



STANDARD TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

"**Vehicle**" means the motor vehicle, truck, trailer or other property, goods or things that the Customer contracted Rydweld to provide the Works for;

"**all monies**" means all monies of whatsoever kind now or in the future due or owing on any account, contract, invoice, indemnity or transaction whatsoever and includes principal, interest, charges, fees and costs;

"**Force Majeure**" includes storm, flood, fire, earthquake, cyclone, and any other event or circumstance reasonably beyond Rydweld's control;

"**Goods**" unless the context requires otherwise it includes all goods, part, components supplied or manufacturer by Rydweld;

"**PPSA**" means the *Personal Property Securities Act 2009* (Cth) and regulations;

"**Services**" means any service Rydweld may provide to the Customer time to time;

"**Customer**" means the person who has ordered and/or received any Works from Rydweld as specified in any quotation, agreement, invoice, document or order and includes the Customer's successors and assigns. It also includes any other entity that the Customer controls which may place an order with Rydweld from time to time or which the Customer is acting as agent or trustee for;

"**Rydweld**" means Rydweld Pty Ltd A.C.N. 105 164 323 and includes its lawful successors and assigns;

"**Works**" means all Services, Goods, modifications, products and other works manufactured, sold, provided and/or supplied by Rydweld to the Customer from time to time; and

"**Our Terms of Trade**" means these standard terms and conditions of trade as published and varied by Rydweld from time to time.

2. INTERPRETATION

In the interpretation of Our Terms of Trade and any agreement entered into with the Customer:

- (a) singular includes plural and vice versa;
- (b) references to statutes includes regulations made under those statutes and statutes amending, consolidating or replacing the statutes;
- (c) covenants imposed on the Customer includes an obligation on the Customer to procure compliance by all other persons (including

licensees, permittees and employees) under the Customer's control;

- (d) covenants on a party are joint and several. The release of one of the persons from an obligation does not release any other person who may be jointly liable;
- (e) all annexures, schedules and other attachments (if any) annexed to an agreement form part of the Agreement;
- (f) any unlawful, invalid or unenforceable term or condition of these terms and conditions will not invalidate or affect the interpretation of the balance of those terms, but will be severed from those terms;
- (g) nothing which appears after the word "include" or "including" is to be interpreted as limiting the type of thing which may be included within the ambit of that class, description or list of things;
- (h) reference to "the parties" means a reference to the Customer and Rydweld and unless the document expressly states otherwise does not include any guarantor. The guarantor is not a party to the contract or agreement with Rydweld but has a separate contractual obligation to guarantee the Customer's obligations pursuant to the terms of the guarantee;
- (i) Rydweld's contractors, sub-contractors, employees and directors are entitled to the benefit of all releases, indemnities and limits of liability contained in Our Terms of Trade; and
- (j) Our Terms of Trade nor any other agreement or contract entered into with the Customer, will not be interpreted against Rydweld merely because Rydweld caused them to be prepared or drafted.

3. OFFER AND ACCEPTANCE

3.1 The Customer acknowledge that:

- 3.1.1. Our Terms of Trade apply to, and are incorporated into and form part of all contracts, agreements and dealings between the Customer and Rydweld; and
- 3.1.2. the Customer is bound by, and exclusively accepts, Our Terms of Trade, immediately upon accepting our quotation, or accepting delivery of the Works, whichever happens the earliest.

3.2 Any terms and conditions contained in the Customer's purchase order or other documentation issued by the Customer, are excluded to the extent of any inconsistency with these terms and conditions. They are not binding or effective unless Rydweld expressly agrees in writing to accept the Customer's terms or conditions.

