

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

1.1. In the Terms and Conditions of Sale, unless the contrary intention appears:

Completion Date means the date identified as such in the Scope of Work.

Defective means Special Vehicles (or any part of them) which are not in accordance with the Terms and Conditions of Sale or which are inadequate or incomplete.

Event of Force Majeure means any cause outside the reasonable control of the affected Party (other than an obligation to pay money) and which could not have been prevented or avoided by that Party taking all reasonable steps.

GST has the meaning given to that term under the *A New Tax System (Goods and Special Vehicles Tax) Act 1999* (Commonwealth).

Intellectual Property Rights are all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know how, materials, documents, methods, confidential information, patents, inventions and discoveries.

Uniqco Special Vehicles means AWD Pty Ltd trading as Uniqco Special Vehicles, a specialist supplier of tailored heavy vehicle solutions, including rail shunting, verge mowing, rail maintenance, tunnel washing and remote controls.

Law means:

- a) Commonwealth, State and local government legislation, including regulations, by-laws, orders, awards and proclamations;
- b) common law and equity; and
- c) requirements and guidelines of Government authorities, consents, certificates, licences, permits and approvals, and any conditions of the same.

Parties means the Client and Uniqco Special Vehicles and "Party" means one of them.

Price means the price agreed to in writing by the Parties for the delivery of the Special Vehicles.

Scope of Work means the specific Special Vehicles or scope of work required by the Client to be delivered and/or performed by Uniqco Special Vehicles.

Special Vehicles means the specific tailored heavy vehicle solutions, including rail shunting, verge mowing, rail maintenance, tunnel washing and remote controls agreed to in writing by the Parties.

Terms and Conditions of Sale means the agreement between the Parties comprising:

- a) the Terms and Conditions of Sale;
- b) the specific Scope of Work agreed to by the Parties in relation to the Special Vehicles to be sold by Uniqco Special Vehicles.

Site means any place that is occupied, operated, controlled or owned by the Client.

Tax Invoice has the meaning given to that term under the *A New Tax System (Goods and Special Vehicles Tax) Act 1999* (Commonwealth).

The Client means the party receiving the Special Vehicles under the Scope of Work.

Warranty Period means the period of 12 months commencing on the date of completion of the Special Vehicles or such longer period as agreed to in writing by the Parties.

2. AGREEMENT TO PERFORM SERVICES

- 2.1. In consideration of payment of the Price by the Client, Uniqco Special Vehicles will sell the Special Vehicles in accordance with the Terms and Conditions of Sale.
- 2.2. Any terms and conditions contained in any documents other than the Terms and Conditions of Sale in respect of the Special Vehicles, including those supplied with the Special Vehicles, are of no legal effect unless agreed to in writing by both parties.

3. UNIQCO SPECIAL VEHICLES'S OBLIGATIONS

- 3.1. In delivering the Special Vehicles, Uniqco Special Vehicles will:
 - a) comply with all applicable Laws;
 - b) perform all activities on Site in a safe manner and with due care and skill;
 - c) not interfere with the Client's activities or the activities of any other person at Site;
 - d) comply with all lawful, reasonable directions of the Client's work supervisor in and around the Site and all policies and procedures of the Client which the Client

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makes available to Uniqco Special Vehicles from time to time;

- e) at the Client's request, provide any documentation as to the results of quality testing and certification in relation to the Special Vehicles reasonably requested by the Client; and
- f) take all reasonable measures to ensure that its employees, agents and contractors comply with the requirements set out in clauses 3.1(a) to (e).

- 3.2. If Uniqco Special Vehicles breaches its obligations under clause 3.1(e) or otherwise puts the safety of any person (including themselves) at risk, the Client may immediately remove Uniqco Special Vehicles from the Site and prevent Uniqco Special Vehicles from further accessing the Site, until the breach has been rectified.

4. PERFORMANCE

- 4.1. Uniqco Special Vehicles must sell the Special Vehicles as per the Scope of Work by the agreed Completion Date.

5. PRICE

- 5.1. The Client must pay Uniqco Special Vehicles the Price for the Special Vehicles in accordance with clause 6.
- 5.2. The Price is inclusive of all costs incurred by Uniqco Special Vehicles in delivering the Special Vehicles, including all charges for insurance, quality testing, preparation of documentation and provision of certification, unless otherwise agreed in writing.
- 5.3. The Price is inclusive of all taxes and duties, except GST.

6. INVOICE AND PAYMENT

- 6.1. Uniqco Special Vehicles will provide the Client with a Tax Invoice at the end of each month during which the Special Vehicles were performed, for all Special Vehicles performed during that month;
- 6.2. The Client will pay each Tax Invoice provided by Uniqco Special Vehicles within 14 days from the date of the relevant Tax Invoice or as otherwise agreed to in writing or specified on the relevant Tax Invoice.
- 6.3. Should the Client fail to make a payment to Uniqco Special Vehicles in accordance with clause 6.2 then Uniqco Special Vehicles will be entitled to charge interest at 1.5% of the

outstanding amount per month, from the due date for payment of the invoice until the date when full payment is received plus debt collection fees (where applicable).

