

## TERMS AND CONDITIONS OF SALE

1.1 All used vehicles, machinery, plant and equipment (all of which are collectively referred to as "Goods"), sold and supplied to you by International Earthmoving Equipment Solutions (the "Company") are sold and supplied on these terms and conditions. In these terms and conditions you are referred to as the "Customer".

1.2 These terms and conditions prevail over any prior agreement, arrangement or understanding and over any terms and conditions of the Customer, whether incorporated into the Customer's order or other instructions given to the Company, in relation to the supply and sale of Goods to the Customer by the Company ("order").

### 2. Quotations

Any quotation or estimate or price given by the Company is not an offer to sell or contract, and no order given to the Company following a quotation, estimate or price, or otherwise, will bind the Company until it is accepted by the Company in writing, in its absolute discretion. All quotations, estimates and prices are subject to withdrawal or variation by the Company at any time prior to acceptance of an order by the Company, as provided for below.

### 3. Offer & Acceptance

3.1 A binding contract will exist between the Company and the Customer immediately upon acceptance by a General Manager, Used Equipment Manager or authorised representative of the company. Every contract shall automatically incorporate and is subject to these terms and conditions.

3.2 In this clause "acceptance" means the earlier of:

3.2.1 when this document is signed, Goods are supplied or the order is filled; or

3.2.2 notification of acceptance is posted, faxed or emailed to the Customer.

3.3 The Customer's "terms and conditions" (however expressed) will not apply to any dealing or contract with the Company, and any endeavour to incorporate them into the contract between the Company and the Customer will be of no force and effect, irrespective of any reference to any such terms or conditions in the Customer's order, or otherwise.

3.4 The price or amount due and payable by the Customer for the Goods ("price") in any order will be the prevailing price charged by the Company for those Goods as applicable at the date and time when the Goods in question are delivered to the Customer, irrespective of the price stipulated in the order for those Goods, unless the Company otherwise agrees in writing.

3.5 In the event of any dispute as to the amount of the price, a certificate by the Company's General Manager, at the time shall be conclusive and binding on the Customer.

### 4. No Reliance

The Customer acknowledges, agrees and warrants that it has not entered into the contract incorporating these terms and conditions in reliance on any express or implied representation, warranty, promise or statement of any kind made by the Company, or on the Company's behalf, other than as expressly set out in the contract. The Customer warrants and represents that the Customer has made, and relies solely on, the Customer's own enquiries and inspections concerning the Goods. The customer acknowledges that they agree that the integrity of the purchase is satisfactory.

### 5. Payment – Non refundable deposit (unless otherwise agreed)

5.1 Payment for the Goods must be made to the Company in cleared funds before the Goods are delivered. A 25% deposit will be paid for the total invoice amount + GST on receipt of the official tax invoice by the customer and then the balance of payment will be made on goods arriving in to Delivery Port or as agreed with the company.

5.2 International Earthmoving Equipment Solutions reserves the right (may choose) to sell this machine to another party if the outstanding balance of the payment is not paid within 72 hours of the machine arriving in to Delivery Port. This can and will be done with without repayment of the initial deposit.

5.3 Where the Customer fails to pay to the Company any sum when due, the Company is entitled (without prejudice to any other remedies available to it, including the right to retake possession of the Goods) to charge interest, and the Customer must pay, on the amount unpaid at the rate which is 4% above the 30 day bank bill swap reference rate as published in the Australian Financial Review, or any equivalent source nominated by the Company from time to time, calculated daily and compounded monthly from the date of default to the date on which the amount is paid in full.

5.4 In addition, the Company is entitled to recover from the Customer, and the Customer must on demand pay, all costs and expenses incurred or to be incurred by the Company in connection with the recovery of any Goods not returned by the Customer and the recovery of any amount due by the Customer, including collection charges and legal costs, on a full indemnity basis. A certificate signed by an officer or General Manager of the Company stating the amount owing by the Customer, is conclusive evidence of that amount and is final and binding on the Customer. Any payments received by the Company following a default will be credited first against interest, then against costs and expenses and then in respect of the amount due for the Goods.

