

## TERMS AND CONDITIONS OF SALE

'**Australian Buyer**' means a Buyer that purchases or orders Goods in Australia.

'**Buyer**' means the entity, and includes any agent or representative of that entity, that places an Order.

'**Goods**' means the goods purchased or ordered by the Buyer including but not limited to all kinds of access equipment such as scissor lifts, boom lifts, telehandlers, elevating work platforms and parts and accessories therefor.

'**GST**' has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* and the *New Zealand Goods and Services Tax Act 1985*.

'**NZ Buyer**' means a Buyer that purchases or orders Goods in New Zealand.

'**Order**' means an order placed by the Buyer requesting the supply of Goods.

'**Payment Date**' means the date for payment specified in any quotation, order acceptance, invoice or similar document or communication issued by the Seller.

'**Seller**' means Skyjack Australia Pty Ltd ACN 145 303 895 or any Related Body Corporate as defined by the *Corporations Act 2001*.

### 1. GENERAL

- (a) Orders for Goods placed by the Buyer are subject to these terms and conditions. These terms and conditions in conjunction with any applicable credit terms constitute the whole agreement between the Seller and the Buyer. No term or condition contained in the Buyer's Order will add to, amend or delete these terms and conditions unless expressly pre-agreed in writing by a duly authorised officer of the Seller.
- (b) The Buyer agrees that it is the Buyer's responsibility when Ordering the Goods to satisfy itself (by carefully considering the Goods' operating manual) that the Goods Ordered conform to the Buyer's requirements and are suitable and sufficient for the Buyer's purpose.
- (c) The Buyer agrees that:
  - (i) it knows the way it intends to use the Goods;
  - (ii) it knows the purpose for which it intends to use the Goods;
  - (iii) it is satisfied, based on:
    - (A) the operating manual for the Goods; and/or
    - (C) the Buyer's own enquiries,that the Goods will be fit for the purpose the Buyer intends; and
  - (iv) it has brought to the Seller's attention any special characteristics or properties the Goods must have before the Goods were operated and Ordered.
- (d) If the parties have not agreed in writing before the Order is placed that the Goods are fit for the particular purpose the Buyer intends to use them for, the Buyer agrees that:
  - (i) it has not relied on the Seller's skill and judgement when selecting the Goods;

- (ii) the Goods have all of the characteristics the Buyer requires; and
  - (iii) it will not use, on-sell or promote the Goods as having any characteristics outside those in the operating manual provided by the Seller.
- (e) The Seller reserves the right subject to any applicable law which cannot be excluded and to the other provisions of this document:
  - (i) not to accept the return of, or give credit for, any Goods it supplies to the Buyer; or
  - (ii) to accept the return of Goods it has supplied to the Buyer on terms and conditions satisfactory to the Seller as determined by the Seller in its absolute discretion; or
  - (iii) for NZ Buyers, to repair or replace any faulty Goods, at the discretion of the Seller.
- (f) Any quotation by the Seller is not and shall not be construed as an offer capable of acceptance or as creating an obligation to sell.
- (g) The Seller's receipt of the Buyer's Order does not constitute acceptance of the Order by the Seller. The Order is deemed accepted on the earlier of delivery of the Goods or the date of the Seller's Order acceptance.
- (h) The Seller may if and to the extent necessary to protect its legitimate interests correct any genuine error in any sales literature, quotation, price list, acceptance of Offer, invoice or other document without any liability to the Buyer.
- (i) All descriptions, performance figures, drawings, data, dimensions and weights furnished by the Seller or contained in catalogues, price lists or advertisements provide only a general description of the Goods and shall not form part of these terms and conditions. These general descriptions are not to be taken as specifications or an operating manual. The Buyer agrees that the specifications and operating manual for the Goods may be used by the Buyer to satisfy itself that the Goods conform to the Buyer's requirements and are suitable for the Buyer's purpose.
- (j) It is the Buyer's responsibility to provide all information necessary to enable the completion of each Order in a timely manner. The Buyer shall be responsible for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information.
- (k) The Buyer agrees that it will not offer the Goods for hire or re-sale in any country other than Australia for Australian Buyers or New Zealand for NZ Buyers without the written consent of the Seller.

