

1. INCORPORATION OF TERMS

- (a) These Terms of Trade shall be incorporated into each and every contract for Goods and Services which is entered into between UTE and the Customer.
- (b) These Terms of Trade:
 - (i) are current from 1 February 2020;
 - (ii) apply to all contracts for Goods and Services entered into between UTE and the Customer from 1 February 2020; and
 - (iii) may be replaced by UTE at any time and, upon such replacement, the newer terms of trade shall prevail over these Terms of Trade.
- (c) Unless otherwise agreed in writing by UTE, where any terms and conditions of the Client are inconsistent with these Terms of Trade, then these Terms of Trade will prevail to the extent of the inconsistency.

2. FORMATION OF SALE CONTRACT

- 2.1. The Customer acknowledges that by signing the Quote and these Terms of Trade, the Customer has agreed to a Contract to engage UTE to fabricate the Goods and provide the install Services on the terms and conditions set out in these Terms of Trade and the Quote.
- 2.2. The Customer acknowledges that the Quote issued by UTE is only valid for 30 days and UTE shall not be bound to accept the engagement to supply the Goods if:
 - (a) the Customer has not signed the Quote and these Terms of Trade within 30 days after UTE has issued the Quote; or
 - (b) has varied any provision in these Terms of Trade or the Quote provided by UTE.

3. PAYMENT OF CONTRACT PRICE

3.1. General Payment Obligations

- (a) The Customer agrees to pay the Contract Price and Deposit as stipulated in the Quote.
- (b) The Unless otherwise directed by UTE the Customer shall pay the invoice amount into the UTE Account by electronic funds transfer.
- (c) Payment (less any Deposit) is required 30 days from the date of issue of the invoice.

3.2. Consequence of Late Payments and Non Payment

If any amount payable by the Customer is outstanding, then UTE shall be entitled to charge interest on the outstanding amount at a rate of 15% per annum accruing daily until the amount is paid in full.

4. CUSTOMER OBLIGATIONS

4.1. Request For Further Information

- (a) After the Customer has signed the Quote and these Terms of Trade UTE will request further information from the Customer for the design and supply of the Goods and Services.
- (b) UTE requires the responses to the request for information within 5 Business Days.

4.2. Drawings

- (a) Once the further information has been received from the Customer, UTE will prepare the drawings for the Goods and Services (if required) and forward these to the Customer for review and approval.
- (b) The Customer must notify UTE whether they approve the drawings or require amendments to the drawings within 14 days of receipt of the drawings from UTE.
- (c) If the Customer requests amendments to the drawings, UTE will amend the drawings and resubmit these to the Customer as soon as possible.
- (d) If the Customer requires further amendments then the processes in clause 4.2(b) and 4.2(c) above shall be repeated as required until the customer provides UTE with unconditional approval of the drawings.

- 4.3. The Customer acknowledges that the turnaround periods stipulated by UTE in the Quote are not inclusive of the time taken to obtain approval of all drawings and that any delays by the Customer in providing the information in clause 4.1 or approval of the drawings in clause 4.2 will result in delays to the completion date and indemnifies UTE for any loss arising due to delays to the completion date.

5. COMMENCEMENT AND PERIOD FOR COMPLETION OF WORK

5.1. Programme/Timetable

- (a) The timetable for completion of the work shall be as indicated in the Quote and shall be extended in accordance with any delays experience as a result of the Customer providing UTE with unconditional approval of all drawings pursuant to clause 4.2 above.
- (b) The timeframes as contemplated in the Quote may be modified in accordance with this Terms of Trade.

5.2. Commencement of Manufacturing

UTE will not be required to order the parts and commence manufacturing the Goods until they have received approval of all drawings in accordance with clause 4.2 above.

5.3. Supply Interruption

Where a Good is not able to be supplied within the prescribed timeframes by clause 5.1(a) due to a supply interruption for a part or parts of the Goods, UTE shall extend the timeframe for completion and notify the Customer of the delay and the expected

completion time.

5.4. Late Delivery

UTE will not be liable for any loss incurred or suffered by the Customer as a result of any delay in delivery of parts of Goods necessary to complete the Services.

6. AUTHORITY IN RESPECT OF THE VEHICLE

- 6.1. The Customer authorises UTE to do every act, matter and thing considered desirable or necessary for UTE to provide the Customer with the Goods and/or Services set out in the Quote in respect of the Customer's vehicle, including (but not limited to):
 - (a) entering the vehicle; and
 - (b) test driving the vehicle (including driving the vehicle to another location outside of the premises).

