

Terms and Conditions of Sale

Lomax Hoarding and Fencing System Pty Ltd ACN 604 219 712

1. Definitions and Interpretation

In this Agreement:

Agreement means the agreement between the Supplier and the Customer relating to the sale of Equipment and supply of Consumables, comprising these Terms and Conditions and each Order.

Consumables means the consumables (if any) set out in an Order.

Consumer Guarantees means the non-excludable rights under Schedule 2 of the *Competition and Consumer Act 2010* (Cth) as amended and any replacement or successor legislation.

Customer means the person, company or other legal entity purchasing Equipment and being supplied Consumables (if applicable) from the Supplier pursuant to an Order.

Engineer Pre-Certified Guidance means the LOMAX Hoarding and Fencing System engineer pre-certified guidance prepared by the Supplier from time to time.

Equipment means the LOMAX Hoarding and Fencing System equipment purchased by the Customer pursuant to an Order, but excludes the Consumables.

GST has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended.

Privacy Laws means the *Privacy Act 1988* (Cth) as amended, the Australian Privacy Principles established under that Act, and any other requirement under Australian law relating to the handling of personal information.

Order means a Quote which is accepted by the Customer by signing and returning it to the Supplier.

Quote means a sales quote form provided by the Supplier to the Customer in relation to the sale of Equipment and (if applicable) Consumables.

Supplier means Hoarding Ideas Pty Ltd ACN 604 219 712.

2. Terms of sale

- 2.1 These Terms and Conditions of Sale, together with an Order in respect of Equipment and Consumables, constitute the whole contract between the Supplier and the Customer, and supersede all previous communications either oral or written, in relation to that Equipment and Consumables.
- 2.2 No terms or conditions incorporated or attempted to be incorporated by the Customer in relation to the sale of Equipment or Consumables amends or varies any terms of this Agreement, unless expressly agreed in writing by a duly authorised officer of the Supplier.
- 2.3 The Supplier agrees to sell the Equipment and the Consumables to the Customer, in accordance with an Order for that Equipment and Consumables.
- 2.4 In order to purchase Equipment and Consumables, the Customer must request a Quote from the Supplier. The Customer may accept a Quote by signing and returning it, and any other form reasonably required by the Supplier and notified by the Supplier to the Customer from time to time, to the Supplier whereupon it becomes an Order. Each Order does not constitute a separate agreement, but all Orders form part of this Agreement.
- 2.5 By signing and accepting a Quote, the Customer agrees that the Customer has had sufficient opportunity to read this Agreement and the Quote and agrees to be bound by it.

3. Payments

- 3.1 The Customer agrees to pay to the Supplier the fees and charges for the Equipment and Consumables as set out in the Order for that Equipment and Consumables, and in accordance with the payment schedule set out in that Order. The Customer must also pay all applicable GST, stamp duty and other duties, tolls, fines, penalties, levies, and freight and other charges relevant to this Agreement, and the purchase of the Equipment and Consumables.
- 3.2 All payments made by the Customer pursuant to an Order must be paid in the manner, and to the account, specified in the Order. A failure to receive an invoice from the Supplier does not relieve the Customer from liability to make a payment when due under this Agreement. Ownership of the Equipment remains with the Supplier until all payments set out within the Order are made.
- 3.3 If the Customer cancels an Order prior to delivery of the Equipment and Consumables, the Customer agrees to pay to the Supplier, on demand, all expenses incurred by the Supplier up to the time of cancellation, plus any additional charges incurred in respect of the cancellation.
- 3.4 The Customer is liable for the cost of recovery of amounts owed to the Supplier in connection with this Agreement, including the cost of any outsource debt recovery provider.

4. Delivery

- 4.1 Where specified in an Order, the Supplier may subcontract the delivery of the Equipment and/or Consumables to a third party.

- 4.2 Customer may collect the Equipment and/or Consumables the subject of an Order at the times and places specified in the Order or as otherwise agreed with the Supplier.

5. Receipt of Equipment and Consumables

- 5.1 The Customer must provide written notice to the Supplier immediately upon delivery if the Equipment and/or Consumables do not correspond in all respects with the Order relating to that Equipment and/or Consumable. If the Customer does not provide such notice, the Customer agrees that the Equipment and Consumables (as the case may be) correspond in all respects with the Order relating that Equipment and/or Consumables.

