

Terms and Conditions of Sale

1. DEFINITIONS

"**Agreement**" means these terms, and includes the Quote and other documents between the Company and the Customer relating to the sale of the Equipment.

"**Business Day**" means a day that is not a Saturday, Sunday or public holiday in Brisbane.

"**Company**" means any or all entities in the Lincom Group including Lincom Pty Ltd ABN 81 064 383 848, Powerscreens Australasia Pty Ltd ABN 88 081 849 041, Lincom Pacific Equipment Pty Ltd ABN 37 090 881 511, Recycling Systems Australia Pty Ltd ABN 79 124 113 579, Lincom Equipment Rentals Pty Ltd ABN 29 098 990 919, Lincom Earthmoving Equipment Pty Ltd ABN 89 127 081 038, Morbark Pacific Pty Ltd ABN 15 140 558 765 and Thor Australasia Pty Ltd ABN 87 134 700 262.

"**Customer**" means the party or parties named in the Quote as the "Customer", its representatives, administrators and successors, and where more than one, each and all of them jointly and severally.

"**Equipment**" means the equipment supplied by a Company to the Customer including parts of equipment supplied from time to time.

"**ex Works**" means out of the premises at 92 Potassium Street, Narangba, Queensland or such other premises advised by the Company to the Customer from time to time.

"**GST**" means the goods and services tax under the GST Act.

"**GST Act**" means A New Tax System (Goods and Services) Tax Act and includes other GST related legislation.

"**Losses**" includes all loss and damages (including consequential loss or damage), cost and expenses of any nature whatsoever.

"**Quote**" means the document under which the price for the Equipment is quoted to the Customer.

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

"**Sale Price**" means the sale price of the Equipment, expressed in the Quote or other document between the Company and the Customer.

"**Site**" means the location to which the Equipment will be transported.

2. SUPPLY OF EQUIPMENT AND INVOICING

These terms apply to any or all dealings between the Customer and each Company for the sale of the Equipment, and any reference to "Company" in these terms and conditions shall be taken to refer to the relevant Company that is supplying the Equipment to the Customer.

3. PAYMENT

- (a) The Customer must pay the Sale Price and deliver any trade-in together with existing registration and insurance (if any) to the Company, without set-off or counter-claim.
- (b) The Sale Price is due and payable in full on delivery of the Equipment or no later than 5 Business Days from the date the Company notifying the Customer that the Equipment is available for delivery, whichever is earlier. If the Customer fails to make payment, then (without prejudice to any other rights of the Company) the Company may:
 - (i) suspend deliveries to be made to the Customer;
 - (ii) terminate this Agreement, and at its election any other agreement with the Customer, and claim damages for breach.
- (c) The Customer must pay, in addition to the Sale Price, the cost of all modifications to the Equipment, mobilisation, demobilisation and commissioning of the Equipment as required by the Customer together with a reasonable allowance for profit and overhead.
- (d) If, before delivery of the Equipment to the Customer, if there is any change in costs or circumstances beyond the control of the Company, the Company may increase the Sale Price by notice to the Customer.
- (e) The Customer may by notice in writing to the Company cancel this Agreement within 3 Business

Days after receipt of the notice in clause 3(d), unless the Customer takes delivery of the Equipment under clause 7 or if such increase results from a change in any applicable tax or other additional cost set out in the Quote.

- (f) If GST is imposed on the supply of the Equipment and other supplies by the Company which are taxable supplies for the purposes of the GST Act, then unless the Sale Price is expressed in the Quote to be GST inclusive, the amount the Customer must pay is increased by the amount of the GST.

4. INTEREST ON LATE PAYMENTS

The Company may charge interest at 12% per annum calculated on a daily basis on all late payments.

5. TRADE-INS

- (a) If the Company has agreed to any trade-in by the Customer, at the time of delivery of any trade-in to the Company:
 - (i) the amount required to discharge any debt or security on the trade-in is more or less than the trade-in pay out shown in the Quote or other document between the Company and the Customer; or
 - (ii) a revaluation of the trade-in is necessary; or
 - (iii) the trade-in is not in substantially the same condition as at the date of this Agreement (excluding reasonable wear and tear),the Company may:
 - (iv) adjust the balance of Sale Price payable; or
 - (v) return the trade-in to the Customer and demand the balance of Sale Price payable ignoring the price of the trade-in.
- (b) The Customer declares and warrants that:
 - (i) the trade-in is solely owned by it;
 - (ii) the trade-in is unencumbered with any mortgage, bill of sale, hire purchase arrangements, lien, charge, any security interest under the PPSA or any adverse interest; and
 - (iii) it is entitled to sell the trade-in without further consent of any person.