7. VARIATIONS TO CONTRACTS

7.1. Customer Initiated Variation

- (a) During the term of the Contract, the Customer may, by notice in writing direct UTE to vary any aspect of the works on and from the date specified in the Notice.
- (b) If the specifications provided for the purpose of providing the Quote are wrong or need to be amended, such change will be considered a variation to the Contract and the further costs of the changes will be the responsibility of the Customer.
- (c) To the extent that the variations will alter the cost of the works, such cost will be calculated and UTE will provide the Customer with a revised quote within 14 days of the notice of the Variation.
- (d) If the Customer rejects the revised quote the Customer must elect to:
 - (i) proceed with the original contract; or
 - (ii) terminate the contract.
- (e) If the proposed variation to the contract compromises UTE's manufacturing standards then UTE will reject the variation and the Customer must elect whether they proceed with the original contract or terminate the contract.
- (f) Any variation to the Contract by the Customer will extend the completion date by a time to be stipulated by UTE.
- (g) If the Contract is terminated in accordance with clause 7.1(d), the Customer shall pay UTE for the work completed up to the date of the termination, on demand.

7.2. UTE Initiated Variation

- (a) If during the performance of its duties under the contract UTE become aware of further additional work required that was not initially quoted then UTE must issue the Customer with a revised quote.
- (b) If the variation to the contract is necessary to comply with UTE's manufacturing standards and the Customer rejects the variation then the contract shall be automatically terminated.
- (c) If the variation is otherwise not necessary to comply with a standard and the Customer rejects the variation, then the contract shall continue based on the original quotation.

- 7.3. The Customer acknowledges that variations to the contract may result in delays to the completion date and hereby indemnifies UTE for any loss arising due to variations causing delays to the completion date.

- 7.4. If the Contract is terminated in accordance with clause 7.2(b), the Customer shall pay UTE for the work completed up to the date of the termination, on demand.

8. SUPPLY OF GOODS

8.1. Title & Risk

- (a) Full unencumbered title for the Goods supplied does not pass to the Customer until the Contract Price is paid in full.
- (b) Risk in the Goods passes to the Customer on acceptance of the Goods at delivery or collection.
- (c) UTE will not be liable for any loss incurred or suffered by the Customer as a result of any delay in delivery of Goods.

8.2. Testing Of Goods

- (a) UTE shall test the Goods in accordance with all applicable laws, enactments, orders, regulations, and other similar instruments (including all applicable health and safety legislation).
- (b) If during testing UTE discovers defective part/s that require replacement then UTE shall unilaterally extend the completion date and notify the Customer of the expected delay in sourcing and replacing the part.

8.3. Collection of Goods

- (a) Unless otherwise stipulated in the Quote the Customer shall arrange collection of the Goods within 7 days of UTE notifying the Customer that the Goods are ready for collection ("Collection Date").
- (b) The Customer will be responsible for the costs of collection of the Goods.
- (c) If the Customer does not arrange collection of the Goods by the Collection Date then UTE shall charge the Customer the Storage Fee and the Customer shall be responsible for insuring the Goods from the Collection Date.

8.4. Delivery

- (a) Where stipulated on the Quote the Goods will be delivered to the Site where

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agreed between UTE and the Customer at the Quote stage.

- (b) Delivery of the Goods shall be arranged within 7 days of UTE notifying the Customer that the Goods are ready for delivery ("Delivery Date").
- (c) The Customer will be responsible for the delivery charges.
- (d) If the Customer does not arrange delivery of the Goods with UTE by the Delivery Date then UTE shall charge the Customer the Storage Fee and the Customer shall be responsible for insuring the Goods from the Delivery Date.

9. INTELLECTUAL PROPERTY

UTE retains all copyright and intellectual property rights in all designs and drawings used or provided to the Customer in performing the design services.

