

1. **INTERPRETATION**

1.1 In these Conditions:

- 1.1.1 **Australian Consumer Law** means the law as set out in Schedule 2 of the *Competition and Consumer Act 2010*;
- 1.1.2 **Company** means NTP Pty Ltd ATF The NTP Unit Trust ABN 29 117 832 739 trading as NTP Forklifts Australia;
- 1.1.3 **Contract** means any contract for the supply of Goods or Services evidenced by acceptance of any order from the Customer by the Company;
- 1.1.4 **Customer** means the purchaser of any goods or services directly from the Company;
- 1.1.5 **Consumer** means a “consumer” as that term is defined in Section 3 of the Australian Consumer Law;
- 1.1.6 **Consumer Contract** means a contract for supply of Goods or Services by the Company to the Customer as a Consumer;
- 1.1.7 **Consumer Guarantees** means the guarantees under the Australian Consumer Law;
- 1.1.8 **Effective Date** means 1 May 2013;
- 1.1.9 **Goods** means any products supplied to the Customer by the Company from time to time including any components of such products;
- 1.1.10 **Implied Terms** means any guarantees, conditions, warranties or other terms implied by any Australian Commonwealth, State or Territory laws (excluding the Australian Consumer Law), or the laws of any other jurisdiction;
- 1.1.11 **NTP Warranty** means the warranty in clauses 5.3 to 5.7;
- 1.1.12 **PPSA** means the *Personal Property Securities Act 2009 (Cth)*;
- 1.1.13 **Services** means any services supplied to the Customer by the Company from time to time including maintenance and repair services and services for the installation, modification and alteration of Goods;
- 1.1.14 any expressions defined in the *A New Tax System (Goods and Services Tax Act) 1999* has the meaning given to it in that Act.

1.2 Nothing in these Conditions excludes, restricts or modifies any conditions, warranty, guarantee, right or remedy implied by law (including under the *Competition and Consumer Act 2010*) except to the extent permitted by law.

2. **APPLICATION**

- 2.1 These Conditions apply to all Goods and Services supplied by the Company as from the Effective Date and the Customer is deemed to have read and agreed to these conditions prior to the placing of any order for the Goods or Services.
- 2.2 These Conditions prevail over all inconsistent conditions of the Customer’s order, unless the Company expressly agrees otherwise in writing.
- 2.3 The Company reserves the right to vary these Conditions with effect from the date of notification of such variations to its customers.
- 2.4 No promise, representation or undertaking in relation to these Conditions binds the Company unless the Company expressly agrees otherwise in writing.

3. **DELIVERY OF GOODS AND SERVICES**

- 3.1 Any delivery times advised by the Company to the Customer are estimates only and the Company is not liable for late delivery or non-delivery.
- 3.2 The Customer may cancel an order for Goods or Services supplied under a Consumer Contract if the Company is unable to deliver the Goods within 90 days of any specified delivery date.
- 3.3 Except where clause 3.2 applies:
  - 3.3.1 no delay in delivery of Goods or Services shall relieve the Customer of its obligations to accept or pay for the Goods or Services;
  - 3.3.2 the Company reserves the right to deliver by portion and delivery by portion shall not entitle the Customer to repudiate the Contract.
- 3.4 Delivery of Goods will be taken to have occurred when the Goods are off-loaded at the Customer’s premises or at such other delivery address as may be specified by the Customer or, where Goods are collected from the Company, upon collection by the Customer or the Customer’s agent.
- 3.5 Services will be taken to be delivered when delivered in accordance with the relevant Contract.

4. **RISK**

All Goods are at the risk of the Customer after delivery in accordance with clause 3.4.

5. **NTP WARRANTY**

5.1 Nothing in this clause 5 affects the Customer's rights under the Australian Consumer Law. The benefits to the Customer under the NTP Warranty are in addition to the rights and remedies of the Customer under any Consumer Guarantees.

