

**1. INTRODUCTION****1.1 Definitions**

In these Terms & Conditions, the following defined terms will have the following defined meanings: "the Client" is the business or individual ordering goods and services from the Supplier and will include all employees, officers, agents & contractors of the Client; "Goods" means farm equipment including but not limited to tractors, ride-on mowers, loaders, backhoes, balers, hay equipment, sprayers, water tanks, and associated attachments, implements, spare parts and hardware; "the Manufacturer" means the original producer of the Goods; "Quote" means the offer of Goods by the Supplier to the Client; "Services" means field service and repair work; and "the Supplier" is Loffminster Pty Ltd ABN 22 010 879 848 trading as K.C. Farm Equipment and where applicable its employees, subcontractors and agents.

**2. QUOTES****2.1 The Supplier Supply Quote**

The Supplier shall give the Client a Quote specifying the Goods to be provided in order to fulfill the Client's requirements and an estimate of the Supplier's charge for such Goods.

**2.2 Acceptance by the Client**

Where the Supplier has given the Client a Quote:

- a) the Supplier need not commence the order for Goods until the Quote has been accepted by the Client;
- b) the Client shall accept the Quote by signing and returning a true copy of the Quote accompanied by a purchase order number if applicable; and
- c) the Quote is valid for fourteen (14) days only unless an extension has been authorised by the Supplier.

In acceptance of the Quote the Client warrants that it has not relied on any representation by the Supplier other than as supplied in writing in the Quote.

**2.3 Supplier May Revise Quote**

The Supplier may amend the Quote after a period of fourteen (14) days from the date of the signed acceptance of the Quote to take into account any rise or fall in the cost of fulfilling the order and the Supplier shall notify the Client of such amendment as soon as practicable thereafter. Upon the Supplier giving the Client notification of such amendment the amended Quote shall be deemed to be the Quote for the purposes of these terms and conditions.

**2.4 Variations to Initial Quote**

The Client shall indemnify the Supplier from any additional cost incurred by the Supplier should the Client increase the scope of the Goods to be provided by the Supplier.

**2.5 Indemnity**

The Client shall indemnify the Supplier from all costs incurred when Goods are manufactured exclusively to the Client's specification and such Goods cannot be cancelled.

**2.6 Copyright**

The copyright in all plans, sketches, design ideas and custom made solutions which appear in the Quote shall be the property of the Supplier.

**3. DELIVERY**

**3.1** Delivery of the Goods made to the Client's nominated address will incur freight charges unless otherwise agreed in writing. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Failure to do so may incur additional costs.

**3.2** Delivery of the Goods made to the Client at the Supplier's premises will be on an agreed date and failure by the Client to uplift such Goods from the Supplier's premises on this agreed date may incur storage charges estimated on a daily basis. These charges are available on application.

**3.3** Delivery of Goods to a third party and/or site nominated by the Client is deemed to be delivery to the Client for the purpose of this agreement.

**3.4** The failure of the Supplier to deliver shall not entitle either party to treat this agreement as repudiated. The Supplier shall not be liable for any loss or damage whatsoever due to the failure by the Supplier to deliver the Goods, or any part of them, promptly or at all.

**4. SPARE PARTS**

The Client shall indemnify the Supplier from any costs, losses or expenses incurred by the Client due to delays in providing spare parts or the fitting of such parts.

**5. DESIGN UPDATES/PRODUCT IMPROVEMENT**

**5.1** Due to a continual development program by the Manufacturer, the Supplier reserves the right to change models and specifications without notice.

**5.2** The Manufacturer reserves the right to make changes and improvements to the Goods without incurring any obligations whatsoever to install or make any changes and improvements to Goods already supplied.

**6. CLIENTS RESPONSIBILITY**

The Client agrees:

- a) to advise the Supplier within ten (10) days should the Client have not received all instruction manuals and a Registration of Purchase Form;

- b) to participate and complete the appropriate Supplier's Installation Certificate prior to the operation of the Goods. The Client understands that failure to do so may void warranty on the Goods;
- c) that insurance will be the Client's care from the time the Goods leave the Supplier's premises; and
- d) that Goods are as inspected and not registered for the road unless previously agreed in writing by the Supplier. The Client shall ensure any Australian Standards are complied with should the Client plan to use the Goods on the road.

