

Disclosure of Key Terms relating to the supply of goods or services to consumers

Section 47A Fair Trading Act 1987 (NSW) ("the Act")

Pursuant to section 47A of the Act, a supplier must, before supplying a consumer with goods or services in NSW, take reasonable steps to ensure the consumer is aware of the substance and effect of any term or condition relating to the supply of the goods or services that may substantially prejudice the interests of the consumer.

The following contains a summary of key terms in the attached Trading Terms between Minley Investments Pty Ltd (ACN 001 299 529) trading as Tara Forklift Services (Tara) (**Us, We, Our**) and the Customer (**You**), which You should be made aware of as per the requirements of the Act.

Words not defined in this summary have the same meaning as set out in the Terms:

1. **Clause 3.3 - Exclusion of Warranties**

This clause excludes all warranties not set out in the Terms or any other warranty document (to the extent possible) and makes clear that We are not liable to compensate you for:

- (a) Any increased costs or expenses you may incur;
- (b) Any loss of profit, revenue, business, contract 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.

2. **Clause 4 – Limitation of Liability**

This clause limits the remedies available to You if the Goods or services provided by Us are faulty, for example we may replace the Goods or provide a refund at our election.

This clause also seeks to limit the timeframe for any claim by You relating to the short delivery of Goods.

3. **Clause 14 – Indemnity**

This clause requires You to indemnify Us against any loss or damage We may suffer as a result of your breach of our Trading Terms, which means You will pay us any loss or damage We suffer.

4. **Clause 17 - Privacy**

This clause provides that You authorise Us to collect, retain and use any information about You for the purposes outlined in, and accordance with, our Privacy Policy and the National Privacy Principles

**Minley Investments Pty Ltd (ACN 001 299 529) trading as Tara Forklift Services
ACN 001 299 529
(Company)
Trading Terms and Conditions
For Sale of Goods and Supply of Services**

These Trading Terms & Conditions ("Terms") apply (unless otherwise previously agreed in writing) to the supply of Goods by the Company to a Customer from time to time. Any supply of Goods by the Company to the Customer made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by the Company ('Agreement') and any such supply does not give rise to a new or separate agreement.

1 Interpretation

In these Terms unless the contrary intention appears:

Additional Charges includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to the Company arising out of the sale of the Goods.

Consequential Loss means increased costs or expenses; loss of revenue; loss of profit or anticipated profit; loss of business; loss of business reputation; loss of opportunities; loss of anticipated savings; loss of goodwill; loss or expense resulting from a claim by a third party; special or indirect loss or damage of any nature whatsoever caused by the Company's failure to complete or delay in completing the order to deliver the Goods; and any other loss suffered by a party as a result of a breach of this Agreement that cannot reasonably be considered to arise directly and naturally from that breach.

Customer means the person to or for whom the Goods are to be supplied by the Company.

Force Majeure Event means any event outside the reasonable control of the Company including acts of God, war, riots, strikes, lock outs, trade disputes, break downs, mechanical failures, interruptions of transport, government action, pandemic, epidemic or any other cause whatsoever, whether or not of a like nature to those specified herein.

Goods means the goods sold to the Customer by the Company and includes any services provided by the Company to Customer.

Intellectual Property Right means any patent, registered design, patent, trademark, copy-right, trade secret or any other

proprietary right of a third party or parties, registered or unregistered, in any country.

PPSA means the *Personal Property Securities Act 2009 (Cth)*.

Purchase Price means the list price for the goods as charged by the Company at the date of delivery or such other price as may be agreed by the Company and the Customer prior to delivery of the Goods.

2 Order for Goods

- 2.1 An order given to the Company is binding on the Company and the Customer, if:
- 2.1.1 a written acceptance is signed for or on behalf of the Company;
 - 2.1.2 we communicate our acceptance (whether in writing or verbally); or
 - 2.1.3 the Goods are supplied by the Company in accordance with the order.
- 2.2 An acceptance of the order by the Company is then to be an acceptance of these Terms by the Company and the Customer and these Terms will override any conditions contained in the Customer's order. The Company reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on the Company until accepted by it.
- 2.3 An order which has been accepted in whole or in part by the Company cannot be cancelled by the Customer without obtaining the prior written approval of the Company, which it may refuse in its absolute discretion.

