

TERMS & CONDITIONS FOR THE SUPPLY OF GOODS / SERVICES

1. DEFINITIONS

- 1.1. **“Action”** means any claim, action, suit, proceeding, demand or other proceeding including (without limitation) mediation, arbitration, compromise, out of court settlement or appeal;
- 1.2. **“Business Day”** means a day other than a Saturday, a Sunday or a public holiday recognised in Western Australia.
- 1.3. **“Contract”** has the meaning given in clause 3.2.
- 1.4. **“Customer”** means the customer referred to in the Quotation and any Related Corporation of the Customer.
- 1.5. **“Dispute”** and **“Dispute Notice”** have the meanings given in clause 22.1(a).
- 1.6. **“Force”** means Force Equipment Pty Ltd (ACN 009 220 562) trading as Force Equipment.
- 1.7. **“Force Majeure Event”** means any of the below:
- an act of God;
 - war, riot, insurrection, vandalism or sabotage;
 - strike, lockout, ban, limitation of work or other industrial disturbance;
 - law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application;
 - quarantine or customs restriction; and
 - breakdown or damage to or confiscation of property.
- 1.8. **“Force’s Premises”** means 897 Abernethy Road, Forrestfield, Western Australia or any such other premises which Force may operate from time to time.
- 1.9. **“Goods”** means the goods supplied by Force to the Customer.
- 1.10. **“GST”** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.11. **“Loss”** means loss or damage, whether consequential or indirect loss or damage, including (without limitation) loss of profit, loss of opportunity or loss of reputation.
- 1.12. **“Price”** means the price specified in the Contract.
- 1.13. **“Quotation”** means a written quotation issued by Force to the Customer in respect of the Goods and/or Services.
- 1.14. **“Related Corporation”** bears the same meaning as given to the term “related body corporate” in section 50 of the *Corporations Act 2001* (Cth).
- 1.15. **“Services”** means services supplied by Force to the Customer under the Contract.
- 1.16. **“Site”** has the meaning given in clause 10.1.
- 1.17. **“Terms”** means these terms and conditions.
- 1.18. **“Vienna Convention”** means the *United Nations Convention on Contracts for the International Sale of Goods 1980*, as amended from time to time.

2. INTERPRETATION

- 2.1. In these Terms, unless the context requires otherwise:
- the singular includes the plural and the plural includes the singular;
 - a person includes a body corporate;
 - a party includes the party’s executors, administrators, successors and permitted assigns and, if the context permits, that party’s employees, contractors, agents and consultants;

- money is to Australian dollars, unless otherwise stated;
- “including” and similar expressions are not words of limitation;
- headings are for convenience only and do not form part of these Terms or affect its interpretation;
- a provision of these Terms must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms;
- if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day; and
- a reference to legislation is a reference to that legislation as amended or any replacement or other relevant legislation and regulations.

2.2. If a party consists of more than 1 person, the Contract binds each of them separately and any 2 or more of them jointly.

2.3. An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

2.4. A party which is a trustee is bound both personally and in its capacity as a trustee.

3. CONTRACT

- 3.1. A Quotation given by Force to the Customer constitutes an offer by Force to supply Goods and/or Services to the Customer on these Terms and the terms of the Quotation, to the exclusion of all other terms and conditions. A Quotation is open for acceptance until the earliest to occur of:
- 30 days have passed from the issue date of the Quotation;
 - any different timeframe stated on the Quotation has passed;
 - Force issues a revised Quotation which is expressed to replace a previous Quotation.
- 3.2. Subject to clause 3.1, a contract is made when the Customer accepts the Quotation in writing or otherwise by conduct (such as by requesting or instructing Force to undertake the supply of Goods and/or Services the subject of the Quotation) which acceptance shall also be deemed to be acceptance of these Terms (**“Contract”**). A Contract made on acceptance of a revised Quotation prevails over any Contract made on acceptance of an earlier Quotation regarding the same or related Goods and/or Services, to the extent of any inconsistency.
- 3.3. These Terms become irrevocable once a Contract is formed under clause 3.2 and can only be varied by written agreement of the parties.
- 3.4. None of Force’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by a Force company director in writing nor is Force bound by any such unauthorised statements.

4. STATUS

These Terms replace any previous terms pursuant to which Force has previously contracted with the Customer, and apply to the exclusion of any conditions of purchase used by the Customer, even if they form part of the Customer's order.