### 6. Trade-in

6.1 If noted in the contract, the payment for the Goods may be made in part, or in full, by the consideration noted for the Customer's trade-in, including all accessories and attachments. The customer warrants that the trade-in and accessories and attachments are owned by the customer outright and to be free from all encumbrances.

6.2 The amount to be allowed by the Company for the trade in will be that amount determined by the Company at the date when the trade-in is delivered to the Company with due regard to the state and condition of the trade in and the prevailing wholesale value of such trade in at the time of delivery to the company. If the Customer does not agree to the amount as notified, the Customer must within 24 hours of being notified of the amount give notice to the Company in writing cancelling the trade-in. In that event, the full amount due for the Goods must be paid in cash. If the Customer fails to give such notice in time, the Customer will be deemed to have accepted the stipulated amount for the trade-in.

### 7 Delivery

7.1 The Company will endeavour to deliver the Goods at the first available opportunity. The Company will notify the Customer when the Goods are available for delivery.

7.2 The Customer will have no claim of any kind against the Company for any late delivery or non-delivery, for whatever reason.

7.3 The Customer must take delivery of the Goods within 7 days of the Company notifying the Customer that the Goods are available for delivery.

7.4 If the Customer fails to take delivery within 7 days of notification by the Company, the Company may terminate the contract by written notice to the Customer, whereupon any deposit paid will be forfeited to the Company and the Company will be entitled to claim as and by way of pre-estimated agreed liquidated damages from the Customer a sum equal to 15% of the total price of the Goods, less any deposit forfeited.

7.6 Delivery of the Goods will take place at the Company's premises. If the Customer requests, and the Company agrees, the Goods may be delivered at a place other than the Company's premises. Where the Goods are to be delivered at a place other than the Company's premises the Customer must pay all costs and expenses incurred, or to be incurred, in connection with that delivery and the Customer agrees to and must indemnify and hold harmless the Company from any claim, loss or damage of any kind incurred, suffered or made directly or indirectly arising from, in connection with, or as a consequence of with such delivery.

7.7 Save as otherwise agreed in writing, delivery will be deemed to have occurred when the keys for the goods are handed to the Customer, or its representative, and in the case of no keys, when loading of the Goods

commences, and in the event of any unresolved dispute as to the time of delivery, delivery will be deemed to have occurred, at the time when the Goods leave the Company's premises, irrespective of who is in control of the Goods at that point.

7.8 If the INCOTERM is stated then the International Chamber Of Commerce (ICC) Incoterms® Rules 2010 apply (<https://iccwbo.org>).

### 8 Risk

8.1 Risk in the Goods passes to the Customer on delivery. The Customer must insure the Goods for their full replacement value from the time that risk in the Goods passes to the Customer until the time that title in the Goods passes to the Customer. Irrespective of any insurance cover, the Customer must indemnify the Company and hold the Company harmless from any claim, loss or damages of any kind, howsoever arising in respect of, or in connection with the Goods once the risk has passed until the time when title in the Goods passes to the Customer.

8.2 If the INCOTERM is stated then the International Chamber Of Commerce (ICC) Incoterms® Rules 2010 apply (<https://iccwbo.org>).

### 9 Retention of Title

9.1 Title, property and ownership in any Goods sold or supplied will not pass to the Customer but will remain in the Company until payment of the purchase price of the Goods and of all other amounts owing by the Customer to the Company has been made in full, in cleared funds. Until such time the Customer:

(a) holds the Goods as bailee and fiduciary agent for the Company;

(b) must store the Goods separately from all their property possessed by it in a way which makes the Goods readily identifiable as being Goods belonging to the Company;

(c) must not affix the Goods to any item of real or personal property without the prior written consent of the Company.

9.2 The Customer must not sell the Goods unless and until title to the Goods has passed to the Customer.

9.3 Notwithstanding paragraph 9.2 above, if the terms of the order accepted by the Company provide that the Goods, or any of them may be on-sold by the Customer, then although title to the Goods has not passed to the Customer (and is retained by the Company as provided for above), the Customer may sell such Goods in the ordinary course of the Customer's business, provided that the Customer:

(a) keeps full and complete separate records of all such sales; and

(b) pays the proceeds of every sale into a separate bank account and holds the proceeds of every such sale as trustee for the Company until all amounts owing by the Customer to the Company from time to time have been paid in full.

