



Standard Trading Terms and Conditions Products Sale & Installation

1. Definitions and Interpretations

- a) "Levitate Lifting" and "Us" and "the Company" means Levitate Lifting Equipment Pty Ltd trading as Levitate Lifting and any business conducted under any registered business name of which Levitate Lifting is a proprietor.
- b) "Customer" and "Buyer" means any natural person or persons, partnership, corporation, joint venture or association (whether or not incorporated) to whom Levitate Lifting provides services pursuant to this agreement and in addition to any purchaser of goods and services which may include any person requesting same to be manufactured or supplied as agent for the ultimate recipient of the goods and services, a consignor or consignee of goods.
- c) "Consignor" means and includes any natural person, partnership, corporation, joint venture or association (whether or not incorporated) which sends goods on behalf of the customer or has a claim, entitlement or interest of any kind in the goods and any person signing a request for authorisation for carriage of goods is deemed to be the authorised agent of the consignor.
- d) "Goods" includes any manufactured or processed item of any description whatsoever, and specifically includes any device, machine, receptacle, container, packing material, pallet or the other item attached to or delivered with the goods.
- e) "Services" means anything done or to be done by Levitate Lifting in its capacity as supplier or manufacturer or vendor or servicer including the whole operation by Levitate Lifting.
- f) "Clear Funds" means cash or bank cheque or the receipt of clear funds to Levitate Lifting's bank account which has been verified by Levitate Lifting's bank as being clear funds or an order for payment or negotiable instrument which has been approved by Levitate Lifting's bankers as one upon which Levitate Lifting can immediately draw as cash without further recourse.

2. Governing Law and Submission to jurisdiction

All of the conditions and the contracts will be governed by and interpreted in accordance with the laws of the state of Victoria, Australia.

3. General

These Terms and Conditions (which may be subject to change or variation without notice) apply to all goods submitted to Levitate Lifting for repair or to the supply or manufacture of goods requested of Levitate Lifting and prevail over any conflicting or inconsistent work order, request or condition submitted by the customer and apply to the exclusion of any terms or conditions (whether written, verbal or to be implied) provided by the customer. The giving by the customer of any instructions to supply, manufacture, repair or deliver goods and the acceptance by the customer of delivery of goods (whether in part or whole) and any payment or promise to pay by the customer subsequent to Levitate Lifting's acceptance of the purchase order request constitutes an unqualified acceptance by the customer of these Terms and Conditions and unless expressly acknowledged by Levitate Lifting in writing no variation to these Conditions will be accepted or bind Levitate Lifting in any manner whatsoever.

4. Quotations

Any quotation or tender is open for acceptance by the customer provided such acceptance is communicated in writing to Levitate Lifting within thirty (30) days after the date of the quotation or tender or within such other period of time as Levitate Lifting may agree to in writing. If not accepted in writing by the customer within 30 days the quotation or tender will be deemed to have been withdrawn. Any contract arising from the acceptance by a customer of a quotation or tender is subject to approval by Levitate Lifting (whose decision is final) and any contract arising following approval by Levitate Lifting is subject to these Terms and Conditions.

5. Price Variations

Invoice prices quoted are for supply of the goods from Levitate Lifting's premises unless otherwise agreed in writing. Any price quoted does not include any of the following items which (if incurred by Levitate Lifting) will be paid by the customer to Levitate Lifting upon demand and are in addition to the price quoted: -

- a) Freight, insurance and other charges borne by Levitate Lifting or for which Levitate Lifting is liable by reason of or arising out of Levitate Lifting's compliance with any request by the customer or which results in delivery other than to the place specified or initially contemplated;
- b) Storage and packing costs;
- c) All increases in direct and indirect costs to Levitate Lifting after the date of the quotation without limitation and including rates of exchange, taxes, levies and imposts, license fees and the like, and expenses incurred as a result of any delay by the customer or the customer's obligation to obtain any license, permit, authority or other document required by law, any insurer or good commercial practice.

A certificate in writing by a person duly authorised by Levitate Lifting will be conclusive evidence of any increase in the contract price.

6. Seller may decline order

The Seller reserves the right, in its sole discretion, to decline any order or part thereof. Any order or part thereof not accepted is deemed cancelled. The Seller requires that any order of Goods be in writing.