### 2. PRICE

- (a) Prices quoted are based on the full quantities specified and do not necessarily operate pro-rata for any greater or lesser quantities.
- (b) Unless otherwise indicated, Prices quoted are exclusive of GST. The Buyer is required to pay all GST for which the Seller is liable in respect of the Goods or any part of the Goods at the same time that payment is made.

- (c) Prices quoted are based on rates and delivery charges calculated at the time an Order is placed and on the terms indicated in the Order.
- (d) Prices quoted are subject to the terms contained in the Seller's quotation.
- (e) The Buyer agrees it will pay the Seller on demand all costs and losses incurred by the Seller if:
  - (i) the Buyer, for any reason, is unable or unwilling to accept the Goods after the date the Order is accepted by the Seller; and/or
  - (ii) any Goods are manufactured or any process is applied to the Goods in accordance with a specification requested by the Buyer.
- (f) The Buyer agrees that items used to transport the Goods such as transport tyres and transport chains remain the property of the Seller and must be returned to the Seller within 60 days of the delivery date of the Goods. The Buyer agrees that if it does not return the transport tyres and transport chains to the Seller within this time, it must pay the Seller the reasonable replacement cost of the unreturned items.

### 3. TERMS OF PAYMENT

- (a) The Seller may require a deposit on an Order. Subject to any credit terms pre-agreed in writing between the Buyer and the Seller, the balance of the Price must be paid on the earlier of:
  - (i) the Payment Date;
  - (ii) if the Buyer is collecting the Goods, the date the Buyer has agreed to collect the Goods;
  - (iii) on delivery of the Goods; or
  - (iv) any time after Delivery of the Goods.
- (b) The parties agree that for the purpose of clause 3(a), time is of the essence.
- (c) The Seller may charge the Buyer interest on overdue amounts. Interest will be calculated on daily balances from the day following the date upon which payment should have been made at the Cash Rate Target of the Reserve Bank of Australia from time to time plus a margin of 4% per annum. The Buyer agrees that the Seller is not required to demand payment of outstanding invoices before the Buyer's liability to the Seller to pay interest is incurred.
- (d) The Buyer agrees that the Seller may cancel or suspend any delivery of Goods to the Buyer if the Seller determines (in its absolute discretion) that any amount of money due from the Buyer to the Seller is overdue.
- (e) The Seller reserves the right to collect overdue invoices using a debt collection agency. In addition to all other remedies available to it, the parties agree that the Seller will be entitled to recover from the Buyer all costs, expenses and disbursements associated with collecting unpaid, outstanding or overdue amounts including (without limitation) debt collection agency fees and legal fees.

### 4. DELIVERY, RISK AND TITLE

- (a) Unless otherwise agreed in writing, the Goods shall be delivered to the Buyer at the store or works of the Buyer.