9.4 If the Customer:

(a) breaches any provision of these terms; or

(b) fails to pay any amount owing to the Company by its due date; or

(c) enters into, or proposes to enter into, a compromise of any kind with any creditor, or any steps are taken to enter into a scheme of arrangement, deed of company arrangement, or composition or compromise with any creditor or creditors, or it proposes a moratorium, reorganisation or other administration or arrangement involving any creditor; or

(d) takes any steps to obtain protection, or is granted protection, from its creditors, or any of them, under any applicable legislation; or

(e) stops payment of its debts, or ceases, or threatens to cease, to carry on any of its businesses; or

(f) has judgement of more than \$1,000.00 entered against it in any Court and it is not satisfied or set aside within 14 days; or

(g) has any credit or financing arrangements and an event or circumstance occurs which entitled a person to cancel, terminate or demand repayment of any credit or financial accommodation extended to the Customer, or to exercise any right under any security for such credit or financial accommodation; or

(h) is a company which is not listed on a recognised Australian Stock Exchange and there is a change in the ownership (at the date of this contract) of more than 20% of the issued voting shares in the Customer, or if the Customer is a listed company and there is a change in the control of the Customer; or

(i) is a company and in the opinion of the Company there is a change in the persons who control the Customer or in the principle activities of the Customer; or

(j) has a receiver, receiver and manager or controller (as defined in the Corporations Act) appointed in respect of all or any of the Customer's assets; or

(k) has an administrator appointed in respect of the Customer; or

(l) has any resolution to wind up the Customer proposed or an application is made to a court for the winding up of the Customer; or

(m) has any action taken which could result in the Customer becoming "an insolvent under administration" within the meaning of section 9 of the Corporations Act; or

(n) is unable to, or fails to, pay its debts as they fall due, or is, or states that it is, insolvent, or is deemed or presumed insolvent under any applicable legislation; or

(o) if any other event occurs or circumstances arises, financial or otherwise, which in the opinion of the Company is likely to materially affect the ability of the Customer to meet its obligations to the Company, then:

(i) all amounts owing by the Customer immediately become due and payable without notice, irrespective of any credit arrangements;

(ii) the Customer must immediately pay to the Company the proceeds of the separate bank account, or which have been held by the Customer in trust for the Company;

(iii) the Company is immediately entitled to retake possession of all Goods then in the possession or under the control of the Customer;

(iv) where the Company has supplied and fitted parts and materials to a machine, the Company may take possession of the entire machine in question (and remove the machine to the Company's premises) for the purposes of removing the Company's parts and materials from the machine; and

(v) the Company may sell such Goods.

9.5 For the purposes of enabling the Company to retake possession of the Goods and in conjunction with these terms and conditions, the Company is irrevocably authorised by the Customer to enter the Customer's premises in which the Goods are located and the Customer irrevocably appoints the Company as its agent to enter any premises not owned by the Customer and in which any Goods may be located from time to time.

9.6 The Customer, or anyone claiming under or through the Customer, shall not have any claim of any kind howsoever arising against the Company, or any of its servants or agents, as a consequence of any act or omission under this clause and the Company is not obliged to restore the machine after removing the Company's parts and materials.

9.7 The provisions of this clause apply notwithstanding any arrangement between the Company and the Customer, whether set out in these terms or not, whereby the Company grants (or has granted) to the Customer credit for the purchase of the Goods.

### 10 Claims

10.1 The Customer must inspect the Goods upon delivery and if the Customer believes the Goods are damaged,

incorrect or otherwise not in conformity with the Customer's order, the Customer must give written notice to the Company, setting out full details, within 24 hours of delivery. If the Company has not received any written notice from the Customer within that 24 hours period, the Customer is deemed to have accepted the Goods and the Customer waives and abandons any claim against the Company in respect of those Goods that the Customer has or may have.

10.2 Where a written notice is given to the Company within 24 hours as provided for above, the relevant Goods must be returned to the Company at the Customer's cost in the condition they were in at delivery (and in the case of packaged Goods, in their original packing) and with the original invoice within seven (7) days of the notice, and the Company may, but is not obliged to do so, in its absolute discretion, repair the Goods, credit to the Customer the price of the returned Goods, or replace the Goods.

