

SUNSET EQUIPMENT PTY LTD TERMS AND CONDITIONS OF SUPPLY

1. APPLICATION OF THESE TERMS AND CONDITIONS

For the purposes of this Agreement, "the Supplier" is Sunset Equipment Pty Ltd ABN 84 059 067 837 and its successors and assigns or any person acting on behalf of and with the authority of Sunset Equipment Pty Ltd; "the Customer" is the individual, business or other entity named on the Supplier's Credit Account Application and/or on the Supplier's Customer Booking Form as the customer ordering and receiving Equipment from the Supplier; and "Equipment and/or Parts" mean all equipment and parts, including but not limited to machine attachments and associated components that are sold, consigned, bailed or otherwise made available to the Customer by the Supplier.

2. QUOTES

2.1 Supplier's Quote

2.1.1 The Supplier will give the Customer a quote specifying the Equipment and/or Parts of interest, the price (excluding GST) for the quoted Equipment and/or Parts (excluding GST) and delivery dates.

2.1.2 The quote is subject to availability of the Equipment and Parts at the time of ordering.

2.2 Acceptance by the Customer

Where the Supplier has given the Customer a quote:

- a) the Customer shall accept the quote and instruct the Supplier to commence the order by signing and returning a true copy of the quote accompanied by a purchase order number; and
- b) at the earliest opportunity, the Customer must advise the Supplier of any changes to the Customer's account details, including but not limited to ownership, address and contact information.

2.3 Supplier May Revise Quote

The Supplier may amend the quote if not accepted within thirty (30) days to take into account any cost increases or any other changes beyond the Supplier's control. The Supplier shall notify the Customer of such amendment as soon as practicable thereafter. The Supplier will not be obliged to commence the order until such time as the Customer agrees to the amendment of the quote.

2.4 Variations to Initial Quote

The Customer shall indemnify the Supplier from any additional cost incurred by the Supplier should the Customer make changes to the original order and/or specifications of the Equipment and/or Parts.

2.5 Indemnity

The Customer shall indemnify the Supplier from all costs incurred when Parts are supplied as non-standard or supplied exclusively to the Customer's specification. These Parts cannot be cancelled.

3. PHONE ORDERS

Phone orders will need to be accompanied by written proof of a purchase order number, before any Parts are dispatched.

4. IMPORTED EQUIPMENT AND PARTS

Air-Freight charges will apply for overseas orders and may be subject to customs duty and/or GST and other taxes. Any Equipment and Parts imported by sea into Australia will be subject to customs duty and/or GST and other taxes.

5. DELIVERY

5.1 Delivery of Equipment and/or Parts to the Customer's nominated address will incur freight charges unless otherwise agreed in the written quote. The Customer shall make all arrangements necessary to take delivery of the Equipment and/or Parts whenever they are tendered for delivery. Failure to do so may incur additional costs.

5.2 Delivery of Equipment and/or Parts 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.

5.3 Delivery of Equipment and/or Parts made to the Customer at the Supplier's address will be on an agreed date and an invoice will be raised at that time. Failure by the Customer to uplift the Equipment and/or Parts from the Supplier's address on this agreed date may incur storage charges estimated on a daily basis.

5.4 Delivery dates are forecast as accurately as possible. 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 Equipment and/or Parts or any part of them, promptly, where due to circumstances beyond the Supplier's control.

6. FITNESS FOR PURPOSE

The Customer agrees to take care to ensure ordered Equipment and/or Parts suit the Customer's requirements. The Customer can not rely on the skill or judgment of the Supplier in relation to the suitability of any Equipment and/or Parts for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier.

7. PAYMENT

7.1 Deposit

The Supplier will require a minimum ten percent (10%) deposit from the Customer. This will be at the sole discretion of the Supplier. The Customer acknowledges the Supplier is under no obligation to start the order as requested by the Customer, until the deposit is received by the Supplier in full and when all details pertaining to the quote and/or order confirmation are finalised. In the event of default as to payment owing to the Supplier on the part of the Customer, the Supplier shall be entitled to forfeit the deposit and claim any Supplier's profit or margin contemplated by or allowed for in the quote and/or order confirmation in addition to any remedy available to the Supplier at law or in equity.

7.2 Balance of Payment

Subject to clause 7.1, and unless otherwise agreed in writing, the Supplier's payment terms are full payment before Equipment and/or Parts are ready for dispatch from the Supplier's address.