6. Use of the Equipment and Consumables

- 6.1 The Customer is entitled to use the Equipment and Consumables subject to the terms of this Agreement.
- 6.2 The Customer agrees that the use of the Equipment and Consumables carries with it dangers and risks of injury, and that the Customer agrees to accept all dangers and risks in connection with its use of the Equipment and the Consumables.
- 6.3 The Customer must maintain the Equipment in good condition and must not, alter, damage, make additions to, or deface the Equipment, or any of its logos, marks, numbers, or identifying particulars, without the Supplier's prior written consent.
- 6.4 The Customer must ensure that the Equipment and the Consumables are not used by anyone other than the Customer, the Customer's authorised personnel, or the Customer's clients, without the prior written consent of the Supplier.
- 6.5 The Customer agrees to install, use, erect, dismantle, move, maintain and store the Equipment and the Consumables, and agrees to procure its clients also do so, in accordance with the Engineer Pre-Certified Guidance, technical guides, guidelines, instructions, specifications and any other material provided by the Supplier to the Customer from time to time. The Customer agrees only to use the Equipment and the Consumables for their intended purpose as notified by the Supplier.
- 6.6 The Customer must ensure that all persons installing, using, erecting, dismantling, moving, maintaining or storing the Equipment and/or the Consumables:
 - (a) do so with due care, and in a proper manner;
 - (b) strictly follow the Engineer Pre-Certified Guidance, and any technical guide, guidelines, instructions, specifications and/or other material provided by the Supplier from time to time;
 - (c) are instructed in its safe and proper use, erection, dismantling or movement; and
 - (d) where required by applicable regulatory requirements, hold valid proof of current training or are currently fully licenced and insured to undertake such activity.
- 6.7 The Customer must comply with all applicable health and safety laws and regulations in addition to all relevant industry best practice, custom and standards relating to the use of the Equipment, the Consumables, and associated operations.
- 6.8 The Customer must not claim any damages or compensation from the Supplier for any liability incurred by the Customer in relation to the use of the Equipment or the Consumables.
- 6.9 The Supplier is not liable for any costs, damages, loss or expenses relating to or arising from:
 - (a) the Customer's non-adherence to the Engineer Pre-Certified Guidance, or any technical guide, guidelines, instructions, specifications and/or other material provided to the Customer by the Supplier;
 - (b) the Customer's non-adherence to normal maintenance requirements that could reasonably be expected of the Customer under this Agreement;
 - (c) loading or offloading the Equipment and/or Consumables from any vehicle, the transportation of the Equipment and/or Consumables on any vehicle, or the use of the Equipment and/or Consumables on any vehicle;
 - (d) any loss or damage during all forms of transport; or
 - (e) any loss or damage caused or contributed to by the negligent act or omission of the Customer or the Customer's clients.

7. Intellectual property

- 7.1 All intellectual property rights relating to the Equipment remain the property of the Supplier.
- 7.2 The Customer agrees not to use any intellectual property rights of the Supplier (including in any trade marks or patents) except with the prior written approval of the Supplier, or (in relation to the Equipment) except to the extent such intellectual property rights are incorporated in the Equipment and the Equipment is used in accordance with this Agreement.

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7.3 The Customer agrees not to make, or incite, encourage or cause any other person to make, or authorise to make, any statement which is calculated or reasonably likely to harm or damage the reputation of the Supplier, or officeholder, employee or contractor of the Supplier, or the Equipment or any Consumables, or cause harm or damage to the Supplier or its business.

8. Customer warranties

8.1 The Customer warrants to the Supplier, and it is a condition of this Agreement, that:

- (a) the Equipment will only be installed, used, erected, dismantled, moved, maintained and stored in accordance with the Engineer Pre-Certified Guidance, technical guide, guidelines, instructions, specifications and/or other material provided to the Customer by the Supplier from time to time;
- (b) the Customer holds a valid current licence (if any licence is required) in respect of use, erection, dismantling and movement of the Equipment and the Consumables;
- (c) the Equipment and the Consumables will not be used for any illegal purpose or any purpose other than their intended purpose;
- (d) the Customer will not, without the prior written consent of the Supplier, tamper with, repair or modify the Equipment or the Consumables in any way, or permit another to do so; and
- (e) unless notified in writing to the Supplier immediately upon receipt by the Customer, the Equipment has been received by the Customer in clean and in good working order.

8.2 The Customer further warrants that:

- (a) it has the power and capacity to enter into and perform this Agreement, and has obtained all approvals and authorisations necessary for it to enter into and perform its obligations under this Agreement; and
- (b) any person signing any documentation on behalf of the Customer in relation to this Agreement is authorised to bind the Customer.

8.3 The Customer indemnifies and holds harmless the Supplier against all losses, damages, costs, expenses and claims incurred by the Supplier as a result of any breach by the Customer of this clause 8.