5.2 The Company will extend to the Customer the same benefit of any warranty as given to it by the manufacturer or supplier of Goods to the extent that the Company is able to successfully claim under that warranty provided that the Customer sends written notice of the defect within thirty (30) days of its discovery and has established that:

5.2.1 the Goods have been maintained and operated within the limits of rated and normal usage;

5.2.2 the defect did not result in any manner from the intentional or negligent action or inaction by the Customer, its agents or employees.

5.3 Subject to clauses 5.1 and 5.2, the Company warrants that:

5.3.1 the Goods supplied will be free of manufacturing defects under normal use and service for the time period designated in the warranty applicable to the particular type, make or model of product and will perform to the Company's specifications;

5.3.2 the Services will be supplied with due care and skill and will comply with the Company's specifications or service standards for the Services

subject to the following clauses.

5.4 The benefit of the NTP Warranty extends only to the Customer and not any subsequent owner or user of the Goods or other party benefiting from the Services.

5.5 The NTP Warranty:

5.5.1 in respect of Goods, commences on the date of delivery of the Goods and continues for a period of one year from that date (**Goods Warranty Period**);

5.5.2 in respect of Services, commences on the date of delivery of the Services and continues for a period of 30 days from that date (**Service Warranty Period**).

5.6 If within the Goods Warranty Period a manufacturing defect is discovered in the Goods or the Goods fail to perform to the Company's specifications as a result of some defect in materials or workmanship in the Goods, then the Company will, at its option, repair the Goods or supply replacement Goods at no cost to the Customer or refund the purchase price paid by the Customer.

5.7 The NTP Warranty will not apply to Goods:

5.7.1 used otherwise than in accordance with normal and intended use;

5.7.2 subjected to misuse, neglect, negligence or accidental damage; or

5.7.3 operated or maintained in any way contrary to any operating or maintenance instructions; or

5.7.4 installed, repaired or maintained by any person other than a qualified tradesperson; or

5.7.5 improperly handled, installed, repaired or maintained; or

5.7.6 altered or modified after delivery; or

5.7.7 used after any defect becomes reasonably apparent; or

5.7.8 in respect of which any serial number of the Company or the manufacturer is altered or removed.

5.8 If within the Service Warranty Period it is discovered that the Services were not supplied with due care or skill or did not comply with the Company's specifications or service standards for the Services, the Company will, at its option, resupply the Services free of charge or refund the purchase price paid by the Customer.

The Australian Consumer Law requires the inclusion of the following statement with the NTP Warranty in any Consumer Contract:

*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 for 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.*

**6. CLAIMING UNDER THE NTP WARRANTY**

- 6.1 In order to make a claim under the NTP Warranty, the Customer must:
- 6.1.1 contact the Company to obtain an NTP Warranty Claim Form for the Goods and/or Services and to be notified of the Company's address for the service of the claim by:
    - 6.1.1.1 calling 131687 anywhere in Australia; or
    - 6.1.1.2 writing to NTP Product Support, 37 White Road, Gepps Cross, SA, 5094; or
    - 6.1.1.3 emailing to enquiries@ntpforklifts.com.au;
  - 6.1.2 complete the NTP Warranty Claim Form and in particular, include in the form:
    - 6.1.2.1 a detailed description of the defect or fault in the Goods or Services;
    - 6.1.2.2 the Customer's contact details (including postal address, email address and telephone numbers at which the Customer can be contacted during usual business hours);
  - 6.1.3 send to the address for service of the claim under the NTP Warranty specified by the Company:
    - 6.1.3.1 the completed NTP Warranty Claim Form;
    - 6.1.3.2 a copy of the invoice or other proof of purchase of the Goods or Services; and
    - 6.1.3.3 where relevant, the defective or faulty Goods together with all accessories, instructions, specifications or other material supplied with the Goods.
- 6.2 The Company will consider the Customer's claim under the NTP Warranty and where relevant, examine any returned Goods and determine whether the Company accepts the Customer's claim under the NTP Warranty.
- 6.3 The Company will notify the Customer whether it accepts the Customer's claim under the NTP Warranty within a reasonable time of its determination.
- 6.4 The Company will not accept any claim under the NTP Warranty where the claim is not made strictly in accordance with the NTP Warranty.
- 6.5 Where the Company accepts the Customer's claim under the NTP Warranty, the Company will:
- 6.5.1 repair or replace the Goods; or
  - 6.5.2 resupply the Services
- in accordance with the NTP Warranty.
- 6.6 The Customer will be responsible for all costs of returning Goods to the Company and for redelivery of the Goods (whether original or repaired and/or replacement Goods) by the Company and any other expenses of the Customer in claiming under the NTP Warranty.
- 6.7 The Company will not be responsible for:
- 6.7.1 any loss or damage to the Goods occurring while the Goods are in transit (either on return to the Company or upon redelivery to the Customer of the original or repaired and/or replacement Goods); or
  - 6.7.2 any delay in determining the Customer's claim under the NTP Warranty or providing the Customer with any remedy under such claim.

