

1. APPLICATION OF THESE TERMS AND CONDITIONS

The Customer agrees that prior to placing an order with the Supplier, the Customer has read and agreed to the terms and conditions as set out hereunder. For the purposes of this Agreement, "Supplier" is TITAN MANUFACTURING PTY LTD A.B.N. 62 010 828 976 and where applicable its officers, employees, agents and subcontractors; the "Customer" is the applicant named on the account with the Supplier or where no account exists then on the quote provided by the Supplier to the Customer; "Contract" means the accepted quote; "Goods" mean the Supplier's earthmoving and trucking products, be it singular or plural and associated services; "Work" means the work required to fulfill the Customer's specifications/requirements; and "Equipment" means the Customer's earthmoving and trucking vehicles.

2. QUOTES

2.1 Supplier Supply Quote

The Supplier shall give the Customer a quote specifying the Work required in order to fulfill the Customer's instructions and an estimate of the Supplier's charge for the performance of such Work.

2.2 Acceptance by the Customer

Where the Supplier has given the Customer a quote:

(a) the Supplier need not commence Work until the quote has been accepted by the Customer;

(b) the Customer shall accept the quote by instructing (in writing) the Supplier to commence the Work by signing and returning a true copy of the quote accompanied by a purchase order number if applicable.

(c) quotes are valid for thirty (30) days only, unless an extension has been authorised by the Supplier.

In acceptance of the quote the Customer warrants that it has not relied on any representation by the Supplier other than as supplied in writing in the quote.

2.3 Supplier May Revise Quote

The Supplier may amend the quote after a period of thirty (30) days from the date of the signed acceptance of the quote to take into account any rise or fall in the cost of performing the Work and the Supplier shall notify the Customer of such amendment as soon as practicable thereafter. Upon the Supplier giving the Customer notification of such amendment the amended quote shall be deemed to be the accepted quote for the purposes of these Terms and Conditions.

2.4 Variations to Initial Quote

The Customer shall indemnify the Supplier from any additional cost incurred by the Supplier, should the Customer increase the scope of the Goods to be provided by the Supplier.

2.5 Copyright

Copyright in all plans, sketches, designs and custom made solutions in the Supplier's quote shall be the property of the Supplier.

3. PRE DELIVERY SIGN OFF

Before acceptance of the Goods, the Customer shall sign off that the Goods have been manufactured to the Customer's satisfaction and, subject to the Supplier's warranty, are fit for the purpose for which they were designed. Upon sign off the Customer waives any right to rescind the Contract for any reason whatsoever.

4. DELIVERY

4.1 Delivery of the Goods made to the Customer's nominated address will incur freight charges unless otherwise agreed in writing. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Failure to do so may incur additional costs.

4.2 Delivery of the Goods made to the Customer at the Supplier's address will be on an agreed date and failure by the Customer to uplift completed Goods from the Supplier's address on this agreed date may incur storage charges estimated on a daily basis.

4.3 Delivery of Goods to a third party and/or site nominated by the Customer is deemed to be delivery to the Customer for the purpose of this Agreement.

4.4 The failure of the Supplier to deliver shall not entitle either party to treat this Agreement as repudiated. The Supplier shall not be liable for any loss or damage whatsoever due to the failure by the Supplier to deliver the Goods, or any part of them, promptly or at all.

5. SPARE PARTS

The Customer shall indemnify the Supplier from any costs, losses or expenses incurred by the Customer due to delays in providing spare parts or the fitting of such parts.

6. RISK

The risk in the Goods shall pass to the Customer upon delivery and/or installation of the Goods to the Customer or its agent or to a third party nominated by the Customer.

7. PAYMENT

7.1 Time for Payment

The Customer must, within the time specified in the quote upon the Customer receiving the Supplier's invoice, pay the Supplier the total amount set out in the invoice.

7.2 Deposit

The Supplier will require a deposit from the Customer and the Customer acknowledges the Supplier is under no obligation to start any Work as requested by the Customer, until the deposit is received by the Supplier in full and when all details pertaining to contract are finalised. In the event of default as to payment owing to the Supplier on the part of the Customer, the Customer shall be entitled to forfeit the deposit and claim any profit or margin contemplated by or allowed for in the contract in addition to any remedy available to the Supplier at law or in equity.

7.3 Credit Card Payments

Payments by MasterCard and Visa are accepted and will incur a three per centum (3 %) surcharge.

7.4 Progress Payments

When agreed progress payments are not honoured by the Customer, the Supplier reserves the right to halt any further Work until such time as the outstanding payment is forthcoming. In addition interest (as specified in 7.5) may be charged.

7.5 Interest

The Supplier may charge interest at two (2%) per centum above the commercial lending rate of the National Australia Bank (NAB) calculated on a daily basis on amounts not paid within the time specified in clause 7.1 and 7.8.

7.6 Damages

The Customer must pay to the Supplier any costs, expenses or losses incurred by the Supplier as a result of the Customer's failure to pay to the Supplier all sums outstanding as owed by the Customer to the Supplier including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

7.7 Non- Rescindable Goods

A binding agreement will come into effect upon the Customer signing a Contract with the Supplier and that Contract cannot be terminated by the Customer. Goods subject to such a Contract shall be non-rescindable.