7. No Cancellation

Orders cannot be countermanded, terminated or cancelled under any circumstances except with Levitate Lifting's prior written consent and only upon terms that the customer guarantees and indemnifies Levitate Lifting against all loss and damage of whatsoever nature and howsoever caused; Levitate Lifting may cancel any order, agreement or the like or suspend manufacture or completion at Levitate Lifting's sole discretion and Levitate Lifting reserves all rights to recover any loss or damage consequent upon any such cancellation or suspension due to any of the following circumstances or events: -

- a) in the case of death, incapacity, bankruptcy, administration or liquidation of customer;
- b) in the event that the customer suspends or delays payment including any part payment, progress payment or installment payment required pursuant to the agreement;
- c) in the event that the customer makes any agreement with creditors of the customer in circumstances where the customer is unable to pay its debts as and when those debts fall due;
- d) in the event the customer fails to make any payment in respect of any license, permit, authority, sales tax, tax of any other nature, levy, charge or fee, storage, handling, packing, freight or insurance fee or charge of and incidental to the manufacture or on-site installation.

8. Termination by the Seller

Without prejudice to any of its other rights, powers or remedies, the Seller may cancel any order for the delivery of Goods and terminate any contract governed by these Conditions if:

- a) the terms of payment for any Goods delivered to the Buyer by the Seller have not been strictly adhered to by the Buyer;
- b) the Buyer defaults under any of its obligations under these Conditions; or
- c) the Buyer becomes insolvent, commits an act of bankruptcy or, being a company, a liquidator, provisional liquidator, receiver, receiver and manager, administrator or official manager is appointed in respect of the Buyer, a mortgagee goes into possession of the Buyer's assets or business, an application is made to appoint a liquidator or to have the company wound up, the Buyer is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors or if anything analogous occurs in respect of the Buyer, in which case, the Seller will be released from all liability under the Contract.

The Seller will be entitled to payment for all Goods ordered up to the effective date of termination and is entitled to immediately invoice the Buyer upon termination of the Contract regardless of the delivery status. Termination of a Contract is without prejudice to the rights of the Seller accruing up to the date of termination.

9. Title to Goods

Notwithstanding any other provisions in these Conditions and notwithstanding that the Buyer has possession of the Goods, title to any



and all Goods supplied by the Seller will remain with the Seller and no legal or equitable interest or property in the Goods whatsoever will pass to the Buyer, until

the Buyer has paid the full invoice price for all Goods supplied by the Seller under all invoices. Until payment in full of all monies owing has been made to the Seller, the Buyer will hold the Goods in a fiduciary capacity and as bailee for the Seller and agrees to store the Goods in such a manner that they can be identified as the property of the Seller, and will not mix the Goods with other similar goods.

Until title passes the Buyer must:

- a) Refrain from encumbering the Goods;
- b) Store, mark and keep appropriate records for the Goods so that they can at all times be identified and distinguished as the property of the Seller and in particular must refrain from mixing the Goods with any Goods owned by the Buyer or any other person;
- c) Allow the Seller full and free access to the Buyer's premises where the Goods are located to retake possession of such Goods, if the Buyer is in any way in breach of these Conditions;
- d) Not dispose of the Goods unless all of the following conditions are satisfied:
- e) the Goods are disposed to a bona fide sub-purchaser in the ordinary course of the Buyer's business;
- f) no event as specified in clause 8 - a), b) & c) has occurred in respect of the Buyer; and
- g) the Buyer maintains records of all disposals of the Goods and permits inspection of the records by the Seller promptly upon request; and
- h) Hold such money received by the Buyer on account of the Goods as represents the amounts owing for such Goods in trust for the Seller in a separate bank account identified as the Seller's account and hold that money on trust for the Seller until the full amount due for the Goods has been paid.

The Buyer indemnifies the Seller against any claim, action, damage, loss, liability, cost, expense or payment which the Seller suffers, incurs or is liable for in respect of the Seller's exercise of its rights under this clause 9.

The Buyer will be responsible for the Seller's costs and expenses in exercising its rights under clause 9. Where the Seller exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Buyer against the Seller, any related company to the Seller, and any officers, employees, agents or contractors of the Seller.