3 Warranties

- 3.1 No express warranties are given by the Company other than as set out in this document.
- 3.2 If the Customer is deemed to be a consumer pursuant to the Australian Consumer Law, then:

3.2.1 For Goods:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

3.2.2 For services:

Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value

You are also entitled to be compensated for any other reasonably foreseeable loss or damage.

If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

3.3 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms or in another warranty document given by the Company are excluded and the Company is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:

- 3.3.1 any increased costs or expenses;
- 3.3.2 any loss of profit, revenue, business, contracts or anticipated savings;
- 3.3.3 any loss or expense resulting from a claim by a third party; or
- 3.3.4 any special, indirect or Consequential Loss or damage of any nature whatsoever caused by the Company's failure to complete or delay in completing the order to deliver the Goods.

4 Limitation of Liability

4.1 The Company's liability is limited, to the extent permissible by law and at the Company's option, to;

4.1.1 in relation to the Goods:

4.1.1.1 the replacement of the products or the supply of equivalent products

4.1.1.2 the repair of the products

4.1.1.3 the payment of the cost of replacing the products or of acquiring equivalent products; or

4.1.1.4 The payment of the cost of having the products repaired

4.1.2 Where the Goods are services:

4.1.2.1 the supply of service again; or

4.1.2.2 the payment of the cost of having the services supplied again.

4.2 To the extent permitted at law, any claims to be made against the Company for short delivery of Goods must be lodged with the Company in writing within 7 days of the delivery date.

4.3 Requests for proof of delivery documentation are available for 90 days from month of invoice.

5 Delivery

5.1 The times quoted for delivery are estimates only and Company accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of Company.

5.2 Risk in accepting the Goods passes on delivery to/collection by the Customer.

5.3 All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.

5.4 To the extent permitted by law, we exclude all liability for any damage or loss caused to any goods owned by You during the delivery of such goods, except to the extent that such damage or loss was caused or contributed to by our Us.

6 Returns

- 6.1 Return of Goods will not be accepted by Company except by prior agreement in writing with Company. Any Goods accepted for return by the Company shall be at the Customer's expense and will be subject to a restocking charge to be determined by the Company upon acceptance of the Goods returned.
- 6.2 Goods returned must have been purchased from the Company, in a saleable condition and accompanied by the relevant invoice number.
- 6.3 No credit will be issued for Goods returned after 7 days from receipt or for custom ordered Goods.

7 Price and Payment

- 7.1 The Customer must pay the Purchase Price and the Additional Charges to Company.
- 7.2 If the Customer is in default, the Company may at its option withhold further Goods, deliveries or cancel a contract or refuse credit without prejudice to any of its existing rights.
- 7.3 Unless otherwise agreed in writing, all payments for Goods are due on or before the 30th day of the month following the month in which the Goods are invoiced ('the due date for payment'). Interest is charged at the benchmark interest rate advertised by the Australian Taxation Office for the financial year of which these Terms were entered into, for each month or part of a month from the due date until the date payment is received by the Company.
- 7.4 The Company reserves the right to increase the Purchase Price on fourteen (14) days' notice to the Customer if the scope of the Goods changes (including without limitation the scope of any services provided by the Company), or to capture increases in the cost of supplying the Goods, including but not limited to the increase in the cost of labour, parts and currency fluctuations. In the event of a price increase, the Client has the option within the 14 day notice period to accept the amended prices or cancel the order to the extent no Goods have been supplied. Upon expiry of the 14 day notice period the price variation will be deemed to be accepted by the Client.
- 7.5 In addition to any other rights under these Terms, a breach by the Customer of Clause **Error! Reference source not found.** shall entitle the Company to:

- 7.5.1 require immediate payment of invoices rendered by the Company to the Customer;
- 7.5.2 terminate this Agreement without prejudice to any existing rights accrued to the Company;
- 7.5.3 add to the Customer's account and require payment of all expenses and Additional Charges incurred as a consequence of the action taken by the Company to recover outstanding monies from the Customer;
- 7.5.4 add to the Customer's account a service fee of \$50.00 (excluding GST) together with all other charges in respect of any cheque not met upon presentation.