6. FINANCE

- (a) If this Agreement is subject to Customer obtaining finance and the Customer fails after having reasonably endeavoured to do so, the Customer may, within 5 Business Days of the agreed finance date, cancel this Agreement by written notice together with evidence satisfactory to the Company of its inability to obtain finance.
- (b) The Company must (at the Customer's cost) return any trade-in or monies paid, provided that the Customer complies with clause 6(a).

7. DELIVERY & TRANSPORTATION

- (a) The Customer must take delivery of the Equipment ex Works within 5 Business Days from the Company notifying the Customer that the Equipment is available for delivery.
- (b) The Customer is responsible for, must bear the risk of any damage to, and must pay the cost of all transportation of, the Equipment.
- (c) If the Company arranges for transportation of the Equipment to the Customer, it will not be responsible for any late delivery, non-delivery, or loss or damage occasioned from such transportation.
- (d) The Company must take reasonable steps to make the Equipment available for delivery on or about the estimated delivery date. The Company is not responsible for any delay or failure to do so. If the Company does not notify the Customer that the Equipment is available for delivery within 120 days after the estimated delivery date, the Customer may cancel this Agreement.

8. RISK

The Equipment is at the risk of the Customer ex Works whether the Equipment is delivered to the Customer under clause 7(a) or is delivered to the Customer under clause 7(c).

9. SITE PREPARATION

If the Company agrees to transport the Equipment to

the Site, the Customer will, at its expense and prior to transportation of the Equipment, ensure that the Site is prepared as directed by the Company.

10. SAFETY & TRAINING

The Customer must comply with all safety and training requirements. The Customer must not make any claim against the Company and further indemnifies the Company against any and all Losses or damage (to person or property) arising from, or contributed to by, the Customer's failure to carry out safety and training requirements.

11. RETENTION OF TITLE & OWNERSHIP

- (a) Title in the Equipment will only pass to the Customer once the Sale Price has been paid in full and the Company has received clear title to any trade-in.
- (b) If the Company accepts payment by cheque, that payment shall be deemed not to have been made until the cheque is cleared.
- (c) If the Equipment is transported to the Customer before payment is made and before title to any trade-in passes to the Company, the Customer shall have possession of the Equipment as bailee only, even if the Customer has a credit account with the Company and the Company may have sold the trade-in. Whilst bailee of the Equipment, the Customer must not part with possession of the Equipment and shall be responsible for any damage to or loss to it.
- (d) Subject to clause 5(a), title and property in the trade-in passes to the Company upon delivery to it.

12. PROCEEDS OF SALE

If the Equipment is resold, the Customer holds all of the book debts owed in respect of such sales and proceeds in respect of such sales on trust for the Company and must keep such proceeds of sale in a separate account and not mix such proceeds with any other funds. Such part of the book debts and proceeds are deemed to equal in dollar terms the amount owed by the Customer to the Company at the time of the receipt of such book debts and proceeds.

13. ALLOCATION OF FUNDS

The Company may at their discretion and in such manner as they determine allocate payments made by the Customer as payment for any Equipment supplied by the Company or any other amount that may be due to the Company by the Customer.

14. DEFAULT

- (a) If the Customer fails to punctually observe and perform all of its fundamental obligations under this Agreement, the Company may, subject to the terms of this Agreement, do any or all of the following:
 - (i) re-sell the Equipment;
 - (ii) forfeit and retain any monies paid on account of the Sale Price and the trade-in up to 20% of the Sale Price as liquidated damages, or otherwise recover from the Customer an amount representing 20% of the Sale Price as liquidated damages;
 - (iii) sue the Customer for breach and recover from the Customer any shortfall from the resale of the Equipment and the realised value of the trade-in;
 - (iv) enter upon any premises where the Equipment is located and take possession of it and if necessary, dismantle it from anything to which it is attached. The Customer will be deemed to have granted an irrevocable authority to the Company in the exercise of the Company's right under this clause 14. The Customer waives and releases the Company from any liability for any damage or Losses occasioned by the repossession of the Equipment. Repossession does not constitute a waiver of any claim by the Company against the Customer under this Agreement.
- (b) Without prejudice to the rights and remedies of the Company, it will be entitled to recover from the Customer any and all damages or Losses which the Company may sustain by reason of any breach by the Customer, together with legal fees (on a full indemnity basis) and such expenses expended or incurred in the seizure, hire or re-sale

of the Equipment.