Pending payment of all monies owing, the Buyer's right to sell the Goods in the ordinary course of its business will immediately cease on the happening of any of the following events:

- i) The Buyer ceases to be able to pay its debts as and when they fall due;
- j) The Buyer commits an act of bankruptcy or has a controller or trustee appointed in respect of its estate or any part of its assets;
- k) Execution is levied against any of the Buyer's possessions;
- l) A resolution is passed for, an application is made for, or the Buyer is placed in, liquidation, whether voluntary or otherwise;
- m) The Buyer's act or omission would entitle a receiver to take possession of any assets, or would entitle an external administrator to be appointed to it;
- n) The Buyer commits a material breach of any of the terms of this Agreement or any other agreement between the Buyer and the Seller;
- o) The Buyer purports to enter into a forward sale contract in respect of the Goods or value-added goods or purports to assign or factor the book debts due to it without the Seller's prior written consent, which consent may be withheld in the Seller's absolute discretion; or
- p) The Seller gives notice to the Buyer terminating its right to sell the Goods in the ordinary course of business.

The Buyer must ensure that no security interest (within the meaning of the PPSA) is created, exists or subsists over the Goods (including any replacement part or other item that is incorporated into any Goods), in the Buyer's possession or control prior to title to the Goods passing to the Buyer other than a security interest arising under this Contract.

10. Risk

Risk in the Goods passes to the Buyer on delivery of the Goods or on dispatch of the relevant invoice whichever is the earlier and from that time

the Buyer assumes all risk of loss and damage to the Goods including without limitation all loss or damage in the course of unloading the goods following delivery.

11. Acceptance

To the fullest extent permitted by law, the Buyer has five (5) business days from the delivery of Goods to accept or reject the Goods in writing and if the Buyer fails to notify the Seller within that period, the Buyer is deemed to have accepted such Goods.

12. Return of Goods

- a) The customer acknowledges that it is responsible for examining the goods supplied and/or manufactured by Levitate Lifting at the time of their delivery and satisfying itself about them, including but not limited to:
 - 1) their compliance with their description; and
 - 2) their condition, suitability and fitness for purpose
- b) Any claims for credit and/or refund must be made within five (5) days of delivery, after which Levitate Lifting reserves the right to reject such claims.
- c) Levitate Lifting reserves the right to charge a return and restocking fee of 25% of the costs of goods returned together with all transport charges paid or incurred by Levitate Lifting as a result of the returns.
- d) If Levitate Lifting has manufactured goods in accordance with the customer's specification, Levitate Lifting reserves the right to reject any claim for refund and/or credit. Levitate Lifting's liability is limited to any repairs necessary to ensure the goods are good condition and fit for their purpose.

13. Goods & Service Tax (GST)

All prices quoted by Levitate Lifting exclude goods and services tax, which the customer will pay to Levitate Lifting in addition to and at the same time as the price of the goods.

14. Payment

Payment is to be made strictly on delivery of goods unless otherwise agreed in writing between Levitate Lifting and the customer. If the invoice price is not paid by the due date, then interest will accrue on that amount from the date of delivery of the Goods until the price is paid in full. Interest will be paid at a rate of 12% per annum. Interest will accrue on a daily basis and be payable on demand.

15. Payment Default

If the Buyer defaults in payment or breaches Conditions of clause 14 then:

- a) the entire amount of the Buyer's outstanding debt will become immediately due and payable to the Seller without any need for the Seller to make written demand for such payment; and
- b) the Seller may do any one or more of the following:
 - 1) suspend any further deliveries;
 - 2) require the Buyer to deliver the Goods back to the Seller at the Buyer's cost;
 - 3) Charge interest in relation to paragraph 14; and
- c) The Buyer will be liable for all costs incurred by the Seller and the Buyer will indemnify the Seller against any loss, liability, charge, expense, outgoings or payment which the Seller suffers, incurs or is liable for in respect of the recovery of moneys owing by the Buyer to the Seller

16. Warranty and Liability

- a) Subject to any condition, warranty or right implied or imposed by the Competition and Consumer Act 2010 (Cth) (CCA) or any other law which cannot by law be excluded by Agreement, or any express provision in these Conditions, the Seller gives no warranties Regarding any Goods supplied save for what is contained in this clause 16 and all other Implied or imposed conditions, warranties and rights are excluded. Where any condition, Warranty or right is implied or imposed by law and cannot be excluded, the Seller limits its Liability for breach of that implied or imposed condition, warranty or right to the fullest Extent permitted by law.
- b) Subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, the Seller's liability for any breach of any implied or imposed condition, warranty or right in connection with the supply of