- (b) The Seller is not obliged unless it has specifically agreed to do so in writing to deliver the Ordered Goods:
  - (i) in one instalment; or
  - (ii) on the date estimated on any quotation or Order.
- (c) Where Goods are delivered in instalments, each instalment will constitute a separate Order. Unless the Seller has specifically agreed otherwise in writing, the Buyer agrees that it will not be entitled to terminate any future instalment comprising the Order due to the Seller's failure to deliver an instalment of Goods.
- (d) Unless otherwise stated in a delivery docket or packing slip, risk in the Goods passes to the Buyer:
  - (i) when the Goods pass the entrance of the Buyer's store or works;
  - (ii) when the Goods pass the entrance of the Buyer's pre-arranged address for delivery; or
  - (iii) if the Goods are being delivered to the Buyer using a carrier, when the Goods are delivered to the carrier.
- (e) The Buyer will, at the Buyer's expense, provide labour, cranes or forklifts and reasonable access to the nominated point of delivery for the prompt offloading of Goods.
- (f) If the Seller agrees to deliver the Goods to the premises of the Buyer and if the Seller contracts with a carrier to do so, delivery of the Goods to the carrier in all circumstances constitutes delivery to the Buyer.
- (g) Until the Seller has received from the Buyer payment of all money owed to it for the Goods and actually or contingently on any other account, the Seller remains the owner of the Goods. The Buyer must keep the Seller's Goods:
  - (i) stored separately and in such a way that the Goods remain identifiable;
  - (ii) insured against loss and damage;
  - (iii) free from all encumbrances and charges; and
  - (iv) as bailee for the Seller.
- (h) The Buyer authorises the Seller to:
  - (i) enter any property and inspect the Goods; and
  - (ii) enter any property without notice to the Buyer and repossess the Goods if the Buyer is in breach of any agreement between the Buyer and Seller.
- (i) The Buyer indemnifies the Seller against any claim, demand or action arising out of or in connection with the Seller exercising its right to enter and repossess its Goods.
- (j) If the Buyer re-sells the Seller's Goods (whether those Goods are re-sold alone or as part of a manufactured product) before all money payable by the Buyer to the Seller has been paid, the Buyer agrees that it holds the proceeds of the re-sale of the Goods on trust for the Seller as soon as the proceeds are receivable or received. The proceeds must be kept in a separate account. This does not limit the Seller's rights to proceeds under the PPSA.
- (k) If after fourteen (14) days from the date on which the Goods are ready for despatch, delivery is delayed

due to the Buyer's act, omission, breach or default, the Seller may at its election:

- (i) store the Goods at its premises or elsewhere and the cost of storage, handling and insurance shall be payable by the Buyer on the Seller's demand; or
  - (ii) terminate the Order without liability to the Buyer.
- (l) No delivery may be deferred except with the written consent of the Seller.

## **5. PERSONAL PROPERTY SECURITIES ACT (PPSA)**

This clause 5 applies to Australian Buyers only:

- (a) The Seller may register its security interest under the PPSA including as a purchase money security interest (PMSI). The Buyer must do anything (such as obtaining consents and signing documents) which the Seller requires for the purposes of ensuring that the security interest is enforceable, perfected, first in priority and otherwise effective under the PPSA.
- (b) The rights of the Seller under this document are in addition to and not in substitution for Seller's rights under other law (including the PPSA) and the Seller may choose whether to exercise rights under this document and/or under such other law as it sees fit.
- (c) To the extent that: section 115 of the PPSA permits the parties to contract out of any provision of Chapter 4 of the PPSA; and such a provision requires the Seller to give a notice, allow time, give an account, or allow reinstatement or similar rights to the Buyer in connection with enforcement, the parties agree that all such provisions are contracted out of.
- (d) Provisions of Chapter 4 of PPSA confer rights on the Seller. The Buyer agrees that in addition to those rights, the Seller shall, if there is default by the Buyer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those provisions but also, as additional and independent rights, under this document, and the Buyer agrees that the Seller may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- (e) The Buyer waives its rights to receive a verification statement in relation to registration events under section 157 of the PPSA.
- (f) The parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA. The Buyer must do everything necessary on its part to ensure that section 275(6)(a) of the PPSA continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to the Seller the benefit of section 275(6)(a) and the Seller shall not be liable to the Buyer if the Seller breaches this sub-clause.

## **5A. PERSONAL PROPERTY SECURITIES ACT 1999 (NZ PPSA)**

This clause 5A applies to NZ Buyers only:

- (a) The Buyer acknowledges that these terms and conditions create a security interest in all present and after acquired goods supplied or to be supplied by

the Seller and any proceeds of the sale of the goods as security for all of the Buyer's obligations to the Seller, pursuant to the NZ PPSA and that the Seller may register a financing statement to perfect its security interest in the goods delivered or to be delivered to the Buyer in accordance with the provisions of the NZ PPSA.