10. WARRANTY CLAIMS

10.1. The following clause applies if the Customer is not a consumer for the purposes of Australian Consumer Law (ACL).

- (a) UTE shall only be liable for claims against the workmanship of the Goods and Services for a period of 12 months from the date of delivery or collection.
- (b) The Customer must make a valid warranty claim to UTE within the period of 12 months from the date of delivery or collection.
- (c) Upon receipt of a warranty claim from a Customer, the Customer shall deliver to UTE the vehicle the subject of the warranty claim in which case the claim will be accepted or rejected.
- (d) If the claim is rejected in accordance with clause 10.1 (c) above then the Customer may request that the parties shall jointly appoint an independent consultant to assess the system to determine if there is a defect in the workmanship.
- (e) If the claim is accepted by UTE in accordance with 10.1 (c) or a determination is made in favour of the Customer at clause 10.1 (d) above then UTE shall repair the defects within a reasonable amount of time.
- (f) This warranty will not apply:
 - (1) to normal wear and tear;
 - (2) where Goods come to the end of their natural service life;
 - (3) to maintenance items such as globes, wiper blades, lubricants and fluids; or
 - (4) where the defect is a result of alteration, accident, misuse, abuse or neglect, or unsafe or inappropriate driving practices; or
 - (5) where the goods are subsequently repaired or modified by a service agent not authorised by UTE.

10.2. If the Customer is a consumer for the purposes of ACL, UTE's Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law and the following clause applies.

- (a) For major failures with the service, the Customer is entitled:
 - (i) to cancel the service contract with UTE; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value.
- (b) The Customer is also entitled to choose a refund or replacement for major failures with Goods.
- (c) If a failure with the Goods or a Service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time.
- (d) If this is not done the Customer is entitled to a refund for the Goods and to cancel the contract for the service and obtain a refund of any unused portion.
- (e) The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.

11. GENERAL WARRANTIES & REPRESENTATIONS

11.1. UTE knows of no reason why the Goods may not be supplied in accordance with and to the levels stated in this Agreement, and;

- (a) the provision of the Goods and the Customer's use thereof shall not infringe any Rights of any third party;
- (b) the Goods and Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence and fit for the purpose as notified by the Customer to UTE;
- (c) it shall discharge its obligations pursuant to this Agreement with all due skill, care and diligence including good industry practice and (without limiting the generality of this clause) in accordance with its own established internal procedures.

11.2. Limitation Of Liability

- (a) UTE will not be liable to the Customer or any third party in respect of any claim for injury, death, loss or damage to any person or property caused or arising out of the use of products sold by UTE, or out of any Services performed by UTE, except to the extent that liability is imposed upon UTE or implied into a transaction by this agreement or by any statutory provisions that cannot be excluded by this agreement.
- (b) UTE has no authority to accept any Goods for safe custody from the Customer and will not be liable in any case for loss of, or damage to, any articles alleged to have been left with UTE by the Customer or alleged to have been left in the Customer's vehicle, however such loss or damage was

caused.

12. CUSTOMER REPRESENTATIONS & OBLIGATIONS

The Customer hereby warrants and represents to UTE that:

- (a) it will co-operate with UTE (without incurring any expenditure) and provide UTE with such information and assistance as UTE may reasonably require in order to enable or facilitate UTE to duly and punctually to comply with its obligations under these terms.
- (b) In the event that UTE considers either that the Customer is in breach of any obligations or that UTE is otherwise unable to perform any obligations as a result of any other act or relevant omission of the Customer (in either case other than the due and proper performance by the Customer of its obligations hereunder) UTE shall only be entitled to rely on such breach act or relevant omission as relieving it from the performance of any of its obligations.
- (c) UTE shall reasonably promptly after the alleged breach, act or omission came to its attention have notified the Customer in writing setting out in reasonable detail such breach, act or omission; and to the extent that such breach, act or omission by the Customer precludes or restricts performance by UTE of its obligations.

13. TERMINATION FOR CUSTOMER'S BREACH

13.1. UTE may terminate this Contract immediately on notice in writing to the Customer if:

- (a) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- (b) the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (c) the Customer, being a natural person, dies; or
- (d) the Customer ceases or threatens to cease conducting its business in the normal manner.

13.2. If notice is given to the Customer pursuant to the preceding clauses, UTE may, in addition to terminating the Agreement:

- (a) claim liquidated damages equivalent to the Contract Price;
- (b) retake possession of all property of UTE in the possession of the Customer; and
- (c) pursue any additional or alternative remedies provided by law.

14. TERMINATION FOR UTE'S BREACH

14.1. If UTE breaches any of its obligations under this Contract, then the Customer may only terminate this Contract if:

- (a) the Customer has notified UTE of the alleged breach in writing; and
- (b) UTE has failed to remedy the default within 28 days of receiving the notice of default from the Customer.

