

Austate Services Terms and Conditions for the Sale of Goods and Services

These are the terms and conditions upon which Austate Haulage Pty Ltd trading as Austate Services of 15 Swaffham Rd, Minto NSW 2566, ABN: 99 601 640 206 (**Austate**) sell and quote for the sale of goods and services.

1. DEFINITIONS

In these terms and conditions:

- **Contract** means the contract between Austate and the Customer comprising these Standard Conditions and, where applicable, the Quotation, the Order, an invoice, delivery docket and or any other document setting out the payment terms for the supply of Goods and Services including a Retention of Title Agreement;
- **Customer** means the party purchasing the Goods and/or Services, or having the Goods repaired as set out in the Order or the Quotation;
- **Goods** means the goods and/or equipment supplied by Austate to the Customer including but not limited to custom truck bodies, trailers, specialised transport equipment, spare parts and accessories related thereto;
- **Manufacturer** means the maker and makers of the Goods (or any part of the Goods) to which this Contract relates;
- **Non-recoverable costs** means the costs not recovered by Austate upon the subsequent sale of the Goods and include but not limited to Customer specific components, attachments and options, assembly costs, storage costs, handling costs, transport costs, shipping and demurrage costs and holding costs including interest.
- **Order** means the order for the supply of Goods and/or Services.
- **PPSA** is the Personal Property Securities Act 2009 (Cth) and 'Register', 'Purchase Money Security Interest', 'Security Agreement', 'Security Interest', 'Verification Statement' and 'Financing Statement' will have the meanings for those terms as defined in the PPSA.
- **Price** means the Order Price or the Quoted Price.
- **Quotation** means a quotation given by Austate to the Customer in relation to the Goods and the Repairs;
- **Repairs** means the repairs of Goods carried out by Austate.
- **Services** means the services supplied by Austate to the Customer including but not limited to inspection, advice, design, maintenance, repairs and sales.

2. THE CONTRACT

This Contract becomes legally binding when either the Customer has provided to Austate an executed Order and Austate has provided to the Customer written acceptance of the Order, or Austate and Customer enter into a written agreement for the supply of the Goods and Services. Until Austate has notified the Customer in writing of its acceptance of the Order or the parties enter into a written agreement for the supply of the Goods and Services, Austate may, without incurring any liability, revise or withdraw any Quotation provided to the Customer.

3. SPECIFICATIONS

If before the manufacture of the Goods (whether before or after Austate's acceptance) the manufacturer modifies its specifications the modified specifications shall be substituted for any specification in the Quotation and;

- a) The Customer shall accept the Goods as manufactured in accordance with the modified specification in satisfaction of Austate's obligations under the Contract;
- b) The Customer shall pay any increase in the manufacturer's prices resulting from such modification.

4. PRICE AND PAYMENT

- a) Unless otherwise stated in writing the price:
- b) (i) for the Goods as set out in the Quotation (**Quoted price**) is for delivery at the place specified in the Quotation and is payable without discount or allowance;
(ii) for the Services as set out in the Order (**Order Price**) is for delivery at the place specified in the Order and is payable without discount or allowance;
(iii) for the repair of Goods as set out in the Quotation (**Quoted Price**)
- c) The Customer must pay to Austate in addition to the Price:
 - (i) all taxes, duties and charges whatsoever imposed by any government or other authority and payable in respect or by reason of the sale, repair or delivery of the Goods and Services or any part thereof, including charges for import, export or currency licences, sales, packaging costs, turnover or purchase taxes and duties of customers and excise; and
 - (ii) if requested by Austate acting reasonably, the amount of any increase in the cost to Austate of supplying, repairing or deliver the Goods and Services or any part of the Goods occurring after the date of the Order for any reason whatsoever including changes in manufacturers' prices, rates of exchange, landing charges and port dues and the cost of carriage, insurance and handling.
- d) The Customer must pay the Price to Austate:
 - (i) in the case of a sale of Goods or delivery of Services, within 14 days from the end of the month in which the invoice is dated, and the Customer will not be entitled to withhold payment or make any deduction from the Price in respect of any set-off, counter-claim or dispute.
- e) If the Customer fails to pay the Price, Austate will be entitled to charge interest on the Price from the date when due until payment at the rate of two per centum per annum above the maximum overdraft rate of Austate's bankers for the time being in force.