**7. GENERAL LIMITATION ON LIABILITY**

- 7.1 This clause 7 does not limit the liability of the Company under Consumer Contracts.
- 7.2 The Company is not liable for any guarantee, warranty or representation as to the quality, performance, and fitness for purpose or otherwise of any Goods or Services unless expressed in writing and signed on behalf of the Company and any such warranty or representation is limited to its express terms.
- 7.3 None of the Implied Terms apply to any Contract except to the extent that they cannot be lawfully excluded.
- 7.4 The Company's liability for breach of any Contract or for breach of any Implied Terms which by force of law cannot be excluded from applying to any Contract is limited to:
- 7.4.1 at the option of the Company to repairing or replacing Goods which have been found defective, or paying the cost of repairing or replacing Goods;
  - 7.4.2 resupplying the Services
- which have been found defective.
- 7.5 The Company is not liable in tort for any loss or damage suffered by the Customer or by any third party.

- 7.6 In no circumstance is the Company liable to the Customer or to any third party for any loss of profits, loss of anticipated savings, economic loss or interruption of business or for any indirect or consequential loss arising out of the late delivery of Goods or Services or any breach of the Company's obligations under any Contract or Implied Terms and the Customer will keep the Company fully indemnified against any claim made against the Company for any Consequential Loss.

**8. AUSTRALIAN CONSUMER LAW**

- 8.1 Where the Contract under which the Customer purchases the Goods is a Consumer Contract (ie where the Customer is a Consumer):
- 8.1.1 the Goods and Services are supplied subject to the Consumer Guarantees;
  - 8.1.2 if the Goods or Services fail to meet any Consumer Guarantee, the Customer will be entitled to such rights and remedies as are permitted or provided in the Australian Consumer Law for such failure, to the extent that such rights and remedies cannot be lawfully excluded;
  - 8.1.3 the Customer may only exercise any right or remedy for breach of a Consumer Guarantee strictly in accordance with the rights and responsibilities of the Customer under the Australian Consumer Law;
  - 8.1.4 where the Goods are not ordinarily acquired for personal, domestic or household use or consumption, then, unless the Company is the manufacturer of the Goods under the Australian Consumer Law, the Company's liability for breach of a Consumer Guarantee is limited at the Company's option to repairing or replacing the Goods, supplying equivalent goods or paying the costs of the repair or replacement of the Goods or of acquiring equivalent goods;
  - 8.1.5 where the Services are not ordinarily acquired for personal, domestic or household use or consumption, then the Company's liability for breach of a Consumer Guarantee is limited at the Company's option to supplying the Services again or paying the costs of having the Services supplied again.
- 8.2 Where the Customer resupplies the Goods to a Consumer and the Goods are not ordinarily acquired for personal, domestic or household use or consumption, then the Company's liability to the Customer in connection with any breach of a Consumer Guarantee in respect of the Goods is limited to paying to the Customer an amount equal to the cost of replacing the Goods, supplying equivalent goods or having the Goods repaired, whichever is the lower amount.

