate effective from time to time plus 2% per annum calculated on daily balances of amounts and capitalised daily.

I/We hereby certify that the above information is true and correct at the date of this application.

I/We agree that any change to any of the above particulars is subject to written acceptance by the Credit Manager of AWD Equipment Sales Pty Ltd.

Name

Name

Signature

Signature

Date

Date



Commercial Credit Application & Terms of Trading Agreement

TERMS & CONDITIONS OF SALE

These are the Terms and Conditions of AWD Equipment Sales Pty Ltd (A.B.N. 46 083 230 200) for the sale of goods and services.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Terms and Conditions, unless the context otherwise requires:

- (a) "Buyer" means the Person named in the Sales Invoice.
- (b) "Sales Invoice" means the sales invoice issued by the Seller to the Buyer in which these terms and conditions are or are deemed to be incorporated.
- (c) "Seller" or "Company" means AWD Equipment Sales Pty Ltd A.B.N. 46 083 230 200

1.2

Interpretation

(a) These Terms and Conditions:

- (i) replace all prior terms and conditions issued by Seller to Buyer; and
 - (ii) take precedence over any terms set out in the Buyer's purchase order, to the extent of any inconsistency.
- (b) The expression "Person" includes an individual, a body politic, a corporation, an association (incorporated or unincorporated), a statutory authority or any other authority or persons identified as the Seller.

2. ALTERATION TO TERMS AND CONDITIONS

The Seller may, at any time and from time to time by written notice to the Buyer, alter these Terms and Conditions of Sale.

3. TERMS OF PAYMENT

If the Buyer has an approved credit account with the Seller, payment by the Buyer for goods and services supplied must be paid for within 7 calendar days of the date on which the goods and services are invoiced.

Where the Buyer's payment is overdue:

- (i) the Seller can change the Buyer to a Cash On Delivery account (COD account) and all goods and services on COD account shall be paid for before they are supplied;
- (ii) all amounts owing by the Buyer shall immediately become due and payable upon receipt of notice by the Buyer that the Buyer is on a COD account. The Seller has the right to charge a default charge on the overdue amount at a rate as determined by the Bank of Queensland Indicator Lending Rate effective from time to time plus 2% per annum calculated on daily balances of amounts and capitalised daily.

4. CLAIMS

The Buyer is to inspect all goods upon delivery and the Seller shall not be liable for shortage or errors in delivery unless the buyer submits a written claim to the Seller within 7 days of delivery.

5. GOVERNING LAW

The Terms and Conditions shall be governed by the laws of the state or territory in which the Seller accepts the Buyer's order.

6. PRICES AND QUOTATIONS

- (a) In the absence of a contrary expressed agreement:
 - (i) Price for goods supplied – shall be the Seller's list price ruling at the date of shipping; and
 - (ii) Charge for services supplied – shall be at the Seller's prevailing rates at the time of supply.
- (b) Prices quoted in published price list or by Seller's representatives are subject to change without notice and are not binding on the Seller. (c) All prices are expressed as net prices
- (d) The Seller shall not be bound by any condition attaching to the Buyer's order or acceptance of a sale, unless such conditions are expressly accepted by the Seller in writing.
- (e) Every sale is subject to and conditional upon obtaining the necessary import, export or other licence.
- (f) A quotation is not to be constructed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise until the Seller has accepted in writing the Buyers order. All quotations lapse thirty-(30) days after issue but the Seller may vary or withdraw quotation at any time.
- (g) All payments shall be made in Australian dollars without deduction or set off of any kind.