9. Limitation of liability

9.1 Except where non-excludable rights under the Consumer Guarantees apply in relation to the manufacture or sale of Equipment or supply of Consumables by the Supplier under this Agreement, the Supplier:

- (a) excludes all representations and warranties, including as to merchantability and fitness for purpose, relating to the Equipment and Consumables, whether expressed or implied by law, trade, custom or otherwise;
- (b) excludes liability for any loss, damage, cost and expense incurred in connection with the Equipment and Consumables; and
- (c) otherwise limits its liability in respect of the Equipment and Consumables, the Engineer Pre-Certified Guidance, technical guides and any related guidelines, instructions, specifications or other material provided to the Customer, whether in contract, tort (including negligence), statute or otherwise, to the cost of repairing the Equipment or Consumables (as the case may be) or the cost of resupplying the Equipment or Consumables (as the case may be), at the sole discretion of the Supplier.

9.2 To the extent permitted by law, the Supplier excludes all liability for any loss of profits, loss of anticipated savings, loss of contract, loss of opportunity, economic loss or interruption of business, or for any indirect or consequential loss (**Consequential Loss**) arising in connection with the Equipment and Consumables, or this Agreement, and Customer must indemnify the Supplier for against any claim made against Supplier for any Consequential Loss.

9.3 The Supplier excludes any liability to the Customer or any other person for any liability, loss, damage, cost or expense incurred as a result of the Customer or any other person not using the Equipment or Consumables in accordance with the Engineer Pre-Certified Guidance or any technical guide, guidelines, instructions, specifications or other material provided to the Customer from time to time.

9.4 The Customer assumes all risks and liabilities for, and in respect of, the Equipment and the Consumables, and for all injuries to or death to persons and any damage to property, howsoever arising from the Customer's or the Customer's client's possession, installation, use, maintenance, repair, movement, dismantling, storage or transport of the Equipment and/or the Consumables.

9.5 If there is any delay or failure in the supply of the Equipment or Consumables due to weather, fire, labour dispute, strike, acts of God or any other cause whatsoever beyond the reasonable control of the Supplier, or due to the inability of the Supplier to obtain materials from third parties in the quantities required or at the times reasonably expected:

- (a) the Supplier is not liable for any loss, damage, cost or expense incurred by reason of that delay or failure;
- (b) the Supplier is entitled to suspend performance for such period as it thinks fit, or terminate the Agreement between the Customer and the Supplier, and will not be liable for any loss, damage, cost or expense incurred by reason of such suspension or termination; and
- (c) if that delay or failure continues for more than 7 days, the Customer may give notice that the Order is cancelled. A delay or failure does not relieve the Customer of the obligation to pay all reasonable expenses incurred in respect of the cancellation.

10. Privacy

10.1 The Customer authorises the Supplier to collect, store, use and disclose information about the Customer for the Supplier's business purposes, including the sale and hire of Equipment (including whether to allow credit on the Customer's account), reporting information to any credit agency, marketing the Supplier's ideas, goods and services, and enforcing any rights under this Agreement.

10.2 The Customer expressly consents to receiving commercial electronic messages from the Supplier and its agents for the purposes of the *Spam Act 2003* (Cth). The Customer may withdraw its consent at any time by notifying the Supplier in writing.

10.3 The Supplier agrees to comply with the Privacy Laws applicable to its dealings with the Customer.

11. GST

11.1 If any supply by the Supplier to the Customer under or in connection with this Agreement is subject to GST, the Customer must pay to the Supplier in addition to the consideration for that supply (unless it expressly includes GST) an amount (**additional amount**) equal to the amount of the consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

11.2 The Customer must pay the additional amount to the Supplier at the same time as the consideration for the supply is payable.

11.3 In this clause 11, the terms 'tax invoice', 'GST', and 'GST exclusive market value' have the respective meanings as set out in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

12. General

12.1 The Supplier may amend these conditions in its absolute discretion by providing at least 30 days' prior written notice to the Customer, and provided that any such amendments do not affect Orders placed, or the Customer, and any accrued rights, liabilities and obligations, prior to those amendments taking effect.

12.2 The Customer must not assign, transfer or otherwise deal with its rights or obligations under this Agreement without the Supplier's prior written consent.

12.3 The Supplier may, at its discretion, enter into a subcontract relating to this Agreement or assign its rights under this Agreement.

12.4 A waiver of any rights under this Agreement must be in writing signed by the party entitled to the benefit of that right, and is effective only to the extent set out in that written waiver.

12.5 This Agreement sets out the entire agreement between the Supplier and the Customer in relation to the sale of Equipment and supply of Consumables by the Supplier to the Customer. The Supplier is not bound by, or liable for, any statement, representation, promise, or understanding that is not expressly set out in this Agreement.

12.6 If any terms of this Agreement is invalid, void or voidable, that term will be severed and the remainder of the terms of this Agreement will continue to have full force and effect.

12.7 This Agreement and any Order may be executed in counterparts.

12.8 This Agreement is governed by and is to be construed in accordance with the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and their courts of appeal.