14.2. If the Customer terminates this Contract in accordance with clause 14.1 above then:

- (a) the Customer shall pay any invoice issued under clause 3 for work carried out by UTE up to the date that the Contract is terminated;
- (b) UTE shall only be liable to the Customer:
 - (i) for the costs that the Customer incurs to rectify UTE's default; and
 - (ii) up to a maximum amount equal to the payments of the Contract price paid to UTE.

14.3. The Customer acknowledges and agrees that UTE shall not be liable to the Customer for any economic loss suffered by the Customer including, but not limited to:

- (a) loss of profit, revenue or use; and
- (b) financial costs including interest incurred on borrowings, by reason of UTE's default.

14.4. Notwithstanding any rights that the Customer may have against UTE, the Customer shall not be entitled to withhold or set-off any amounts from any invoice from UTE and must pay the monies owing under any invoice to UTE in full without deduction.

15. MISCELLANEOUS

15.1. Quotations

Unless otherwise stated in the Quotation:

- (a) all prices in the Quotation are exclusive of GST and sales tax; and
- (b) all prices are quoted in Australian dollars.

15.2. GST

- (a) The parties acknowledge that the amounts set out in this Agreement are exclusive of GST.
- (b) The supply of the Goods made by UTE to the Customer will be subject to GST which will be added to invoices rendered.
- (c) The Customer must pay to UTE an additional amount equal to the amount of the consideration multiplied by the applicable GST rate.

15.3. Use of Subcontractors

- (a) The Customer acknowledges that UTE may engage the services of subcontractors. No additional consent, either verbal or written will be obtained for the Customer.

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- (b) The selection of sub-contractors will be at the discretion of UTE, who may, if so required terminate and replace any sub- contractor they in their absolute discretion see fit.
- (c) UTE warrants to the Customer that any sub contractors engaged by UTE will be covered by all necessary insurance, and the Customer will not have the right to raise any further queries in relation to insurance cover of the sub contractors or request certificates of currency for those insurance policies.

15.4. Personal Property Securities Act

- (a) UTE may register its security interest over Goods, where the goods have been collected or delivered and the Contract Price has not been paid in full, on the PPS Register and the Customer shall indemnify UTE for the costs of registering those interests.
- (b) The Customer agrees to provide to UTE all the necessary information to enable UTE to register a financing statement which complies with the PPSA and PPSReg.

15.5. Dispute Resolution.

- (a) If a dispute arises in connection with this Terms of Trade, a party to the dispute must give to the other party to the dispute notice specifying the dispute and requiring its resolution under this clause ("Notice of Dispute").
- (b) If the dispute is not resolved within seven (7) Business Days after the Notice of Dispute is issued, the dispute will be referred to arbitration. The arbitration must be conducted in Western Australia by a single arbitrator.
- (c) If the parties have not agreed upon the arbitrator, the arbitrator is the person appointed by the President or the President's nominee, acting on the request of a party, and:
 - (i) the arbitrator must not be a present or former member, officer, employee or agent of a party or a person who has acted as a mediator or advised a party in connection with the dispute;
 - (ii) the arbitration must be conducted in accordance with the *Commercial Arbitration Act 1985 (WA)* ("Arbitration Act") except that:
 - (iii) the arbitrator must only accept evidence which would be accepted in a court of law;
 - (iv) a party may be represented by a qualified legal practitioner or other representative;
 - (v) the arbitrator must include in the arbitration award the findings on material questions of law and of fact, including references to the evidence on which the findings of fact were based; and
 - (vi) the parties consent to an appeal to the Supreme Court of Western Australia on any question of law arising in the course of the arbitration or out of an arbitration award; and
- (d) after accepting the appointment and during the arbitration the arbitrator may:
 - (i) require the parties to lodge security or further security towards the arbitrator's fees and expenses; and
 - (ii) apply any security towards those fees and expenses, but the arbitrator may not direct a party to provide security for the costs of the arbitration to be incurred by the other parties.

15.6. This clause does not prevent a party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.

15.7. If a dispute is referred to arbitration, UTE may suspend work until the dispute is resolved.

15.8. This clause continues in force even where the Agreement has been fully performed, terminated or rescinded or where the parties or any of them have been discharged from the obligation to further perform the contract for any reason.

16. GENERAL

16.1. Entire Agreement

This Agreement shall constitute the whole agreement between the parties hereto in respect of the subject matter of this Agreement provided that nothing in this clause 15 shall limit a Party's liability for fraudulent misrepresentation.

16.2. Variation

This Agreement shall be capable of being varied only by a written instrument signed by a duly authorised officer or other representative of each of the Parties.