- (c) The exercise of the Company's rights under this clause does not release the Customer from the obligation to pay any sum due to the Company or discharge any other obligation of the Customer whether arising before or after the exercise of such rights.

15. SECURITY

- (a) The Customer grants a security interest in favour of the Company over all its present and after acquired property (including without limitation the Equipment) as security for any monies that may be owing by the Customer to the Company under this Agreement.
- (b) If requested by the Company, the Customer shall promptly and without undue delay execute any documents (including any new contracts or mortgages over real estate), provide all information required in order to complete a financing statement and comply with any other reasonable requests by the Company to ensure that the Company's purchase money security interest(s) and general security interest are perfected.
- (c) The Customer authorises the Company and its officers, jointly and individually, to execute any documents and do all acts as its attorney for the purpose of registering a caveat over any real property of the Customer or to register on any other appropriate register the security granted by it under this clause over any assets of the Customer.

16. PURCHASE MONEY SECURITY INTEREST

The Customer acknowledges that the Company holds a purchase money security interest in the following:

- (a) Equipment supplied by the Company;
- (b) any Equipment supplied by the Company which have been manufactured, processed, assembled or commingled such that their original identity is lost;
- (c) all proceeds in relation to the Equipment referred to in 16(a) and 16(b) including money, accounts receivable and insurance proceeds; and
- (d) any goods for which any of the Equipment referred to in 16(a) and 16(b) have been exchanged or traded or that have been acquired in lieu of those Equipment, as security for the price payable by the Customer to the Company at any time for the Equipment supplied by the Company.

17. CUSTOMER TO PROVIDE INFORMATION REQUIRED FOR 'PERFECTION'

The Customer shall immediately notify the Company in writing of any change in the Customer's name and shall also provide all information required in order to complete a financing change statement.

18. NEGATIVE PLEDGE

The Customer shall not enter into any security agreement with any other party that permits that party to register a security interest in respect of Equipment supplied by the Company or proceeds of those Equipment.

19. CUSTOMER WAIVES RIGHT TO RECEIVE VERIFICATION STATEMENT

The Customer waives its right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement in relation to the Company's security interests.

20. CUSTOMER TO PAY ALL FILING FEES FOR FINANCING STATEMENT

The Customer shall be responsible for all costs, expenses and other charges incurred, expended or payable by the Company in relation to the filing of a financing statement or a financing change statement.

21. COMPANY MAY SELL AND RECOVER FROM PROCEEDS

For the purposes of the PPSA:

- (a) where the Company takes possession of the Equipment upon default of the Customer, the Company may, should it choose to do so and without derogating from its rights under clause 11:
- (i) sell the Equipment by any means and at any time;
- (ii) deduct from any proceeds of sale, all costs incurred in relation to the sale;
- (iii) retain for its own use and benefit any part of

the purchase price for those Equipment which remains outstanding; and

- (iv) apply any balance to monies owed by the Customer on any account (even if not due and payable) to the extent to which the Company has priority over other security interests;

- (b) where there is a shortfall on any sale or attempted sale of the Equipment, the Company continues to hold their security interest in the Equipment and may recover the shortfall from the Customer.

22. COMPANY MAY LEASE EQUIPMENT AND RECOVER FROM LEASE CHARGES

For the purposes of the PPSA:

- (a) where the Company takes possession of the Equipment upon default of the Customer, the Company may, should it choose to do so and without derogating from its rights under clause 11:
- (i) lease the Equipment by any means and at any time;
- (ii) deduct from any lease charges, all costs incurred in relation to the lease;
- (iii) retain for its own use and benefit any part of the purchase price for those Equipment which remains outstanding; and
- (iv) apply any balance to monies owed by the Customer on any account (even if not due and payable) to the extent to which the Company has priority over other security interests;
- (b) where there is a shortfall on any lease or attempted lease of the Equipment, the Company continues to hold their security interest in the Equipment and may recover the shortfall from the Customer.

