

TERMS AND CONDITIONS

DEFINITIONS:

“**Agreement**” means and includes the terms and conditions herein and on the trace thereof;

“**Australian Consumer Law**” means that part of the Competition and Consumer Act 2010;

“**Charges**” means the cost of Goods and Services to be provided by the Company;

“**Company**” means the relevant company, as listed in the Customer Order, to supply the Goods and Services;

“**Credit Account**” means the credit account of the Customer (if applicable);

“**Credit Terms**” means the terms upon which the Company agrees to provide the Credit Account to the Customer as set out in this Agreement;

“**Customer**” means and includes any natural person, company, partnership or other entity identified in the Customer Order;

“**Customer Order**” means the order given by the Customer and accepted by the Company in relation to the supply of Goods or Services by the Company;

“**Force Majeure**” means an act, omission or circumstance over which a party could not reasonably have exercised control and which includes an ‘act of God’ including war, strikes, machinery breakdowns, pandemics, epidemics, beyond the control of either party, and natural disasters resulting from fire, storms, cyclones or earthquakes;

“**Goods**” means the goods to be provided by the Company as specified in the Customer Order;

“**Prices**” means, unless stated to the contrary, the price for which a Good(s) or Service(s) are sold pursuant to the Terms and Conditions and is the amount payable by the Customer to the Company;

“**Services**” means the services to be provided by the Company as specified in the Customer Order;

1. PROMOTIONS

- (a) “**Promotions**” refers to periodic discounts, offers, coupons and other similar promotions which are available for Australian resident Customers only. Only at Elite 4x4 Darwin.
- (b) Promotions exclude:
 - (i) shipping costs, which are additional;
 - (ii) Fleet Customers;
 - (iii) colour coding and labour charges, which are additional;
- (c) Rain checks are not available, however should an advertised product(s) be unavailable, a back order (where a deposit is required) will be raised.
- (d) Promotions are subject to stock availability and are not in conjunction with any other offer.
- (e) Only a select range of Goods are available for purchase online.

2. CUSTOMER ORDERS & ACCEPTANCE OF TERMS AND CONDITIONS

- (a) The Customer requests that the Company provides the Goods and Services specified in the Customer Order.
- (b) Any variation to the Customer Order must be agreed by both the Customer and the Company in writing.
- (c) The Company may install Goods supplied by the Customer. However, the Company reserves the right, in its absolute discretion, to decline this request.
- (d) The Company cannot guarantee the quality or performance of any Goods supplied by the Customer or the labour to install them should the Goods fail. To the maximum extent permitted by law and without limiting clause 8 the Company excludes any and all liability to the Customer in connection with any loss or damage suffered or incurred as a result of the Company installing Customer supplied parts.
- (e) The Company may refuse to supply the Goods to the Customer where:
 - (i) the Goods are unavailable for any reason (including where demand exceeds supply);
 - (ii) the Customer’s credit limit with the Company has been exceeded;
 - (iii) the Company decides not to extend credit to the Customer;
 - (iv) a termination event under an existing Agreement between the Customer and the Company has occurred and has not

been remedied;

- (v) any circumstances arising that are beyond the Company's control, including industrial action.
- (f) Customer Orders cannot be varied or cancelled after the manufacturing of any made to order Goods, or the customisation of any Goods for the Customer has commenced.
- (g) The Customer acknowledges being provided the opportunity to read the terms and conditions before proceeding with the Customer Order. The Customer proceeding with the Customer Order constitutes the Customer's acceptance of these terms, and any additional terms that may be contained within the Company's pricelist or quotations, pursuant to which the Customer Order is given.
- (h) Terms and conditions may only be amended with the written consent of the Company. Any statements within the Customer's documentation stating the Customer's terms and conditions prevail are hereby expressly excluded.

3. PRICE AND PAYMENT

- (a) All references to '\$' are in Australian dollars.
- (b) Prices are subject to change without notice, list and retail prices are recommended only.
- (c) Prices for Goods may vary from those initially quoted by the Company. The Company reserves the right to vary any of the prices quoted to the Customer:
 - (ii) to conform to the Company's pricelist as at the date of dispatch of the Goods, with exception to existing orders accepted by the Customer;
 - (ii) due to implementation of any requests by the Customer for changes in delivery schedules, quantities, designs or specifications or similar requests;
 - (iii) due to delays caused by any instruction of the Customer or by any failure of the Customer to provide adequate information or instructions;
 - (iv) if a particular model of a Good has been replaced by a new model, the Company may, after consultation with the Customer, supply the new model instead of the old model, and the price and terms will be those applicable to the new model.
- (d) The Customer will pay to the Company the Charges on the due date specified by the Company.
- (e) In the event that this Agreement provides for a Credit Account, then the Credit Terms shall also apply to the payment of any amounts owing by the Customer to the Company under this Agreement.
- (f) The Customer acknowledges (unless stated to the contrary) that the prices quoted for Goods and Services sold pursuant to this Agreement are exclusive of GST and any other taxes, duties, tariffs, imposts or fees and exclusive of warehouse, freight and insurance charges which shall be the responsibility of the Customer.
- (g) Agreed discounts, rebates and allowances to which the Customer is entitled, are credited to the Customer by the Company. In no circumstances is the Customer permitted to deduct any discount, rebate or allowance from monies owing by it to the Company.
- (h) Special order and Goods especially procured by the Company are subject to a 50% deposit to be applied to the value of the Customer Order, excluding labour charges, and is payable at the time of acceptance of the Customer Order.
- (i) The title of Goods remains with the Company until paid for in full.