7.3 Credit Card Payments

The Supplier will accept payments by MasterCard and Visa with a surcharge of one point one seven eight percent (1.178%).

7.4 Electronic Funds Transfer ("EFT")

EFT payments must clear before any Equipment and/or Parts are dispatched from the Supplier's address.

7.5 Cancellation

The Customer shall reimburse the Supplier for any costs, expenses or losses incurred by the Supplier should the Customer cancel an accepted order or quote. The time for payment for such cancellation shall be seven (7) days from the date of the Supplier's tax invoice.

8. PAYMENT DEFAULT

8.1 Administration Fee

The Supplier reserves the right to charge a monthly fee of twenty-five dollars (\$25) on accounts not paid within the Supplier's agreed terms.

8.2 Interest

The Supplier may charge interest at fifteen percent (15%) per annum calculated on a daily basis on amounts not paid within the Supplier's agreed payment terms.

8.3 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 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.

9. RISK

The risk in the Equipment and/or Parts shall pass to the Customer upon delivery of the Equipment and/or Parts to the Customer or to a third party nominated by the Customer.

SUNSET EQUIPMENT PTY LTD TERMS AND CONDITIONS OF SUPPLY (continued)

10. RETENTION OF TITLE

10.1 Title

Notwithstanding the delivery of Equipment and/or Parts, title in any particular Equipment and/or Parts shall remain with the Supplier regardless of whether the Equipment and/or Parts are on-sold by the Customer until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by the Supplier for the Equipment and/or Parts, including all applicable GST and other taxes, levies and duties.

Where the Equipment and/or Parts have been on-sold by the Customer, the Customer will be taken to hold the proceeds of sale of such Equipment and/or Parts upon trust for the Supplier and to account to the Supplier for these proceeds. Any payment made by or on behalf of the Customer which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Supplier's title in the Equipment and/or Parts nor the Customer's indebtedness to the Supplier and, in such event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

10.2 Bailment

The Customer acknowledges that it is in possession of the Equipment and/or Parts solely as Bailee until payment of all invoices for the Equipment and/or Parts is made pursuant to clause 10.1 and until that time, the Customer:

- a) is not entitled to sell the Equipment and/or Parts but only in the ordinary course of business;
- b) must not encumber or otherwise charge the Equipment and/or Parts; and
- c) shall be responsible for any loss or damage to the Equipment and/or Parts whatsoever and howsoever caused following delivery of the Equipment and/or Parts to the Customer.

10.3 Repossession

The Customer hereby irrevocably grants to the Supplier the right, at its sole discretion, to access the Customer's property and remove or repossess any Equipment and/or Parts 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 Equipment and/or Parts 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 Equipment and/or Parts 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.

11. PERSONAL PROPERTY SECURITIES ACT ("PPSA")

11.1 In this clause, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement. In this clause "the Customer" is the grantor and "the Supplier" is the secured party, as defined in the PPSA.

11.2 The Customer acknowledges and agrees:

- a) that these Terms and Conditions constitute a Security Agreement that creates a Security Interest in all Equipment and Parts (and Proceeds):
 - (i) previously supplied by the Supplier to the Customer;
 - (ii) to be supplied in the future by the Supplier to the Customer;
- b) that the Security Interest created by these Terms and Conditions is a continuing Security Interest in all Equipment and Parts (supplied now or in the future by the Supplier to the Customer) and Proceeds, which will operate (despite any intervening payment or settlement of account) until the Supplier has signed a release;
- c) to waive its rights under section 157 of the PPSA and the following subsections of section 115 of the PPSA, which will not apply to the Security Agreement created by these Terms and Conditions: 95, 117, 118, 121(4), 130, 132(4), 135, 143.

11.3 The Customer undertakes to:

- a) keep all Equipment and/or Parts free of any charge, lien or Security Interest except as created under these Terms and Conditions and except in so far as it is created to protect the Supplier's Security Agreement and not otherwise deal with the Equipment and/or Parts in a way that may prejudice any rights of the Supplier under these Terms and Conditions or the PPSA;
- b) sign any further documents and provide any further information (which must be complete, accurate and up-to-date in all respects) that the Supplier may require to:
 - (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 11.3(b) (i) or 11.3(b) (ii);
- c) indemnify, and upon demand reimburse, the Supplier for all fees (including actual legal fees on a solicitor/own client basis), costs, disbursements and expenses in:
 - (i) registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Equipment and/or Parts charged thereby; and
 - (ii) enforcing or attempting to enforce the Security Interest created by these Terms and Conditions.
- d) not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Equipment and/or Parts or Proceeds in favour of a third party, without the prior written consent of the Supplier; and
- e) immediately advise the Supplier of any material change in its business details (including, but not limited to, its trading name, address, email) or business practices.