5. GOODS

- 5.1. The Goods shall be described on the invoices, Quotation, sales order or any other forms provided by Force to the Customer.
- 5.2. Unless expressly agreed in writing to the contrary, the provisions and tolerances contained in the standard specifications to which the Goods are manufactured by Force or its supplier will apply to this Contract and the Customer shall be deemed to have knowledge of the standard specifications at the date upon which the Quotation is accepted by the Customer.
- 5.3. To the maximum extent permitted by law, Force makes no warranty in respect of the Goods as to their quality, condition or sufficiency for any purpose.
- 5.4. Any description of Goods provided by Force is given by way of identification only and use of such description shall not constitute a sale by description.
- 5.5. The Customer shall be deemed to have accepted that the Goods correspond with any sample provided by Force.

6. SERVICES

- 6.1. The Services shall be described on the invoices, Quotation, or any other forms provided by Force to the Customer.
- 6.2. To the maximum extent permitted by law, Force makes no warranty in respect of the Services.

7. TRADE PRACTICES & FAIR TRADING LEGISLATION

Nothing in the Contract is intended to have the effect of contracting out of any applicable provisions of the Trade Practices or Fair Trading legislation of the Commonwealth, and the States and Territories, of Australia, except to the extent permitted by such legislation where applicable.

8. PRICE

- 8.1. Force reserves the right to charge extra for additional services which are beyond the scope of an accepted Quotation and necessary in order for Force to supply the relevant Goods and/or Services, where the Customer has provided insufficient or incorrect instructions or has breached the Contract.
- 8.2. Unless expressly stated otherwise, the Price does not include any GST or similar taxes or other domestic or foreign government duties, charges and taxes, freight charges or credit card surcharges. Any GST will be added to the Price and any other duties, charges and taxes will be payable by the Customer either directly to the relevant authorities or to Force by way of reimbursement (as applicable).

9. PAYMENT

- 9.1. The Customer agrees to pay all invoices within 30 days after Force issues such invoice or any different timeframe stated in the accepted Quotation.
- 9.2. Force may issue invoices at such intervals as it considers appropriate (acting reasonably) for progress payments and/or for parts purchased in order to perform the Contract, prior to completion of the supply of the relevant Goods and/or Services.
- 9.3. Time for payment for the Goods and/or Services shall be of the essence.
- 9.4. Where the Customer does not make payment in respect of specified Goods and/or Services, payment may be allocated against whichever invoice(s) and in whatever order as Force determines in its sole discretion.
- 9.5. Payment must be made by bank cheque, credit card, direct debit, or by any other method as agreed to in writing by Force.
- 9.6. Payment via an approved credit card will attract a 2% surcharge.
- 9.7. 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 Force or have been paid by the Customer to the relevant authorities.

10. DELIVERY OF GOODS

- 10.1. The Customer shall take delivery of the Goods at Force's Premises or such other location as agreed by the parties ("**Site**").
- 10.2. Delivery of the Goods to a carrier nominated by the Customer to Force, or failing such nomination to a carrier at the discretion of Force, for the purpose of delivery to the Customer, is deemed to be a delivery of the Goods to the Customer.
- 10.3. The costs of carriage and any insurance cost incurred by Force shall be reimbursed by the Customer (without any set-off) and shall be paid when invoiced in accordance with clause 9.1.
- 10.4. The carrier shall be deemed to be the Customer's agent.
- 10.5. Force may deliver the Goods by separate instalments (in accordance with any agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the Contract.
- 10.6. Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of the Contract.

11. DEFECTS

- 11.1. The Customer shall:
 - (a) inspect the Goods on delivery;
 - (b) assess the Services supplied, and shall within 5 Business Days after such delivery and/or assessment notify Force in writing;
 - (c) of any alleged defect, shortage in quantity, damage or failure to comply with the description or Quotation; or
 - (d) of any complaint in connection with the Services.
- 11.2. If requested by Force, the Customer shall allow Force to:
 - (a) inspect the Goods within a reasonable time following delivery or shall supply photographs of the Goods to Force;
 - (b) inspect any goods or other matter in respect of which Force supplied the Services.