4. TRANSPORT

- (a) The Customer is responsible for all transportation costs. The Company does not accept responsibility for transport failures or delays or losses due to handling and such matters shall be the responsibility of the Customer and the transportation company.
- (b) Unless otherwise agreed with the Company, the Customer is responsible for their own transport arrangements and the Company will comply with the directions of the Customer in this regard.
- (c) Unless carriage of the Goods is agreed, in writing, to be the responsibility of the Company, the Customer (or its freighter) bears all risk to the Goods whilst in transit and is responsible for insurance coverage.

5. DELIVERY & ACCEPTANCE OF GOODS

- (a) The Customer will pay all freight/shipping costs and insurance to deliver the Goods to the Customer's premises.
- (b) In the event that the Customer specifies a delivery date, the Company shall use its best endeavours to comply with the

Customer's request. In no circumstances will the Company be liable for any loss or damage of any kind whatsoever in the event that it is not able to comply with the Customer's request for delivery at a certain time. The Customer acknowledges and agrees that it will not make any claim against the Company for any loss or damage (including loss of revenue or increase in expenses) incurred as a result of late delivery.

- (c) Unless notified in writing to the Company, all Goods will be delivered to the address of the Customer as specified on the Customer Order. The Goods will have been deemed to have been delivered to the Customer, by the Company or the Company's agent, to the address of the Customer specified on the Customer Order. The Goods will have been deemed to be collected by any person (whether arranged by the Company or the Customer) for the purposes of transporting Goods to the Customer.
- (d) Delivery of Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purpose of this Agreement.
- (e) The Customer shall not be entitled to repudiate this Agreement as a result of the failure of the Company to deliver the Goods.
- (f) It is the responsibility of the Customer to inspect each delivery for loss or damage prior to accepting the Goods. The Customer will be deemed to have accepted the Goods as being in accordance with its order and received in good condition unless it notifies the Company and the freight/shipping company in the case of loss or damage, in writing, of any claim within 7 days of receipt of the Goods.

6. RETURN POLICY

- (a) If the Goods fail to meet a guarantee as set out in the Australian Consumer Law, then:
 - (i) Where the problem is minor, the Company may either provide a repair or offer the Customer a replacement or a refund (in the discretion of the Company);
 - (ii) Where there is a major failure, the Customer may reject the Goods and (at its option) choose a refund or replacement.
- (b) The Company will not accept any return of Goods unless it has given prior written authorisation to the Customer for the return.
- (c) The Company reserves the right to refuse returns or refunds to Customers who change their mind. However, the Company may, in its absolute discretion, provide a credit in limited circumstances.
- (d) Goods returned must have been purchased from the Company, be within 14 days from receipt of sale, in a saleable condition, with its original packaging and accompanied by a relevant invoice number.
- (e) Special order and especially procured Goods are not entitled to credit.
- (f) If the Company elects to take back the Goods for any reason, such return shall be on the Company's terms. A 25% handling, re-packaging, and processing charge will be applied to the value of the Goods being returned.
- (g) The Customer is responsible for the costs of return of Goods unless otherwise specified in the Australian Consumer Law.

7. WARRANTIES

- (a) All warranty claims must be returned to the Company. All warranties whether express or implied and whether statutory or otherwise with regard to the Goods supplied by the Company as to quality, fitness for purpose or any other matter are hereby excluded except in so far as any such warranties are incapable of exclusion by law.
- (b) All claims for warranty must be made within the warranty period by returning the Goods to the Company at the Customer's expense with a completed warranty claim form and proof of purchase.
- (c) Any warranty provided by the Company shall not cover any defect or damage which may be caused by:
 - (i) failure on the part of the Customer to properly maintain the Goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Company; or
 - (iii) any use of any Goods otherwise than for any application specified on any documentation supplied with the Goods; or
 - (iv) the continued use of any Goods after any defect becomes apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
- (d) Any warranty provided by the Company shall be voided in the event that the Goods are repaired or altered or replaced without the Company's consent.
- (e) Notwithstanding any other terms and conditions referred to in clause 2, but only to the extent permitted by the Competition and Consumer Act 2020 (Cth) or any other applicable law, the Company's liability under the Warranty shall be limited to, at

the option of the Company, the replacement of Goods, refund of the purchase price or allowing credit in relation to the Goods.

