

Access Industrial Products Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "AIP" means Access Industrial Products Pty Ltd ATF Jar Discretionary Trust T/A Access Industrial Products Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Access Industrial Products Pty Ltd ATF Jar Discretionary Trust T/A Access Industrial Products Pty Ltd.</p> <p>1.2 "Customer" means the persons buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by AIP to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).</p> <p>1.4 "Equipment" means all Equipment including any accessories supplied on hire by AIP to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by AIP to the Customer.</p> <p>1.5 "Price" means the Price payable for the Goods and/or Equipment hire as agreed between AIP and the Customer in accordance with clause 4 below.</p> <p>2. Acceptance</p> <p>2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Equipment.</p> <p>2.2 These terms and conditions may only be amended with AIP's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and AIP.</p> <p>3. Change in Control</p> <p>3.1 The Customer shall give AIP not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by AIP as a result of the Customer's failure to comply with this clause.</p> <p>4. Price and Payment</p> <p>4.1 At AIP's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by AIP to the Customer; or</p> <p>(b) AIP's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>4.2 AIP reserves the right to change the Price if a variation to AIP's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods will be charged for on the basis of AIP's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.</p> <p>4.3 At AIP's sole discretion a non-refundable deposit may be required.</p> <p>4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the dates determined by AIP, which may be:</p> <p>(a) on delivery of the Goods/Equipment;</p> <p>(b) thirty (30) days following the end of month in which the invoice is given to the Customer or posted to the Customer's address or address for notices;</p> <p>(c) the date specified on any invoice or other form as being the date for payment; or</p> <p>(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by AIP.</p> <p>4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and AIP.</p> <p>4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.</p> <p>5. Delivery of Goods/Equipment</p> <p>5.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:</p> <p>(a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at AIP's address; or</p> <p>(b) AIP (or AIP's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.</p> <p>5.2 At AIP's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.</p> <p>5.3 The Customer must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods/Equipment as arranged then AIP shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.</p> <p>5.4 AIP may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>5.5 Any time or date given by AIP to the Customer is an estimate only. The Customer must still accept delivery of the Goods/Equipment even if late and AIP will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.</p> <p>6. Risk</p> <p>6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.</p> <p>6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, AIP is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by AIP is sufficient evidence of AIP's rights to receive the insurance proceeds without the need for any person dealing with AIP to make further enquiries.</p> <p>6.3 If the Customer requests AIP to leave Goods outside AIP's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.</p> <p>7. Specifications of the Goods</p> <p>7.1 Where AIP gives advice or recommendations to the Customer, or the Customer's agent, with specific instructions regarding the use of the Goods and such advice or recommendations are not acted upon then AIP shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent purchase of the Goods.</p> <p>7.2 The Customer acknowledges that:</p> <p>(a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in AIP's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by AIP;</p> <p>(b) while AIP may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that AIP has given these in good faith, and are estimates which are variable due to factors out of AIP's control.</p> <p>7.3 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.</p> <p>7.4 AIP reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases AIP will notify the Customer in advance of any such substitution.</p> <p>8. Title To Goods</p> <p>8.1 AIP and the Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid AIP all amounts owing to AIP; and</p> <p>(b) the Customer has met all of its other obligations to AIP.</p> <p>8.2 Receipt by AIP of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>8.3 It is further agreed that:</p> <p>(a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to AIP on request.</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for AIP and must pay to AIP proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.</p> <p>(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for AIP and must pay or deliver the proceeds to AIP on demand.</p> <p>(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of AIP and must sell, dispose of or return the resulting product to AIP as it so directs.</p> <p>(e) the Customer irrevocably authorises AIP to enter any premises where AIP believes the Goods are kept and recover possession of the Goods.</p> <p>(f) AIP may recover possession of any Goods in transit whether or not delivery has occurred.</p> <p>(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of AIP.</p> <p>(h) AIP may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.</p>	<p>9. Personal Property Securities Act 2009 ("PPSA")</p> <p>9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by AIP to the Customer.</p> <p>9.3 The Customer undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which AIP may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, AIP for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of AIP;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of AIP;</p> <p>(e) immediately advise AIP of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>9.4 AIP and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(k) and 132(4) of the PPSA.</p> <p>9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>9.7 Unless otherwise agreed to in writing by AIP, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>9.8 The Customer must unconditionally ratify any actions taken by AIP under clauses 9.3 to 9.5.</p> <p>9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>10. Security and Charge</p> <p>10.1 In consideration of AIP agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>10.2 The Customer indemnifies AIP from and against all AIP's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising AIP's rights under this clause.</p> <p>10.3 The Customer irrevocably appoints AIP and each director of AIP as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.