**9. QUOTATIONS**

- 9.1 All prices quoted for Goods or Services are valid quotes for the period from the date of quotation specified in the quotation and if no such period is specified, for 30 days from the date of quotation.
- 9.2 The Company reserves the right to charge the Customer for any work undertaken and/or costs incurred as a result of the Customer varying its order or the Contract, correcting any errors or omissions referred to in clause 9.4, or requiring Goods or Services urgently.
- 9.3 The Company will supply the Goods or Services on the basis of the Customer's written order. The Company will not be responsible for any errors or omissions in the supply of the Goods or Services where those errors or omissions result wholly or partially from incomplete or unclear instructions in the Customer's order.
- 9.4 Should there be any adjustments in quantities above or below the quantities ordered by the Customer and those set out in a quotation, then any such increase or decrease shall be adjusted on a unit rate basis according to the unit price set out on the invoice.

**10. GST**

- 10.1 Unless otherwise stated, all prices quoted by the Company are exclusive of GST.
- 10.2 Subject to the Company providing a tax invoice, the Customer must pay to the Company the amount of any GST payable in respect of the supply of the Goods or Services to the Customer at the same time that the purchase price for the Goods or Services is payable.

**11. CASH SALES**

Where no Credit Application has been approved for the Customer, or approval of the Credit Application is withdrawn, the purchase price of the Goods or Services must be paid in full on delivery.

**12. CREDIT PAYMENT**

- 12.1 Where a Credit Application is approved for the Customer, the purchase price of the Goods or Services is payable within thirty (30) days from the date of delivery unless other terms of payment are expressly stated on the invoice.
- 12.2 The Company reserves the right to withdraw approval of a Credit Application for the Customer at any time by notice to the Customer.

12.3 The Company reserves the right to request such security or additional security for any credit arrangements with the Customer as the Company in its discretion thinks fit and is entitled to withhold supply of any Goods or Services or credit arrangements until such security or additional security is provided by the Customer.

**13. ADMINISTRATION FEE**

The Company reserves the right to charge the Customer a reasonable administration fee for issuing duplicate invoices, statements or other documents requested by the Customer.

**14. PAYMENT**

14.1 All amounts payable to the Company by the Customer must be paid in Australian dollars in any manner required by the Company in writing and in full without set-off on or before the due date for payment.

14.2 The Company reserves the right to charge interest at the rate of 12% per annum on all overdue amounts owing to it. Such interest will accrue daily and is payable on demand.

14.3 Any costs incurred by the Company in collecting or attempting to collect any overdue amounts (including any fees payable to a collection agency) must be paid by the Customer to the Company on demand.

14.4 Payment will not be taken to occur until all cheques tendered in discharge of amounts owing to the Company have been presented and cleared in full.

**15. TITLE TO GOODS**

15.1 The legal and equitable title to and property in the Goods will not pass until the Customer has paid all monies owed to the Company on any account whatsoever.

15.2 Until the Customer has paid all monies owed to the Company:

15.2.1 the Company retains a purchase money interest in the Goods and the proceeds of sale of the Goods under the PPSA;

15.2.2 the relationship of the Customer to the Company is as a fiduciary in respect of the Goods and accordingly:

15.2.2.1 the Customer must store the Goods in such a way that they can be recognised as the property of the Company;

15.2.2.2 upon re-sale of the Goods by the Customer, the Company will have the right to trace the full proceeds of sale; and

15.2.2.3 the Customer must account to the Company for such proceeds of sale and the Company may recover from such proceeds of sale any moneys then owing to the Company on any account whatsoever;

15.2.3 the Company reserves the right to enter upon any premises for the purpose of repossessing the Goods without prejudice to any other rights of recovery available and the Customer grants the Company a licence to enter such premises for the purpose of exercising such right.

15.3 The Customer must do all things reasonably required by the Company in respect of the registration of the Company's interest in the Goods under this clause or the enforcement of the Company's rights under the PPSA in respect of the Goods.

15.4 The Customer waives any right the Customer has under the PPSA:

15.4.1 to receive notice in relation to registration of the Company's interest in the Goods under the PPSA; and

15.4.2 to claim damages against the Company under Section 271 of the PPSA.