- (b) The Buyer must do anything (such as obtaining consents and signing documents) which the Seller requires for the purposes of ensuring that the security interest is enforceable, perfected, first in priority and otherwise effective under the NZ PPSA.
- (c) The rights of the Seller under this document are in addition to and not in substitution for Seller's rights under other law (including the NZ PPSA) and the Seller may choose whether to exercise rights under this document and/or under such other law as it sees fit.
- (d) The Buyer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of the Seller under the NZ PPSA and agrees that as between the Seller and the Buyer, the Buyer will have no rights under (or by reference to) sections 114(1)a, 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the NZ PPSA and where the Seller has rights in addition to those in part 9 of the NZ PPSA those rights shall continue to apply.
- (e) The Buyer shall immediately upon request by the Seller, procure from any person considered by the Seller to be relevant to its security position such agreements and waivers as the Seller may at any time require.
- (f) The Buyer shall immediately notify the Seller of any change in the Buyer's name, address details and any other information provided to the Seller to enable the Seller to register a financing change statement if required.

## **6. ACCEPTANCE OF GOODS**

- (a) Within (7) days of delivery, the Buyer must notify the Seller if it is aware or should reasonably be aware that the Goods do not conform to the Order. The notice must be written and must contain the Order number, the delivery date and reasonable detail of the non-conformity. Failure to give such notice shall constitute an irrevocable acceptance of the Goods by the Buyer.
- (b) Non-conformity of part of the Ordered Goods will not, subject to any non-excludable rights of the Buyer under any law, entitle the Buyer to reject all of the Ordered Goods.

## **7. FORCE MAJEURE**

If the Seller cannot supply the Goods due to any cause beyond its control such as any act or neglect of any carrier, sub-contractor, manufacturer or supplier of the Seller, Acts of God, war or threat of war, strikes, lockouts, bans or other industrial disturbances, difficulties obtaining raw materials, fuel, parts, labour or machinery, machinery failure, fire, flood, explosion, civil riot or commotion, government interference or request, by-laws, rules or

regulations or order of any competent authority, the Seller may elect to:

- (i) extend the time for performance; or
- (ii) terminate the Order,

without liability to the Buyer for the Seller's failure.

## 8. DEFAULT

(a) The following events are **Insolvency Events**:

- (i) the commission by the Buyer of any act of bankruptcy;
- (ii) the Buyer going into liquidation;
- (iii) a petition being presented for the sequestration of the Buyer's estate or assets or for the winding up of the Buyer;
- (iv) the Buyer being a company is deregistered;
- (v) the Buyer assigning its property for the benefit of creditors or having a receiver or administrator appointed to it or to any of its assets;
- (vi) the Buyer failing to make any payment to the Seller on the due date;
- (vii) the Buyer being in breach of any of these terms and conditions; or
- (viii) the Seller reasonably believing any of the events or any event similar to that described above in clause 8(a) is about to occur.

(b) In the event of an Insolvency Event, the Seller shall, without prejudice to any other remedy, have the right to:

- (i) cease production of the Goods;
- (ii) decline to deliver the Goods or any balance of the Goods the subject of an Order;
- (iii) stop any Goods in transit;
- (iv) otherwise cease to perform any of its obligations to the Buyer;
- (v) notwithstanding any agreement to the contrary, demand payment of the Price of any Goods delivered but not paid for;
- (vi) terminate its agreements with the Buyer without incurring any liability at law or in equity and without prejudice to the Seller's right to recover amounts owing to it by the Buyer;
- (vii) enter any premises and repossess any Goods already delivered whether or not property in such Goods has passed to the Buyer; and/or
- (viii) sell the Buyer's Ordered Goods elsewhere and recover from the Buyer any difference between the quoted price and the re-sale price.

## 9. WARRANTY AND LIABILITY OF SELLER

(a) The Buyer indemnifies the Seller, the Seller's officers and employees, agents and representatives against any loss, claim, demand, liability, damage or expense incurred by the Buyer or any third party arising out of or in connection with:

- (i) any misuse of the Goods by the Buyer or its agents or employees;
- (ii) any failure by the Buyer to comply with any legislation or direction of any authority in its use, storage or transportation of the Goods;

- (iii) any handling, storage or transport of the Goods;
- (iv) any negligent act or omission of the Buyer;
- (v) any breach by the Buyer of any agreement between the Buyer and the Seller;
- (vi) any incorrect representation by the Buyer as to how the Goods will be used; and
- (vii) any death or injury to any person due, either in whole or in part, to the act, omission or negligence of the Buyer,

provided that the Buyer's liability under this indemnity is reduced to the extent that any loss results from any negligent or wrongful act of the Seller.