- (f) Subject to clause 7(g), the Company warrants that it will, at its option, replace, rework, refund the price of or give a credit in relation to any Company branded Goods for defects in respect of materials or workmanship (the "Warranty"), except that Goods purchased on special order are not acceptable for credit. No claims will be recognised after 10 days from the date of invoice.
- (g) The Warranty shall be valid for a period as stated on the Company's website or quotations pursuant to which the Customer Order is given.
- (h) The Company distributes non-Company branded Goods in which case the Manufacturer warranty shall apply.
- (i) Where a manufacturing warranty exists then the Customer may only rely on such warranty and shall not be entitled to rescind or cancel the contract or sue the Company for damages or claim restitution arising out of any misrepresentation made to the Customer by any servants or agents of the Company. The Customer acknowledges that it has relied on its own skill and judgement in deciding to enter into this Agreement and has not relied on any representation, condition, warranty covenant or promise made for and on behalf of the Company.

8. LIMITATION OF LIABILITY

- (a) To the maximum extent permitted by law, the liability of the Company if any, under or arising for supply of Parts and or performance of Services or breach of any term, condition or warranty implied in or imposed upon the sale or supply of parts of performance of law is limited, at the option of the Company.
- (b) In the case of parts:
 - (i) the replacement of the Parts or the supply of equivalent Parts;
 - (ii) the repair of the Parts;
 - (iii) to the payment of the cost of replacing the Parts or of acquiring equivalent parts;
 - (iv) to the payment of the cost of having the Parts repaired.
- (c) In the case of services:
 - (i) the supply of the Services again;
 - (ii) the payment of the cost of having the Services supplied again.
- (d) Except as expressly provided above and to the extent permitted by law, the Company is not liable to the Customer for any loss or damage (including, without limitation, consequential or indirect loss or damage or loss of profits) howsoever caused which may be suffered or incurred or which may arise directly or indirectly in respect of the Parts or Services or the failure of the Company to comply with this Agreement.

9. INTELLECTUAL PROPERTY

- (a) The Company shall retain the copyright in all drawings of any products produced for the Customer unless otherwise agreed in writing.
- (b) If the Customer provides the Company with any specifications, designs or drawings for the production or manufacture of any item(s) then the Customer hereby warrants that the use of these designs, drawings or specifications will not infringe any third party's rights and the Customer hereby indemnifies the Company against any claims, demands, suits or actions in relation thereto.

10. LIEN

- (a) The Customer hereby acknowledges that the Company has a lien over all Goods in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

11. TITLE AND RISK

- (a) Property in any Goods sold by the Company shall not pass to the Customer until the Customer has paid for the Goods in full and has paid all other monies outstanding under any other sale of Goods by the Company to the Customer.
- (b) Risk of loss or damage to the Goods passes to the Customer with possession. Until payment of the purchase price (and all other monies outstanding) the Customer is to insure the Goods against all risk. Any insurance claim in respect of loss or damage or destruction of the Goods is hereby assigned to the Company.

(c) In the event that:

- (i) the Customer has failed to pay for the Goods as and when due;
- (ii) the Customer has breached any of the conditions of this Agreement;
- (iii) the Customer commits an act of bankruptcy or becomes bankrupt;
- (iv) a controller is appointed to the Customer;
- (v) the Customer is placed under external administration;
- (vi) the Customer enters into a scheme of arrangement with its creditors;
- (vii) execution is issued against the property of the Customer and is returned unsatisfied; or
- (viii) the Customer is insolvent; and
- (ix) then the Company may retake possession of any of its Goods which have been supplied to the Customer and for this purpose the Company may enter any premises belonging to or occupied by the Customer. The Customer hereby grants right of entry to the Company for the purpose of retaking possession of its Goods and indemnifies the Company, its servants, agents and employees in relation to any loss or damage occurring as a result of retaking possession of the Goods.

(d) The Customer hereby indemnifies the Company against any loss or damage to the Goods howsoever arising.

(e) The Customer is entitled to resell the Goods in the usual course of its business but the Company is to be paid from the proceeds of the sale the purchase price owed to the Company (and all other monies outstanding including interest, costs and collection costs) which proceeds, to the extent of the purchase price (and all other monies outstanding including interest, costs and collection costs) shall be kept in a separate account and held by the Customer in trust for the Company.

(f) The Customer shall, on request, disclose to the Company all relevant information regarding the Goods and any sale thereof by the Customer.

(g) Nothing in this Agreement entitles the Customer to return any Goods for a credit adjustment or otherwise, unless the Company has requested, in writing, that the Goods be returned. Transportation charges must be prepaid, and the original invoice number must accompany the returned Goods where the Company has made a request.