16.3. Severability

This Agreement is severable in that if any provision is determined to be illegal or unenforceable by any court of competent jurisdiction such provision shall be deemed to have been deleted without affecting the remaining provisions of this Agreement.

16.4. No Partnership, etc.

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, agency or joint venture between the Parties hereto or constitute or be deemed to constitute either Party the agent of the other for any purpose whatsoever and neither Party shall have any authority or power to bind the other or to contract in the name of or create a liability against the other.

16.5. Waiver

Unless otherwise agreed in writing, no failure by either Party to exercise any right or remedy available to it hereunder nor any delay so to exercise any such right to remedy shall operate as a waiver of it nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

16.6. Notices

Any notice to be given hereunder by either Party to the other shall be in writing and delivered personally, sent by pre-paid recorded delivery or registered post to the addressee at the addressee's registered office for the time being or by telefax and shall be deemed to be received if delivered personally at the time of receipt if sent by post at the expiration of 72 hours after being placed in the post (having been correctly addressed) whether or not received or if by telefax 24 hours after dispatch to the correct telex number or telefax number of the addressee.

16.7. Third Party Rights

No third party shall have any rights in connection with this Agreement.

16.8. Force Majeure

Neither Party shall be liable for any delay or failure to carry out its obligations under this agreement caused by Force Majeure provided that it promptly gives written notice of the occurrence of the Force Majeure relied on to the other party and it uses all reasonable endeavours to remove or avoid the effect of such Force Majeure as promptly as practicable. In this Terms of Trade Force Majeure also includes the delay of delivery of parts to UTE by being delayed in customs or the delay or sinking of a ship. If any Force Majeure is relied on for longer than 60 days by either Party under this clause 16.8 the other shall be entitled to terminate this Agreement on written notice.

16.9. Governing Law and Jurisdiction

This Agreement shall be governed and construed in accordance with the laws of Western Australia. The parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of Western Australia.

17. DEFINITIONS AND INTERPRETATION

17.1. The terms defined have the same meanings when used throughout this Agreement.

17.2. Unless the contrary intention appears:

- (a) a reference to this Agreement or any other document includes any variation
- (b) or replacement of it;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, transferors, substitutes (including persons taking by novation) and assigns;
- (f) an agreement, representations or warranty on the part of or in favour of two (2) or more persons binds or is for the benefit of them jointly and severally;
- (g) if a period of time is specified and commences from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (h) a reference to time shall mean Western Standard Time;
- (i) a term or definition incorporated by reference into this Agreement remains in force notwithstanding that the document from which it was referred may at any time be no longer in force; and
- (j) gender reference includes all genders.

17.3. Headings are inserted for convenience and do not affect the interpretation of this Agreement.

17.4. The following words have the following meanings:

- "Business Day"** means any day on which trading banks in Western Australia are open for business;
- "Customer"** means any Person to whom UTE provides Goods and Services;
- "Contract"** means the contract formed pursuant to clause 2.1 for the supply of Goods and Services contemplated in the Quote and governed by these Terms of Trade;
- "Contract Price"** means the aggregate amount payable by the Customer to UTE including any additional variation costs;
- "Day"** means the period of time commencing at midnight and ending 24 hours later;
- "Goods"** means the items manufactured by UTE in accordance with the quote;
- "Loss"** means any delay, loss, liability, damage, expense or cost, and includes, without limitation, direct or consequential loss or damage;
- "Person"** includes a firm, a body corporate, an unincorporated association and an authority;

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“PPSA”	means the <i>Personal Property Securities Act 2009</i> , as amended;
“PPSReg”	means the <i>Personal Property Securities Regulations 2010</i> , as amended;
“PPS Register”	means the Personal Property Securities Register established pursuant to the <i>Personal Property Securities Act 2009</i> ;
“Quote”	means the fee quoted to the Customer and annexed to these Terms;
“Services”	means design and installation of custom designed Goods;
“Site”	means a place nominated by the Customer where the Goods are to be delivered for installation;
“Storage Fee”	means an amount of \$12.00 per square metre of the Goods per day after the Customer is notified of the collection date up to and including the date of collection;
“Terms of Trade”	means these terms and conditions of sale;
“UTE”	means UNITED TRANSPORT EQUIPMENT PTY LTD ACN 166 733 093]

Signed _____

Print Name _____

Dated _____

For and on behalf of the Customer as evidence of acceptance of these Terms of Trade