- 7.6 All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.
- 7.7 Payments should be made to the Company via direct debit or credit card (credit card processing fees incurred will be on-charged) or cheque. The Company is not liable for any loss or damage of any kind howsoever caused which is suffered or incurred by the Customer in connection with the use of a credit card or other debit device.

8 Intellectual Property

- 8.1 All branding and artwork provided by the Customer is the intellectual property of the Customer. Artwork and branding supplied will only be used for the purposes of satisfying these Terms.
- 8.2 Customer warrant that the use by the Company of any intellectual property provided by the Customer to the Company so that the Company may provide the Goods and/or services under these Terms does not infringe any Intellectual Property Rights.
- 8.3 Customer must indemnify and keep indemnified the Company against any and all liabilities, expenses, losses and/or damages including attorney's fees whether direct, indirect or consequential, arising from a third party, alleging that the Goods infringe the Intellectual Property Right of the third part due to the Company's use in the production of the Goods of any branding, artwork or other intellectual property provided to the Company by the Customer.

9 Retention of Title

- 9.1 Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with the Company until payment in full for the Goods and all sums due and owing by the Customer to the Company on any account has been made. Until the date of payment:
- 9.1.1 the Customer has the right to sell the Goods in the ordinary course of business;
- 9.1.2 the Goods are always at the risk of the Customer.
- 9.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
- 9.2.1 if any payment to the Company is not made promptly before the due date for payment;
- 9.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to the Company is dishonoured;
- 9.3 In the event of a default by the Customer, then without prejudice to any other rights which the Company may have at law or under this Agreement:
- 9.3.1 The Company or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
- 9.3.2 the Company may recover and resell the Goods;
- 9.3.3 if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, the Company may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of the Company and the Customer may be ascertained. The Company must promptly return to the Customer any goods the property of the Customer and the Company is in no way liable or responsible for any loss or damage to

the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.

- 9.3.4 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Company. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Company at the time of the receipt of such proceeds. The Customer will pay Company such funds held in trust upon the demand of Company.

- 9.4 Separately, Customer hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral (as defined in the PPSA) as original collateral, or any of it, in favour of the Company.
- 9.5 Ownership of all scrap or redundant material recovered or removed by the Company (including without limitation any such material replaced by any Goods) (**Scrap Material**), including without limitation any such Scrap Material owned by the Customer or forming part of their property, immediately passes to the Company unless agreed in writing by the parties and the Company may deal with such Scrap Material in any manner whatsoever. The Customer will not receive any payment or credit for any material (including the Scrap Material) discarded or retained by the Company in connection with any Goods (including any services) provided by the Company.

10 PPSA

- 10.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 10.2 The Company and the Customer acknowledge that these Terms constitute a Security Agreement and entitle the Company to claim:
- 10.2.1 a Purchase Money Security Interest ("PMSI") in favour of the Company over the Collateral supplied or to be supplied to the Customer as Grantor pursuant to these Terms; and

- 10.2.2a security interest over the proceeds of sale of the Collateral referred to in (a) as original collateral.
- 10.3 The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms.
- 10.4 The Proceeds of sale of the Collateral referred to in clause 10.2.1 falls within the PPSA classification of "Account".
- 10.5 The Company and the Customer acknowledge that the Company, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to the Customer pursuant to these Terms and in the relevant Proceeds.
- 10.6 To the extent permissible at law, the Customer:
- 10.6.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer to the Company.
- 10.6.2 agrees to indemnify the Company on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;
- 10.6.2.1 registration or amendment or discharge of any Financing Statement registered by or on behalf of the Company; and
- 10.6.2.2 enforcement or attempted enforcement of any Security Interest granted to the Company by the Customer;
- 10.6.3 agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;.
- 10.6.4 agrees to waive its right to do any of the following under the PPSA:
- 10.6.4.1 receive notice of removal of an Accession under section 95;
- 10.6.4.2 receive notice of an intention to seize Collateral under section 123;
- 10.6.4.3 object to the purchase of the Collateral by the Secured Party under section 129;
- 10.6.4.4 receive notice of disposal of Collateral under section 130;
- 10.6.4.5 receive a Statement of Account if there is no disposal under section 132(4);
- 10.6.4.6 receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- 10.6.4.7 receive notice of retention of Collateral under section 135;
- 10.6.4.8 redeem the Collateral under section 142; and
- 10.6.4.9 reinstate the Security Agreement under section 143.
- 10.6.5 All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