**7. TRADE-INS**

Goods offered for acquisition/trade-in, shall be free of encumbrance and the Client will provide clear title to such Goods.

**8. SUPPLIER REPAIR CENTRE**

The Client acknowledges that:

- a) Goods in for service and/or repair will be at the Client's own risk;
- b) replacement of parts will be solely at the Client's own risk;
- c) repairs are covered by a thirty (30) days warranty;
- d) any claim for faulty materials or workmanship must be lodged within seven (7) days of failure;
- e) repairs carried out under the Supplier's goodwill agreement must be settled with the Supplier's repair centre on completion of the repair and will be reimbursed if and/or when a credit is received from the Manufacturer.

**9. PAYMENT****9.1 Time for Payment**

The Client must, upon receiving the Supplier's invoice and within the time specified, pay the Supplier the total amount set out in the invoice.

**9.2 Deposit**

The Supplier will require a deposit from the Client (export sales on application) and the Client acknowledges the Supplier is under no obligation to start any Order as requested by the Client, until the deposit is received by the Supplier in full and when all details pertaining to contract are finalised. In the event of default as to payment owing to the Supplier on the part of the Client, the Supplier shall be entitled to forfeit the deposit and claim any profit or margin contemplated by or allowed for in the contract in addition to any remedy available to the Supplier at law or in equity. Any remaining balance will be transferable and offset against any future Orders placed with the Supplier.

**9.3 Credit Card Charges**

The Supplier will accept payment by Visa and MasterCard, subject to a two per centum (2%) surcharge.

**9.4 Interest**

The Supplier may charge interest at two per centum (2%) above the commercial lending rate of the National Bank of Australia (NAB) calculated on a daily basis on amounts not paid within the time specified in the Supplier's invoice.

**9.5 Damages**

The Client must pay to the Supplier any costs, expenses or losses incurred by the Supplier as a result of the Client's failure to pay to the Supplier all sums outstanding as owed by the Client to the Supplier including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

**9.6 Cancellation**

The Client shall reimburse the Supplier for any costs, expenses or losses incurred by the Supplier should the Client cancel an accepted order or Quote.

**10. RISK**

The risk in the Goods shall pass to the Client upon delivery of the Goods to the Client or its agent or to a third party nominated by the Client.

**11. RETENTION OF TITLE****11.1 Title**

Notwithstanding the delivery of the Goods, title in any particular Goods shall remain with the Supplier until the Client has paid and discharged any and all monies owing pursuant to any invoice issued by the Supplier for the Goods, including all applicable GST and other taxes, levies and duties. Where the Goods have been on sold by the Client, the Client will be taken to hold the proceeds of sale of such Goods upon trust for the Supplier and to account to the Supplier for these proceeds.

Any payment made by or on behalf of the Supplier which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Supplier' title in the Goods nor the Client's indebtedness to the Supplier and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

**11.2 Bailment**

The Client acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods are made pursuant to clause 11.1 and until that time the Client is not entitled to sell the Goods but only in the ordinary course of business, the Client must not encumber or otherwise charge the Goods and the Client shall be fully responsible for

any loss or damage to the Goods whatsoever and howsoever caused following delivery of the Goods to the Client.

### 11.3 Repossession

The Client hereby irrevocably grants to the Supplier the right, at its sole discretion, to remove or repossess any Goods from the Client and sell or dispose of them, and the Supplier shall not be liable to the Client or any person claiming through the Client and the Supplier shall be entitled to retain the proceeds of any Goods sold and apply same towards the Client's indebtedness to the Supplier.

If the Client commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Supplier may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Client on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing the Supplier by the Client.

## 12. WARRANTY

12.1 The Supplier's Goods are hereby sold and warranted against any defect in workmanship appearing under proper usage within the time specified in the Manufacturer's warranty (from receipt of applicable warranty registration). Full warranty details are available from the Supplier's office at the time of sale or on application during normal trading hours.

12.2 Goods must be checked for suitability and tolerances prior to fitting. The Client shall indemnify the Supplier from any claim whatsoever occasioned to the selection of incorrect Goods.

12.3 It is the Client's responsibility to determine the suitability of the Goods. No express warranty is given as to fitness or suitability of the Goods for any specific application or use unless expressly endorsed by the Supplier.