- 11.3. If the Customer fails to comply with this clause 11, the Goods and/or Services shall be deemed to have been supplied in accordance with the Contract and free from any defect or damage.
- 11.4. The Customer shall not have any right to commence an Action in connection with the supply of the Goods and/or Services unless:
- (a) the Customer has complied with clauses 11.1 and 11.2;
 - (b) the Customer has complied with clause 22; and
 - (c) the Goods are returned to Force at the Customer's cost within 5 Business Days after delivery.
- 11.5. Goods may be returned for credit if agreed by Force in writing, in which case Force is entitled to charge a 15% re-stocking fee to the Customer.
- 12. DEFAULT**
- 12.1. If the Customer defaults in payment, then all monies due to Force immediately become payable to Force.
- 12.2. Force reserves the right to charge the Customer interest on any overdue account at a rate per annum which is 2% above the Commonwealth Bank reference-lending rate. Interest will be calculated daily from the due date until the principal invoice is paid in full.
- 12.3. The Customer must pay all costs and expenses (including legal costs on a solicitor and own client basis, recovery costs and mercantile agent's fees) which Force may incur in attempting to recover any amount overdue.
- 12.4. Without prejudice to any other remedies Force may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Force may suspend or terminate the supply of Goods and/or Services and any of its other obligations to the Customer with immediate effect, provided that where the breach is remediable Force has firstly given the Customer not less than 5 Business Days to remedy the breach and the Customer has failed to remedy the breach to Force's reasonable satisfaction. Force will not be liable to the Customer for any Loss the Customer suffers in connection with Force's exercise of its rights under this clause 12.
- 12.5. In the event of Customer default, Force reserves the right to terminate any credit agreement and request additional security as it deems necessary.
- 13. RISK IN GOODS**
- 13.1. Risk in the Goods passes to the Customer as soon as the Goods leave Force's Premises.
- 13.2. Force shall not be liable for any Loss connected with the delivery of the Goods to the Site.
- 14. RETENTION OF TITLE**
- 14.1. When Title Passes
Title to the Goods supplied by Force to the Customer under the Contract does not pass to the Customer until the Price, and any other money owing by the Customer to Force, has been paid in full and the funds are cleared.
- 14.2. Customer Holds as Bailee
Until title to the Goods passes, the Customer holds the Goods as fiduciary bailee and agent for Force.
- 14.3. Customer's duties until payment in full
Until the title to the Goods passes under clause 14.1, the Customer:
- (a) must properly store, protect and insure the Goods, including storing them in a manner that shows clearly that they are the property of Force;
 - (b) may sell the Goods, in the ordinary course of its business, but only as fiduciary agent of Force. The Customer has no authority to bind Force to any liability by contract or otherwise and must not purport to do so. The Customer receives all proceeds, whether tangible or intangible, direct or indirect, of any dealing with the Goods (including any proceeds from insurance claims) in trust for Force and must keep the proceeds in a separate bank account until the liability to Force is discharged; and
 - (c) agrees not to sell, assign, charge or otherwise encumber or grant any interest over the Goods.
- 14.4. Act of Default**
Without prejudice to any other rights of Force, Force is entitled to reclaim possession of the Goods even if they have been paid for in full, in satisfaction of all debts owing to Force by the Customer, if any of the following events occurs ("Act of Default"):
- (a) the Customer fails to pay money owing under the Contract, for more than 5 Business Days;
 - (b) the Customer fails to carry out any other provision of the Contract and does not remedy that failure within 10 Business Days after notice requiring it to be remedied;
 - (c) the Customer commits an act of bankruptcy or takes advantage of the provisions of Part X of the *Bankruptcy Act 1966* (Cth);
 - (d) a receiver, or receiver and manager, or other controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed in respect of the Customer or the whole or any part of its undertaking, property or assets or any steps are taken for the appointment of such a person;
 - (e) the Customer goes into liquidation, administration, or some other form of insolvency administration whether formal or informal;
 - (f) the Customer convenes a meeting of its creditors or proposes or enters into a scheme of arrangement (except for the purpose of reconstruction or amalgamation) or a composition with any of its creditors;
 - (g) an application or order is made to or by a court or a resolution is passed for the winding up of the Customer or notice of intention to propose such a resolution is given;
 - (h) the Customer is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001* (Cth) or suspends payment of its debts;
 - (i) an administrator of the Customer is appointed under Part 5.3A of the *Corporations Act 2001* (Cth);
 - (j) a warranty given by the Customer in the Contract is materially incorrect;
 - (k) the Customer ceases to carry on business; or
 - (l) it becomes unlawful for the Customer to perform its obligations under the Contract.