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4. PRICE OF WORKS

- 4.1. Where no price has been quoted by Rydweld, then labour and parts (plus Rydweld's standard profit margin) are charged at rates and prices prevailing at the date of invoice.
- 4.2. Without limiting what Rydweld can charge for, the Customer acknowledges and agrees that Rydweld is entitled to charge labour rates for each and every person Rydweld has on the job, part rates, admin fees and charges and to pass on all other expenses and costs incurred by Rydweld including freight and consultant fees and costs.
- 4.3. The price of the Works shall be subject to the addition of GST and a sum equal to any other government duty, tax or levy applicable to the Works, or any Goods, parts or components comprising of the Works.
- 4.4. Unless expressly stated otherwise on a quotation, prices, rates and amounts are exclusive of third party certifying, delivery/freight, design and engineering charges, costs and expenses. Customer agrees to pay them in addition to all other amounts payable to Rydweld.
- 4.5. Any quotation is an estimate only and Rydweld is not bound by the price or rates quoted.
- 4.6. Customer agrees to pay to Rydweld any increase in price, rates or costs arising from:
 - 4.6.1. Force Majeure or other circumstances not caused by Rydweld;
 - 4.6.2. increases in taxes, duties, awards, rates of exchange and other supply fluctuations and changes in conditions taking place prior to delivery or performance of the Works;
 - 4.6.3. any act, omission or delay by the Customer or any other person connected with the Customer including any change to designs, specifications or plans;
 - 4.6.4. any variation made by the Customer to their order or any errors made by the Customer in the order or its specifications;
 - 4.6.5. the provision of any design, third party consultation or other third-party service engaged by Rydweld on the Customer's behalf which was not specifically allocated for in the initial quotation; or
 - 4.6.6. any other material fact or circumstance not discoverable by, or disclosed to, Rydweld at the date of quotation.

5. PAYMENT

- 5.1. The Customer agree to pay for the Works, and all monies owing to Rydweld from time to time, without deduction, retention, counterclaim or setoff.
- 5.2. The Customer agrees that Rydweld may at any time specify or vary the payment terms. Rydweld may impose progress payments, payments in advance or other payment conditions.
- 5.3. In the absence of Rydweld notifying the Customer to the contrary, the payment terms are within seven (7) days following the date of any invoice given to the Customer by Rydweld.

6. INTEREST AND FEES ON OUTSTANDING ACCOUNTS

- 6.1. The Customer agrees to pay Rydweld: -
 - 6.1.1. Interest: on overdue amounts at the rate of 18% per annum compounding monthly.
 - 6.1.2. Additional costs: all costs, charges and expenses legal (on a solicitor and own client basis) and otherwise, which Rydweld may incur or suffer as a result of the exercise of any rights or remedies that Rydweld may have against the Customer.

7. IMPORTANT NOTICE

- 7.1. If any Goods presented for repair are capable of retaining user generated data, the Customer is advised that the repair of the Goods may result in loss of the data. The Customer should save that data to another device before delivering the Goods to Rydweld for the Works.

8. RETENTION OF TITLE

- 8.1. The Customer agrees that until Rydweld receives payment for the Works and all monies owing to it from time to time:
 - 8.1.1. any Goods delivered or sold to the Customer by Rydweld remains Rydweld's and are held by the Customer as Rydweld's fiduciary bailee. This includes any Goods provided or installed as part of the performance of the Works;
 - 8.1.2. any proceeds of resale, in so far as they relate to the Goods, or part of a transaction to which the Goods are incorporated, must be held by the Customer in a separate account and Rydweld is entitled to trace the proceeds;

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- 8.1.3. any proceeds of insurance in respect of the Goods, or any Vehicle to which the Goods were incorporated, are to be retained again on the basis that Rydweld is entitled to be allocated from the proceeds payment of all monies owing to it at the time of receipt of insurance and the Customer directs the insurer to pay such amount directly to Rydweld; and
- 8.1.4. if the Goods are intermingled with other Goods or things, to the extent lawfully possible Rydweld retains ownership in the Goods, an equitable interest in the resulting product and any proceeds of sale resulting from the resulting product.
- 8.2. Rydweld may enter any premises owned or leased by the Customer to recover Goods and to remove them from any Vehicle.