12.4 Warranty does not extend to spare parts, components or accessories that are not provided by the Supplier.

12.5 There is no warranty on used Goods unless otherwise specified in writing by the Supplier.

12.6 The Supplier reserves the right to make the warranty null and void should the Goods be modified, altered, damaged, put to any undue stress other than in the way the Goods were designed to perform or have not been regularly maintained as specified under the Manufacturer's warranty.

12.7 Warranty Claim Forms must be completed correctly and in full. Once accepted by the Supplier the Client will be advised of a suitable time for the defective Goods to be delivered to the Supplier's premises. The cost of all freight will be the Client's care.

12.8 Goods accepted for return under warranty must be clean or the Supplier will exercise its right to charge the Client a cleaning fee at the Supplier's current rate.

12.9 Should the Supplier need to access the original Registration of Purchase Documentation the Supplier's current administration fee will apply.

## 13. DEFECTS

13.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Supplier of any alleged shortage in quantity, damage or failure to comply with the description. The Client shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with these terms and conditions and free from any damage.

13.2 All labour costs in replacing defective parts and all costs of transportation of such parts are the responsibility of the Client.

## 14. RETURN OF GOODS

14.1 Return of Goods from the Client to the Supplier can only be made with the prior written approval of the Supplier.

14.2 All returns must be in original packaging (of purchasable standard) accompanied by the relevant invoice number and date of purchase. In the case of bearings and rings, the returns must be in an unopened condition.

14.3 The Client shall be responsible for freight costs on Goods that are returned by the Client to the Supplier under warranty.

## 15. LIABILITY

### 15.1 Non-excludable Rights

The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these terms and conditions and there are rights and remedies conferred on the Client in relation to the provision of the goods or of services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

### 15.2 Disclaimer of Liability

The Supplier disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Client, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded

other than any Non-excludable Rights. To the extent permitted by law, the liability of the Supplier for a breach of a Non-Excludable Right is limited, at the Supplier's option, to the supplying of the Goods and/or Services again or payment of the cost of having the Goods and/or Services supplied again.

### 15.3 Indirect Losses

Notwithstanding any other provision of these terms and conditions, the Supplier is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Client for:

- a) any increased costs or expenses;
- b) any loss of profit, revenue, business, contracts 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 whatsoever caused by the Supplier's failure to complete or delay in completing the order or to deliver the Goods.

### 15.4 Training on Use of Goods

15.4.1 The Client shall ensure it has received the correct safety training from the Supplier and that its operator is licensed to operate the Goods and is trained in the correct use of the Goods.

15.4.2 The Client agrees that it will not make any claim against the Supplier and further indemnifies the Supplier against all loss or damage to person or property that may be occasioned due to the Client's failure to carry out operator training in the correct use of the Goods. For the avoidance of doubt this includes any and all loss or damage due to negligence on the part of the Client, its officers, employees or agents.

### 15.6 Force Majeure

The Supplier will have no liability to the Client in relation to any loss, damage or expense caused by the Supplier's failure to deliver the Goods or complete the Services as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Supplier's normal suppliers to supply necessary Goods or any other matter beyond the Supplier's control.

## 16. PRIVACY

16.1 The Client hereby authorises the Supplier to collect, retain, record, use and disclose commercial and/or consumer information about the Client, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Supplier, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.

16.2 The Supplier may give information about the Client to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Client's credit file. This information may be given before, during or after the provision of credit to the Client and will be in accordance with the Privacy Act 1988 and subsequent amendments.

## 17. SECURITY AND CHARGE

The Client hereby charges all property, both equitable and legal, present or future of the Client in respect of any monies that may be owing by the Client to the Supplier under these terms and conditions or otherwise and hereby authorises the Supplier or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Client at any time or to register this charge over assets of the Client with the Australian Securities and Investments.

## 18. GENERAL MATTERS

### 18.1 No Waiver

A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right.

A power or right may only be waived in writing, signed by the party to be bound by the waiver.

### 18.2 Severability

Any provision in these terms and conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these terms and conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

### 18.3 Governing Law and Jurisdiction

These terms and conditions are governed by the laws of the State of Queensland and all disputes arising between the Client and the Supplier will be submitted to the Brisbane Registry of any Court as is competent to hear the matter.