(b) To the full extent permitted by law, the Seller will not be liable to the Buyer for:

- (i) losses arising from the supply, partial supply, non-supply or delay in supply of the Goods;
- (ii) unless otherwise agreed in writing, loss or damage arising from recommendations and suggestions provided to the Buyer;
- (iii) loss or damage to the Goods arising out of the negligent act or omission of the Buyer or its agents or representatives;
- (iv) loss or damage due to the Buyer's misuse of the Goods;
- (v) any consequential or indirect loss howsoever arising including loss of profit, loss of reputation or loss of opportunity; or
- (vi) loss or damage due to the Buyer's negligent handling of the Goods.

(c) If the Goods are purchased by an NZ Buyer for business purposes, the Buyer agrees that the Consumer Guarantees Act 1993 does not apply.

(d) If the Goods are purchased by an Australian Buyer and are not of a kind ordinarily acquired for personal, domestic or household use, the liability of the Seller for breach of any guarantees, conditions or warranties implied by the Competition and Consumer Act 2010 (Cth), and/or the Sale of Goods Act 1923 (NSW) shall be limited to one of the following at the Seller's discretion:

- (i) the replacement of the Goods;
- (ii) the supply of equivalent Goods;
- (iii) the repair of the Goods;
- (iv) the payment of the cost of replacing the Goods;
- (v) the payment of the cost of acquiring equivalent Goods; or
- (vi) the payment of the cost of having the Goods repaired.

(e) To the full extent permitted by law all other warranties or liabilities imposed or implied whether by law or by statute are excluded.

(f) Subject to the rights of the Buyer under any law that cannot be excluded by these terms, the Buyer agrees that it is liable for all losses and liabilities resulting from the use of the Goods (either alone or in conjunction with other Goods or materials) even if the Seller had, or should have had, prior knowledge of the use to which the Goods would be put, unless the loss or liability arises from the wrongful or negligent act or omission of the Buyer.

- (g) If the Buyer has not paid the Seller the Price by the Payment Date, the Buyer agrees that the Seller will not be liable to the Buyer for any of the matters listed in clause 8(b).

## 10. MISCELLANEOUS

- (a) These terms and conditions shall be governed and construed in accordance with the laws of the State of New South Wales for supplies to Australian Buyers and the laws of New Zealand for supplies to NZ Buyers.
- (b) All notices to be served upon the Buyer shall be deemed to be duly served if left at or sent by ordinary prepaid post to the last known address of the Buyer. The Buyer shall be deemed to have received any notice two (2) working days after posting.
- (c) The Buyer shall not assign any rights or obligations under this contract without the prior written consent of the Seller.
- (d) The Seller may assign its rights (including the right to payment) to a third party without the consent of the Buyer. The Seller may also require a novation of the rights and obligations of the Seller to a third party in connection with any bona fide business sale or corporate restructure.
- (e) The Seller's acquiescence, conduct or failure to require performance does not constitute a waiver of the Seller's rights unless otherwise expressly notified to the Buyer in writing.
- (f) The singular shall include the plural and vice versa, words importing any gender shall include every other gender and where there is more than one Buyer the Buyers shall be bound jointly and severally.
- (g) If a clause in these terms and conditions or a right or remedy of a party under these terms and conditions is invalid or unenforceable in a particular jurisdiction it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability.

## 11. EXPORT

- (a) When Goods Ordered are shipped from outside the country in which Buyer seeks delivery unless otherwise pre-agreed in writing:
- (i) the Goods shall subject to clause 4 be delivered in accordance with Incoterm F.O.B; and
  - (ii) for Australian Buyers, the Seller is not required to give the Buyer notice of delivery in accordance with s32(3) of the Sale of Goods Act 1923 (NSW) or corresponding legislation in any other applicable jurisdiction.
- (b) When Goods Ordered are shipped from outside the country in which Buyer seeks delivery and the Buyer arranges the transport of the Goods, the Seller will not be liable for any claim in connection with and damage to the Goods during transit.