7. DELIVERY AND RISK

- (a) Risk in the goods will pass to the Buyer ex Seller warehouse upon the goods being placed upon the vessel or vehicle which is to deliver the goods to the Buyer. Buyer shall be responsible for arranging delivery and insurance of the goods. Seller shall not be liable to Buyer in the event of any failure to arrange insurance.
- (b) The seller reserves the right to deliver in instalments and all such instalments, where separately invoiced, shall be paid for without regard to the delivery of subsequent instalments. A part delivery of an order shall not invalidate the balance of the order.
- (c) While the Seller shall use all reasonable endeavours to meet agreed delivery dates, the Seller shall not be liable to Buyer for any loss or damage whatsoever should it be delayed or prevented from delivering goods, supplying services or otherwise performing any of its contractual obligations due to any cause or circumstances beyond the Seller's reasonable control. In the event of any delay in delivery or supply, as aforesaid, the due date shall be deferred for a period equal to the time lost by reason of the intervening cause or circumstance. Delivery duties are not to be treated as a condition of the sale.
- (d) Subject to clause 7 (c), delivery dates shall not be varied once they have been agreed, without Sellers prior written approval. Should the Seller agree to postpone delivery, the goods in question shall be stored at Buyer's risk and the Seller reserves the right to impose a weekly storage charge. Where delivery is postponed for more than 3 months, any fixed contract may be increased by the Seller, at the Sellers discretion, to reflect the current Seller's list price.

8. SUPPLY

While every effort shall be made to fulfil orders for goods, the Seller shall not be liable for any loss or damage arising through non-availability of stock.



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TRADE CREDIT TERMS

9. RETENTION OF TITLE

- (a) Title to the goods supplied by the Seller to the Buyer shall remain with the Seller until the total amount due in respect of the goods and all monies owing to the Seller have been paid in full (the "Debts").
- (b) The Buyer shall have the right to sell the goods in its own name and not as agent for the Seller by way of bona fide sale at full market value and in the ordinary course of its business.
- (c) Until the Debts have been paid for in full:
- (i) the Buyer shall hold the goods as bailee for the Seller;
 - (ii) the Buyer shall store the goods in such a manner as to show clearly that they are the property of the Seller;
 - (iii) any sale of the goods under paragraph (b) shall be effected as bailee for the Seller and the proceeds of such sale and the rights against its customers from such sales shall be held on trust for the Seller. The proceeds of such sales must be held in a separate account, or otherwise clearly identified in the books and records of the Buyer.
- (d) The Seller may at any time, without notice to the Buyer and without prejudice to any other rights which it may have against the Buyer, terminate any contract connected with the goods and the bailment referred to in paragraph (c), and enter upon any premises owned or occupied by the Buyer where the Seller reasonably believes the Goods may be stored, repossess the goods without liability for any damaged caused, and subsequently dispose of the goods at the Seller's discretion if:
- (i) the Debts are not paid in accordance with these Terms and Conditions and any other contract or arrangement between the Seller and the Buyer;
 - (ii) the Seller receives notice of or reasonably believes that: (A) a third person may attempt to levy execution against those goods; (B) the Buyer is insolvent (within the meaning of the Corporations Law) or bankrupt; (C) the Buyer has entered into any arrangement or composition with its creditors, gone into liquidation, or has appointed a receiver, a receiver and manager or administrator.
- (e) In the event that the goods are sold by the Seller following repossession under paragraph (d), Seller shall account to Buyer for any excess of the proceeds of sale (less expenses of repossession and sale) over the costs of the goods.
- (f) If any goods belonging to the Seller are disposed of by the Buyer or an insurance claim is made in respect of them, the Seller shall be entitled to trace the sale or insurance proceeds, which proceeds shall be held by Buyer in a separate bank account on trust for Seller.

10. INSTALLATION

The Seller's Sale invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Buyer unless otherwise specified in writing by the Seller.

11. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS

(a) All photographs, photos, illustrations and any other particulars accompanying or associated with a quotation may be subject to alteration without notice.

