

Bill Kerry Machinery Transport Pty Ltd (ABN: 32 671 384 610) - Terms & Conditions of Trade

1. Definitions	10. Intellectual Property
1.1 "Carrier" shall mean Bill Kerry Machinery Transport Pty Ltd and its successors and assigns.	10.1 Where the Carrier has designed or drawn Goods for the Consignor, then the copyright in those designs and drawings shall remain vested in the Carrier, and shall only be used by the Consignor at the Carrier's discretion.
1.2 "Consignor" shall mean the Consignor or any person acting on behalf of and with the authority of the Consignor.	10.2 Conversely, in such a situation, where the Consignor has supplied drawings, the Carrier in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Carrier).
1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Consignor if a Limited Liability Consignor on a principal debtor basis.	11. Default & Consequences Of Default
1.4 "Goods" shall mean Goods supplied by the Carrier to the Consignor (and where the context so permits shall include any supply of Services as hereinafter defined).	11.1 Late fees on overdue invoices shall be incurred from the date when payment becomes due daily until the date of payment at a rate of 2.5% of the total amount overdue per calendar month and shall accrue at such a rate after as well as before any judgement.
1.5 "Services" shall mean all services supplied by the Carrier to the Consignor and includes any advice or recommendations (and where the context so permits shall include any supply of Services as defined supra).	11.2 If the Consignor defaults in payment of any invoice when due, the Consignor shall indemnify the Carrier from and against all the Carrier's costs and disbursements including on a solicitor and own Consignor basis and in addition all of EC Credit Control Pty Ltd's costs of collection.
1.6 "Price" shall mean the cost of the Goods as agreed between the Carrier and the Consignor subject to clause 4 of this contract.	11.3 Without prejudice to any other remedies the Carrier may have, if at any time the Consignor is in breach of any obligation (including those relating to payment), the Carrier may suspend or terminate the supply of Goods to the Consignor and any of its other obligations under the terms and conditions. The Carrier will not be liable to the Consignor for any loss or damage the Consignor suffers because the Carrier exercised its rights under this clause.
2. Acceptance	11.4 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 \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
2.1 The Carrier is not a common carrier and will accept no liability or responsibility as such. All articles are carried or transported or moved and all storage and other services are performed by the Carrier subject only to these conditions, and the Carrier reserves the right to refuse the carriage or transport of articles for any person, corporation or company, and the carriage or transport of any class or article at its discretion.	11.5 In the event that:
2.2 Any instructions received by the Carrier from the Consignor for the supply of Goods and/or the Consignor's acceptance of Services and/or Goods supplied by the Carrier shall constitute acceptance of the terms and conditions contained herein.	(a) any money payable to the Carrier becomes overdue, or in the Carrier's opinion the Consignor will be unable to meet its payments as they fall due; or
2.3 Where more than one Consignor has entered into this agreement, the Consignors shall be jointly and severally liable for all payments of the Price.	(b) the Consignor 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
2.4 Upon acceptance of these terms and conditions by the Consignor 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 Carrier.	(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Consignor or any asset of the Consignor;
2.5 None of the Carrier's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Carrier in writing nor is the Carrier bound by any such unauthorised statements.	(i) then without prejudice to the Carrier's other remedies at law the Carrier shall be entitled to cancel all or any part of any order of the Consignor which remains unperformed in addition to and without prejudice to any other remedies; and
3. Goods	(ii) all amounts owing to the Carrier shall, whether or not due for payment, immediately become payable.
3.1 The Goods shall be as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Carrier to the Consignor.	12. Security And Charge
3.2 The Consignor or his authorised agent shall not tender for carriage any explosive, inflammable or otherwise dangerous or damaging Goods without presenting a full description of those Goods and in default of so doing shall be liable for all loss and damage caused thereby.	12.1 Notwithstanding anything to the contrary contained herein or any other rights which the Carrier may have howsoever:
4. Price And Payment	(a) Where the Consignor and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Consignor 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 Carrier or the Carrier's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Consignor and/or the Guarantor acknowledge and agree that the Carrier (or the Carrier'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.
4.1 At the Carrier's sole discretion;	(b) Should the Carrier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Consignor and/or Guarantor shall indemnify the Carrier from and against all the Carrier's costs and disbursements including legal costs on a solicitor and own Consignor basis.