## 12. CREDIT ASSESSMENT

- (a) If any Goods are supplied to the Buyer on credit, the Seller may need to disclose to a credit reporting agency certain information referred to in (c) below about the Buyer when assessing the Buyer's

application for credit and managing the Buyer's account with the Seller. The Buyer authorises the Seller to disclose such information to a credit reporting agency for these purposes.

- (b) Subject to the Seller's obligations under the Privacy Act 1988 (Cth) for Australian Buyers and the Seller's obligations under the New Zealand Privacy Act 1993 for NZ Buyers, and other applicable laws, the Seller may give the information referred to in (c) below to a credit reporting agency to obtain a consumer credit report about the Buyer or to allow the credit reporting agency to create or maintain a credit information file about the Buyer. The Buyer agrees that the Seller may disclose a credit report about it to any credit provider, debt collecting agency or the Seller's insurers for the purposes of assessing the Buyer's creditworthiness or to collect any overdue payments (as the case may be).
- (c) The Seller may disclose the following information relating to the Buyer in accordance with clauses (a) and (b) above;
- (i) the Buyer's name and address and the name and address of the Buyer's Directors and Managers;
  - (ii) credit limits on the Buyer's accounts;
  - (iii) the amount of any payments which are overdue;
  - (iv) where an overdue payment has been previously reported, advice that the payment is no longer overdue;
  - (v) cheques or credit card payments which have been dishonoured; and
  - (vi) information that the Seller has ceased to supply Goods to the Buyer.
- (d) The Buyer agrees that the Seller may obtain information about the Buyer from any business which provides information about the commercial creditworthiness of persons for the purposes of assessing the Buyer's application to purchase the Goods on credit and collecting any overdue amounts.
- (e) The Seller may refuse to supply the Goods to the Buyer on credit on the basis of the Seller's credit assessment of the Buyer.

## 13. AMENDMENT

These terms and conditions may be amended at any time by the Seller by notice to the Buyer. The amended terms and conditions will however only apply to all orders made after the date notice of the amendment is given.

## 14. PRIVACY

- (a) The Buyer agrees to the Seller collecting, using and disclosing personal information of the Buyer for various purposes, including to:
- (iii) assess creditworthiness;
  - (iv) third parties in response to requests for information regarding credit worthiness of the Buyer;
  - (v) supply the Goods to the Buyer and the management of the Buyer's account;

- (vi) communicate to the Buyer about the Goods which the Seller or its partners or affiliates may provide to the Buyer;
  - (vii) business advisors;
  - (viii) implement these terms and conditions or any other agreement; and
  - (ix) comply with the law.
- (b) Please contact the Seller's Privacy Officer at Lot 272 Honeycomb Drive, Eastern Creek NSW 2766:
- (i) to access any personal information relating to the Buyer held by the Seller;
  - (ii) to correct or amend any personal information relating to the Buyer held by the Seller;
  - (iii) if you do not want the Seller to contact you with information about other Seller's Goods.
- (c) The Seller will handle the Buyer's personal information in accordance with relevant laws.

### **15. HEAVY VEHICLE NATIONAL LAW**

For Australian Buyers, the Seller acknowledges the Heavy Vehicle National Law (NSW) creates a shared responsibility for transport safety and compliance. As a company committed to safety, the Seller takes reasonable steps in furtherance of its obligations and expects that contractors and third parties that it engages will do likewise.

When arranging carriage of the goods, the Seller provides details of the goods to be transported to the carrier, including the weight of the load. The Seller expects all carriers to be familiar with all matters relevant to the safe loading, unloading and carriage of the goods, including any effect that the weight or positioning of the load may have on the axle.

The Seller provides its goods for carriage on the basis that carriers will seek guidance from their principal if they have any queries or safety concerns. Unless the Seller receives a request for additional information, it will proceed on the basis that the information provided is sufficient for the carrier to ensure safe loading, unloading and carriage of the goods in compliance with all legal and safety obligations.