(h) The risk in the Goods shall remain with the Company until delivery or collection of the Goods to or by the Customer or the Customer's agent, or in the case of the export market, delivery in accordance with pre-arranged terms between the Customer and a Company.

12. PERSONAL PROPERTIES SECURITIES ACT (PPSA)

(a) Where this Agreement creates a security interest under the PPSA, the Customer acknowledges that the Company may register a purchase monies security interest on the Personal Property Securities Register and that the PPSA shall apply.

(b) If this Agreement or any transaction contemplated by it gives rise to a security interest for the Company under the PPSA, then this clause 11 applies to enable the Company to secure the amount owing by the Customer to the Company in relation to Goods and also the performance of all of the Customer's other obligations under this Agreement.

(c) The Customer consents to the Company perfecting its interest in the Goods (and any product to which Goods are attached or converted into by any process) by registration under the PPSA of the security interest that the Customer considers arises out of this Agreement.

(d) The Customer and the Company agree to contract out of each provision which, under sections 115(1) and 115(7) of the PPSA, they are permitted to contract out of, other than sections 117, 118, 134(1) and 135. To the extent permitted by law, the Customer also waives any rights that it might have (including to receive any notice) under sections 92, 93, 94, 95 and 96 of the PPSA.

(e) To the extent permitted by the PPSA:

- (i) the Customer waives its right to receive each notice which section 144 or 157 of the PPSA permits to be waived;
- (ii) the Customer waives its right to receive anything from the Company under section 275 of the PPSA and agrees not to make any request of the Company under that section.
- (iii) For the purposes of section 275 of the PPSA, the information of the kind mentioned in section 275(1) of the PPSA must not be disclosed by the Customer except where required by section 275(7) of the PPSA.
- (iv) The Customer, when requested to do so by the Company, must do all things which the Company asks to ensure that this Agreement (including any purchase order) and any security interest granted under it is fully effective, enforceable and perfected with the priority required by the Company and otherwise enable the Company to exercise its rights in

connection with that security interest. This may include:

- (a) doing anything to make, procure or obtain any consent, authorisation, registration or approval in respect of anything, or to facilitate it;
- (b) creating or executing (or procuring the creation or execution of) any document, including any form, notice, consent or agreement; and
- (c) delivering documents or evidence of title or otherwise giving possession or control with respect to any personal property or other asset.

13. DEFAULT, TERMINATION AND CANCELLATION

- (a) The Company may, by notice in writing to the Customer, terminate this Agreement and any Credit Account of the Customer, in the event of the following:
 - (i) in the event of Force Majeure;
 - (ii) the Customer fails to meet its payment obligations for the Goods and Services in accordance with this Agreement;
 - (iii) the Customer breaches any other term of this Agreement.
- (b) The Customer may cancel any Customer Order for any reason by providing notice to the Company but must pay for any part of the Goods or Services incurred by the Company to the date of the cancellation.

14. CREDIT TERMS

In the event that the Company establishes a Credit Account on behalf of the Customer then the following terms apply:

- (a) All accounts are to be settled in full within 30 days from the last day of the month in which the Goods and/or Services are supplied (unless otherwise agreed in writing, with the Company).
- (b) Any expenses, costs or disbursements incurred by the Company in recovering any outstanding monies including debt collection agency fees and solicitor's costs shall be paid by the Customer.
- (c) The Customer agrees to notify the Company in writing of any change of ownership of the Customer within 7 days from the date of such change and indemnifies the Company against any loss or damage incurred by it as a result of the Customer's failure to notify the Company of any change.
- (d) In addition to any other remedies under this Agreement the Company shall be entitled, without notice, to terminate any Credit Account in the event of the Customer defaulting in any of the Credit Terms of this Agreement.

15. FORCE MAJEURE

- (a) The Company will not be in default or breach of any dealing with the Customer as a result of Force Majeure. Neither party shall be liable for any default due to an act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm, cyclone, pandemic, epidemic or other event beyond the reasonable control of either party.

16. AUSTRALIAN CONSUMER LAW

- (a) The Company excludes any warranty, guarantee or representation in relation to the Goods and Services unless it is stated in this Agreement or may not be excluded under the Australian Consumer Law.
- (b) If the Customer is a consumer as defined in the Australian Consumer Law, nothing in this Agreement restricts, limits, or modifies the Customer's rights or remedies against the Company for failure of a statutory guarantee under the Australian Consumer Law.
- (c) Nothing in this Agreement is to be interpreted as excluding, restricting, or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be so excluded, restricted, or modified.

17. GOVERNING LAW

- (a) This Agreement shall be governed and construed in accordance with the laws of the Northern Territory of Australia and the parties agree to submit to the jurisdiction of the Courts of that State/Territory.