

# **AUSTERRAIN PTY LTD TERMS AND CONDITIONS OF TRADE**

## **1. INTRODUCTION**

For the purpose of this Agreement, the "Supplier" is AusTerrain Pty Ltd ABN 61 629 293 554, and its successors and assigns or any person acting on behalf of and with the authority of AusTerrain Pty Ltd; the "Customer" is the business entity or individual identified in the Supplier's quote and/or Agreement as the Customer requesting goods and/or services; "Agreement" means the agreement entered into and between the Supplier and the Customer pursuant to these terms and conditions as amended from time to time; "Goods" mean all goods sold, rented, leased, bailed or otherwise made available to the Customer including but not limited to vehicle canopies, trays and other associated components and accessories; "Service/s" means the work required to fulfill the Customer's instructions as detailed in the quote and/or Agreement; and "Order" means a purchase order for Goods or Services placed by a Customer, incorporating a Quote, these Terms and Conditions of Trade, and any specifications and other supporting documents.

## **2. QUOTES/ORDERS**

**2.1** A quote is valid for fourteen (14) days from the date of the quote, unless otherwise stated on the quote and is subject to withdrawal or change at any time until the Customer's Order has been received and accepted by the Supplier.

**2.2** Quotes will be considered Orders following acceptance by the Customer in writing or electronically. Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.

**2.3** The Customer's acceptance of the quote/placement of an Order, includes the acceptance of these Terms and Conditions of Trade.

**2.4** For dealership and wholesale Customers, a Commercial Agreement issued by the Supplier is also required to be completed and signed by the business owner/director.

**2.5** The Customer acknowledges that information and specifications contained in the Supplier's quote are only to be used within the Customer's business to determine acceptance and are to be kept confidential indefinitely.

**2.6** An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law (ACL), this estimate is not binding upon the Supplier.

**2.7** It is agreed that the Supplier is not obligated to proceed until an Order has been placed by the Customer and a deposit has been paid.

## **3. VARIATIONS**

**3.1** The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.

**3.2** If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or Services or both.

**3.3** The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

## **4. CANCELLATION**

An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled. The time for payment for such cancellation shall be seven (7) days from the Supplier's tax invoice.

## **5. DESCRIPTIVE DATA AND PRICE LIST**

**5.1** All illustrations, drawings, catalogues, advertisements, and other such descriptive data accompanying the Supplier's quote must be regarded as informative only and not part of the Agreement unless otherwise stipulated in the Supplier's quote. All measurements and other particulars specified in descriptive data are stated in good faith, but inaccuracies shall not vitiate the Agreement or be made the basis of any claim against the Supplier, nor justify rejection.

**5.2** The Supplier's current price list is to be used as a guide only and is subject to price increases at any time.

## **6. COPYRIGHT AND PATENTS**

The proprietary products sold by the Supplier are covered by various patents, design copyright and registered trademarks in order to protect the Supplier's intellectual property. Ownership of copyright will at all times remain exclusively with the Supplier.

## **7. PAYMENT AND DEFAULT**

**7.1** The Supplier will invoice the Customer and the Customer must pay the amount due on the invoice in accordance with the payment terms as set out in the invoice.

**7.2** The Supplier will require a non-refundable deposit of up to thirty percent (30%) within seven (7) days of the Supplier's invoice date. If the deposit is not received by the due date, the invoice may need to be reissued and this may incur additional charges and an extended estimated delivery date. The Customer acknowledges the Supplier is under no obligation to commence the provision of the Goods or Services as requested by the Customer until the deposit is received by the Supplier in full and when all details pertaining to the Agreement are finalised.

**7.3** The Supplier may require progress payments to be made at certain stages of manufacturing. The Customer acknowledges the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.

**7.4** Unless otherwise agreed, all final balances and payments shall be made in full on, or before, the date of substantial completion of the supply (and where applicable, installation) of the Goods or Services to you. For the purpose of this clause, substantial completion will be determined by us in our sole discretion.

