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**Trading Terms & Conditions**  
**Ekebol Pty Ltd ABN: 66 140 715 297**

Please read the following terms carefully. If you do not understand any aspect of these Terms you should seek legal advice. Ekebol agrees to supply and the Customer agrees to purchase the Goods on the following terms:

**DEFINITIONS**

A reference to:

- 'Ekebol' means Ekebol Pty Ltd ACN 140 715 297 ATF the Ausroe Trust ABN 66 140 715 297;
- 'Equipment' means all Recovery Units provided by Ekebol and includes all tilt slide truck bodies and associated equipment;
- 'Goods' means the goods supplied by Ekebol as set out on the relevant Invoice (including any Equipment and any parts provided to the Customer);
- 'Services' means the services provided by Ekebol as set out on the relevant Order Confirmation or Invoice or otherwise agreed;
- 'Terms' means these Trading Terms and Conditions;
- 'the Customer' means the Customer specified on the relevant Order Confirmation or Invoice;
- 'Invoice' means any invoice issued by Ekebol to the Customer in respect of the purchase of the relevant Goods or Services.

**1. APPLICATION OF TERMS**

- 1.1 These Terms apply to all transactions by which the Customer is supplied with Goods or Services by Ekebol. To the extent any agreement between Ekebol and the Customer contains any term inconsistent with these Terms, these Terms will apply unless such other term expressly refers to and amends a specific provision of these Terms, in writing, and such alteration is agreed to by Ekebol in writing.
- 1.2 The Customer must immediately notify Ekebol of any material change in any of the information supplied by the Customer to Ekebol in any Credit Application or Order or in relation to the structure of the Customer's business (including but not limited to any transfer of business name, change in corporate structure or any company acting as trustee of any trust), and until a new Credit Application is signed and approved by Ekebol any Customer and any Guarantor signing any Credit Application or Order shall remain liable to Ekebol as though all Goods and Services were supplied to it.

**2. PAYMENT**

- 2.1 The Customer must pay Ekebol for the Goods and Services (other than Equipment) within the time specified in the relevant invoice.
- 2.2 The Customer must pay Ekebol for Equipment prior to receiving possession of the Equipment (ex-works) or delivery of the Equipment.
- 2.3 Ekebol reserves the right not to proceed with any order until any required deposit is received.
- 2.4 If the Customer fails to make any payment by the due date Ekebol is relieved of any responsibility to deliver any Goods or Services until all moneys payable are paid in full, and the Customer agrees:
  - (a) to pay interest at the rate of 2% per month calculated on any amounts due but unpaid to Ekebol until payment is received in full.
  - (b) to pay all costs associated with the collection of any sum owing to Ekebol (including but not limited to legal costs calculated on a solicitor and own client full indemnity basis, commissions to debt collectors, location costs and process serving costs).

**3. RISK & TITLE**

- 3.1 Risk in all Goods and Services passes to the Customer upon dispatch of the Goods and Services, and from such time Ekebol bears no responsibility of any kind for the Goods and Services, other than as expressly specified herein.
- 3.2 Ekebol provides no insurance against theft, fire or damage to trucks on our premises. It is the responsibility of the Customer to ensure the truck is insured while in transit, and during the build and modification process against theft and all damages. It is the responsibility of the customer to ensure the goods are fully insured from the time and point of dispatch from Ekebol's premises.
- 3.3 Title to Goods only passes from Ekebol to the Customer upon receipt by Ekebol of cleared funds for the full price of the relevant Goods and Services.  
Until such time as full property and ownership in the Goods passes to the Customer in accordance with this clause the Customer acknowledges that it holds the Goods as bailee of Ekebol, and that Ekebol retains unencumbered title to the Goods.
- 3.4 If:
  - the Customer fails to pay any moneys due to Ekebol under these Terms when due; or
  - a receiver and manager, liquidator, provisional liquidator or other insolvency administrator is appointed in respect of the Customer, or a scheme of arrangement is proposed or approved in respect of the Customer, or a mortgagee enters in possession of any of the Customer's assets or an application is made for the winding up of the Customer; or
  - the Customer is otherwise in default of these Terms;the Customer authorises Ekebol to enter the Customer's premises and to retake possession of the Goods in accordance with these Terms, and to re-sell the Goods if Ekebol retakes possession of them, and indemnifies and saves harmless Ekebol, its servants and agents in relation to any loss or damage as a result of the retaking of possession of such Goods. If Ekebol exercises its right to retake possession of Goods, the Customer grants power of sale to Ekebol to resell the Goods, and agrees that any shortfall owing after the Goods are resold is payable by the Customer.

**4. TAXES AND DUTIES**

The amounts payable by the Customer to Ekebol for, or in connection with, any supply made under these Terms do not include any GST or other taxes or duties. If any GST or other taxes or duties are payable, the Customer must pay such amounts to Ekebol at the same time and in the same manner as the price payable for the Goods and Services.