12. WARRANTY

12.1 The Supplier warrants that any new Equipment and/or Parts supplied shall be covered by the manufacturer's warranty. Warranty information is available on application to the Supplier's office during normal business hours from 8.30am to 3pm Monday to Friday.

12.2 During any warranty period the Customer agrees to provide regular cleaning and maintenance, as recommended by the Supplier.

12.3 The Supplier reserves the right to make null and void the warranty should the Equipment and/or Parts be modified, altered, damaged or put to any undue stress other than in the way the Equipment and/or Parts were designed to perform.

12.4 The Customer shall indemnify the Supplier from any labour costs connected to warranty work due to operator error.

12.5 In respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or repairing the Equipment and/or Parts, or in promptly assessing the Customer's claim.

13. DEFECTS

The Customer shall inspect the Equipment and/or Parts on delivery and shall within seven (7) days of delivery notify the Supplier, quoting the applicable invoice number, 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 Equipment and/or Parts within a reasonable time following delivery if the Customer believes the Equipment and/or Parts are defective in any way. If the Customer shall fail to comply with these provisions the Equipment and/or Parts shall be conclusively presumed to be in accordance with these terms and conditions and free from any damage.

14. RETURN OF PARTS

14.1 Parts will only be accepted for return with the written approval of the Supplier and reference to the Supplier's appropriate delivery docket/tax invoice.

14.2 A restocking fee of twenty percent (20%) and applicable freight charges may be charged, at the Supplier's sole discretion.

SUNSET EQUIPMENT PTY LTD TERMS AND CONDITIONS OF SUPPLY (continued)

15. LIABILITY

15.1 Non-Excludable Rights

The parties acknowledge that, under the Australian Consumer 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 Equipment and/or Parts which cannot be excluded, restricted or modified by the agreement ("Non-Excludable Rights").

15.2 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 of a Non-Excludable Right is limited, at the Supplier's option, to the supplying of the Equipment and/or Parts again or payment of the cost of having the Equipment and/or Parts supplied again.

15.3 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 order or to deliver the Equipment and/or Parts.

15.4 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 order or to deliver the Equipment and/or Parts as a result of fire, flood, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Supplier's normal suppliers to supply necessary parts or any other matter beyond the Supplier's control.

16. PRIVACY

16.1 The Customer hereby authorises the Supplier to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the Privacy Act 1988, the Privacy Principles outlined in the Privacy Amendment Act 2012 and any subsequent amendments, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Supplier, a debt collector, credit reporting body and/or any other individual or organisation which maintains credit references and/or default listings.

16.2 Subject to the Privacy Principles outlined in the Privacy Amendment Act 2012 and any subsequent amendments, the Customer further authorises the Supplier to collect, retain, record, use and disclose personal information about the Customer for the marketing of the Equipment and/or Parts provided by the Supplier.

17. 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 the 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.

18. ARBITRATION AND MEDIATION

Any dispute or difference between the Customer and the Supplier may be notified by a party to the other party and the parties shall firstly meet to negotiate, in good faith, resolution of the dispute and secondly, if negotiation fails to achieve a resolution of the dispute within five (5) working days of the notification of the dispute, attend mediation, administered in accordance with procedures as set out by the Institute of Arbitrators and Mediators Australia, provided that this provision shall not prevent the Supplier from instituting legal action at any time to recover monies owing by the Customer to the Supplier.

19. GENERAL MATTERS

19.1 No Waiver

Failure by the Supplier to enforce or delay in enforcing any right or provision of these Terms and Conditions will not constitute a waiver of such right or provision unless acknowledged and agreed by the Supplier in writing.

19.2 Amendments to these Terms and Conditions

The Supplier reserves the right to vary these Terms and Conditions with fourteen (14) days' notice in writing to the Customer. Any subsequent order or supply will represent the Customer's agreement to these Terms and Conditions as amended.

19.3 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.

19.4 Governing Law and Jurisdiction

These Terms and Conditions are governed by the laws of the State of Queensland and the laws of the Commonwealth of Australia which are in force in Queensland. All disputes arising between the Supplier and the Customer will be submitted to a court of competent jurisdiction in Queensland selected by the Supplier and such court shall possess territorial jurisdiction to hear and determine such proceedings.