(a) The Price shall be as indicated on invoices provided by the Carrier to the Consignor in respect of Goods supplied; or	(c) To give effect to the provisions of clause 12.1 (a) and (b) inclusive hereof the Consignor and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Carrier or the Carrier's nominee, namely EC Credit Control Pty Limited as the Consignor'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 Carrier and/or EC Credit Control Pty Limited shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Consignor and/or the Guarantor in any land, realty or asset in favour of the Carrier and in the Consignor's and/or Guarantor's name as may be necessary to secure the said Consignor's and/or Guarantor's obligations and indebtedness to the Carrier 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 Carrier's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
(b) The Price shall be the Carrier's current price at the date of delivery of the Goods according to the Carrier's current Price list.	13. Cancellation
4.2 The Carrier may by giving notice to the Consignor at any time before delivery increase the Price of the Goods to reflect any increase in the cost to the Carrier beyond the reasonable control of the Carrier. (including, without limitation, foreign exchange fluctuations, taxes and duties, provisions of any Acts, By-Law, Order or Regulation of any parliament, municipality or local authority enacted after the date of contract between the Consignor and Carrier and the cost of labour).	13.1 The Carrier may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Carrier shall not be liable for any loss or damage whatever arising from such cancellation.
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/Service.	14. Privacy Act 1988
4.4 At the Carrier's sole discretion payment may be due at the date of this agreement.	14.1 The Consignor and/or the Guarantor/s agree for the Carrier to obtain from a credit-reporting agency a credit report containing personal credit information about the Consignor and Guarantor/s in relation to credit provided by the Carrier.
4.5 At the Carrier's sole discretion, for certain approved Consignors payment will be due seven (7) days following the date of the invoice.	14.2 The Consignor and/or the Guarantor/s agree that the Carrier may exchange information about Consignor 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:
4.6 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by direct debit or by any other method as agreed to between the Consignor and the Carrier.	(a) To assess an application by Consignor;
4.7 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 Carrier.	(b) To notify other credit providers of a default by the Consignor;
5. Delivery Of Goods / Services	(c) To exchange information with other credit providers as to the status of this credit account, where the Consignor is in default with other credit providers; and
5.1 Delivery of the Goods shall be made to the Consignor's address. The Consignor 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 Consignor at the Carrier's address.	(d) To assess the credit worthiness of Consignor and/or Guarantor/s.
5.2 Delivery of the Goods to a Carrier, either named by the Consignor or failing such naming to a Carrier at the discretion of the Carrier for the purpose of transmission to the Consignor, is deemed to be a delivery of the Goods to the Consignor.	14.3 The Consignor consents to the Carrier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
5.3 The Carrier will effect insurance of Goods as the Consignor's agent if the Consignor instructs the Carrier to do so. Insurance of Goods will not be effected for the benefit of the consignor except upon the written instructions and then only at his expense and in accordance with the Carrier's conditions of insurance in force from time to time such conditions being obtainable from any office of the Carrier.	14.4 The Consignor agrees that Personal Data provided may be used and retained by the Carrier for the following purposes and for other purposes as shall be agreed between the Consignor and Carrier or required by law from time to time:
5.4 Without derogating from Clause 4 above, the Carrier shall not be liable for any loss or market loss of use or consequential loss concealed or damage caused by inherent vice or nature of the Goods or merchandise carried, including chilled, frozen, refrigerated or perishable Goods) either in transit or in storage whether caused by the negligence, wrongful act or default of the Carrier or by any other cause whatsoever.	(a) provision of Services & Goods;
5.5 The Consignor will be and remain responsible to the Carrier for all charges incurred for any reason. Labour to load or unload the vehicles shall be the responsibility and expense of the Consignor or Consignee.	(b) marketing of Services and or Goods by the Carrier, its agents or distributors in relation to the Services and Goods;
5.6 Delivery of the Goods to a third party nominated by the Consignor is deemed to be delivery to the Consignor for the purposes of this agreement.	(c) analysing, verifying and/or checking the Consignor's credit, payment and/or status in relation to provision of Services/Goods;
5.7 The Consignor hereby authorises the Carrier (if it should think fit to do so) to arrange with a sub-contractor for the carriage of any Goods the subject of this contract. Any such arrangement shall be deemed to be ratified by the Consignor upon delivery of the said Goods to such sub-contractor who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Carrier in so far as it may be necessary to ensure that such sub-contractor shall be so entitled the Carrier shall be deemed to enter into this contract for its own benefit and also as trustees for the sub-contractor.	(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Consignor; and
5.8 The Consignor can authorise any deviation from the usual route or manner of carriage of Goods, which may be in the absolute discretion of the Carrier be deemed reasonable or necessary in the circumstances.	(e) enabling the daily operation of Consignor's account and/or the collection of amounts outstanding in the Consignor's account in relation to the Services and Goods.
