

BRYANTS TRACTORS (1983) LTD TERMS OF TRADE

1. Defined Terms

- 1.1 "Bryant Tractors," 'we', 'our', 'us' – means Bryant Tractors (1983) Ltd
- 1.2 "Goods" – means all goods supplied from time to time by us to you.
- 1.3 "PPSA" – means the Personal Property Securities Act 1999 as amended or substituted from time to time.
- 1.4 "You" – means the customer.
- 1.5 "Procured Item" – means an item that is not in our stock and which has been sourced at your request.

2. Terms of Contract

- 2.1.1 All goods or services supplied by us to you are subject to these terms of trade unless varied in writing. If you accept delivery of these goods or services from us, or you deliver goods to us for repair or servicing, those actions by you are deemed to be acceptance of these terms of trade, notwithstanding anything that may be stated to the contrary in your enquiries.

3. Price

- 3.1 Unless otherwise agreed in writing, all freight, insurance, delivery and travel charges may be additional to any price quoted. Any price quoted may be altered prior to delivery of the goods to you, or before completion of repairs or services by us, if our costs fluctuate materially. A cost fluctuation will be a material fluctuation, for the purposes of these terms of trade, if the fluctuation has the effect of increasing the median gross acquisition cost of the goods, or of the services by a factor of 5% or more. We may withdraw any quotation before it is accepted, and in any event any quotation will lapse 30 days after it is given, or on the date specified on the quote GST is payable by you as an additional amount on all prices and charges.
- 3.2 The price for goods and services will be either as quoted to you in writing or, if no written quote is provided, levied pursuant to our standard charges applying at the time, notice of which you are hereby deemed to have received, and which receipt you hereby acknowledge.

4. Payment

- 4.1 All accounts must be paid in full before the 20th day of the month following the date of the invoice, unless a Wholegoods account when payment is required before or on delivery. Failure to comply constitutes a breach of contract.
- 4.2 Any unpaid accounts as at the 20th day of the month following the date of the invoice will incur penalty interest at 1.5% per month. There are no exceptions to this. You are liable to pay all the expenses, collection and legal costs (on a solicitor/client basis) incurred by us as a result of your breach of contract.

5. Ownership

- 5.1 Ownership of the Goods shall not pass on delivery to you, but shall remain with us until full payment of all money owed by you has been made. Until all money has been paid to our account:
 - a) You hold the Goods as a fiduciary for us and you will deal with the Goods as our Agent (but you must not hold yourself out as our agent to any third parties.)
 - b) If you resell the goods, the proceeds of any resale belong to us and you will pay such proceeds into a separate account, for which separate records are kept. On receipt of such proceeds, you will make payment forthwith to us of the full amount due to us.
 - c) You irrevocably give Bryant Tractors Ltd and our agents the right to enter your premises, or to any place where we reasonably believe you have stored the Goods, to remove the Goods and to resell them;
 - d) If any of the Goods become part of a product or mass (by whatever process) such that the identity of those Goods is lost in the product or mass, the security interest created by this clause continues in the product or mass in accordance with the provisions of the PPSA;
 - e) If any of the Goods are installed in or affixed to or become an accession to other goods, the security interest continues in the accession in accordance with the provisions of the PPSA.

6. Liens

- 6.1 All goods delivered to or in our possession, for repair or servicing, are subject to a lien for any sums owing by you to us, for repairs or servicing carried out on the goods. Where we retain a lien over any of your goods and if you are more than three months overdue with any monies owing, we may sell the goods without further notice to you and may repay the amounts owing to us from the sale proceeds including the expenses of sale.

7. Risk & Delivery

- 7.1 Unless otherwise agreed, you are responsible to arrange and meet all costs of or associated with transportation of all Goods. If we are delivering goods to you, we will use our best endeavours to see that deliveries are made according to the Schedule, but we are not responsible for any losses arising from delay in delivery.
- 7.2 Risk in respect of the Goods passes to you when the Goods are delivered to you, or to your carrier or agent, or at the time you pay for the Goods, whichever is the earliest. Risk in the Goods in our possession for servicing or repair remains with you throughout. It is your responsibility to insure even if we have arranged transportation of the Goods.
- 7.3 While every care is taken in packing goods, we do not accept responsibility for goods lost or broken in transit.

8. Returns

- 8.1 All goods returned maybe subject to a handling charge. Returned goods will not be accepted unless made within seven days from the date of the invoice and accompanied by the invoice or packing slip. Freight charges are not refundable and transportation charges must be prepaid on goods being returned. Procured items are not returnable.

9. Parts Procured from other sources

- 9.1 Freight costs incurred in procuring items from other sources and all incidental expenses are your responsibility.

10. Warranties

- 10.1 We give no warranty on any product or service performed beyond that offered by the manufacturer or supplier. The judgement of the manufacturer or supplier as to the validity of any claim is final and binds both us and you.
- 10.2 Details of warranties available from the manufacturer or supplier, if any, will be provided upon request but are in any event subject to clauses .3 and .4 later in this clause. Where any warranty conflicts with clauses .3 or .4 below, then the provisions of clauses .3 and .4 shall apply.
- 10.3 We are not liable:
 - a) Where you have altered or modified the Goods, misapplied the Goods or subjected them to any unusual or non-recommended use, servicing or handling.
 - b) For loss caused by factors beyond our control;
 - c) For any indirect or consequential loss of any kind;
 - d) For any second hand goods;
 - e) Where the terms of any written warranty have not been complied with, the operating specifications or directions contained in any manufacturer's handbook to you have not been complied with;
 - f) Where you have engaged an unqualified tradesperson, or have had goods fitted in a un-tradesman-like manner.
- 10.4 Our total liability under any warranty for defective or damaged goods supplied by us or in relation to the provision of services is limited at our option to either:
 - a) Replacing or repairing the defective or damaged goods; or
 - b) Refunding the price of the defective or damaged goods or provision of service.For the avoidance of doubt, we are not liable for any loss of crops, loss because of delay, loss incurred for labour, other supplied, substitute machinery rental or any other loss whatsoever.

11. PPSA

- 11.1 You acknowledge and agree that:
 - a) By assenting to these terms of trade, you here by grant a security interest to us in all goods previously supplied by us to you (if any) and all after acquired goods supplied by us to you (or for your account); and
 - b) These terms of trade shall apply notwithstanding anything express or implied to the contrary contained in your purchase order.
- 11.2 These terms of trade constitute a security agreement for the purposes of s.36 of the PPSA.
- 11.3 You hereby waive your right to receive a verification statement in accordance with s.148 of the PPSA.
- 11.4 You undertake to sign any further document and/or provide any further information which we may reasonably require to enable registration of a Financing Statement or Financing Change Statement on the Personal Property Securities Register.
- 11.5 You undertake not to register a Financing Change Statement or a change in demand in respect of the Goods (as those terms are defined in the PPSA) without our prior written consent.

12. Governing Law

- 12.1 These terms of trade will be interpreted in accordance with and be governed by the laws of New Zealand.