9. PPSA AND SECURITY

- 9.1. In addition to any other rights Rydweld has, the Customer grants Rydweld:
 - 9.1.1. a charge over all of the Customer's personal property now or in the future in existence including any proceeds arising from the sale of that personal property; and
 - 9.1.2. a specific security interest in the Vehicle,
 - 9.1.3. as security for the Customer's obligations to Rydweld including to pay all monies due to Rydweld from time to time.
- 9.2. The Customer agrees:
 - 9.2.1. Rydweld is entitled to register on the Personal Property Securities Register any security interest/s that the Customer have given Rydweld in personal property and/or the Vehicle and Good (including arising under the Retention of Title Clause above);
 - 9.2.2. the Customer will provide Rydweld with all information reasonably required to register a financing statement or financing change statement on the Personal Property Securities Register;
 - 9.2.3. where permitted by law, the Customer waive the Customer's rights to receive a notice of verification statement;
 - 9.2.4. the Customer will advise Rydweld in writing of any change to the Customer's name or address at least 7 days prior to that change taking effect;

- 9.2.5. Rydweld has the authority to search the register from time to time to determine what security interests may exist in respect of the Customer;
- 9.2.6. to pay the costs of and incidental to the registration of a financing statement or financing change statement along with any costs incurred by Rydweld in enforcing its rights against the Customer under the PPSA; and
- 9.2.7. where Rydweld have rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and its rights to seize the property will not be limited by the PPSA.
- 9.3. In the event that Rydweld exercises its rights under the PPSA to gain possession of personal property, the Customer waives the Customer's rights with respect to the following:
 - 9.3.1. the right to receive notice prior to Rydweld removing or seizing the personal property; and
 - 9.3.2. to receive a statement of account, a disposal notice or a notice of retention either prior to or immediately following our retaking possession and selling personal property to a third party.
- 9.4. Rydweld may register a caveat on the Customer's land on the grounds the Customer hereby grants an equitable charge in the Customer's land to Rydweld to secure all monies owed to Rydweld.
- 9.5. Unless the context requires otherwise, terms defined in the PPSA and used in this clause, will have the same defined meaning herein.

10. POWER OF SALE AND LIEN

- 10.1. The Customer acknowledge that:
 - 10.1.1. if Rydweld carries out any work to the Customer's Vehicle or other property owned by the Customer, that Rydweld has a general law lien over the Customer's Vehicle/property for payment of Rydweld's accounts and all monies owing to Rydweld from time to time;
 - 10.1.2. if such monies remain unpaid for a period of 30 days after Rydweld have sent the Customer a written demand for payment, then:
 - 10.1.2.1. Rydweld may without further notice to the Customer and at its sole discretion either store the

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Vehicle or property or sell it in such manner and upon such terms as Rydweld determines appropriate;

10.1.2.2. Rydweld may deduct from the sale proceeds all monies owing to Rydweld whatsoever including for unpaid invoices, fees and costs incurred for enforcing its rights and in carrying out the sale, sale costs and expenses, and other monies payable by the Customer to Rydweld together with any other amounts necessary to provide clear title in favour of a third party; and

10.1.2.3. any monies remaining after deduction of the aforementioned amounts will be firstly applied towards any other monies that Rydweld must lawfully provide for, or which is reasonably necessary, to avoid any further claim against Rydweld in respect of the sale and thereafter the balance (if any) will be paid to the Customer. Rydweld will be released from all liability if it is paid by cheque and sent to the Customer's last known address, or in the event the Customer cannot be located, paid to the Public Trustee of Queensland.

10.1.3. The Customer irrevocably appoints Rydweld as the Customer's attorney to exercise all the rights necessary to give effect to a sale and transfer of the Customer's Vehicle or property including the power of sale, and to sign a transfer of good title to any other person. Customer hereby ratifies all acts done by Rydweld.