7. WARRANTY PERIOD AND DEFECTS

- 7.1. If, during the Warranty Period, any of the Special Vehicles are found to be Defective, the Client may require Uniqco Special Vehicles to make good the Defective Special Vehicles within a reasonable time frame. This will be the Client's sole remedy.

8. LIABILITY

- 8.1. Neither Party will be liable for consequential damages or breach-of-contract damages that are remote or speculative, or that the breaching party could not reasonably have foreseen.
- 8.2. Uniqco Special Vehicles's liability to the Client under the Terms and Conditions of Sale will not exceed the total amount paid to Uniqco Special Vehicles as per the specific Scope of Work.

9. TERMINATION

- 9.1. The Client may terminate the Special Vehicles, if:
 - a) Uniqco Special Vehicles becomes, or is deemed to become, insolvent or if insolvency, receivership or bankruptcy proceedings are commenced in respect of Uniqco Special Vehicles - immediately upon notice to Uniqco Special Vehicles;
 - b) Uniqco Special Vehicles's performance of its obligations under the Terms and Conditions of Sale is affected by an Event of Force Majeure for a period of 14 days or more - immediately upon notice to Uniqco Special Vehicles; and
 - c) Uniqco Special Vehicles is in breach of any of its obligations under the Terms and Conditions of Sale - immediately upon such breach not being remedied within 7 days of the receipt of a notice from the Client requesting the breach be remedied.
- 9.2. If the Terms and Conditions of Sale is terminated under clause 9.1, the Client must reimburse Uniqco Special Vehicles for the costs incurred in relation to the Special Vehicles supplied by Uniqco Special

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Vehicles as at the date of the notice given under that clause.

- 9.3. The Client acknowledges that the Special Vehicles are custom-made and tailored to suit the Client's specific requirements and as such no termination for convenience is allowed under this Agreement or any other/implied terms and conditions.

10. FORCE MAJEURE

- 10.1. If, as a result of an Event of Force Majeure, a Party becomes unable, wholly or in part, to perform any of its obligations under the Terms and Conditions of Sale, or is delayed in performing those obligations:

- a) the affected Party must immediately give notice to the other party setting out the full details of the Event of Force Majeure, the obligations affected and the estimated delay in those obligations being able to be performed;
- b) the affected obligations will be suspended, but only in so far, and for so long as, the performance of those obligations is affected by the Event of Force Majeure; and
- c) the affected Party must use its best endeavours to overcome or remove the effects of the Event of Force Majeure, to mitigate its effects and to minimise the delay.

11. INSURANCE

- 11.1. Both Parties will procure and maintain from reputable insurers during the term of the Terms and Conditions of Sale, all and any insurances that:

- a) are reasonable in the circumstances;
- b) a Party is required to have by Law, and a Party must provide evidence, upon request from the other Party of its compliance with this clause 11.1.

12. CONFIDENTIALITY

- 12.1. The Parties must treat all information not publically available which either Party obtains in connection with the Terms and Conditions of Sale as confidential and must not disclose such information to any person without the other Party's prior written approval (except to the extent necessary to comply with its obligations under the Terms and Conditions of Sale).

13. INTELLECTUAL PROPERTY

- 13.1. To the extent that any Intellectual Property Rights form any part of the Special Vehicles, Uniqco Special Vehicles grants to the Client a royalty-free licence to use those Intellectual Property Rights with respect to the Special Vehicles performed as part of the Scope of Work.

14. MISCELLANEOUS

- 14.1. Uniqco Special Vehicles will perform its obligations under the Terms and Conditions of Sale as an independent contractor and not as an agent, partner, representative or employee of the Client.

- 14.2. The Terms and Conditions of Sale constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings, negotiations and communications on that subject matter.

- 14.3. A provision of the Terms and Conditions of Sale or a right created under it may not be waived, assigned, sub-contracted or varied except in writing signed by the Party or Parties to be bound.

- 14.4. Clauses 9.1 (Termination), 10.1 (Force Majeure) and 12 (Confidentiality) shall survive any termination of the Terms and Conditions of Sale.

- 14.5. The laws in force in Western Australia govern the Terms and Conditions of Sale and the Parties submit to the exclusive jurisdiction of the courts of Western Australia.

- 14.6. All amounts referred to in the Terms and Conditions of Sale are in Australian dollars unless stated otherwise.

- 14.7. Any notices given in accordance with the Terms and Conditions of Sale must be in writing and sent by email or post to the recipient's address as specified in the Scope of Work.

- 14.8. A notice sent by email is regarded as given and received when sent by the sender unless:

- a) the sender receives a report of delivery failure or delivery delay;
- b) the sender receives an "Out of Office" reply or similar response; or
- c) the recipient informs the sender that the notice is illegible, incomplete or

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corrupted within 4 hours of the notice being transmitted.

- 14.9. A notice delivered other than on a business day or after 4.00pm (recipient's time) is to be regarded as being received at 9.00am on the following business day and a notice delivered before 9.00am (recipient's time) is to be regarded as being received at 9.00am.