

QTRS TERMS AND CONDITIONS OF SUPPLY

1. APPLICABILITY

- a. Unless otherwise agreed in writing by QTRS, these terms and conditions:
 - i. apply to all goods (**Goods**) and/or services (**Services**) to be supplied by QTRS Pty Ltd ABN 99 152 035 179 (**QTRS**) to each of its customers (each a **Customer**); and
 - ii. prevail over any terms and conditions that the Customer may nominate.
- b. QTRS has no obligation to supply Goods and/or Services (**Goods and Services**) until the Customer's order for the Goods and Services has been accepted by QTRS. The Customer shall place orders in accordance with procedures adopted by QTRS from time to time (including online procedures). QTRS' acceptance of the Order creates a contract between QTRS and the Customer (**Agreement**) for QTRS to supply Goods and Services to the Customer subject to these terms and conditions. QTRS may accept the Customer's order in writing (including electronically) or by commencement of the supply of the relevant Goods and Services. Any quotation issued by QTRS is an invitation to treat only. Any order which has been accepted by QTRS (**Order**) cannot be cancelled by the Customer however the supply of Goods and Services is subject to availability and QTRS reserves the right to suspend or discontinue the supply of any Goods and Services to the Customer for any reason without penalty.

2. SUPPLY OF GOODS AND SERVICES

- a. Subject to compliance by the Customer with its obligations under the Agreement, QTRS shall supply the Goods and Services to the Customer.
- b. Dates for delivery or supply of Goods and Services (whether contained in an Order or anywhere else) are estimates only and QTRS shall have no liability to the Customer for any delay.
- c. Unless otherwise agreed by QTRS in writing, the Customer is responsible for collection of completed Goods and Services from QTRS' premises. Where QTRS agrees to undertake any delivery, this shall be done at the cost of the Customer entirely and QTRS shall be free to subcontract the delivery task.
- d. If, in supplying Goods and Services, QTRS is to carry out any installation upon a Customer vehicle or trailer (**Vehicle**), the Customer must ensure that the Vehicle is delivered to QTRS' premises by the time requested by QTRS, in order to enable QTRS to effect the relevant installation.

3. PRICE AND PAYMENT

- a. Unless otherwise expressly agreed by QTRS in writing, where a written quotation has been given by QTRS and the Order has been accepted by QTRS in relation to that written quotation (**Quotation**), the price for the Goods and Services is the price specified in the Quotation. In all other cases, the price for the Goods and Services is QTRS' list price (for Goods) and prevailing rates (for Services) applying as at the date of the Order.
- b. The price payable for the Goods and Services pursuant to clause 3.a (**Price**) must be paid by the Customer:
 - i. in accordance with the payment terms specified in the Quotation;
 - ii. where clause 3.b.i does not apply (either because there is no Quotation or because the Quotation does not specify payment terms), in accordance with any payment terms agreed in writing between QTRS and the Customer (including as part of any QTRS credit application process); or
 - iii. where neither clause 3.b.i or 3.b.ii apply, immediately upon receipt of invoice from QTRS.
- c. If the Customer fails to pay any part of the Price by its due date, QTRS may:
 - i. suspend delivery and supply to the Customer of any Goods and Services (including those that are not the subject of the relevant Order);
 - ii. charge the Customer interest on the amount unpaid at the rate set from time to time under the *Penalty Interest Rates Act 1983* (Vic) (such interest to be computed daily and compounded monthly) from the due date until payment in full is made;
 - iii. exercise a general lien on all of the Customer's property in QTRS' possession to cover the amount unpaid (including any Vehicle); and
 - iv. recover from the Customer, in addition to the outstanding amount and interest, all reasonable costs incurred by QTRS in collection of the outstanding amount.
- d. Without prejudice to any of QTRS' rights to recover any loss or damage that QTRS may incur, if the Customer repudiates the Agreement prior to the completion of the supply of the Goods and Services to the Customer or QTRS terminates the Agreement under clause 9, the Customer shall forfeit any amounts already paid by the Customer to QTRS as at the time of repudiation or termination.

4. GST

- a. The Price and any other amounts payable to QTRS pursuant to the Agreement (**the amounts**) do not include any goods and services tax (**GST**).
- b. If any GST is incurred or payable by or collectable from QTRS in respect of any supplies by QTRS to the Customer, the Customer must pay to or reimburse QTRS for any GST, in addition to the amounts.
- c. The GST must be paid or reimbursed by the Customer to QTRS at the same time as when the amounts are required to be paid by the Customer to QTRS.
- d. QTRS shall, as a pre-condition to the Customer paying GST, provide the Customer with a tax invoice in compliance with applicable GST legislation.