11. ORDERS, TESTING ETC

11.1. The Customer is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving Rydweld any

necessary information relating to the Works within a sufficient time to enable Rydweld to perform the contract in accordance with its terms.

11.2. The quantity, quality and description of and any specification for the Works shall be those set out in our quotation forming part of the Customer's order (if accepted by Rydweld in accordance with its terms of trade).

11.3. Save where otherwise expressly warranted to the contrary by Rydweld, any recommendation or suggestion relating to Rydweld's Works, storage or handling of the Goods made by Rydweld either in sales and technical literature or in response to a specific enquiry or otherwise, is given in good faith but it is the Customer's sole responsibility to determine the suitability of the Works/Goods for the Customer's own particular purposes. All drawings, descriptive matter, specifications and advertising issued by Rydweld and any descriptions contained in catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Works/Goods described in them.

12. ACCEPTANCE, DELIVERY AND ACCESS

12.1. The Customer must inspect its Vehicle/the Works upon taking delivery and let Rydweld know at that time if there is any defect, error, fault, short delivery or failure in description failing which the Customer is deemed satisfied with the Vehicle/Works and the performance of the Works.

12.2. If the Customer should make a complaint, the Customer must provide free and unrestricted access at all reasonable times to inspect the Vehicle/Works to determine the validity of any complaint, claim or demand received by Rydweld from the Customer. Further the Customer is solely responsible, at its sole cost and expense, of returning the Vehicle/Works to Rydweld's principal place of business for inspection. The Customer is not entitled to claim any expense, loss or damage for such travel, freight, inconvenience or loss of use of its Vehicle or property.

12.3. Any other Goods not taken or collected by the Customer within seven (7) days from the date of attempted delivery, Rydweld may at its option and without limiting its rights, treat the sale as repudiated by the Customer, terminate and sue for damages or affirm the sale and sue for specific performance and/or damages.

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- 12.4. If the Customer fail or refuses to accept delivery, then the Works are deemed to have been delivered and the Customer is in breach.
 - 12.5. If, due to Force Majeure, Rydsweld cannot perform, or is delayed in performing, the Works (or any part of them), Rydsweld may either extend the time for delivery or performance for a reasonable period or terminate the contract. Rydsweld must still be paid for all Works performed to the date of termination. Customer is not entitled to claim for any loss or damage if termination is pursuant to Force Majeure.
 - 12.6. Any time stated in a quotation or other documentation is an estimate only and Rydsweld may revise it as it sees fit based on its work schedule and availability. There is no guarantee of a fit up or delivery date. Time is not of the essence unless Rydsweld expressly agrees in writing to the contrary. Any completion/delivery date is an approximation. Rydsweld are not liable for any loss or damage arising or delay expense or cost incurred, whatsoever for failing to deliver the Works (or any part of them) promptly, by a specified date or for extending delivery/completion dates. Rydsweld is not responsible for flights, accommodation or any other delay expense arising whatsoever. The Customer is not entitled to terminate the Contract where Rydsweld elects to extend any date for completion or delivery date for whatsoever reason.
 - 12.7. Where the Works are to be delivered in instalments a failure by Rydsweld to deliver any one or more of the instalments in accordance with any contract or agreement or any claim by the Customer in respect of any one or more instalments will not entitle the Customer to treat the contract as a whole as repudiated.
 - 12.8. Save where otherwise agreed in writing by Rydsweld, the Customer may not re-direct delivery, performance or any instalment of the Works.
 - 12.9. The Customer are responsible for compliance with all statutes and regulations applying to the Vehicle and its property including safety, registration, compliance, engineering and licensing requirements.
- 13. LIMITATION OF LIABILITY**
- 13.1. The Customer acknowledges that no claim for incorrect delivery of the faulty workmanship or can be made against Rydsweld if the Customer has not notified Rydsweld of the alleged fault, defect etc within 48 hours of taking delivery of the Vehicle or completion of the Works (as applicable).
 - 13.2. To the full extent permitted by law, the Customer agrees that Rydsweld is released from:
 - 13.2.1. defect or failure arising from the Customer's improper use of any of the Customer's Vehicle or property;
 - 13.2.2. any damage, complaint, failure or other breakdown, error or problem which can be reasonably associated with fair wear and tear;
 - 13.2.3. the Customer's own negligence, abuse, mistreatment, omission or act;
 - 13.2.4. the carrying out of any maintenance or work by the Customer or other service providers at the request of the Customer;
 - 13.2.5. any claim in respect of loss of data, files or records for whatsoever reason;
 - 13.2.6. alteration or modification by the Customer or other service providers including any addition of software, reconfiguration of settings and installation of new hardware;
 - 13.2.7. any claim for loss of profits or for any indirect or consequential loss claimed by the Customer, for whatsoever reason;
 - 13.2.8. a claim that the Works, or any portion of them, are not in accordance with the sale contract, unless the claim is lodged with Rydsweld in writing within seven (7) days from the date of delivery of the Works;
 - 13.2.9. any loss allegedly arising from our delay in performing the Works.
 - 13.3. To the extent permitted by law all implied warranties, conditions, terms and guarantees in relation to the sale or delivery of Works, and the carrying out of Works, statutory or otherwise, are hereby excluded.
 - 13.4. To the extent permitted by law, where Rydsweld are not the manufacturer of the Goods supplied in the works, the Customer agree that the Customer's rights are limited to those rights arising under the express warranty (if any) the manufacturer has given in respect of the Goods and where any such warranty is denied, voided, is inapplicable or unable to be enforced, the Customer waives