5. DELIVERY

- a) Unless otherwise stated in writing the Customer must take delivery of the Goods within 7 days of notification from Austate that the Goods are ready for delivery. Austate will be under no obligation to make delivery before payment of the Price in full.
- b) Austate will be under no liability whatsoever to the Customer for loss, injury or damage of any kind (including consequential loss of any kind) arising out of delay in or failure to make delivery of the Goods or any part of the Goods

by reason of any cause whatsoever, including any act, omission, negligence or wilful default of Austate or its servants or agents, or any breach by Austate, its servants or agents of this Contract.

6. RISK

- a) The risk of loss or damage to the Goods passes to the Customer from the occurrence of first in time of any of the following events:
 - (i) the passing of property and title in the Goods to the Customer in accordance with clause 9(a);
 - (ii) the physical delivery of Goods to the Customer; and
 - (iii) the physical delivery of the Goods to a carrier or other bailee whether named by the Customer or not.
- b) If the Customer fails to pay the Price and any other amounts payable under this Contract Austate will be entitled to give the Customer 7 days prior written notice that Austate intends to retake possession of the Goods and sell or resell the Goods. If the Customer fails within that period to pay the Price and any other amounts payable under this Contract Austate will be entitled to retake possession of the Goods (and for that purpose the Customer grants an irrevocable licence to Austate to enter upon any premises where the Goods may be situated) and to sell or resell the Goods (and for that purchase, in the case of a repair of Goods, the Customer irrevocably appoints Austate as attorney for sale) and apply the proceeds in reduction of any claim which Austate has against the Customer.
- c) Austate will be under no obligation to give the Customer the notice referred to in Section 35(3) of the Sale of Goods Act 1923 (NSW).

7. MANUFACTURER'S WARRANTY

Austate will use its best endeavours to furnish to the Customer as soon as is practicable after acceptance of the Order copies of all express guarantees, warranties and indemnities (if any) given or offered by the manufacturer of the Goods or any part thereof.

8. LIABILITY AND WARRANTY OF AUSTATE

- a) To the fullest extent permitted by law, any liability of Austate to the Customer including but not limited to the liability for special, consequential or incidental damages or for breach of any term, condition, warranty, undertaking, inducement, guarantee or representation whether express, implied, statutory or otherwise relating to this Contract or to the Goods will be limited at Austate's option, to any one or more of the following:
 - (i) the replacement of Goods or the supply of equivalent Goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or acquiring equivalent Goods; or
 - (iv) the payment of the cost of having the Goods repaired,
- b) To the fullest extent permitted by law and subject to clause 8(a), Austate will under no circumstances be liable to the Customer for any loss, damage or expense, sustained or incurred by the Customer or any other party, whether direct or indirect, special, consequential, incidental or punitive losses or damages whether in contract, tort (including without limitation negligence), equity, under statute or on any other basis, and whether or not such loss or damage was foreseeable. The term "consequential damages" will include, but not be limited to, economic loss including actual or anticipated profits, business interruption, loss of use, revenue, reputation and/or data, costs incurred, and loss or damage to property or equipment.
- c) To the extent permitted by statute, all warranties, conditions and guarantees (whether express, implied or applied, and whether given by Austate, the manufacturer or a third party) and any obligation of Austate to repair or replace any goods are void in respect of any goods which the Customer tampers with or alters.

9. FITNESS FOR PURPOSE

Austate will not be responsible for the consequences of any technical advice given by its employees or agents in relation to the design, specifications, installation or use of Goods. The Customer acknowledges that it will not rely and has not relied on any skill or judgment of Austate, its employees or agents about the fitness or suitability of any Goods and/or Services for a particular purpose.