- 14.5. Right to repossession
- (a) If the Customer has committed an Act of Default, Force has the right to immediate possession of the Goods (even if they have been paid for in full) and the Customer irrevocably authorises Force at any time without notice to any person to enter any premises (forcibly if necessary) upon which the Goods are stored, in the Customer's name or in the name of any Related Corporation of the Customer, to repossess the Goods.
 - (b) The Customer gives Force security clearance and agrees to do all things necessary to enable Force to exercise its rights under this clause 14, including (without limitation) procuring the consent of any third party.
 - (c) Any costs incurred by Force in exercising its rights under this clause 14, will be a debt due by the Customer payable on demand to Force.
- 14.6. Force's right to inspect
- If the Customer has committed an Act of Default, the Customer irrevocably authorises Force, at any time without notice to any person, to enter any premises (forcibly if necessary):
- (a) upon which Force's Goods are stored to enable Force to inspect the Goods;
 - (b) upon which the Customer's records pertaining to the Goods are held to enable Force to inspect and copy such records.
- 14.7. Right to begin legal action
- Force may begin legal action against the Customer if the Goods are not paid for in accordance with the Contract or within Force's usual credit terms or any separate arrangement for credit made by Force with the Customer, although title to the Goods has not passed to the Customer.
- 15. EXCLUSION & LIMITATION OF LIABILITY**
- 15.1. Binding conditions & warranties
- The only conditions and warranties which are binding on Force in respect of the Goods and/or the Services are those imposed and required to be binding by statute which cannot be contracted out of.
- 15.2. Limitation on liability
- To the extent permitted by statute, the liability, if any, of Force arising from the breach of the conditions or warranties referred to in clause 15.1 is, at Force's option, limited to any one or more of the following:
- (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 resupply of the Services; or
 - (ii) the payment of the cost of having the Services supplied again by a third party.
- 15.3. Exclusion of other conditions & warranties
- Except as provided in this clause 15, all conditions and warranties imposed or implied by law in respect of the state, quality or condition of the Goods and/or the quality of the Services which may apart from this clause 15 be binding on Force are excluded to the extent permitted by law.
- 15.4. Customer acknowledgements
- The Customer acknowledges that the Customer does not rely and it is unreasonable for the Customer to rely on the skill or judgment of Force as to whether the Goods and/or Services supplied are reasonably fit for any purpose for which they are being acquired, and that the sale of Goods (if applicable) is not a sale of goods by description or sample.
- 15.5. Exclusion of consequential loss
- Except to the extent provided in this clause 15, Force has no liability (including liability in negligence) to any person for:
- (a) any Loss in connection with the Goods and/or the Services; and
 - (b) in particular, without limiting clause 15.5(a), any Loss suffered or incurred by that person caused by, or connected with, or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the Goods and/or Services.
- 16. INDEMNITY**
- 16.1. The Customer indemnifies Force against:
- (a) all Loss incurred by Force;
 - (b) all liabilities incurred by Force; and
 - (c) all costs actually payable by Force to its own lawyers and other expenses incurred by Force in connection with an Action, arising directly or indirectly as a result of or in connection with the supply of Goods and/or Services by Force to the Customer except to the extent caused by wilful misconduct or negligence on the part of Force or any of its employees or agents acting within the scope of their employment.
- 16.2. The Customer must pay to Force upon demand all liabilities, costs and other expenses referred to in clause 16.1, whether or not Force has paid or satisfied them.
- 17. TERMINATION**
- 17.1. Force may terminate this Contract at any time by giving written notice to the Customer if an Act of Default occurs.
- 17.2. On termination of this Contract under clause 17.1:
- (a) the Customer must, at its own expense and at Force's election:
 - (i) immediately return the Goods to Force; and/or
 - (ii) if the Price has not been paid in full, immediately pay the Price in full (or the balance that remains outstanding) to Force; and
 - (b) Force may take whatever steps as are available to it to recover any Loss suffered by it by reason of the termination of this Contract, including repossessing and selling the Goods and retaining the proceeds, provided that where the sale proceeds exceed the sum claimed by Force (including the Price, any Loss and recoverable costs) the excess will be paid to the Customer.
- 17.3. If the Customer fails to comply with its obligations under clause 17.2(a), Force may repossess the Goods in accordance with clause 14.
- 17.4. Termination of this Contract does not affect the respective rights and obligations of the parties arising prior to the date of termination.
- 17.5. This clause 17 survives the expiry or termination of this Contract.

18. SUBCONTRACTS

Force may subcontract any part of the performance of this Contract. Subcontracting does not relieve Force of its obligations to the Customer under the Contract.

19. TESTING

All the Goods are manufactured from high-grade materials and to stringent specifications, but since Force has no control over the conditions under which the Goods are applied, used, stored, transported or handled, the Customer agrees to test the Goods thoroughly before putting them to its own use and releases and discharges Force from any liability in respect of defects which could have been discovered by testing of the Goods prior to use.