7.8 Cancellation of a Contract

Any cancellation of a Contract will be subject to the Customer reimbursing the Supplier for any costs, expenses or losses incurred by the Supplier. The time for payment for such cancellation shall be seven (7) days from the Supplier's invoice.

8. RETENTION OF TITLE

8.1 Title

Notwithstanding the installation of the Goods, title in any particular Goods shall remain with the Supplier until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by the Supplier for the Goods, including all applicable GST and other taxes, levies and duties. Where the Goods have been on sold by the Customer, the Customer will be taken to hold the proceeds of sale of such Goods upon trust for the Supplier and to account to the Supplier for these proceeds.

Any payment made by or on behalf of the Supplier which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Supplier's title in the Goods nor the Customer's indebtedness to the Supplier and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

8.2 Bailment

The Customer acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods are made pursuant to clause 8.1 and until that time:

(a) the Customer is not entitled to sell the Goods but only in the ordinary course of business;

(b) the Customer must not encumber or otherwise charge the Goods;

(c) the Customer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery or installation of the Goods to the Customer.

8.3 Repossession

The Customer hereby irrevocably grants to the Supplier the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them, and the Supplier shall not be liable to the Customer or any person claiming through the Customer and the Supplier shall be entitled to retain the proceeds of any Goods

sold and apply same towards the Customer's indebtedness to the Supplier.

If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this Agreement, then the Supplier may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing the Supplier by the Customer.

9. WARRANTY

9.1 Goods are hereby sold and warranted against any defect in workmanship appearing under proper usage within six (6) months from date of delivery.

9.2 The Warranty does not extend to components or accessory equipment which is not manufactured by the Supplier. The Supplier agrees to assign to the Customer on request any manufacturer's warranty under contract or by implication or operation of law to the extent possible.

9.3 No express warranty is given as to fitness or suitability of the Goods for any specific application or use unless expressly endorsed by the Supplier.

9.4 Warranty information is available on application to the Supplier's office during normal trading hours.

9.5 The Supplier warrants that the Work will be carried out in accordance with all relevant laws in an appropriate and skilful way, in accordance with the plans and specifications supplied by the Customer using materials that are good and suitable for the purpose for which they are intended to be used.

9.6 Work and/or service carried out on the Goods by anyone other than the Supplier and/or their nominated agents shall make the warranty null and void unless the Customer obtains prior written approval from the Supplier before any remedial work is carried out.

9.7 The Supplier reserves the right to make null and void the warranty should the Goods be modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform (including but not limited to the Customer's failure to engage the safety pin during quick coupler operation).

9.8 In respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.

10. DEFECTS

10.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Supplier of any alleged shortage in quantity, damage or failure to comply with the description. The Customer shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any damage.

10.2 All labour costs in replacing defective parts and all costs of transportation of such parts are the responsibility of the Customer.

11. RETURN OF GOODS

Return of Goods from the Customer to the Supplier can only be made with the prior written approval of the Supplier.

12. DESIGN UPDATES

The Supplier reserves the right to make changes and improvements to its Goods without incurring any obligations whatsoever to install or make any changes and improvements to Goods already supplied.

13. LIABILITY

13.1 Non-excludable Rights

The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

13.2 Disclaimer of Liability

The Supplier disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the

extent permitted by law, the liability of the Supplier for a breach Non-Excludable Right is limited, at the Supplier's option, to the supplying of the Goods and/or any services again or payment of the cost of having the Goods and/or services supplied again.

13.3 Indirect Losses

Notwithstanding any other provision of these Terms and Conditions, the Supplier is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Supplier's failure to complete or delay in completing the Work or to deliver the Goods.

13.4 Training on use of Goods

The Customer shall insure that its operator is licensed to operate the Equipment which the Supplier's Goods form part thereof and is trained in the correct use of the Goods.

13.5 The Customer agrees that it will not make any claim against the Supplier and further indemnifies the Supplier against all loss or damage to person or property that may be occasioned due to the Customer's failure to carry out operator training in the correct use of the Goods. For the avoidance of doubt this includes any and all loss or damage due to negligence on the part of the Customer, its officers, employees or agents.

13.6 Force Majeure

The Supplier will have no liability to the Customer in relation to any loss, damage or expense caused by the Supplier's failure to complete the Work or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Supplier's normal suppliers to supply necessary material or any other matter beyond the Supplier's control.

14. PRIVACY

14.1 The Customer hereby authorises the Supplier to collect, retain, record, use and disclose commercial and/or consumer information about the Customer, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Supplier, a debt collector, credit reference organisation and/or any other individual or organisation which maintains credit references and/or default listings.

14.2 The Supplier may give information about the Customer to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Customer's credit file. This information may be given before, during or after the provision of credit to the Customer and will be in accordance with the Privacy Act 1988 and subsequent amendments.

15. SECURITY AND CHARGE

The Customer hereby charges all property, both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to the Supplier under these Terms and Conditions or otherwise and hereby authorises the Supplier or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Customer at any time or to register this charge over assets of the Customer with the Australian Securities and Investments

16. GENERAL MATTERS

16.1 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

16.2 Governing Law and Jurisdiction

These terms and conditions are governed by the laws of the State of Queensland and all disputes arising between the Customer and the Supplier will be submitted to the Brisbane Registry of any Court as is competent to hear the matter.