

Terms and Conditions

General

1. These Terms and Conditions apply to all transactions between us. Other documents relating to our transactions may include Price Lists, Invoices and Purchase Orders or any other document we consider necessary.
2. These Terms and Conditions shall apply upon acceptance of your Credit Application or upon provision of our services to you, whichever is the earlier.
3. The expressions “we” and “us” shall include unless the context otherwise requires all our servants, agents and sub-contractors.
4. We are NOT a COMMON CARRIER and will accept no liability as such. We reserve the right to refuse the carriage or transport of goods for any person, corporation or company and the carriage or transport of any class of goods at our absolute discretion.
5. The goods are accepted by us subject to the following conditions:
 - a. That they comply with the requirement of any applicable law relating to the nature condition and packaging of the goods and the expenses and charges of us in complying with the provisions of any such law or with any order or requirement there under or with the requirement of any harbour, dock, railway, shipping, Customs, warehouse or other authority or company shall be paid by you.
 - b. If any of the goods are subject to the control of Customs then all Customs duty, excise duty and costs which we become liable to pay and shall pay in respect of such goods pursuant to any law relating to Customs or excise shall be paid by you.
6. We shall not be under any liability for any loss of or damage to or misdelivery, delay in delivery, concealed damage, deterioration, contamination, evaporation, non-delivery of goods held in our care, custody or control, or any consequential loss arising therefrom, howsoever caused.
7. In the event of you requiring us to undertake any handling, installation, removal, assembly or erection of any kind whatsoever (hereinafter “the movement”) it is undertaken on the strict basis that we accept no liability for any loss, damage or injury of any kind whatsoever and howsoever arising, caused or incurred during any part of the movement. This extends to include not only loss of or damage to itemised equipment itself, but loss, damage or injury to any person, property or thing damaged during the movement and to include any loss consequently or otherwise arising from any loss, damage or injury aforesaid.

8. We will not arrange insurance except with the express instructions in writing of you and then only at your expense and on lodgement of a declaration as to value prior to collection.
9. No other insurance other than the insurance referred to in clause 8 hereof shall be arranged or obtained by us in respect of the goods in our custody, care and control.
10. We may arrange with any other person or company to undertake the carriage hereby contracted for or services ancillary thereto and any such person or company, its servants, agents and employees shall be entitled to the benefit of these conditions to the same extent as us.
11. We accept no responsibility for any damage, including injury, delay or loss of any nature arising out of or incidental to the carriage of goods or any services ancillary thereto which may occur:
 - a. At any time prior to the goods being received by us; and
 - b. At any time after the goods have been delivered to the nominated recipient by us or any other person or company acting on our behalf.
12. We accept no responsibility for any damage, including injury, delay or loss of any nature arising out of or incidental to the carriage or any services ancillary thereto or which may occur at any time prior to the goods being delivered to us
13. If on demand you fail to pay charges due to us in respect of any service rendered by us then we may detain and sell all or any of the goods which are in our possession and out of the moneys arising from the sale, retain the charges payable, and all the charges and expenses of the detention and sale, and shall render the surplus, if any, of the moneys arising from the sale and such of the goods as remain unsold to the person entitled thereto.
14. Freight shall be considered earned whether the goods are delivered to the Owner or not and whether damaged or otherwise. Under no circumstances will any payment for freight be refunded.
15. If we have a security interest, we may choose to protect our interest until payment by registering under the Personal Properties Securities Act 2009. You agree to do all things necessary to facilitate such registration.
16. You agree to sign documents or do all things necessary to perfect our rights under these Terms and Conditions and appoint us as your attorney to sign any document or do anything that may reasonably be required to enforce our rights on default.
17. You represent and warrant to us that all information and representations that you, or any person acting on your behalf has given in connection with our transactions are true and correct and that you have not failed to disclose to us