**5. VARIATION OR CANCELLATION OF ORDER**

If the Customer requests any change to an order (including additions, deletions or substitutions) such change is at the Customer's cost. If the Customer wishes to cancel an order for Equipment, Ekebol may in its absolute discretion charge the Customer for all costs incurred by Ekebol (including parts purchased and labour costs incurred by Ekebol to fulfil the Customer's order) prior to Ekebol being notified of cancellation.

**6. CEASE SUPPLY**

If the Customer:

- becomes insolvent;
- breaches a condition of these Terms; or
- fails to pay for the Goods and Services in accordance with Clause 2,

Ekebol may halt or terminate the supply of the Goods and Services under these Terms by written notice to the Customer, until such breach is rectified.

**7. SPECIFICATIONS**

- 7.1 Ekebol reserves the right to change the specifications of any Goods quoted for in its sales literature, at any time and without notice.

- 7.2 Unless otherwise specifically stated in any contract, all certifications and particulars of weights and dimensions stated in the contract and in Ekebol's sales literature are approximate only.
- 7.3 The rated capacity for the tilt tray body or recovery equipment quoted or in Ekebol's sales literature, is the rated capacity of the tray body or recovery equipment only. It is not the legal load carrying capacity of the finished truck and body combination as installed, which is dependent on the truck make, model, axle tare weights and options fitted. The Customer must confirm the estimated legal load carrying capacity of the truck and body combination prior to ordering the goods.
- 7.4 Winch capacities quoted or in sales literature are quoted per the winch manufacturer's standard practice and is the maximum pulling force on a single line at rated oil pressure, rated oil flow rate and with the winch rope only on the bottom layer of the winch drum.

#### 8. PERSONAL PROPERTY SECURITIES ACT 2009 ('PPSA')

- 8.1 In this clause the terms 'financing statement', 'financing change statement', 'security agreement', and 'security interest' have the meaning given by the PPSA.
- 8.2 On placement of an order 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 any Goods or Equipment that has been supplied and will be supplied in the future by Ekebol to the Customer, and that Ekebol is the holder of a purchase money security interest ('PMSI') by virtue of this agreement and/or the PPSA.
- 8.3 The Customer undertakes to:
- promptly undertake such acts and sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Ekebol may reasonably require to;
    - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register, and any other document registrable under the PPSA;
    - correct a defect in a statement referred to in this sub-clause;
  - not register any financing charge statement in respect of a security interest which will or could compete with or affect any security interest created by any agreement between Ekebol and the Customer without the prior written consent of Ekebol;
  - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or the Equipment in favour of a third party without the prior written consent of Ekebol.
- 8.4 The parties agree that Sections 96, 115 and 125 of the PPSA do not apply to any security agreement created by these Terms.
- 8.5 The Customer waives its rights:
- to receive notices under Sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA, and
  - to receive a verification statement in accordance with Section 157 of the PPSA
- agrees to ratify any actions taken by Ekebol under this clause and consents to and appoints Ekebol to be an interested person, and the Customer's authorised representative for the purposes of PPSA Section 275(9).

#### 9. SECURITY

- 9.1 In consideration of Ekebol agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, property 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 (including, but not limited to, the payment of any money).
- 9.2 The Customer irrevocably appoints Ekebol and each director of Ekebol as the Customer's attorney/s to perform all necessary acts to give effect to the provisions of these terms, including, but not limited to, signing any document on the Customer's behalf.

#### 10. PRIVACY ACT 1988 ('PA') Privacy Amendment (Enhancing Privacy Protection) Act 2012

- 10.1 The Customer authorises Ekebol to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Ekebol.
- 10.2 Ekebol may exchange information about the Customer with credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency:
- to assess an application by the Customer assess the creditworthiness of the Customer; and/or
  - to notify other credit providers of a default by the Customer and/or 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
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are permitted to exchange under the PA, and consents to Ekebol being given a consumer credit report to collect overdue payment on commercial credit.
- 10.3 The Customer agrees that personal credit information provided may be used and retained by Ekebol for the following purposes (and for other purposes as agreed between the Customer and Contractor or required by law from time to time):
- the provision of Goods; and/or
  - the marketing of Goods by Ekebol, its agents or distributors; and/or (You can unsubscribe to direct marketing if you wish)
  - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - the operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 10.4 We will not share your information outside of Australia without your consent.
- 10.5 For general enquiries you can contact us anonymously or using a pseudonym, where practical.
- 10.6 Sometimes we will receive unsolicited information about you or your business. If this information is pertinent to us and our business we will store this information in the same way under the Privacy Act.
- 10.7 We will use, where practical, electronic communication using email, SMS and social networking forums to communicate with you. You can still tell us how you would prefer to communicate.