10. RESERVATION OF TITLE

- a) Property in and title to the Goods remains with Austate until the Customer has paid to Austate the Price for the Goods as shown on the invoice and any other money that the Customer may owe to Austate at any time on any account.
- b) The Customer may sell or otherwise dispose of the Goods in the ordinary course of the Customer's business.
- c) Where the Customer disposes of the Goods before payment to Austate, the sale proceeds of such disposal are the property of Austate and the Customer holds the proceeds on trust for Austate.
- d) In addition to clause 10(c), in the event of sale of the Goods to a third party the Customer in his position as a fiduciary must assign to Austate the benefit of any claim against the third party.
- e) Austate may enter the Customer's premises or elsewhere within business hours and seize any Goods which have not been paid for by the due date stated on the invoice without Austate having to give notice to the Customer.
- f) While the Goods remain the property of Austate, the Customer agrees:
 - (i) to store the Goods separately at the Customer's premises so they can be easily identified;
 - (ii) to only dispose of the Goods in the ordinary course of the Customer's business;
 - (iii) to not cause the Goods to lose their identifiable character or be intermingled with other goods in any way by any process of its own or by a third party, except with Austate's prior written consent;
 - (iv) other than disposal of the Goods in the ordinary course of the Customer's business, that it has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation that Austate owes to the Customer;
 - (v) that it cannot claim any lien over the Goods;
 - (vi) to not create any absolute or defeasible interest in the Goods in relation to any third party except with Austate's prior written consent;
 - (vii) to provide Austate access to the premises where the Goods are stored to enable Austate to inspect and/or seize the Goods; and

(viii) to:

- (A) not allow any person (other than Austate) to have or acquire any Security Interest in the Goods;
- (B) insure the Goods for their full insurable value or replacement value (whichever is higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business; and
- (C) not remove, deface or obliterate any identifying mark or number on any of the Goods. These terms and conditions will apply to each Order, invoice and any commercial transaction concerning the supply of any Goods by Austate to the Customer.

11. ORDER CANCELLATION FEE

- a) If the Customer cancels the Order for the supply of Goods before delivery, the Customer must pay Austate a cancellation fee.
- b) The cancellation fee is the greater of:
 - (i) 5% of the Price of the Goods subject to the cancelled order; or
 - (ii) The sum of all non-recoverable costs associated with the cancelled order and incurred by Austate up to the date of the order cancellation, or to be incurred (due solely to the order cancellation) up until the subsequent sale of the Goods.
- c) The Customer must pay the cancellation fee to Austate within 14 days of Austate submitting an invoice with supporting documentation to the Customer for that fee.
- d) The Customer specific components and options that can be reasonably removed from the Goods will (after payment of the cancellation fee) become the property of the Customer.
- e) Upon the sale of the Goods, Austate will account to the Customer and refund to the Customer all non-recoverable costs (in excess of the minimum 5% cancellation fee) that were recovered upon the sale of the Goods subject to the cancelled order.

12. PPSA

The Customer:

- a) acknowledges that the Contract constitutes a Security Agreement for the purposes of the PPSA;
- b) grants a Security Interest to Austate in:
 - (i) all Goods supplied under the Contract;
 - (ii) all Goods (and their proceeds) previously supplied by Austate to the Customer (if any and only to the extent that the Customer owes Austate monies with respect to those Goods); and
 - (iii) all future Goods (and their proceeds) supplied by Austate to the Customer;
- c) acknowledges that Austate may register its security interest in the Goods (and their proceeds) as a Purchase Money Security Interest on the Register;
- d) will execute documents and do such further acts and things and provide such further information as may be required by Austate to enable registration of the Security Interest granted to Austate on the Register or perfect or correct any registration;
- e) acknowledges and agrees that where the PPSA applies with respect to the Goods and to any action taken by Austate in relation to the Goods, it:
 - (i) agrees sections 116(2), 120, 125, 142 and 143 of the PPSA will not apply; and
 - (ii) waives its right to receive any notices under the PPSA (including the notice of a Verification Statement) unless the notice required by the PPSA cannot be excluded; and
- f) agrees to only authorise disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if Austate approves.

13. GOODS & SERVICES TAX

Unless otherwise stated expressly all prices are exclusive of GST and the Customer must on demand pay to Austate, and Austate reserves the right to recover from the Customer all GST payable in respect of the supply of the Goods or Services to the Customer.

14. GENERAL

- a) This Contract will be construed and governed in all respects by the laws of the State of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of New South Wales.
- b) Where the Customer has provided Austate with a nominated email address, Austate may send any notices to the Customer by emailing it to that email address.
- c) In the event that any provision of this Contract is held invalid or unenforceable, the remaining provisions of this Contract will remain in full force and effect.
- d) Austate may, from time to time and without notice to the Customer vary these terms and conditions for the supply of Goods and Services.
- e) The Customer shall not assign its rights or obligations under this Contract without the prior written consent of Austate.
- f) No failure or delay by Austate to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- g) This Contract constitutes the entire agreement between Austate and the Customer and supersedes any previous agreement relating to the supply of Goods and Services.