

Marpoll Pty Ltd T/A Lifrite Hire & Sales – Terms & Conditions of Trade

- 1. Definitions**
 - 1.1 "Owner" shall mean Marpoll Pty Ltd T/A Lifrite Hire & Sales its successors and assigns or any person acting on behalf of and with the authority of Marpoll Pty Ltd T/A Lifrite Hire & Sales.
 - 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Owner to the Client.
 - 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
 - 1.4 "Goods" shall mean Goods supplied by the Owner to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Owner to the Client.
 - 1.5 "Services" shall mean all Services supplied by the Owner to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
 - 1.6 "Price" shall mean the price payable for the Goods as agreed between the Owner and the Client in accordance with clause 3 of this contract.
- 2. Acceptance**
 - 2.1 Any instructions received by the Owner from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Owner shall constitute acceptance of the terms and conditions contained herein.
 - 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
 - 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Owner.
 - 2.4 The Client undertakes to give the Owner at least fourteen (14) days notice of any change in the Client's name, address and/or any other change in the Client's details.
- 3. Price And Payment**
 - 3.1 At the Owner's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Owner to the Client in respect of Goods supplied; or
 - (b) the Owner's quoted Price (subject to clause 3.2) which shall be binding upon the Owner provided that the Client shall accept the Owner's quotation in writing within thirty (30) days.
 - 3.2 The Owner reserves the right to change the Price in the event of a variation to the Owner's quotation.
 - 3.3 At the Owner's sole discretion a deposit may be required.
 - 3.4 At the Owner's sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment shall be due before delivery of the Goods; or
 - (c) payment for approved Clients shall be made by instalments in accordance with the Owner's payment schedule; or
 - (d) payment for approved Clients shall be due thirty (30) days following the end of the month of invoicing.
 - 3.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
 - 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two and one half percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and the Owner.
 - 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Delivery Of Goods**
 - 4.1 At the Owner's sole discretion delivery of the Goods shall take place when:
 - (a) the Client takes possession of the Goods at the Owner's address; or
 - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Owner or the Owner's nominated carrier); or
 - (c) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
 - 4.2 At the Owner's sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Client's account.
 - 4.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Owner shall be entitled to charge a reasonable fee for redelivery.
 - 4.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
 - 4.5 The Owner may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
 - 4.6 The failure of the Owner to deliver shall not entitle either party to treat this contract as repudiated.
 - 4.7 The Owner shall not be liable for any loss or damage whatever due to failure by the Owner to deliver the Goods (or any of them) promptly or at all.
- 5. Risk**
 - 5.1 If the Owner retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
 - 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Owner is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Owner is sufficient evidence of the Owner's rights to receive the insurance proceeds without the need for any person dealing with the Owner to make further enquiries.
- 6. Title**
 - 6.1 The Owner and Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid the Owner all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to the Owner in respect of all contracts between the Owner and the Client.
 - 6.2 Receipt by the Owner of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Owner's ownership or rights in respect of the Goods shall continue.
 - 6.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until the Owner shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from the Owner to the Client the Owner may give notice in writing to the Client to return the Goods or any of them to the Owner. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Owner shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Client fails to return the Goods to the Owner then the Owner or the Owner's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
 - (e) the Client is only a bailee of the Goods and until such time as the Owner has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Owner; and
 - (f) the Client shall not deal with the money of the Owner in any way which may be adverse to the Owner; and
 - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Owner; and
 - (h) the Owner can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
 - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Owner will be the owner of the end products.
- 7. Client's Disclaimer**
 - 7.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Owner or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Owner and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgement.
- 8. Defects**
 - 8.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Owner in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Owner an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Owner has agreed in writing that the Client is entitled to reject, the Owner's liability is limited to either (at the Owner's discretion) replacing the Goods or repairing the Goods.
- 9. Returns**
 - 9.1 Returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 8.1; and
 - (b) the Owner has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and
 - (d) the Owner will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
 - 9.2 The Owner may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.
- 10. Warranty**
 - 10.1 For Goods not manufactured by the Owner, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Owner shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
 - 10.2 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Owner as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Owner shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 11. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
 - 11.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 12. Default & Consequences of Default**
 - 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
 - 12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in pursuing the debt including legal costs on a solicitor and own client basis and the Owner's collection agency costs.
 - 12.3 Without prejudice to any other remedies the Owner may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Owner may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Owner will not be liable to the Client for any loss or damage the Client suffers because the Owner has exercised its rights under this clause.
 - 12.4 If any account remains overdue after sixty (60) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
 - 12.5 Without prejudice to the Owner's other remedies at law the Owner shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Owner becomes overdue, or in the Owner's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 13. Security And Charge**
 - 13.1 Despite anything to the contrary contained herein or any other rights which the Owner may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Owner or the Owner's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Owner (or the Owner's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Owner elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Owner from and against all the Owner's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Owner or the Owner's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
- 14. Cancellation**
 - 14.1 The Owner may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Owner shall repay to the Client any sums paid in respect of the Price. The Owner shall not be liable for any loss or damage whatever arising from such cancellation.
 - 14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Owner (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15. Privacy Act 1988**
 - 15.1 The Client and/or the Guarantor/s agree for the Owner to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Owner.
 - 15.2 The Client and/or the Guarantor/s agree that the Owner may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
 - 15.3 The Client consents to the Owner being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
 - 15.4 The Client agrees that personal credit information provided may be used and retained by the Owner for the following purposes and for other purposes as shall be agreed between the Client and Owner or required by law from time to time:
 - (a) provision of Goods; and/or
 - (b) marketing of Goods by the Owner, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
 - 15.5 The Owner may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 16. Unpaid Owner's Rights**
 - 16.1 Where the Client has left any item with the Owner for repair, modification, exchange or for the Owner to perform any other Service in relation to the item and the Owner has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Owner shall have:
 - (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Owner is in possession of the item;
 - (c) a right to sell the item, and
 - (d) the right to retain all or part of the proceeds of the sale of the item in payment of the Price and any interest due to the Owner and any costs associated with such sale.
 - 16.2 The lien of the Owner shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.
- 17. General**
 - 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
 - 17.3 The Owner shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Owner of these terms and conditions.
 - 17.4 In the event of any breach of this contract by the Owner the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
 - 17.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Owner.
 - 17.6 The Owner may license or sub-contract all or any part of its rights and obligations without the Client's consent.
 - 17.7 The Owner reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Owner notifies the Client of such change.
 - 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
 - 17.9 The failure by the Owner to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Owner's right to subsequently enforce that provision.