

## **TERMS AND CONDITIONS OF TRADE**

1. **Interpretation**
  - 1.1 Unless otherwise inconsistent with the context the word "person" shall include a corporation:
  - 1.2 "goods" shall include services.
  - 1.3 Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.
  - 1.4 "ATS" shall mean All Trailer Spares, its successors, nominees and assigns.
  - 1.5 "customer" shall mean the person named as "the Applicant" on the credit application annexed hereto.
2. **Offer and Acceptance**
  - 2.1 Any quotation made by ATS is not an offer to sell or to provide goods. ATS shall not be bound by any order given in pursuance of any quotation until it is accepted in writing. Sales tax is not included in prices quoted unless stated but will be charged to the buyer's account when applicable. All orders are subject to acceptance by ATS within (30) days of receipt by ATS of the order. These terms and conditions shall be deemed to be incorporated into any agreement between ATS and the customer. Any terms and conditions contained in any order, offer, acceptance or other document of the customer and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
  - 2.2 Insofar as goods or services supplied by ATS are not of a kind ordinarily acquired for personal, domestic or household consumption, the liability for breach of a condition or warranty, implied into this contract by the Sale of Goods Act or the Trade Practices Act (other than a condition implied by Section 69) is limited:
    - (a) in the case of goods to any one of the following as determined by ATS:
      - (i) the refund of the price paid by the customer for the goods or the issue of a credit note for such amount; or
      - (ii) the replacement of the goods or the supply of equivalent goods; or
      - (iii) the repair of the goods; or
      - (iv) the payment of the cost of replacing the goods or at acquiring equivalent goods; or
      - (v) the payment of the costs of having the goods repaired;
    - (b) in the case of services to any one of the following as determined by ATS:
      - (i) the supplying of the services again; or
      - (ii) the payment of the cost of having the services supplied again.
3. **Delivery**
  - 3.1 Any date quoted for delivery ("the quoted date") is an estimate only and unless a guarantee shall be given by ATS in writing providing for liquidated damages for failure to deliver by the quoted date ATS shall not be liable to the customer for any loss or damage howsoever arising even if arising out of the negligence of ATS for failure to deliver on or before the quoted date. The customer shall accept and pay for goods if and when tendered notwithstanding any failure by ATS to deliver by the quoted date. Written or verbal advice to the customer that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.
  - 3.2 ATS shall not be liable to any customer or any other party for direct or indirect or consequential injury, loss or damage whatsoever by reason or any delay in delivery whether the same is due to the negligence of ATS or any other party, strike or any other industrial action be it of ATS or other party or any other cause whatsoever.
  - 3.3 ATS reserves the right to deliver by instalments. If delivery is made by instalments the customer shall not be entitled:
    - (a) to terminate or cancel the contract, or
    - (b) to any claim loss or damage howsoever arising failure by ATS to deliver any instalments on or before the quoted date.
  - 3.4 It is agreed that ATS shall not be responsible for the delay in delivery caused by, or in any way incidental to an act of God, war, fire, breakage's of machinery, strikes or arising out of any other unexpected exceptional cause, or any cause beyond reasonable control of ATS.
4. **Payment**
  - 4.1 Unless otherwise agreed in writing, payment terms are net cash thirty (30) days from the end of the month in which the goods are invoiced to the customer.
  - 4.2 This term as to the payment shall be of the essence of the contract.
5. **Title**
  - 5.1 Notwithstanding the delivery of the goods or part thereof, the goods remain the sole and absolute property of ATS as full legal and equitable owner until such time as the customer shall have paid ATS the full price together with the full price of any goods then the subject of any other contract with ATS.
  - 5.2 The customer acknowledges that he receives possession of and holds goods delivered by ATS solely as bailee for ATS until such time as the full price thereof is paid to ATS together with the full price of any goods then the subject of any other contract with ATS.
  - 5.3 Until such time as the customer becomes the owner of the goods, he will;
    - (a) store them on the premises separately,
    - (b) ensure that the goods are kept in good and serviceable condition;
    - (c) secure the goods from risk, damage and theft-. And
    - (d) keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the customer.
  - 5.4
    - (a) Until the goods are paid for in full, ATS authorises the customer to sell the goods as its agent. However, the customer shall not represent to any third parties that it is acting in any way for ATS. ATS will not be bound by any contracts with third parties to which the customer is a party.
    - (b) The proceeds of any sale of the goods shall be paid into a separate account and held in trust for ATS. The customer shall account to ATS from this fund for the full price of the goods.
    - (c) The customer is entitled to a period of credit but if prior to the expiration of the period OF credit the goods are sold and the proceeds of sale are received by the customer then the customer shall account to ATS for the price of the goods.

