

Price & Speed Containers Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "Seller" shall mean Price & Speed Containers Pty Ltd and its successors and assigns.
 - 1.2 "Purchaser" shall mean the Purchaser or any person, agent or consignee acting on behalf of and with the authority of the Purchaser.
 - 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Purchaser if a Limited Liability Purchaser or a principal debtor basis.
 - 1.4 "Goods" shall mean Goods supplied by the Seller to the Purchaser (and where the context so permits shall include any supply of Services as hereinafter defined).
 - 1.5 "Services" shall mean all services supplied by the Seller to the Purchaser and includes any advice or recommendations (and where the context so permits shall include any supply of Services as defined supra).
 - 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Purchaser subject to clause 4 of this contract.
2. **Acceptance**
 - 2.1 Any instructions received by the Seller from the Purchaser for the supply of Goods and/or the Purchaser's acceptance of Services and/or Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
 - 2.2 Where more than one Purchaser has entered into this agreement, the Purchasers shall be jointly and severally liable for all payments of the Price.
 - 2.3 Upon acceptance of these terms and conditions by the Purchaser the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
 - 2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
3. **Goods**
 - 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Purchaser.
 - 3.2 It is the Purchaser's responsibility to ensure that they have their own insurance in place for their Goods and Services.
4. **Price And Payment**
 - 4.1 At the Seller's sole discretion;
 - (a) The Price shall be as indicated on invoices provided by the Seller to the Purchaser in respect of Goods supplied; or
 - (b) The Price shall be the Seller's current price at the date of delivery of the Goods according to the Seller's current Price list; or
 - (c) The Price of the Goods shall, subject to clause 4.2, be the Seller's quoted Price which shall be binding upon the Seller provided that the Purchaser shall accept in writing the Seller's quotation within thirty (30) days.
 - 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as extras on the invoice. Payment for all extras must be made in full at their time of completion.
 - 4.3 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods/Services.
 - 4.4 At the Seller's sole discretion, for certain approved Purchasers payment will be due seven (7) days following the date of the invoice.
 - 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by credit card (plus any charges that may be applicable), or by any other method as agreed to between the Purchaser and the Seller.
 - 4.6 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 the Seller.
5. **Delivery Of Goods / Services**
 - 5.1 The Seller is not a common carrier and accepts no liability as such. It retains the right to use third parties to deliver Goods on the Purchaser's behalf, and accepts no liability for the acts and omissions of such third parties.
 - 5.2 Delivery of the Goods shall be made to the Purchaser's address. The Purchaser shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Purchaser at the Seller's address.
 - 5.3 Where there is no agreement that the Seller shall send the Goods to the Purchaser, delivery to a carrier at limited carrier's risk at the expense of the Purchaser is deemed to be delivery to the Purchaser.
 - 5.4 Delivery of the Goods to a third party nominated by the Purchaser is deemed to be delivery to the Purchaser or agent or consignee for the purposes of this agreement.
 - 5.5 When the Purchaser/Agent/Consignee take delivery of the Goods and/or are assigned to pick up the Goods the Purchaser/Agent/Consignee shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;
 - (a) such discrepancy in quantity shall not exceed 2%, and
 - (b) the Price shall be adjusted pro rata to the discrepancy, and
 - (c) the Purchaser/Agent shall receive the Goods tendered as shown on the customs return report.
 - 5.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
 - 5.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
6. **Risk**
 - 6.1 If the Seller retains property in the Goods nonetheless, all risk for the Goods passes to the Purchaser on delivery.
 - 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Purchaser, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
7. **Defects**
 - 7.1 The Purchaser shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Purchaser shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Purchaser believes the Goods are defective in any way. If the Purchaser 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 defect or damage.
8. **Return Of Goods**
 - 8.1 For defective Goods, subject to clause 8.2, which the Seller has agreed in writing that the Purchaser is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that;
 - (a) the Purchaser has complied with the provisions of clause 7.1;
 - (b) the Seller will not be liable for Goods which have not been stored or used in a proper manner.
 - (c) the Goods are returned in the condition in which they were delivered.
 - 8.2 Goods made to special order, Purchaser specification or non-catalogue items are under no circumstances acceptable for credit or return.
9. **Warranty**
 - 9.1 For Goods not manufactured by the Seller the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
10. **Purchasers Disclaimer**
 - 10.1 The Purchaser hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Purchaser acknowledges that he buys the Goods relying solely upon his own skill and judgement, and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Purchaser and shall not be transferable to any subsequent Purchaser.
11. **The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
 - 11.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
13. **Default & Consequences Of Default**
 - 13.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgment.
 - 13.2 If the Purchaser defaults in payment of any invoice when due, the Purchaser shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own Purchaser basis and in addition all of the Seller's nominee costs of collection.