20. PRIVACY

Where Goods are supplied to the Customer on credit, the Customer irrevocably authorises Force, its employees and agents to make such enquiries as it considers necessary – and to the extent permitted by law – to investigate the credit worthiness of the Customer, including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Customer or any other credit providers and the Customer authorises the aforementioned persons to disclose to Force all information concerning the Customer which is within their possession and which is requested by Force.

21. FORCE MAJEURE

If a party is prevented from or delayed in complying with an obligation (other than to pay money) by a Force Majeure Event which is beyond the reasonable control and not due to the fault or negligence of such party, performance by it of that obligation is suspended during the time, but only to the extent that compliance is prevented or delayed.

22. DISPUTES

22.1. Dispute Notice

- (a) If a party to the Contract claims that a dispute has arisen under or in connection with the Contract (“**Dispute**”), that party must give notice of the Dispute (“**Dispute Notice**”) to the other party.
- (b) The Dispute cannot be the subject of litigation until the provisions of clauses 22.2 and 22.3 have been complied with (except where a party seeks urgent equitable relief from a court including (without limitation) urgent interim or interlocutory relief, in which case that party does not need to comply with clauses 22.2 and 22.3 before seeking such relief).
- (c) The Customer’s rights and obligations under clause 22.1(b) are subject to clause 11.

22.2. Resolution by representatives

Within 10 Business Days after the Dispute Notice is given (or such other period as agreed between the parties), representatives of each of the parties must meet (in person or by telephone conference) to negotiate in good faith and seek to resolve the Dispute. As part of the negotiation process, the parties must identify what the difference is and what each says should be done to resolve the difference.

22.3. Litigation

If the Dispute is not resolved under clause 22.2 within 20 Business Days after the date of the Dispute Notice, either party may commence litigation.

23. ENTIRE AGREEMENT

23.1. The Contract:

- (a) is the entire agreement and understanding between Force and the Customer on everything connected with the subject matter of the Contract; and

- (b) supersedes any prior agreement or understanding on anything connected with the subject matter of the Contract.

23.2. Force and the Customer have entered into the Contract without relying on any representation by the other or any person purporting to represent the other.

23.3. The terms of the Vienna Convention and all other terms or conditions in relation to the subject matter of the Contract, whether implied by use, statute or otherwise, are expressly excluded.

24. WAIVER

24.1. A party’s failure or delay to exercise a power or right does not operate as a waiver of that power or right.

24.2. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

24.3. A waiver is not effective unless it is in writing.

24.4. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

25. SEVERABILITY

Any provision of this Contract that is or becomes illegal, invalid, void or unenforceable in any jurisdiction, is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions or affecting the validity or enforceability of that provision in any other jurisdiction.

26. ASSIGNMENT

The rights granted under this Contract are personal to the Customer. The Customer must not assign this Contract or any of its rights and obligations under this Contract without the prior written consent of Force (which consent Force may withhold at its sole discretion). If an assignment occurs without Force’s prior written consent, Force may terminate the Contract for breach by the Customer with immediate effect by giving the Customer written notice.

27. VARIATIONS

Except to the extent provided otherwise in clause 3.2 a variation or amendment to the Contract is not effective unless it is in writing and signed by both parties.

28. SURVIVAL

The provisions of this Contract which are capable of having effect after the termination or expiry of this Contract shall remain in full force and effect following its termination or expiry. This Contract shall enure to the benefit of and be binding on the parties and their successors, trustees, permitted assignees, administrators, or receivers but shall not enure to the benefit of any other person.

29. EXECUTION

Each party warrants to the other party that it has full power and authority to enter into and perform its obligations under the Contract.

30. NOTICES

Notices under the Contract must be in writing and in English addressed to the addressee at the address of that party stated in the Contract or as subsequently notified in writing by that party. Notices may be delivered by hand, by mail, by email or by facsimile transmission. Notices will be deemed to be given:

- (a) in the case of hand delivery, on the date of delivery as evidenced by a written acknowledgement of receipt by an adult at the delivery address;

- (b) in the case of posting, 5 Business Days after posting if posted within Australia or 10 Business Days after posting if posted from or to a place outside Australia; and
- (c) in the case of email or facsimile transmission, at the time of transmission (as evidenced by a successful transmission report from the sender's computer or machine) if the transmission was made before 5:00 p.m. (addressee's local time) on a Business Day or otherwise at the commencement of the first Business Day following transmission.

31. CONSTRUCTION OF TERMS

A provision of the Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Contract or the inclusion of the provision in the Contract.

32. APPLICABLE LAWS & JURISDICTION

This Contract shall be governed and interpreted in accordance with the laws of Western Australia and any dispute arising out of or in connection with this Contract shall be heard and determined within the jurisdiction of Western Australia.