**7.5** The Customer shall not be entitled to set off against or deduct from the price any sums owed or claim to be owed to Customer by the Supplier.

**7.6** Unless otherwise agreed, payments are to be made in Australian currency via Electronic Funds Transfer (EFT), into the Supplier's nominated bank account as stipulated on the invoice.

**7.7** 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 profit or margin contemplated by or allowed for in the Agreement in addition to any remedy available to the Supplier at law or in equity.

**7.8** 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 Customer basis.

## **8. ADDITIONAL CHARGES**

**8.1** The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).

**8.2** The imposition of Additional Charges may also occur as a result of:

- a) cancellation by the Customer of an Order where cancellation results in Loss to the Supplier;
- b) storage costs for Goods not collected from the Supplier within 4 weeks of the date on which the Goods are manufactured, fabricated, created or formed;
- c) photocopying, courier, packing or handling charges not included in the Quote;
- d) additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

## **9. FREIGHT**

Freight Australia-wide is made to the Customer's nearest depot or address with a forklift or crane available onsite. The freight costs will be available on application to the Supplier and will be billed direct from the appropriate freight forwarding company.

## **10. PROLONGATION**

**10.1** If the Supplier is prevented from performing its obligations under the agreement within the terms and conditions herein due to any act or omission by any person, body or thing whatsoever, including strike action or act of God, then the Supplier has the right to extend the time to perform its obligations for a similar period to that for which the Supplier was unable to work.

**10.2** If the prolongation is due to the Customer or its agents failing to supply necessary details or do anything whatsoever that the Customer or its agents should have done under its contractual obligations, then the Customer must pay prolongation costs as determined by the Supplier.

**10.3** Failure by the Supplier's subcontractors to supply materials and/or services in a timely manner will be considered a prolongation.

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## **11. DELIVERY**

**11.1** When delivery of the Goods is to be made to the Customer's nominated address, 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 to the Customer.

**11.2** 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 will entitle the Supplier to raise an invoice subject to the Supplier's payment terms (as if the Customer had taken possession of the Goods). In addition, the Customer may incur storage charges estimated on a daily basis.

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

**11.4** 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.

## **12. FITTING AND STORAGE**

**12.1** The Supplier provides approximate static weights of all our products in the Supplier's current Product Guide. These weights are to be used as a guide only. Once the product is fitted, it is the Customer's responsibility to ensure the vehicle manufacturers GVM and payload capacity is not exceeded. The Supplier highly recommends a GVM upgrade prior to fitting.

**12.2** The Supplier recommends that Goods are fitted by a professional. In addition, it is the responsibility of the driver of the vehicle to ensure the Goods are fitted correctly and checked regularly.

**12.3** The Supplier provides a fitting service at their Loganholme workshop (at an extra cost), but do not provide DIY fitting instructions. The Supplier requires the Customer's vehicle for up to five (5) days.

**12.4** The Customer shall indemnify the Supplier from any costs, losses or expenses incurred by the Supplier if the scheduled fitting of Goods is delayed because the Customer's vehicle is not available at the agreed fitting site at the agreed time.

**12.5** A storage limit of four (4) weeks applies to the Customer's old tubs, trays and other items left at the Supplier's site and after such time Additional Charges will apply.

## **13. INSURANCE**

The Customer is responsible for the appropriate insurance for their vehicle for the entire duration their vehicle is located at the Supplier's site.

## **14. TITLE AND RISK**

**14.1** The risk in the Goods shall pass to the Customer immediately upon delivery to the Customer or its agent or to a third party nominated by the Customer.

**14.2** Property and title in Goods supplied to the Customer under these terms of trade does not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.

## **15. 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 deliver the Goods or delay in delivering the Goods as a result of fire, flood, strike, accident, lock-out, hindrance, riot, civil commotion, war, inability to produce or obtain raw materials or component parts or any other occurrence beyond the Supplier's control but any such delay shall not exempt the Customer from the obligation to accept or take delivery of and pay for the said Goods.