11 Liens

The Customer acknowledges that the Company may have a common law or statutory lien over the Goods. In the event that there is no such lien, the Customer agrees that the Company has a general lien over all Goods including the right to sell the same where the Customer is in default under these Terms.

12 On-Sale

The Customer agrees that upon the on-sale of any Goods to third parties, it will:

- 12.1 inform any third party involved of these Terms;
- 12.2 inform any third party of the Company's product warranties if any; and
- 12.3 not make any misrepresentations to third parties about the Goods.

13 Trustee Capacity

If the Customer is the trustee of a trust (whether disclosed to the Company or not), the Customer warrants to the Company that:

- 13.1 the Customer enters into this Agreement in both its capacity as trustee and in its personal capacity;
- 13.2 the Customer has the right to be indemnified out of trust assets;
- 13.3 the Customer has the power under the trust deed to enter into this Agreement; and
- 13.4 the Customer will not retire as trustee of the trust or appoint any new or additional trustee without first advising the Company.

14 Indemnity

- 14.1 To the full extent permitted by law, the Customer will indemnify the Company and keep the Company indemnified from and against any liability and any loss or damage the Company may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by the Customer or its representatives.
- 14.2 To the full extent permitted by law The Customer agrees to indemnify the Company on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis and debt collection costs incurred by the Company in connection with a breach of these Terms or where the Customer is in default under these Terms.

15 Force Majeure

- 15.1 The Company will not be liable for the consequences of any failure or delay in performing any of its obligations under these Terms to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.
- 15.2 If a Force Majeure Event arises, the Company will notify the Customer in writing of the Force Majeure Event and the likely impact it will have on the Company's performance under these Terms. If the Force Majeure Event affects the capacity of the Company to complete its material obligations under these terms in a timely manner, the Company may by notice to the Customer terminate this Agreement without any liability whatsoever on its part arising from that termination.

16 Changes to the Particulars of the Proprietors or Customer Business

- 16.1 The Customer hereby undertakes to give written notice to the Company within 7 days of any actual or proposed change to:
 - 16.1.1 the address of the business and the address at which the Goods will be located (if it differs to the business address);
 - 16.1.2 the trading name of the business;
 - 16.1.3 the person(s), the Directors, the Directors, the trustee or the partnership conducting the business; or
 - 16.1.4 the proprietorship of the business in that the business is converted into a trust or company or is sold to a trust or company

17 Privacy

- 17.1 You authorise Us to collect, retain and use any information about You for the purposes outlined in, and accordance with, our Privacy Policy and the National Privacy Principles.
- 17.2 You agree at all times to comply with the provisions of our Privacy Policy. You may request a copy of our Privacy Policy from Us at any time and it is also available here www.taraforklifts.com.au/privacy-policy.html

18 General

- 18.1 Neither party excludes or limits the application of any statute (including but not limited to the *Competition and Consumer Act 2010 (Cth) (CCA)* as amended from time to time and its schedule 2, the Australian Consumer Law), where to do so would contravene that statute or cause a provision of these Terms to be void. Any stated exclusion or limitation in this Terms is only to the full extent permitted at law.
- 18.2 These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.
- 18.3 These Terms contain all of the terms and conditions of the contract between the parties



and may only be varied by agreement in writing between the parties.

- 18.4 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- 18.5 No waiver of any of these Terms or failure to exercise a right or remedy by Company will be considered to imply or constitute a further waiver by Company of the same or any other term, condition, right or remedy.

Signature: _____

Position: _____

Date: _____