

**TOYOTA MATERIAL HANDLING AUSTRALIA PTY LIMITED****TERMS AND CONDITIONS FOR PURCHASE OF GOODS  
AND/OR SERVICES****1 GENERAL**

1.1 These terms (including any Order, even if attached separately) apply to transactions between the Supplier and TMHA for the sale and supply of Goods and/or Services.

1.2 The Supplier expressly acknowledges that these terms operate to the exclusion of any terms and conditions attached to or printed on the underside of any purchase order or delivery receipt issued by the Supplier.

1.3 In these terms the following definitions apply:

**Acceptable Quality** means goods that are free from any defects that would negatively affect their performance or appearance, are fit for purpose and comply with the Specification.

**ACL** means the Australian Consumer Law.

**Confidential Information** means all information (whether of a technical, industrial, engineering, scientific, business or financial nature or otherwise) whether written, oral or in electronic form of a person (Owner) which is of a confidential nature of which another person (Recipient) first becomes aware, whether before or after the date of this agreement, either through disclosure by the Owner to the Recipient or through the Recipient's involvement with the Owner in the course of the supply of the Services and/or Goods and all documents provided in relation to the supply of same.

**Consequential Loss** means any loss that cannot fairly and reasonably be considered to arise naturally or directly from the relevant breach or event, and will include (without limitation) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

**Defect** means any actual fault, failure, or non-performance in accordance with manufacturer's specifications including defects in material, software algorithms, workmanship.

**Goods** are any products, equipment or materials supplied by the Supplier as specified in an Order.

**Intellectual Property Rights** means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs or copyrights).

**Legislative Requirements** means the requirements of all statutes, rules, regulations, proclamations, ordinances, awards and by-laws present or future in any Australian State or Territory, including without limitation, Australian Standards and any industry codes or codes of practice to which TMHA or its operations is party or subject, including any voluntary codes which may apply to TMHA from time to time.

**Loss** means any loss, cost, expense, liability or damage, including reasonable legal costs on a solicitor/client basis and includes Consequential Loss, unless otherwise stated in this agreement.

**Order** means a purchase order or equivalent document supplied by TMHA to the Supplier which specifies the Goods and/or Services required by TMHA from the Supplier.

**Services** are, as the context permits or requires, as set out in an Order.

**Specification** means the specification (if any) as set out in an Order.

**Supplier** means the party identified as such on the Order.

**2 PERFORMANCE & DELIVERY**

2.1 The Supplier will supply the Services and/or Goods in accordance with this agreement (including the Specifications).

2.2 The Supplier will use its best endeavours to ensure:

(a) the Services are performed on and from the Commencement Date; and/or

(b) the Goods are delivered or made available for collection as and from the Delivery Date;

(c) the Goods are supplied in accordance with the requirements specified in the Order, including applicable packaging, labelling, lead times and production schedules.

**3 SUPPLIER OBLIGATIONS**

3.1 The Supplier must:

(a) ensure that the Services and/or Goods are supplied in accordance with all Legislative Requirements and the requirements of the Specifications.

(b) obtain and maintain, at its expense, all licences, accreditations, certificates or registrations which the Contractor/Supplier is required to possess by any Legislative Requirements in order to supply the Services and/or Goods;

(c) supply the Services with the standard of care, skill, judgment and diligence of a skilled, professional supplier/contractor;

(d) provide TMHA with all records reasonably required by TMHA evidencing the performance of the Services, including but not limited to Technician Worksheets and reports;

(e) ensure that the specification, appearance and functionality of the Goods supplied does not vary without prior written agreement from TMHA;

(f) ensure that where the Goods are intended to be fitted to TMHA equipment, the Goods shall be designed such that, when fitted, the TMHA equipment continues to be compliant with all Legislative Requirements;

(g) ensure that spare parts and any embedded software support remains reasonably available for a minimum period of 7 years; and

(h) ensure that the Supplier supplies the Services and/or Goods safely including, without limitation, complying with all relevant Legislative Requirements which apply to the supply of the Services and/or Goods.