## **16. FACTORY STANDARD MODIFICATIONS**

**16.1** Fuel filler relocation and modification is required for chassis mount canopies and trays. The fuel filling flow rate may be affected as a result. The Customer acknowledges this assertion.

**16.2** Relocation of the rear camera and/or sensors is required on certain vehicles and may not operate the same as the vehicle factory standard. The Customer agrees to this assertion.

## **17. FINISHES**

**17.1** Due to the nature of aluminium welding and fabrication, marks, scratches and small imperfections will be present especially on bare aluminium finishes. All finishes will require upkeep and maintenance.

**17.2** Raptor coating, powder coating and painting will be completed to a high-quality industrial finish. If the Customer requires an automotive/show finish, this must be acknowledged prior to accepting the quote. Blemishes, drips, handling marks, chips, scratches and small imperfections may also be present.

## **18. WARRANTY**

**18.1** Goods manufactured by the Supplier are hereby sold and warranted against any defect in workmanship appearing under proper usage within ten (10) years from date of supply. In the case of Goods not manufactured by the Supplier, or Services provided by subcontractors, the appropriate manufacturer's/subcontractors warranty applies. Full warranty information is available from the Supplier's office during normal business hours as stipulated on the Supplier's website.

**18.2** 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. To the extent permitted by the Australian Consumer Law the liability of the Supplier shall in any case be limited to the repair or replacement at the option of the Supplier of the defective material at the workshops of the Supplier.

**18.3** The Customer acknowledges that no person representing or purporting to represent the Supplier has authority to make any representations or warranties on behalf of the Supplier other than those set out expressly in the Agreement and to the extent permitted by the Australian Consumer Law, and any further express or implied representations and warranties are expressly void.

**18.4** The Supplier will inspect and test the Goods for the purpose of determining the extent of any alleged defect or fault.

**18.5** 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, including but not limited to overloading or extreme off roading outside of the way the Goods were designed to perform. Work and/or Service carried out on the Goods by anyone other than the Supplier and/or its nominated agents shall make the warranty null and void unless the Customer obtains written approval from the Supplier before any remedial work is carried out.

**18.6** The Customer must return the Goods to the Supplier's premises for any agreed repairs, unless the Supplier notifies the Customer otherwise.

**18.7** Any defective Goods replaced by the Supplier will be deemed to be the property of the supplier.

## **19. CLAIMS**

The Customer must, within seven (7) days of the date of delivery of the Goods, notify the Supplier in writing of any matter or thing by reason whereof the Customer alleges that the Goods are not in accordance with the Agreement. Otherwise, the Goods shall be deemed to be in all respects in accordance with the Agreement and the Customer shall be bound to accept and pay for the same accordingly.

## **20. LIABILITY**

### **20.1 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 goods and services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

### **20.2 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 work again or payment of the cost of having the Goods and/or Work supplied again.

### **20.3 Indirect Losses**

Notwithstanding any other provision of these terms and conditions, the Supplier is in no circumstances (whatever the cause) liable in Agreement, 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 Agreements 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 deliver the Goods or complete its Services.

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### **21. 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.

### **22. MARKETING AND MEDIA**

**22.1** The Supplier may take photographs or record videos of the Customer's vehicle before, during and after providing Services (Media).

**22.2** The Supplier may use the Media to promote its Goods and Services on its website, through social media and other publications. The Customer agrees that the Supplier may disclose the relationship between the parties and the nature of the Goods and/or Services provided, and use and publish any part of the Media as its sees fit.

**22.3** The Customer may opt out of Media being used for promotional activities by contacting the Supplier in writing.

### **23. PRIVACY**

**23.1** 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 and the Privacy Principles outlined in the Privacy Amendment Act 2012, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Owner, a debt collector, credit reporting body and/or any other individual or organisation which maintains credit references and/or default listings.

**23.2** Subject to the Privacy Principles outlined in the Privacy Amendment Act 2012, the Customer further authorises the Supplier to collect, retain, record, use and disclose personal information about the Customer for the marketing of the Goods provided by the Supplier.

### **24. NON-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.

### **25. 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.

### **26. 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.