12. WARRANTY AND QUALITY

- (a) Subject to clause 12 (c), goods supplied by the Seller may be covered by an express written warranty supplied (the "Express Warranty") with the goods when sold to the Buyer. To the extent permitted by law, the Express Warranty is a substitution for all other terms, conditions, warranties and representations, express or implied by statute or otherwise.
- (b) The Buyer shall immediately notify the Seller in writing upon the discovery of any defect in the goods. The Buyer shall not carry out remedial work or installation to alleged defective goods without first obtaining the written consent of the Seller to do so.

12. WARRANTY AND QUALITY

- (a) Subject to clause 12 (c), goods supplied by the Seller may be covered by an express written warranty supplied (the "Express Warranty") with the goods when sold to the Buyer. To the extent permitted by law, the Express Warranty is a substitution for all other terms, conditions, warranties and representations, express or implied by statute or otherwise.
- (b) The Buyer shall immediately notify the Seller in writing upon the discovery of any defect in the goods. The Buyer shall not carry out remedial work or installation to alleged defective goods without first obtaining the written consent of the Seller to do so.
- (c) Certain legislation may imply warranties, terms or conditions which cannot be excluded, restricted or modified. If these statutory provisions apply, to the extent to which the Seller is entitled to do so, its liability is limited at its option to:
- (i) the replacement or resupply of the goods; or
 - (ii) the repair of the goods; or
 - (iii) the payment of the cost of replacement of the goods; or
 - (iv) payment of the cost of repair of the goods.
- (d) The Buyer expressly acknowledges and agrees that it has not relied upon and the Seller is not liable for any advice given by the Seller, its agents or employees in relation to the suitability for any purpose of goods or materials supplied by the Seller.
- (e) The Buyer acknowledges that to the extent the Seller has made any representation which is not otherwise stated in these Terms and Conditions, the Seller has been provided with an opportunity to independently verify the accuracy of that representation.

13. SELLER'S CANCELLATION

The Seller reserves the right to immediately cancel any contract for the supply of goods or services or suspend any such supply without incurring any liability to Buyer in any of the following circumstances.

- (a) Buyer is overdue with any payment or otherwise in breach of these terms and conditions;
 - (b) Buyer enters into bankruptcy, liquidation or a composition with its creditors, has a receiver or administrator appointed over all or part of its assets or becomes insolvent; or
 - (c) Contractual performance is delayed or prevented due to any circumstances.
- Cancellation by the Seller under this clause 13 shall be without prejudice to the Seller's right to recover payment from the Buyer for goods and services supplied.



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TERMS & CONDITIONS OF SALE

14. BUYERS CANCELLATION AND RETURNS

- (a) Buyer may return goods supplied for a credit against subsequent orders within (7) days of delivery provided the following conditions are satisfied.
- (i) the Seller's written approval has first been obtained and the invoice number and date have been quoted for reference;
 - (ii) the goods are returned in their original condition; and
 - (iii) Buyer agrees to pay the Seller a handling charge equal to 10% of the price paid for the goods.
- (b) Buyer may cancel, in whole or in part, any contract for the supply of goods or services before supply has been made providing the following conditions are satisfied:
- (i) the Seller's written approval has been first obtained; and
 - (ii) Buyer agrees to pay any cancellation charges, being a genuine pre-estimate of the Seller's loss, that the Seller shall specify.

15. TRADE-INS

Trade-ins will only be accepted if they are in substantially the same condition as at the date of contract. Should the condition of the trade-in be deteriorated, the Company reserves the right to revalue or reject the trade-in, at its absolute discretion.

16. SECOND HAND EQUIPMENT

The Buyer admits and acknowledges that:-

- (a) He has had the fullest opportunity to inspect the equipment.
- (b) The equipment is sold with all faults, present or latent.
- (c) The Terms and Conditions contained in this agreement shall also apply to the sale of second hand equipment.
- (d) The Company shall not be responsible for any loss or damage to the equipment or caused by the equipment however arising.

17. MANUFACTURERS' CHANGES

Where the Seller is acting as agent of a manufacturer or supplier, the Seller shall not be liable for any alteration or variation in the goods made by the manufacturer or the supplier.