Goods is limited to one or more of the following (at election of the Seller):

- 1) replacement of the Goods or supply of goods equivalent to the Goods;
 - 2) repair of the Goods;
 - 3) payment of the cost of replacing the Goods or acquiring goods equivalent to the Goods;
 - 4) payment of the cost of having the Goods repaired.
- c) Subject to clauses 16 - a) and b) despite any implication arising from any other provisions of these Conditions:
- 5) to the fullest extent permitted by law, the Seller will only be liable for a safety defect (as defined in the CCA) in any Good if the Buyer notifies the Seller in writing of the safety defect (as defined in the CCA) in any such Good within five (5) business days after the date of receipt and the Seller accepts such liability;
 - 6) the Seller is not liable to the Buyer, its servants, agents or contractors, in contract, in tort (including negligence), under any statute (to the fullest extent permitted by law) or otherwise for, or in respect of, any indirect or consequential loss or damage including without limitation financial loss or expense including loss of opportunity, loss of profits or loss of goodwill suffered by the Buyer or any other person arising directly or indirectly out of or in in way attributable to the Goods, or their delivery, or the performance of the Contract for the sale of the Goods upon these Conditions even if that loss or damage was in the contemplation of the parties at the time of entry into the Contract; and
 - 7) the aggregate liability of the Seller in contract, in tort (including negligence), under statute (to the fullest extent permitted by law) or otherwise for, or in respect of, any loss or damage arising directly or indirectly out of or in in way attributable to the Goods, or their delivery, or the performance of the Contract will not exceed 10% of the amount payable to the Seller under the Contract.
- d) Where the Seller elects to replace the Goods, the Seller will credit the cost of the Goods being replaced and will replace them as soon as possible with other Goods of the same or equivalent kind at the price charged for the original Goods and otherwise upon the same terms and conditions as those to which the original Goods were subject.
- e) Time for delivery is given as accurately as possible, but it is not guaranteed and is subject to extensions to cover delay caused by strikes, work breakdowns, delay in transport, overseas shipping delays, fire or any other event beyond our control.
- f) The Seller provides a warranty for any defect in the Goods for faulty workmanship and material attributable for the Seller for a period of 12 months from the date of installation of the Goods (Warranty Period).

The warranty excludes:

- 8) the hoist rope, wire rope, CT wheel set, LT wheel set, brake discs, rectifier card, rope guide, equipment installed by others and any access Hire equipment. Access must be provided as stated in AS1418.1 2002 and AS1418.3 1997;
- 9) any equipment or parts not supplied by the Seller including any damage to Goods as a result of these equipment or parts or their malfunction;
- 10) fair wear and tear;
- 11) fading or staining;
- 12) damage caused by the improper installation to the Goods;
- 13) if the Goods have been altered or modified by anyone except the Seller;
- 14) if the Goods have been overloaded;
- 15) if there has been a failure to provide a property operating and working environment for the Goods;
- 16) if there has been any damage as a result of the Buyer relocating the Goods;
- 17) if there has been any accidents or misuse associated with the Goods; and
- 18) if the damage is caused by the Buyer

The faulty Goods must be returned to the Seller by prior written agreement with the Buyer. The cost of transportation of the Goods, including freight

must be prepaid by the Buyer. Rectification by us of such defects, by repairs or replacement of parts shall constitute fulfilment of this guarantee.

- g) The warranty in clause 16 - f) is conditional upon:
 - 19) the Goods being used on a 38-hour working week., single shift basis, and within the duty class of M4. unless specifically agreed otherwise in writing at the time of purchase;
 - 20) the Goods being serviced and maintained as stated in the latest Australian standards;
 - 21) the Buyer only allowing those personnel properly trained on the use and maintenance of the Goods to use, install or repair the Goods; and
 - 22) the person claiming under this guarantee is the Buyer.
- h) Any service calls will be within ordinary business hours.
 - 23) During the Warranty Period, if the Buyer believes that the Goods are defective, the Buyer shall notify Seller immediately upon discovery. The Seller may, at its option, repair or replace such defective Product. In the event that such Product cannot be repaired or replaced, Seller may refund or credit a portion of the Purchase Price paid by Buyer for such Goods upon return of relevant Goods by Buyer; provided, however, that following such refund Buyer shall have paid to Seller, in aggregate, the fair market value and agreed upon cost of use of the Goods for all times prior to the discovery of the defect. Upon repair or replacement of the Goods the Warranty Period shall not extend beyond the date of expiration of the original Warranty Period for the relevant Goods.
 - 24) In the event of repair, replacement or refund in respect of the Goods the Seller will not be liable for any loss of profit, consequential loss, business interruption, loss of damage to goodwill and / or expectation benefit to the Buyer or any liability of the Buyer to a third party.