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all rights to recover from Rydsweld in respect of the Goods.

13.5. Where there is a valid warranty claim accepted by Rydsweld, or Rydsweld agrees to carry out inspections to determine the validity of any warranty claim, the Customer agrees:

13.5.1. all travel and return costs, freight or other carriage costs are to be borne by the Customer. The Customer must return the alleged faulty Works/Vehicle/Goods to Rydsweld's business premises at its sole cost and expense.

13.5.2. The Customer is not entitled to claim for any travel time, travel expenses, loss of use of the Vehicle or its property, or for accommodation or other direct or indirect expenses associated with making a warranty claim, investigating its validity, determining the fault, returning the Works/Vehicle/Goods to Rydsweld's premises or complying with Rydsweld's other reasonable directions.

13.6. Where Rydsweld's liability cannot be excluded by law or limited, Rydsweld's liability will be limited to, in the case of Goods, the replacement of the Goods, the supply of equivalent Goods or the payment of the cost of replacing the Goods, or in the case of Services, the supply of the Services again, or the payment of the cost of having the Services supplied again. The choice of remedy will be at Rydsweld's discretion.

14. RISK

14.1. All risk for the Customer's Vehicle remains with the Customer and the Customer must keep its Vehicle and property insured even when it is kept at our premises for the purpose of performing the Works.

15. ACL

15.1. This clause applies only to the extent that the Australian Consumer Laws apply to a transaction or contract with the Customer. The following is a mandatory statement that Rydsweld must make Consumers aware of:

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

16. INTELLECTUAL PROPERTY

16.1. Where Rydsweld has provided any document including plans, drawings or designs or created any products for the Customer's use, then the intellectual property, know how, and/or copyright in all such designs, drawings, documents, plans schedules and products shall remain vested in Rydsweld. The Customer has a non-exclusive limited licence to use it for its personal use and must not commercialise or reproduce it for others.

16.2. The Customer warrant that where it gives Rydsweld plans, specifications, designs or drawings, it has not breached any third party's intellectual property rights.

17. DEFAULT TERMINATION AND SUSPENSION

17.1. Rydsweld will not be liable to the Customer for any loss or damage the Customer suffers because Rydsweld terminates, cancels or suspends any order, agreement or contract with the Customer.