**16. RETURN OF GOODS SOLD**

16.1 Nothing in this clause affects the Customer's rights under the Australian Consumer Law or in respect of any breach of the NTP Warranty or Implied Terms.

16.2 The Customer may not return Goods specifically manufactured or assembled to the Customer's order under any circumstances.

16.3 The Customer may only return Goods which are not specifically manufactured or assembled to the Customer's order with the express approval of the Company given in writing (which may be withheld or given at the Company's discretion).

16.4 Where the Company approves the return of Goods under clause 16.3, unless otherwise agreed in writing by the Company:

- 16.4.1 the Goods must be returned within 30 days from the date of delivery under cover of a Goods Return Note issued by the Company unused and in prime condition in their original packaging and together with all accessories, instructions, specifications or other material supplied with the Goods;
- 16.4.2 a handling fee of 30% of the invoiced price of the Goods returned will be charged to the Customer and deducted from the sum credited to the Customer on the return of the Goods;
- 16.4.3 the invoice number and delivery date of Goods returned must be supplied to the Company at the time of their return;
- 16.4.4 the Goods must be returned to the Company in accordance with any directions for return of Goods specified by the Company.

**17. DEFAULT BY THE CUSTOMER**

- 17.1 If the Customer makes default in any payment, commits any act of bankruptcy or enters into liquidation whether voluntary or involuntary, the Company may at its discretion suspend deliveries or cancel any Contract so far as it remains unperformed without prejudice to its rights thereunder.
- 17.2 The occurrence of any such default will not prejudice the rights of the Company to recover any amounts due for Goods or Services previously supplied to the Customer.

**18. CANCELLATION OF ORDERS**

- 18.1 The Company may cancel any Contract any time before Goods or Services are delivered by giving written notice to the Customer. On giving such notice, the Company will repay to the Customer any sums paid in respect of the Goods. The Company will not have any other liability in respect of such cancellation.
- 18.2 Subject to clause 3.2, the Customer may not cancel a Contract at any time before delivery of the Goods or Services except with the Company's prior written consent.
- 18.3 In the event that the Customer cancels a Contract otherwise than under clause 3.2:
  - 18.3.1 the Company may retain any deposit or other sums paid on account of the Goods or Services; and
  - 18.3.2 if payment for the Goods or Services is not already made in full, the Customer will be responsible for any losses incurred by the Company in respect of such cancellation (including loss of profits, loss of anticipated savings, economic loss or interruption of business loss or other incidental, consequential or indirect damages).
- 18.4 In the event the Customer cancels a Contract under clause 3.2, the Company will repay to the Customer any sums paid in respect of the Goods or Services. The Company will not have any other liability in respect of such cancellation.

**19. GOVERNING LAW AND JURISDICTION**

Every Contract (wherever made) is governed by the laws of South Australia and the parties submit to the jurisdiction of the courts of South Australia and the Federal Court of Australia (Adelaide Registry).

**20. MISCELLANEOUS**

- 20.1 A Contract may be altered in writing signed by each party.
- 20.2 Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under a Contract.
- 20.3 A party must not assign or otherwise deal with a Contract or any right under it without the written consent of the other party.
- 20.4 A Contract constitutes the entire agreement between the parties about its subject matter and supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.
- 20.5 A waiver of a provision of or right under a Contract must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.
- 20.6 The failure, delay, relaxation or indulgence by a party in exercising a power or right under a Contract is not a waiver of that power or right.
- 20.7 An exercise of a power or right under a Contract does not preclude a further exercise of it or the exercise of another right or power.

**21. INTERPRETATION**

In these Conditions, unless the context otherwise requires:

- 21.1 headings do not affect interpretation;

- 21.2 singular includes plural and plural includes singular;
- 21.3 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 21.4 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 21.5 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 21.6 a provision is not construed against a party only because that party drafted it;
- 21.7 an unenforceable provision or part of a provision may be severed, and the remainder of these Conditions continues in force, unless this would materially change the intended effect of these Conditions;
- 21.8 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.