**4 RISK AND TITLE**

4.1 Title and risk in all Goods and/or Services shall pass to TMHA from the Supplier when the Goods or Services have been delivered to TMHA.

4.2 Any Order is deemed to have been accepted by the Supplier unless rejected in writing within 7 days of its receipt.

**5 WARRANTY**

5.1 The Supplier warrants that the Goods will:

(a) strictly conform to the Specification, be of Acceptable Quality and be fit for the purpose for which they are supplied.

(b) be free from any Defects; and

(c) if installed on a specific piece of TMHA equipment, be warranted by the Supplier for the same period as TMHA warrants the TMHA equipment to third-party purchasers. This Supplier warranty will continue after the termination date of this agreement.

5.2 The Supplier agrees to repair or replace at its cost any Goods or any component supplied as part of the Services,

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purchased by TMHA from the Supplier, when the Goods or component has a Defect during the warranty period specified for the Goods or component, commencing from the time in which the Supplier has supplied the Goods to TMHA or installed or fitted the component to the TMHA equipment. The Supplier must, at no cost to TMHA, rectify any Defect to all Goods or components that becomes apparent during the warranty period of the relevant Goods or Service or the affected part or parts.

- 5.3** The Supplier must undertake the rectification set out in clause 5.2 as soon as reasonably possible by agreement with TMHA.
- 5.4** If the Supplier fails to rectify a Defect in accordance with clauses 5.2 and 5.3, without limiting TMHA's other remedies available under this agreement and at law, the Supplier must refund to TMHA the amount paid by TMHA for the Goods, component or Service (as applicable).
- 5.5** The Supplier shall not charge TMHA any Service fee, price of spare parts or any other expenses for any work and/or spare part which are covered under warranty under this clause 5 or any other warranty applicable.

**6 PRICES AND PAYMENT**

- 6.1** The Supplier will provide the Services and/or Goods to TMHA for the price/rates specified in an Order.
- 6.2** Subject to the Supplier complying with its obligations under this agreement, TMHA will pay the Contractor/Supplier:
- (a) for work for which TMHA accepted a fixed sum, the fixed sum specified in the Order for the supply of the Services and/or Goods; and
- (b) for work for which TMHA accepted rates, the amount ascertained by multiplying the measured quantity of each item of the Services and/or Goods provided under this agreement by the rates specified in the Order for the relevant item.
- 6.3** Payment terms are 45 days from the end of month of the date of invoice and invoices are to be paid by electronic transfer to the Supplier's nominated bank account.
- 6.4** Unless otherwise stated in the Order, the prices are inclusive of GST. A party must pay GST on a taxable supply made to it under this agreement, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to the other party at or before the time that the other party is required to pay the GST.
- 6.5** The Supplier must not set off any amount TMHA owes it under this agreement against any amount that it owes TMHA under this agreement or under any other agreement or arrangement with TMHA.

**7 INTELLECTUAL PROPERTY**

- 7.1** The Supplier retains ownership of all its Intellectual Property Rights used in the supply of Goods and/or Services to TMHA and grants TMHA a royalty-free, non-assignable, revocable, licence to use its Intellectual Property Rights as part of the supply of the Goods.

**8 ASSIGNMENT & SUBCONTRACTING**

- 8.1** The Supplier may be entitled to subcontract the supply of all or any of the Services and/or Goods provided that the Supplier will remain principally liable for the supply of the Services and/or Goods. The Supplier must not subcontract without the prior written consent of TMHA.
- 8.2** The Supplier may not assign or transfer (in whole or in part) any of its rights or obligations under this agreement without

the consent of TMHA (which consent cannot be unreasonably withheld).