- (d) Should the customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws, or being a company, appoints an administrator or calls a meeting for the purpose of or to go into liquidation or has a winding-up application presented against it or has a receiver appointed, ATS may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this contract suspend or cancel this contract or require payment in cash before or on delivery or tender of goods notwithstanding the terms of payment previously specified or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.
- 5.5 If the customer does not pay for any goods on the due date then ATS is hereby irrevocably authorised by the customer to enter the customer's premises (or any premises under the control of the customer or as agent of the customer in which the goods are stored) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence, assault and battery or payment of any compensation to the customer whatsoever.
- 5.6 On retaking possession of the goods ATS may elect to refund to the customer any part payment that may have been made and to credit the customer's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.
6. **Risk**  
Unless otherwise agreed in writing, risk in the goods shall pass to the customer at the time when the goods have been placed on the vehicle which is to effect delivery from ATS store or warehouse. The goods shall remain at the customer's risk at all times unless and until ATS retakes possession of the goods pursuant to these terms and conditions.
7. **Claims and Returns**
- 7.1 All goods supplied to the customer are covered by such warranty as is specified by the manufacturer (if any). It is the responsibility of the customer to satisfy themselves that the goods supplied are of a description, quality and character ordered, and suitable for the purpose they were required.
- 7.2 Subject to clause 2.2 herein, ATS shall not be liable for any loss or damage whatsoever and however arising whether direct or indirect or consequential or in respect of any claim whenever and however made for any loss or damage, deterioration, deficiency or other fault or harm in the goods provided by or on behalf of or in any arrangement with ATS or occasioned to the customer or any third party or to his or their property or interest and whether or not due to the negligence of ATS, its servants or agents.
- 7.3 As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the customer, the customer shall within seven (7) days notify ATS in writing of the same.
- 7.4 ATS shall not be liable in any circumstances for any:
- defects or damages caused in whole or in part by misuse, abuse, neglect, improper application repair or alteration (other than by ATS) or accident.
  - any transport installation removal, labour or other costs;
  - details in goods not manufactured by it, but ATS will endeavour to pass on to the customer the benefit of any claim made by ATS and accepted by the customer and the benefit of any claim made by ATS and accepted by the manufacturer of such goods under a warranty given by the manufacturer of such goods provided that nothing contained in this subparagraph shall limit the rights of the customer to proceed against ATS pursuant to the Trade Practices Act; and
  - technical advice or assistance given or rendered by it to the customer or not in connection with the manufacture construction or supply of goods for or to the customer.
8. **Force Majeure**  
If by reason of any fact circumstance, matter or thing beyond the reasonable control of ATS, ATS is unable to perform in whole or in part any obligation under this contract, ATS shall be relieved of that obligation under this contract to the extent and for the period that it is so unable to perform and shall not be liable to the customer in respect of such inability.
9. **Default**  
Upon the occurrence of default by the customer in compliance with the terms herein:
- ATS may at its discretion withhold further supplies of goods and suspend the provision of further credit or cancel the contract or vary the terms of this contract without prejudice to its rights hereunder, **PROVIDED HOWEVER** that ATS may at any time and from time to time upon such terms as it may determine, waive any of its rights under this clause, but without prejudice to its rights thereafter of any of the events herein before referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.
  - The customer hereby authorises ATS or its agents to review its books and records, including all bank statements and other bank records, to determine whether the customer is able to pay its debts as and when they fall due and the customer further irrevocably grants to ATS a licence to enter upon the customer's premises for such purpose.
  - The customer shall pay to ATS interest at the rate of 1.5% per month on daily balances in respect of any amounts as may from time to time be overdue until paid and such money together with all interest shall be recoverable forthwith from the customer as a liquidated debt.
  - Without prejudice to any other right or remedy the customer shall indemnify ATS against any costs, fees, charges and disbursements charged by any mercantile or collection agent or solicitor engaged for the purpose of the collection or recovery of monies due and payable by the customer to ATS on an indemnity basis and all such costs shall be recoverable as a liquidated debt and, at the option of ATS may be recovered in the Small Debts Court
  - The customer shall pay to ATS an administration fee of \$50.00 on the occurrence of every event of default as a liquidated debt being a genuine pre-estimate of the loss of ATS in respect of such act of default however such fee shall not preclude ATS from claiming any higher amount from the customer for any loss occasioned by such act of default
10. **Change Of Ownership**
- In the event that the customer should change its structure to that of a company incorporated under the Corporations Law, then the signatories to this application whose names appear herein agree to be personally liable, both jointly and severally, for any debts incurred by that company.
  - The customer agrees to notify ATS in writing of any change of ownership of the customer or its business, or of directorships in the case of a corporate customer, or of any other change whatsoever affecting this agreement within

- seven (7) days from the date of such change and indemnifies ATS against any loss or damage incurred by it as a result of the customer's failure to notify ATS of any change.
- 10.3

11. **Lien Charge**

- 11.1 The customer hereby acknowledges and agrees that ATS has a lien over all goods in its possession belonging to the customer to secure payment of any or all amounts outstanding from time to time.
- 11.2 The customer hereby charges all property, both equitable and legal, of the customer in respect of any monies that may hereinafter be owing to ATS under this contract by the customer or otherwise and hereby authorise ATS 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 customer at any time, or to register this charge over assets of the customer with the Australian Securities Commission.

12. **Credit Limit**

The credit limit is the amount notified to the customer from time to time by ATS or its authorised agent and provided that ATS reserves the right not to supply certain goods or certain classes of goods on credit.

13. **Tolerances**

Reference to sheet size, strand width, gauge and weight and all measurements, statistics and characteristics are approximate only. Whilst every effort is made for these figures to be accurate, the specification for goods manufactured and supplied by ATS is subject to normal trade tolerances,

14. **Jurisdiction**

This contract for the supply of the goods is deemed to have been entered into in the State of Queensland. Any legal action arising out of or in respect of the contract and/or the interpretation thereof shall be brought only in the Courts of Brisbane in the State of Queensland and the customer irrevocably submits itself to the jurisdiction of the Courts of Brisbane in the State of Queensland.