5.9 Charges shall be computed from the time the unit leaves the depot of the Carrier until the time it returns t the depot, at the rate applicable to the unit and all hours shall be calculated to the nearest half hour.	14.5 The Carrier may give, information about the Consignor to a credit reporting agency for the following purposes:
5.10 Where a vehicle is delayed by any cause beyond the control of the Carrier or where the delay is caused by the Carrier obeying instructions given by the Consignor or his representative the cost of such delay shall be added to the Consignor's account. Where a vehicle is bogged whilst obeying such instructions the cost of recovering the vehicle from the bog shall also be added to the Consignor's account.	(a) to obtain a consumer credit report about the Consignor; and/or
5.11 Unless otherwise expressly agreed in writing, no responsibility will be accepted by the Carrier for loss of or damage to or mis-delivery or failure to deliver or delay in the delivery of Goods either in transit or in storage for any reason whatsoever. The Carrier is authorised to carry the Goods at the address given to the Carrier by the Consignor for that purpose and it is expressly agreed that the Carrier shall be taken to have delivered the Goods in accordance with this contract if at that address he obtains from any person a receipt or signed delivery docket for the Goods.	(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Consignor.
6. Risk	15. Unpaid Carriers Rights To Dispose Of Goods
6.1 If the Carrier retains property in the Goods nonetheless, all risk for the Goods passes to the Consignor on delivery.	15.1 In the event that:
6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Consignor, the Carrier 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 Carrier is sufficient evidence of the Carrier's rights to receive the insurance proceeds without the need for any person dealing with the Carrier to make further enquiries.	(a) the Carrier retains possession or control of the Goods; and
7. Consignors Disclaimer	(b) payment of the Price is due to the Carrier; and
7.1 The Consignor 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 Carrier and the Consignor acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Carrier 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 Consignor and shall not be transferable to any subsequent Consignor.	(c) the Carrier has made demand in writing of the Consignor for payment of the Price in terms of this contract; and
8. Lien & Stoppage in Transit	(d) the Carrier has not received the Price of the Goods,
8.1 Where the Carrier has not received or been tendered the whole of the price, or the payment has been dishonoured, the Carrier shall have:	then, whether the property in the Goods has passed to the Consignor or has remained with the Carrier, the Carrier may dispose of the Goods and may claim from the Consignor the loss to the Carrier on such disposal.
(a) a lien on the Goods;	16. General
(b) the right to retain them for the price while the Carrier is in possession of them;	16.1 If any provision of these terms and conditions shall be invalid, void or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
(c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and	16.2 All Services/Goods supplied by the Carrier are subject to the laws of Victoria and the Carrier takes no responsibility for changes in the law which affect the Services/Goods supplied.
(d) a right of resale,	16.3 The Carrier shall be under no liability whatever to the Consignor for any indirect loss and/or expense (including loss of profit) suffered by the Consignor arising out of a breach by the Carrier of these terms and conditions.
(e) the foregoing right of disposal,	16.4 In the event of any breach of this contract by the Carrier the remedies of the Consignor shall be limited to damages. Under no circumstances shall the liability of the Carrier exceed the Price of the Goods.
provided that the lien of the Carrier shall continue despite the commencement of proceedings or judgement for the price having been obtained.	16.5 It is expressly agreed that all the rights, and limitations of liability granted to the Carrier by the provisions set forth in the above condition of carrying shall continue to have their full force and effect in the circumstances and not withstanding any breach of the contract or of any conditions hereof by the Carrier.
9.1 The Commonwealth Trade Practices Act 1974 and Fair Trading Acts	16.6 The Consignor shall not set off against the Price amounts due from the Carrier.
9.1 Nothing in this agreement is intended to have the affect 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.	16.7 The Carrier may license or sub-contract all or any part of its rights and obligations without the Consignor's consent.
	16.8 The Carrier 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 Carrier notifies the Consignor of such change.
	16.9 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.