17.2. Without prejudice to our other remedies Rydsweld has, Rydsweld may elect to terminate where the Customer is in default for any reason and without limiting what is a default, it will include:

- 17.2.1. any money payable to Rydsweld becomes overdue, or Customer is otherwise in breach of its obligations;
- 17.2.2. the Customer become insolvent or bankrupt, convenes a meeting with creditors or is negotiating with creditors;
- 17.2.3. a receiver, manager, liquidator (provisional or otherwise) or like



- person is appointed to the Customer or its affairs;
- 17.2.4. the Customer is threatening or abusive to Rydweld or its staff;
- 17.2.5. the Customer's instructions are unlawful or reckless;
- 17.2.6. the Customer fails to comply with any payment obligation, including a deposit obligation;
- 17.3. Rydweld may terminate where the Customer is not in default by giving at least 48 hours' notice of its intention to do so.
- 17.4. In addition to our common law and equitable rights and remedies, Rydweld are entitled to be paid by the Customer for any Works already performed and/or supplied to the date of cancellation or termination, and for any work Rydweld have done in preparation for performance of the Works and Rydweld retain all liens, security interests and other rights until all monies have been paid to Rydweld in full. The Customer agrees that that Rydweld are not liable to the Customer for any loss, damage, costs or expenses whatsoever arising to the Customer from such termination or cancellation by Rydweld.
- 17.5. Rydweld may suspend the performance of its services, keep any contract or order on foot and reserve all its rights, including the right to terminate at a later date.
- 17.6. In the event that the Customer cancel the delivery or supply of the Works the Customer will be liable for, and indemnify Rydweld against, any and all loss, damage, expense and cost incurred or suffered (whether direct or indirect) by Rydweld as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.7. Cancellation of orders for products made to the Customer specifications, or for non-stock list items will definitely not be accepted once production has commenced, or an order by Rydweld has been placed with our supplied unless the Customer have agreed to pay Rydweld for all loss, damage, expense and costs incurred or suffered by Rydweld.
- 17.8. Subject to an express term to the contrary in Our Terms of Trade, termination or cancellation of any contract or agreement with the Customer does not:
 - 17.8.1. affect any claim or action that a party may have against the other or affect any other right or remedy that the party may have;

- 17.8.2. release any guarantors; or
- 17.8.3. release any other party of any obligation which is expressed to continue after termination.

18. VARIATION

- 18.1. Rydweld may at any time by not less than seven (7) days' notice in writing vary or replace these terms and conditions and / or Our Terms of Trade (or any of them). The Customer agree that the variation or replacement will apply to all contracts, dealings or orders arising after the effective date of any variation or replacement.

19. JURISDICTION

- 19.1. The Customer agree that the jurisdiction in respect of any relief, remedy and/or enforcement of these terms and conditions will be determined by the jurisdiction of the Courts in Queensland. Each party waives any right it has to object to an action being brought in those Courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those Courts do not have jurisdiction.
- 19.2. Further, the Customer agree that Rydweld may commence any claim or seek any relief in the Supreme Court and/or in the District Court and/or the Magistrates Court sitting at Townsville in the State of Queensland and any such Court will not be required to make any determination as to whether it has local jurisdiction in respect of the matter.

20. GENERAL TERMS

- 20.1. Where Rydweld replace parts, the removed part will vest in Rydweld and Rydweld may deal or dispose of it as Rydweld sit and without accounting to the Customer for the removed part.
- 20.2. The Customer cannot assign any agreement with Rydweld without our written consent.
- 20.3. Rydweld may assign our rights and obligations with the Customer without the Customer consent. Rydweld may also sub contract or license the performance of any part of the Works without the Customer prior written consent.
- 20.4. The Customer warrants and declares that the Customer agrees to and understands Our Terms of Trade.