 - 13.3 Without prejudice to any other remedies the Seller may have, if at any time the Purchaser is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Purchaser and any of its other obligations under the terms and conditions. The Seller will not be liable to the Purchaser for any loss or damage the Purchaser suffers because the Seller exercised its rights under this clause.
 - 13.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$50.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
 - 13.5 In the event that:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Purchaser will be unable to meet its payments as they fall due; or
 - (b) the Purchaser becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Purchaser or any asset of the Purchaser;then without prejudice to the Seller's other remedies at law
(i) the Seller shall be entitled to cancel all or any part of any order of the Purchaser which remains unperformed in addition to and without prejudice to any other remedies; and
(ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.
14. **Title**
 - 14.1 It is the intention of the seller and agreed by the Purchaser that property in the Goods shall not pass until
 - (a) The Purchaser has paid all amounts owing for the particular Goods, and
 - (b) The Purchaser has met all other obligations due by the Purchaser to the Seller in respect of all contracts between the Seller and the Purchaser, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Purchaser are met.
 - 14.2 It is further agreed that:
 - (a) The Purchaser shall not deal with the money of the Seller in any way which may be adverse to the Seller.
 - (b) Until such time as ownership of the Goods shall pass from the Seller to the Purchaser the Seller may give notice in writing to the Purchaser to return the Goods or any of them to the Seller. Upon such notice the rights of the Purchaser to obtain ownership or any other interest in the Goods shall cease.
 - (c) If the Purchaser fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Purchaser, or any premises as the invitee of the Purchaser, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - (d) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
 - (e) The Purchaser shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
 - (f) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Purchaser to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
 - (g) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Purchaser.
15. **Security And Charge**
 - 15.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have hereover:
 - (a) Where the Purchaser and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Purchaser and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Purchaser and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Purchaser and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own Purchaser basis.
 - (c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Purchaser and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Purchaser's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Purchaser and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Purchaser's and/or Guarantor's name as may be necessary to secure the said Purchaser's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
16. **Cancellation**
 - 16.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
17. **Privacy Act 1988**
 - 17.1 The Purchaser and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Purchaser and Guarantor/s in relation to credit provided by the Seller.
 - 17.2 The Purchaser and/or the Guarantor/s agree that the Seller may exchange information about Purchaser and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
 - (a) To assess an application by Purchaser;
 - (b) To notify other credit providers of a default by the Purchaser;
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Purchaser is in default with other credit providers; and
 - (d) To assess the credit worthiness of Purchaser and/or Guarantor/s.
 - 17.3 The Purchaser consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
 - 17.4 The Purchaser agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Purchaser and Seller or required by law from time to time:
 - (a) provision of Services & Goods;
 - (b) marketing of Services and or Goods by the Seller, its agents or distributors in relation to the Services and Goods;
 - (c) analysing, verifying and/or checking the Purchaser's credit, payment and/or status in relation to provision of Services/Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Purchaser; and
 - (e) enabling the daily operation of Purchaser's account and/or the collection of amounts outstanding in the Purchaser's account in relation to the Services and Goods.
 - 17.5 The Seller may give information about the Purchaser to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Purchaser; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Purchaser.
18. **Unpaid Sellers Rights To Dispose Of Goods**
 - 18.1 In the event that:
 - (a) the Seller retains possession or control of the Goods; and
 - (b) payment of the Price is due to the Seller; and
 - (c) the Seller has made demand in writing of the Purchaser for payment of the Price in terms of this contract; and
 - (d) the Seller has not received the Price of the Goods,then, whether the property in the Goods has passed to the Purchaser or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Purchaser the loss to the Seller on such disposal.
19. **Lien & Stoppage In Transit**
 - 19.1 Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the Seller shall have:
 - (a) a lien on the goods;
 - (b) the right to retain them for the price while the Seller is in possession of them;
 - (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale,
 - (e) the foregoing right of disposal,provided that the lien of the Seller shall continue despite the commencement of proceedings or judgment for the price having been obtained.
20. **General**
 - 20.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 20.2 All Services/Goods supplied by the Seller are subject to the laws of New South Wales and the Seller takes no responsibility for changes in the law which affect the Services/Goods supplied.
 - 20.3 The Seller shall be under no liability whatever to the Purchaser for any indirect loss and/or expense (including loss of profit) suffered by the Purchaser arising out of a breach by the Seller of these terms and conditions.
 - 20.4 In the event of any breach of this contract by the Service Provider the remedies of the Purchaser shall be limited to damages. Under no circumstances shall the liability of the Service Provider exceed the Price of the Services.
 - 20.5 The Purchaser shall not set off against the Price amounts due from the Seller.
 - 20.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Purchaser's consent.
 - 20.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Purchaser of such change.
 - 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.