5. CUSTOMER WARRANTIES

- a. If the Customer gives to QTRS the possession and/or control of a Vehicle for any purpose, the Customer warrants that:
 - i. it is the owner of the Vehicle or has obtained the express permission of the owner of the Vehicle for the possession and control of the Vehicle to be given to QTRS and for Goods and Services to be supplied by QTRS in relation to it;
 - ii. the Vehicle is in a safe and roadworthy condition;
 - iii. the Vehicle has no defects which have the potential to pose a risk to the safety of persons driving, towing or manoeuvring the vehicle, persons working on the Vehicle or who may be in the vicinity of the Vehicle; and
 - iv. the Vehicle is insured for loss and damage however caused while the Vehicle is in the possession and/or under the control of QTRS.
- b. The Customer further warrants that:

- i. it has full legal power and capacity to enter into the Agreement and to carry out the transactions that the Agreement contemplates;
- ii. the Agreement constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms; and
- iii. in requesting QTRS to supply Goods and Services, it does not rely on any express or implied representation made by QTRS (including as to fitness for purpose of any Goods and Services), other than as expressly set out in the Agreement.

6. LIMITATION OF LIABILITY

- a. QTRS excludes all legislated guarantees, implied conditions and warranties except any legislated guarantee, implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void (**Non-excludable guarantee**).
- b. To the fullest extent permitted by law:
 - i. except for liability for breach of a Non-excludable guarantee and subject always to QTRS' obligations under clause 7, QTRS shall not under any circumstances be liable for (and the Customer releases QTRS from) any injury, loss (including without limitation indirect loss, special loss, consequential loss, loss of profit, loss of revenue, loss of income, loss of business opportunity, loss of anticipated savings and pure economic loss), damage, cost, expense and liability (whether in contract, tort or otherwise) of any nature whatsoever which may be suffered or incurred by the Customer arising directly or indirectly out of or in connection with the supply of Goods and Services by QTRS or the failure by QTRS to comply with these terms and conditions, including if due to the negligence of QTRS or any of its officers, employees, contractors or agents; and
 - ii. QTRS' liability for any loss or damage incurred by the Customer in relation to breach of a Non-excludable guarantee is limited (to the full extent permitted by law) to the following:
 1. In the case of Goods that are the subject of the relevant breach:
 - a. replacement of the Goods or the supply of equivalent Goods; or
 - b. payment of the cost of replacing the Goods or of acquiring equivalent Goods, at the option of QTRS in its sole discretion; and
 2. In the case of Services that are the subject of the relevant breach, supplying the Services again.

7. QUALITY AND MANUFACTURER'S WARRANTY

- a. Photographs, drawings, illustrations, weights, dimensions, colours and any other particulars accompanying, associated with or given in a Quotation, any descriptive literature or any catalogue may be subject to alteration without notice. QTRS reserves the right to make changes in the construction, appearance and/or design of Goods and notwithstanding any such change, the Customer shall accept in performance of any Order the relevant manufacturer's then current corresponding standard model.
- b. Goods are supplied subject to the manufacturer's warranty applying thereto (including all remedial rights specified therein, with which QTRS must comply), details of which QTRS must supply to the Customer at any time upon the Customer's request. Subject to clause **Error! Reference source not found.**, QTRS warrants that Services shall be supplied with due professional skill and care and QTRS agrees that it will resupply the Services if this warranty is breached.
- c. Subject to clause 6.b.ii and, otherwise, to the fullest extent permitted by law, the warranties given by QTRS in clause 7.b are the sole warranties given by QTRS in relation to the supply of the Goods and Services and the relevant remedies referred to in clause 7.b are the sole remedies for breach of those warranties.

8. RISK AND TITLE

- a. Risk in relation to the Goods passes to the Customer at the time they are delivered to or collected by the Customer in the manner contemplated by clause 2.c.
- b. The Customer bears all risk in relation to the Vehicle notwithstanding that the Vehicle may be in the possession or under the control of QTRS for any period.
- c. Until the Customer has paid to QTRS all amounts owing to it under the Agreement, QTRS remains the legal and beneficial owner of and has property in and title to the Goods, notwithstanding that the Goods may be wholly or partially installed on a Vehicle or that collection or delivery of the Goods by or to the Customer may have occurred. Until the Customer has paid all amounts owing to QTRS on any account under the Agreement:
 - i. Where the Goods have been delivered to or collected by the Customer in the manner contemplated by the Agreement:
 1. the Goods are held by the Customer as fiduciary bailee of QTRS;
 2. except where QTRS has installed the Goods on a Vehicle, the Customer must store the Goods separately and so that they are readily identifiable as the property of QTRS;
 3. the Customer must keep the Goods in good condition and insure the Goods for their full replacement value against loss or damage, however caused;
 - ii. the Customer must not sell or transfer (or purport to sell or transfer) the Goods (including where the Goods are installed on a Vehicle and are sold as part of a Vehicle sale) except with the prior written consent of QTRS;
 - iii. the Customer must not create or purport to create any encumbrance over or affecting the Goods which is inconsistent with QTRS' title to and ownership of the Goods; and
 - iv. without prejudice to clause 8.c.ii, any proceeds of re-sale of the Goods, including the sale of a Vehicle on which the Goods are installed, shall be held on trust for QTRS in a separate account.
- d. If the Customer is in default of its obligations under the Agreement or in QTRS' reasonable opinion the payment of any amount due to QTRS is in jeopardy, then the Customer irrevocably authorises QTRS and its representatives to enter upon any site where the Goods are located to take possession of the Goods (including any Vehicle onto which the Goods have been installed) without any prior notice, and the Customer indemnifies QTRS against any