18. CONTINGENCIES AND GOODS SERVICES TAX

- (a) Any charge, duty impost, sales tax or other expenditure which is not applicable at the date of Sales Invoice but which subsequently becomes levied upon the Seller in relation to the Sales Invoice as a result of the introduction of any legislation, regulation or government policy, shall be to the Buyer's account.
- (b) The Buyer must pay to the Seller any amount which is payable on account of Goods and Services Tax ("GST") as a consequence of any supply made or deemed to be made or other matter of thing done under or in connection with this agreement by the Seller ("GST Amount").
- (c) The Buyer must pay any GST Amount at the same time and in the same manner as making payment of any consideration on which the GST Amount is calculated or at the time the liability for GST arises, whichever is the earlier. If the GST Amount is not calculated on consideration, the Buyer must pay the GST Amount within 7 days of receipt of a written demand by or on behalf of the Seller.
- (d) No later than 14 days after receipt of payment of any GST Amount the Seller must provide to the Buyer a tax invoice complying with any legislation under GST is imposed.
- (e) Otherwise than as provided by this clause, any sum payable or amount included in the calculation of a sum payable under this agreement is GST exclusive.

19. FORCE MAJEURE

If in the performance or observance of its obligations the Seller is prevented, restricted or affected by reason of force majeure including strike, lock out, industrial dispute, material shortage, stock shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of the Seller, the Seller may, in its absolute discretion give prompt notice of such cause to the Buyer whereupon the Seller is excused from such performance or observance to the extent of such prevention, restriction or affectation.

20. LIABILITY OF SELLER

Except as expressly provided herein and to the extent permitted at law:

- (a) the Seller shall not be under any liability, whether in contract, tort or otherwise in respect of defects in goods delivered or any injury, damage or loss resulting from such defects or from any work done in connection therewith except to the extent that any applicable to these Terms and Conditions prevent the exclusion, restriction or modification of such terms and conditions;
- (b) the Seller shall not be liable to the Buyer for any loss of profit howsoever arising nor shall the Seller be under any liability whether in contract, tort or otherwise for any injury, damage, or loss whether consequential, special, indirect or otherwise save as is expressly provided in these Terms and Conditions;
- (c) the Buyer indemnifies the Seller against any liability to or action by a third party for infringement of alleged infringement of a patent, registered design, trademark or copyright in respect of goods manufactured to the Buyer's specification; and
- (d) the Buyer indemnifies the Seller against any liability for any direct, indirect or consequential injury, loss or damage arising out of any act, default or omission of, or any representation made by the Buyer or its servants or agents.
- (e) all goods are supplied in accordance with usual industry standards and the Seller shall not be liable to the Buyer for the condition or quality of the goods which comply with these standards.

21. CREDIT REPORTING

Where goods are supplied to the buyer on credit the Buyer irrevocably authorises the Seller, its employees and agents to make such enquires as it deems necessary to investigate the credit worthiness of the Buyer from time to time including (but without limiting the generality of the foregoing) the making of enquiries of persons nominated as trade referees, the bankers of the Buyer or any other credit providers (the information sources) and the Buyer hereby authorises the information concerning the Buyer which is requested by the Seller.

22. GENERAL

- (a) All clerical errors are subject to corrections and shall not bind the Seller.
- (b) No employees of the Seller are authorised to bind the Seller unless the Seller has given Buyer express written to that effect.
- (c) The invalidity or unenforceability of any provisions of these Terms and Conditions shall not affect the validity or enforceability of the remaining provisions
- (d) The Seller's failure to enforce, at any time or any period of time, any term of any contract incorporating these terms and conditions shall not constitute waiver of such term and shall in no way affect its right to enforce it.
- (e) Headings are included for ease of reference and do not form parts of or affect the interpretation of these Terms and Conditions. (f) These Terms and Conditions bind the Seller, Buyer and their respective successors and assigns.