- anything relevant to our decision to have dealings with you and that no Court proceedings or dispute is current that may have an adverse effect on performing your obligations under these Terms and Conditions.
18. Acceptance of our services is established if you signify by words or conduct that the services are accepted.
 19. We cannot consider any claim related to the provision of our services after the expiration of 48 hours from dispatch of any goods.
 20. Your right, as against us to make any claim whatsoever in relation to the services delivered or supplied is conditional upon you honouring our payment arrangements.
 21. When a dispute arises between us you agree to comply with our dispute resolution process. To this end a party with a complaint against the other is first required to notify the other of the dispute by giving written notice specifying the nature of the dispute, the outcome required and the action believed necessary under the circumstances that will assist both in settling the dispute.
 22. Each party will then in good faith attempt to resolve the dispute by negotiation, and if the dispute in some aspect involves payment of money, the party withholding payment is required immediately upon receipt of the notice to deposit the disputed amount into an escrow account with instructions pertaining to the release of funds. Undisputed amounts must be paid forthwith.
 23. These terms and conditions shall be governed and construed according to the law applicable and enforced in the State of Victoria regardless where the services were supplied or the business transactions were made and any proceedings in respect of any matter or thing against us shall be constituted or carried on in the State of Victoria only.
 24. Notices must be in writing and be given personally by Express or Registered Post with delivery confirmation or by facsimile transmission or email with receipt confirmation.
 25. You and the Guarantors jointly and severally authorise us to exchange information about the creditworthiness of either yourself or the guarantors with any credit reporting agency at any time during our business dealings.
 26. We shall not be bound by any agreement purporting to vary these Terms and Conditions unless such agreement shall be in writing and signed on behalf of us or by our authorised officer.
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Payment Obligations

- You must pay for our services in accordance with the pricing we provide you from time to time or the amount agreed between us. Our pricing is subject to change and we shall notify you in writing of any applicable changes.
28. The observation of agreed time frames for payment of Invoices and for completion of other obligations set out in these Terms and Conditions is of primary importance.
 29. If you must make a payment or do any other thing on or by a day that is not a business day you must make the payment or do the thing on or by the next business day.
 30. You and any Guarantor will be in default if you do not pay our Invoices when they are due for payment or if you fail to comply with any other obligation under our business arrangements.
 31. By accepting payment of any sum after its due date we do not waive our right either to require payments as they fall due or to suspend or end our arrangements or to charge interest on overdue amounts.
 32. If you are in default under these Terms and Conditions we may send you a Default Notice. The Notice will tell you what the default is and what you are required to do to correct the default. You will have 14 business days to rectify the default.
 33. If you do not comply with the Default Notice you become immediately liable to pay us all money owing with interest on that amount from the due date until payment at the rate of 18% per annum.
 34. You also agree to pay on default all costs and expenses incurred in exercising our rights of recovery from you and the Guarantor (if any) and you indemnify us against any losses resulting from the default. These may include the costs of a collection agency or lawyer instructed on our behalf to collect all monies owing by you.
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GUARANTEE EXPLANATION FOR THE GUARANTOR

By receiving this Guarantee you are acknowledging that you have received, read and understood the Terms and Conditions to which this Guarantee relates. In other words you understand the obligations that must be performed failing which you will become liable.

If there are two or more of you then individually you undertake to observe the Terms and Conditions and pay any money owing if the persons or entity whose obligations you are guaranteeing fail to meet those obligations.

This Guarantee is also an indemnity. This means that if for any reason the obligations of the persons or entity you are guaranteeing are invalid or unenforceable, you are still liable to make the payment.

GUARANTEE

- a. If you are a company we require a guarantor of your obligations. All Principals of a company, trust or partnership are required to sign a personal guarantee.
- b. All Guarantors shall be jointly and severally liable for performance of all of the terms, covenants, and conditions of our business transactions and the obligations specified in these Terms and Conditions.
- c. In consideration of us accepting the attached Credit Application and providing services to you in accordance with these Terms and Conditions, the Guarantor guarantees to us the performance by you of all of your obligations under these Terms and Conditions, and indemnifies us from and against all and any costs, claims, damages and expenses whatsoever, and howsoever, arising out of the breach or non-performance by you of these Terms and Conditions.
- d. This guarantee and indemnity continues during the currency of transactions between us, and the Guarantor's liability shall not be affected by us giving you time, or any other concession, indulgence or compromise for the performance of your obligations.
- e. Each Guarantor warrants that they will receive a commercial benefit by giving this guarantee and indemnity and they have had the opportunity to obtain legal advice in relation to their obligations and the effect of the guarantee and indemnity.
- f. This guarantee and indemnity may be enforced against the Guarantor without us first taking action against you, or pursuing any other available recourse, and may be enforced despite any neglect or omission to enforce any rights against you, or if any of the agreements between us are wholly, or partially unenforceable, or if you go into liquidation.