**9 COMPLIANCE**

- 9.1** Without limiting any other provision of this agreement, the Supplier warrants that it has and will:
- (a) comply with all reasonable requirements of TMHA;
- (b) comply with all Legislative Requirements;
- (c) comply with the laws relating to Chain of Responsibility; and
- (d) comply with all applicable employment and work health and safety Legislative Requirements.
- 9.2** The Supplier represents and agrees that as far as it is aware, no form of Modern Slavery is used in the Contractor/Supplier's business or by its directors, officers, employees, agents, representatives, contractors or subcontractors and it will comply with all applicable Legislative Requirements relating to Modern Slavery.

**10 INSURANCE**

- 10.1** Prior to commencement of this agreement, the Supplier must effect and maintain insurance of the nature, and of the amounts, specified in the Order or as required by law and must produce evidence to TMHA that the insurance required pursuant to this clause 10 has been effected and maintained.

**11 CONFIDENTIALITY**

- 11.1** The parties agree to keep confidential the Confidential Information of one another. The parties must not (and must ensure that their representatives do not) use, reproduce or disclose the Confidential Information of the other for any purpose except to the extent necessary to perform their respective obligations under this agreement.

**12 LIABILITY AND INDEMNITY**

- 12.1** Nothing in these terms excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This includes the Consumer Guarantees contained in the ACL.
- 12.2** The Supplier must indemnify, and keep indemnified, TMHA and its employees, representatives and agents (each an Indemnified Party) against all Loss (excluding Consequential Loss) suffered or incurred by an Indemnified Party arising out of or related to:
- (a) a breach by the Supplier or its personnel of any provision of this agreement; or
- (b) any negligent act or omission of the Supplier in connection with this agreement.
- 12.3** The Supplier accepts liability for any Loss (excluding Consequential Loss) arising from personal injury to TMHA's representatives and employees to the extent that it is caused or contributed to by a negligent act or omission of the Supplier in connection with this agreement.
- 12.4** The Supplier accepts liability for any Loss (excluding Consequential Loss) arising from damage to any property or equipment of TMHA (including TMHA Equipment) to the extent that it is caused or contributed by a negligent act or omission of the Supplier in connection with this agreement.
- 12.5** The liability of the Supplier for any Loss under or in connection with this agreement or the supply of the Services and/or Goods (whether based in contract, tort (including negligence), statute or otherwise) will be reduced to the extent that any acts or omissions of TMHA or its

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representatives or employees cause or contribute to that Loss.

- 12.6** Both parties expressly exclude any liability to the other party for any Consequential Loss suffered or incurred by the other party in connection with the supply of the Services and/or

**13 FORCE MAJEURE**

- 13.1** A party will not be liable for any failure to perform, or delay in performing, an obligation under this agreement if the failure or delay arose from a cause beyond its reasonable control. That party must give the other party notice of the cause as soon as possible after becoming aware of it and must take all reasonable steps to mitigate the consequences of the failure or the duration of the delay.

- 13.2** For the purposes of this clause, a cause beyond the reasonable control of a party' includes an act of God, war, terrorism, act of public enemy, blockade, revolution, riot, insurrection, civil commotion, lightning, storm, flood, fire, earthquake, explosion, embargo, strike, trade dispute or industrial action.

**14 DEFAULT & TERMINATION**

- 14.1** TMHA may cancel and refuse to pay for an Order in full or in part if any term of this agreement is not complied with by the Supplier.
- 14.2** Either party may immediately terminate this agreement by writing notice to the other party if the other party suffers an Insolvency Event.
- 14.3** TMHA may terminate this agreement by giving the Supplier 30 days' notice.

**15 MISCELLANEOUS**

- 15.1** This agreement contains everything the parties have agreed in relation to the matters it deals with and supersedes any prior understandings or arrangements made between the parties, whether orally or in writing.
- 15.2** This agreement is governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 15.3** In the event that any provision of this agreement is held invalid or unenforceable, the remaining provisions of this agreement will remain in full force and effect.
- 15.4** No variation of these terms will be of any force or effect unless made in writing and signed by both parties.

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