action, claim or demand arising out of any act done by QTRS in the exercise of these powers and QTRS shall be further entitled to resell any Goods (including any Vehicle onto which the Goods have been installed) which it has so taken into possession and deduct from the sale proceeds any amounts due to QTRS, with the balance of such proceeds after such deduction (If any) to be remitted by QTRS to the Customer.

9. TERMINATION

- a. A party may, without affecting any other rights it may have, terminate or suspend the Agreement with immediate effect by giving notice to the other party if the other party has:
 - i. breached any provision of the Agreement and has failed to remedy the breach within 7 days after receiving notice requiring it to do so;
 - ii. breached a material provision of the Agreement where that breach is not capable of remedy;
 - iii. ceased to be able to pay its debts as they become due;
 - iv. become subject to any form of insolvency administration; or
 - v. had any step taken by a mortgagee to take possession or dispose of the whole or any part of that party's assets.
- b. If QTRS exercises its rights pursuant to clause 9.a to terminate or suspend the Agreement, QTRS will immediately be entitled to invoice the Customer for work in progress under the Agreement at its current rates. This clause does not limit or affect any other right or remedy which may be available to QTRS including seeking compensation for any loss or damage suffered by QTRS.

10. CHAIN OF RESPONSIBILITY

The Customer acknowledges the responsibilities of parties involved in the transport supply chain to comply with applicable laws relating to chain of responsibility including the Heavy Vehicle National Law and acknowledges and agrees that QTRS shall be entitled to undertake such tasks (including any necessary notifications) as may be required for such compliance.

11. PPSA

- a. In this clause, PPSA means the *Personal Property Securities Act 2009*. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- b. This clause applies to the extent that QTRS' interest in any goods (including without limitation any Goods or any Vehicle) is a security interest.
- c. The Customer acknowledges and agrees that QTRS may apply to register a security interest in the Goods at any time. The Customer waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- d. QTRS may apply amounts it receives from the Customer towards amounts owing to it in such order as QTRS chooses.
- e. If the Customer fails to pay QTRS any amounts which are due and payable to it or otherwise defaults in the performance of any obligation owed to QTRS under the Agreement or any other agreement between QTRS and the Customer, QTRS may enforce its security interest in the Goods by exercising all or any of its rights under the Agreement or the PPSA.
- f. To the maximum extent permitted by law, QTRS and the Customer agree that the following provisions of the PPSA do not apply to the enforcement by QTRS of its security interest in the relevant goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- g. QTRS and the Customer agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
- h. The Customer must promptly do anything required by QTRS to ensure that QTRS' security interest is a perfected security interest and has priority over all other security interests in the relevant goods.

12. CONFIDENTIALITY

Each party (**Receiving Party**) agrees not to disclose any information provided to it by the other party that may reasonably be regarded as confidential or commercially sensitive (including without limitation pricing information of the other party) unless the Receiving Party can establish the information was:

- a. at the time of disclosure, in the public domain;
- b. subsequent to disclosure, entered the public domain other than through the breach of any duty owed to the other party; or
- c. required to be disclosed by law.

13. FORCE MAJEURE

Without limiting any other provision of these terms and conditions, QTRS will not be liable for any failure to perform or delay in performance of any obligation where such failure or delay is due to anything beyond the reasonable control of QTRS, including but not limited to adverse weather or terrain, strikes, lockouts and other industrial action, material shortages, failure of any of QTRS' suppliers to supply, accidents, power or data transmission failure, breakdowns of plant or machinery or import or export regulations or embargoes.

14. GENERAL

- a. QTRS shall not be bound by any agreement purporting to vary these terms and conditions unless that agreement is in writing and signed on behalf of QTRS by an authorised officer of QTRS.
- b. The relationship between the parties is that of independent contractors. No party is an agent, representative or partner of any other party by virtue of the Agreement.
- c. If any part of the Agreement is or becomes illegal or invalid then that part shall be severed from the Agreement and the remainder of the Agreement shall not be affected.
- d. The Agreement is governed by the law in force in Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that state.
- e. Any failure by QTRS to insist on strict compliance with the terms of the Agreement or any delay by QTRS in exercising its rights under the Agreement will not constitute a variation or waiver of any provision of the Agreement or of any right available to QTRS.