### 11 Liability

Except to the extent implied by law, or as set out elsewhere in the contract, the Company gives no express warranty in relation to Goods sold and supplied to the Customer and the Customer acknowledges that it has not relied on any representation or warranty made by or on behalf of the Company. The Company will notify the Customer of any applicable manufacturers' warranty in relation to the Goods. To the extent permitted by law, the Company's entire responsibility with respect to any warranties for the Goods is to pass on to the Customer the benefit of any such manufacturer's warranties. To the extent permitted by law, the manufacturer's warranties are in substitution for all other terms, conditions and warranties, whether implied by statute or otherwise and all such terms, conditions and warranties are expressly excluded. Certain legislation may imply conditions and warranties into these terms. To the extent that any conditions and warranties can be excluded lawfully, all such conditions and warranties are excluded. The liability of the Company under or arising out of the sale and supply of Goods, for breach of any term, condition or warranty implied or imposed upon the sale or supply of Goods by law is limited, at the option of the Company:

(a) in the case of Goods:

(i) to the replacement of the goods or the supply of equivalent goods;

(ii) to the repair of goods;

(iii) to the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(iv) the payment of the cost of having the goods repaired.

Except as expressly provided above, the Company is not under any liability to the Customer in respect of any loss or damage (including consequential or indirect loss or damage or loss of profits) howsoever caused which may be suffered or incurred or which may arise directly or indirectly in respect of Goods or the failure of the Company to comply with the contract.

### 12 Warranty - No Used Equipment Warranty

For the avoidance of any doubt, all equipment is sold by the Company to the Customer on an "as is where is" basis. This means that the Company makes no representations about the state of the equipment it sells to the Customer. The Company has not warranted that it would be free from defects in material and workmanship. This is normal industry practice and the Customer specifically acknowledges the acceptance of this term at the time of purchasing the used equipment.

### 13 Force Majeure

The Company is not obliged to perform any obligation pursuant to the contract to the extent and for the period that, by reason of any fact, circumstance, matter or thing beyond the Company's control, the Company is unable to perform, in whole or in part, that obligation.

### 14 Goods & Services Tax

Unless otherwise stated expressly all prices are exclusive of Goods and Services Tax and the Customer must on demand pay to the Company, and the Company reserves the right to recover from the Customer, all Goods and Services Tax payable in respect of the supply of the Goods to the Customer.

### 15 Law & Jurisdiction

The contract is governed by and will be construed in accordance with the laws of Western Australia and the parties consent to the jurisdiction of the Courts of that State.

### 16 Privacy Statement

In carrying on its business the Company collects personal information about its customers. This personal information may include a customer's name, street and postal address, telephone and fax numbers and bank account details. The Company respects the privacy of its customers and is committed to protecting their personal information. The Company collects personal information in order to provide and market its services to its customers. The Customer agrees that personal information collected by the Company may be disclosed to other entities related to the trustee for the TGM Trust. The Customer has the right to access most personal information collected about it and may request the Company to access or change any personal information which the Company holds.

### 17 Changes to Terms

The Company reserves the right to change these terms and conditions at any time and the Customer acknowledges and agrees that written notice to the Customer given by ordinary mail is deemed to be sufficient notice of any change and will bind the Customer in respect of any supply of Goods after the date of deemed notification.

### 18 Notices

In addition to effective service pursuant to any statute, any notice or other communication in writing to the Customer at the address on the Customer's Order (or such other address authorised by law) will be deemed to have been duly served on and received by the Customer:

- *if it is delivered*, when it is left at the relevant address;

- *if it is sent by post*, 1 day after it is posted;

- *if it is sent by fax*, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the Customer's fax number.

- *if it is sent by e-mail*, as soon as its receipt is acknowledged by the party to whom it is sent. Any notice or communication may be effectively given by the Company or its solicitors.

### 19 Miscellaneous

If the Customer is more than one person, each person shall be jointly and severally liable to the Company. A failure by any party to execute, or to properly execute, or to be bound by, any order or this contract shall not relieve any other party of liability under the contract. The Customer is liable for any stamp duty that may be payable on, or as a consequence of, this contract.

### 20 Severability

If any part of the contract is void or unenforceable, that part is severable from this Agreement to the intent that the parts