#### 11. DEFECTS, WARRANTIES AND RETURNS

- 11.1 Ekebol's Goods come with guarantees that cannot be excluded under the *Competition and Consumer Act 2010* ('CCA'). The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage, and also entitled to have the Goods repaired or replaced if the Goods fail to be of an acceptable quality and the failure does not amount to a major failure.
- 11.2 The Customer must carefully inspect the Goods on delivery and must within 7 days of delivery notify Ekebol in writing of any evident defect/damage, shortage in quantity, or failure to comply with description or quote. The Customer must notify any other alleged defect in the Goods in writing as soon as reasonably possible after any such defect becomes evident, and allow Ekebol to inspect the Goods.
- 11.3 Ekebol excludes any and all conditions, warranties and terms implied by statute, general law, international convention or custom, except any implied condition or warranty the exclusion of which would contravene the provisions of any statute or cause any part of these Terms to be void. Under applicable State, Territory and Commonwealth law (including the CCA) certain statutory implied guarantees and warranties may be implied into these terms and conditions (the Non-Excluded Warranties). Ekebol acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Warranties.
- 11.4 Except as expressly set out in these Terms or in respect of the Non-Excluded Warranties, Ekebol gives no warranties or other representations (including but not limited to the quality or suitability of the Goods), and Ekebol's liability in respect of any warranties is limited to the fullest extent permitted by law.

- 11.5 Ekebol warrants Equipment it manufactures to be free of defects in material or workmanship for 24 months from the date of despatch by Ekebol. As a condition of such warranty, the Customer must notify Ekebol in writing of any claimed defect immediately upon discovery and must promptly return the item for inspection. Unless otherwise specified by Ekebol in writing, such warranty is limited to the replacement or repair of the Goods and excludes cartage charges to or from Ekebol's premises. Ekebol shall not be liable for labour, travelling and any other incurred expenses in the disassembly or re-installation etc of the Goods. Ekebol accepts no liability for faults arising from the improper use or faulty maintenance of the Goods incorrect installation, improper operation beyond recommended specifications or contingent or consequential loss or damage in any situation whatsoever. Any unauthorised modification to the Goods by the Customer voids this warranty.
- 11.6 If the Customer is not a consumer within the meaning of the CCA, Ekebol's liability for any defect in or damage to the Goods is:
- limited to the value of any express warranty provided to the Customer by Ekebol in Ekebol's sole discretion;
  - limited to any warranty to which Ekebol is entitled, if Ekebol did not manufacture the Goods;
  - otherwise negated absolutely.
- 11.7 If Ekebol is liable for a breach of any condition or warranty implied by the CCA in respect of the Goods and Services, Ekebol's liability is limited to, at the election of Ekebol:
- in respect of the Services, either the resupply of the Services or the payment of the cost of having the Services resupplied; and
  - in respect of the Goods, either the replacement or repair of the Goods in respect of which the breach occurred, or the refund of any money the Customer has paid for the Goods or Services.
- 11.8 Subject to the above, Ekebol's liability for any loss or damage suffered by the Customer in connection with the supply of any Goods and Services by Ekebol (including liability for any negligent act or omission), shall be limited to the price paid for the Goods, and Ekebol shall under no circumstance be liable for consequential or indirect damages arising out of or in connection with these Terms, (including without limitation, loss of profits or damage suffered as a result of claims by any third person).
- 11.9 Subject to this clause, returns will only be accepted if:
- the Customer has complied with the provisions of sub-clause 1; and
  - Ekebol has agreed that the Goods are defective; and
  - the Goods are returned within a reasonable time at the Customer's cost in as close a condition to that in which they were delivered as is possible.
- 11.10 Notwithstanding any sub-clause of this provision but subject to the CCA, Ekebol shall not be liable for any defect, damage or liability which may be caused or partly caused by or arise as a result of:
- the Customer failing to properly use, operate, maintain, store or transport any Goods;
  - the Customer using the Goods for any purpose other than that for which they were designed or making any unauthorised modification;
  - the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - the Customer, its employees or contractors failing to strictly follow any instructions, guidelines or manuals provided by Ekebol or any work place health and safety legislation or guidelines, or to provide proper procedures or training for its employees and contractors;
  - fair wear and tear, any accident, or act of God;

## 12. INDEMNITY

The Customer agrees to indemnify and keep indemnified Ekebol and its associates from and against any and all loss, liability, damage, fee, fines, costs (including legal costs on a full indemnity basis) expense, suit, claim, demand, judgment or prosecution arising directly or indirectly out of or in connection with any personal injury or death, or loss of or damage to property as a result of the Customer's or its employees' or contractors' use of the Equipment, Goods and Services after delivery or acceptance.

## 13. GOVERNING LAW

These Terms are governed by the laws of Queensland, and any contract entered into between the parties shall be deemed entered into at the principal office of Ekebol.