17. Personal Property Security Act (PPSA)

- a) Unless the context requires otherwise, terms and expressions used in this clause have the meanings given to them in, or by virtue of, the Personal Property Securities Act 2009 (Cth) (PPSA).
- b) The Buyer grants the Seller a security interest in all Goods to which the Seller retains title under these Conditions.
- c) In consideration for the Seller supplying the Goods to the Buyer under this Agreement, the Buyer:
 - 25) grants to the Seller a security interest, and to the extent applicable, a purchase money security interest (PMSI) in respect of all Goods supplied by the Seller to the Buyer;
 - 26) agrees that the security interest and any PMSI granted will continue to apply to any Goods coming into existence or proceeds of sale of the Goods coming into existence;
 - 27) agrees to treat the security interest and any PMSI created under this Agreement as a continuing and subsisting security interest in the relevant Goods with priority over any registered or unregistered general (or other) security and any unsecured creditor before paid for in full;
 - 28) agrees that the security interest and any PMSI has attached to the Goods now or in the future supplied to the Buyer by the Seller;
 - 29) agrees, until title in the Goods pass to it, to keep all the Goods free and ensure all the Goods are kept free of any charge, lien or security interest except as created under this Agreement, and not otherwise deal with the Goods in a way that will or may prejudice any rights of the Seller under this Agreement or the PPSA; and
 - 30) agrees to execute any documents, provide all relevant information and co-operate fully with the Seller to ensure that the Seller has a perfected security interest and, if applicable, a PMSI.
- d) This Agreement constitutes a security agreement for the purposes of the PPSA with respect to any security interest or PMSI in relation to the Goods or any other collateral in relation to the Goods.



- e) The Seller reserves the right to register a financing statement under the PPSA in respect of the Goods. The Buyer agrees to reimburse the Seller for all costs and/or expenses incurred or payable by the Seller in relation to registering, maintaining or releasing any financing statement or any other document in respect of any security interest under this Agreement.
- f) The Buyer must:
- 31) promptly sign any documents and provide all information reasonably required by the Seller to register a financing statement or financing change statement on the Personal Property Securities Register or that the Seller may require in connection with such registrations;
 - 32) notify the Seller in writing of any proposed change to its name or address at least seven (7) days before the change takes effect;
 - 33) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register, releasing any goods from a security interest perfected by such registration or any other action taken by the Seller to comply with the PPSA (including complying with a demand given under section 178 of the PPSA) or to protect its position under the PPSA;
 - 34) not register a financing change statement in respect of a security interest without the prior written consent of the Seller; and
 - 35) immediately notify the Seller or any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales.
- g) Any time the Buyer makes a payment to the Seller, irrespective of whether the payment is made under or in connection with a particular supply of goods, the Seller may apply that payment in any manner and order it sees fit.
- h) Section 96 and 125 of the PPSA do not apply to the security agreement created by these Conditions.
- i) The Buyer waives its rights to receive a verification statement in accordance with section 157 of the PPSA.
- j) The Buyer:
- 36) waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4) and 135 of the PPSA and its rights as a grantor and a debtor under sections 142 and 143 of the PPSA; and
 - 37) agrees that where the Seller has rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 123 of the PPSA.

18. Intellectual Property and Confidential information

Levitate Lifting makes no representation or warranty that its specifications are precise and final. The customer acknowledges that variations may occur during concept design, improvement, product development, implementation, and manufacture, potentially leading to deviations from the initial or concept design in the ultimate construction of the goods. All plans, drawings, specifications, technical information, testing procedures, test results, data, and similar materials are deemed confidential and constitute the exclusive property of Levitate Lifting. These materials may not be disclosed, reproduced, or communicated to any party or utilized in a manner inconsistent with Levitate Lifting's rights of ownership, use, or license, and commercial interests, without the prior written authorization from a duly authorized officer of Levitate Lifting.