23. OPT-OUT OF ENFORCEMENT PROVISIONS

The Customer waives its rights under sections 95 (notice of removal of accession), 118 (enforcing security interests in accordance with land law decisions), 121(4) (enforcement of liquid assets), 125 (obligation to dispose of or retain collateral), 128 (secured party may dispose of collateral), 129 (disposal by purchase), 130 (notice of disposal), 132(3) (d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal), 135 (notice of retention), 142 (redemption of collateral) and 143 (reinstatement of security interest) of the PPSA and the parties agree that those provisions do not apply to this Agreement or any supply of Equipment pursuant to this Agreement.

24. TERMINATION

Without prejudice to any other rights of the Company, the Company may terminate this Agreement if:

- (a) the Customer breaches this Agreement, or any other agreement with the Company, or any agreement with any other Company;
- (b) any event occurs which, in the reasonable opinion of the Company, would or may adversely affect the ability of the Customer to pay any amount to the Company;
- (c) the Customer fails to pay any amount due to the Company when it is due; or
- (d) a receiver or manager, liquidator, administrator, other controller or trustee in bankruptcy is appointed to the Customer or any of its assets.

25. REALISED VALUE OF TRADE-IN

- (a) The realised value of the trade-in means the amount for which the trade-in is sold by the Company to a genuine purchaser for value, less:
- (i) any reasonable expenses incurred in disposing the trade-in; and
- (ii) the reasonable cost of any repairs or improvements made by the Company to the trade-in.
- (b) Subject to the rights of the Company under this Agreement, if this Agreement is terminated and, at that time, any trade-in:
- (i) remains the property of the Customer, the Company will (at the Customer's expense) return the trade-in to the Customer subject to the payment by the Customer of the reasonable cost of any repairs or improvements made by the Company to the trade-in; or
- (ii) is no longer the property of the Customer,

the Company will pay the Customer the realised value of the trade-in in full and final satisfaction of any claim the Customer may have against the Company in respect of the trade-in.

26. COMPLETION OF INFORMATION

At the date of this Agreement, certain information relating to Equipment (such as serial number, year of manufacture, stock number and registration number) may not be available and the Customer authorises the Company to complete relevant sections of this Agreement on receipt of such information.

27. WARRANTY

The Customer agrees to be bound by the warranty policy of the Company from time to time.

28. COMPANY'S LIABILITY

- (a) To the extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)), all conditions, terms and warranties which are not expressly provided in this Agreement are excluded. To the extent permitted by law, the Company's liability is limited (at the Company's election) to one of the following:
- (i) replacing the Equipment; or
- (ii) repairing of the Equipment; or
- (iii) the cost of replacing the Equipment; or
- (iv) the cost of repairing the Equipment.
- (b) To the extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)), the Company is not liable to the Customer for any losses arising out of or in connection with the supply of the Equipment including, any negligent act or omission or misconduct on the Company's part.
- (c) To the extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)), the Customer indemnifies the Company for any losses arising out of or in connection with the supply of the Equipment including, any negligent act or omission or misconduct on the Company's part.
- (d) Every exemption from liability and every defence and immunity of any nature applicable to the Company or to which the Company is entitled by this Agreement extends to every employee or agent of the Company (including independent contractors) while acting in the course of or in connection with their employment or engagement.

29. GENERAL MATTERS

- (a) The Customer acknowledges that it has inspected the Equipment and confirms that it is fit for the purpose for which the Customer requires it.
- (b) If any of the provisions of this Agreement are unenforceable, void, voidable or illegal, then such shall be severed and the other provisions of this Agreement remain in full force and effect.
- (c) Any failure or delay by the Company to exercise a power, right or remedy pursuant to this Agreement does not operate as a waiver of that power, right or remedy nor does it constitute a waiver or release of any breach by the Customer. The waiver of any right of the Company under this Agreement is only valid if made by notice in writing from the Company to the Customer. The waiver of a power or right is effective only in respect of the specific breach by the Customer to which it relates and for the specific purpose for which it is given.
- (d) This Agreement shall be governed by the laws of Queensland and the parties submit to the exclusive jurisdiction of the Courts of Queensland.
- (e) The Customer declares that it has read this Agreement and agrees that this Agreement is the complete and exclusive statement of the Agreement between the parties.
- (f) The Customer must not assign this Agreement or any of its rights under it. The Company may assign or charge this Agreement, and any of its rights to any other party.