</p> <p>11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>11.1 The Customer must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify AIP in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow AIP to inspect the Goods/Equipment. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>11.2 AIP acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>11.3 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, AIP makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. AIP's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>11.4 If the Customer is a consumer within the meaning of the CCA, AIP's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>11.5 If AIP is required to replace the Goods under this clause or the CCA, but is unable to do so, AIP may refund any money the Customer has paid for the Goods.</p> <p>11.6 If the Customer is not a consumer within the meaning of the CCA, AIP's liability for any defect or damage to the Goods is limited to:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Customer by AIP at AIP's sole discretion;</p> <p>(b) limited to any warranty to which AIP is entitled, if AIP did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>11.7 Subject to this clause 11, returns will only be accepted provided that:</p> <p>(a) the Customer has complied with the provisions of clause 11.1; and</p> <p>(b) AIP has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>11.8 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, AIP shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Customer failing to properly maintain or store any Goods/Equipment;</p> <p>(b) the Customer using the Goods/Equipment for any purpose other than that for which they were designed;</p> <p>(c) the Customer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Customer failing to follow any instructions or guidelines provided by AIP;</p> <p>(e) fair wear and tear, any accident, or act of God.</p> <p>11.9 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by AIP as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that AIP has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 11.10.</p> <p>11.10 Notwithstanding anything contained in this clause if AIP is required by a law to accept a return then AIP will only accept a return on the conditions imposed by that law.</p>	<p>14. Cancellation</p> <p>14.1 AIP may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice AIP shall repay to the Customer any money paid by the Customer for the Goods/Equipment. AIP shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>14.2 In the event that the Customer cancels delivery of the Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by AIP as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>14.3 Cancellation of orders for Goods/Equipment made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>15. Privacy Act 1988</p> <p>15.1 The Customer agrees for AIP to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by AIP.</p> <p>15.2 The Customer agrees that AIP may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.</p> <p>15.3 The Customer consents to AIP being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>15.4 The Customer agrees that personal credit information provided may be used and retained by AIP for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Goods/Equipment; and/or</p> <p>(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Goods/Equipment.</p> <p>15.5 AIP may give information about the Customer to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Customer including credit history.</p> <p>15.6 The information given to the CRB may include:</p> <p>(a) personal information as outlined in 15.1 above;</p> <p>(b) name of the credit provider and that AIP is a current credit provider to the Customer;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and AIP has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of AIP, the Customer has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>15.7 The Customer shall have the right to request (by e-mail) from AIP:</p> <p>(a) a copy of the information about the Customer retained by AIP and the right to request that AIP correct any incorrect information; and</p> <p>(b) that AIP does not disclose any personal information about the Customer for the purpose of direct marketing.</p> <p>15.8 AIP will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.</p> <p>15.9 The Customer can make a privacy complaint by contacting AIP via e-mail. AIP will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.</p> <p>16. Unpaid Seller's Rights</p> <p>16.1 Where the Customer has left any item with AIP for repair, modification, exchange or for AIP to perform any other service in relation to the item and AIP has not received or been tendered the whole of any monies owing to it by the Customer within ninety (90) days, AIP shall have, until all monies owing to AIP are paid:</p> <p>(a) a lien on the item; and</p> <p>(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.</p> <p>16.2 The lien of AIP shall continue despite the commencement of proceedings, or judgment for any monies owing to AIP having been obtained against the Customer.</p> <p>17. Equipment Hire</p> <p>17.1 Equipment shall at all times remain the property of AIP and is returnable on demand by AIP. In the event that Equipment is not returned to AIP in the condition in which it was delivered AIP retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all AIP shall have right to charge the Customer the full cost of replacing the Equipment.</p> <p>The Customer shall:</p> <p>(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.</p> <p>(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.</p> <p>(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by AIP to the Customer.</p> <p>17.2 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, AIP's interest in the Equipment and agrees to indemnify AIP against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.</p> <p>18. General</p> <p>18.1 The failure by AIP to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect AIP's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, enforceability, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which AIP has its principal place of business, and are subject to the jurisdiction of the courts in Queensland.</p> <p>18.3 Subject to clause 11 AIP shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by AIP of these terms and conditions (alternatively AIP's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).</p> <p>18.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by AIP nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>18.5 AIP may license or sub-contract all or any part of its rights and obligations without the Customer's consent.</p> <p>18.6 The Customer agrees that AIP may amend these terms and conditions at any time. If AIP makes a change to these terms and conditions, then that change will take effect from the date on which AIP notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for AIP to provide Goods/Equipment to the Customer.</p> <p>18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>18.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.</p>
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