

APEX Mobility Terms and Conditions v05.2024

These Terms and Conditions apply (unless otherwise previously agreed in writing) to the supply of Goods by APEX Mobility to a Customer from time to time. Any supply of Goods by APEX Mobility to the Customer made after the date of acceptance of these terms is a supply pursuant to these Terms and Conditions as defined and any such supply does not give rise to a new or separate agreement.

Interpretation

In these conditions unless the contrary intention appears:

- “Additional Charges” includes all installation charges, delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to APEX Mobility arising out of the sale of the Goods.
- “Customer” means the person or entity to or for whom the Goods are to be supplied by APEX Mobility.
- “Goods” means the goods sold to the Customer by APEX Mobility and any related services provided by APEX Mobility.
- “Intellectual Property” means APEX Mobility’s business names, trade names, trade marks, product names, copyright, patents, designs, industrial processes, trade secrets, know how and other intellectual property rights and development in such property rights.
- “APEX Mobility” means APEX Mobility Pty Ltd, ABN 42 638 043 893.
- “Purchase Price” means the list price for the goods as charged by APEX Mobility at the date of delivery or such other price as may be agreed by APEX Mobility and the Customer prior to delivery of the Goods.
- “Terms and Conditions” means these trading terms and conditions as amended from time to time by APEX Mobility and notified to the Customer.

Order for Goods

An order given to APEX Mobility is binding on APEX Mobility and the Customer, if:

- a written acceptance is signed for or on behalf of APEX Mobility; or
- the Goods are supplied by APEX Mobility in accordance with the order.

The Customer must place all orders to APEX Mobility in writing specifying order number, date of order, goods required, requested delivery date, quotation reference number, place of delivery and full name and title of person placing the order.

An acceptance of the order by APEX Mobility is then to be an acceptance of these Terms and Conditions by APEX Mobility and the Customer and these Terms and Conditions will override any conditions contained in the Customer’s order. APEX Mobility reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on APEX Mobility until accepted by it.

An order which has been accepted in whole or in part by APEX Mobility cannot be cancelled by the Customer without obtaining the prior written approval of APEX Mobility, which it may refuse in its absolute discretion.

Warranty and Limitation of Liability

APEX Mobility warrants that the Goods When delivered to the Customer will comply with any description provided to the Customer on account of the Goods and with the any specifications (if any) for the Goods. Subject to APEX Mobility's specific warranties accompanying the Goods or any other written document of APEX Mobility's, APEX Mobility gives no representations or warranties for the Goods.

Unless otherwise stated in writing, any warranties are provided as 'ex APEX Mobility workshops'. Any costs in shipping equipment to the APEX Mobility workshop or returning it to the location of use is at the expense of the Customer.

The Customer warrants that in placing its order for the Goods it has:

- satisfied itself as to the description and condition of the Goods and their fitness for the purpose for which the Customer will use them; and
- not relied on any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by APEX Mobility or anyone on APEX Mobility's behalf in respect of the Goods, other than those expressly contained in these Terms and Conditions, APEX Mobility's specific warranties accompanying the Goods or any other document that APEX Mobility has provided to the Customer.

Where the customer buys Goods as a consumer, these Terms and Conditions are subject to the Australian Consumer Law which governs the rights of consumers and nothing in these Terms and Conditions affects the Customer's statutory rights.

The liability of APEX Mobility is limited, to the extent permissible by law and at the option of APEX Mobility: in relation to goods, to;

- replacing the Goods or the supply of equivalent Goods;
- the repair of the Goods;
- the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- the payment of the cost of having the Goods repaired; and in relation to services, to:
- the supply of the services again; and
- the payment of the cost of having the services supplied again.

To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions or in specific warranties accompanying the Goods, are excluded and APEX Mobility is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:

- any increased costs or expenses;
- any loss of profit, revenue, business, contracts or anticipated savings;
- any loss or expense resulting from a claim by a third party; or
- any special, indirect or consequential loss or damage of any nature whatsoever.

Any claims to be made against APEX Mobility for short delivery of Goods must be lodged with APEX Mobility in writing within 7 days of the delivery date.

Unless the terms and warranties are included in these Terms and Conditions or are provided in specific warranties accompanying the Goods, all prior discussions, quotations, warranties to the extent permitted by law, are excluded.

Delivery, Defects and Returns

DELIVERY

The times quoted for delivery are estimates only and APEX Mobility accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of APEX Mobility.

The Customer must provide suitable access for unloading and appropriate labour or mechanical means to unload the Goods upon delivery to the Customer's nominated premises. The Customer is liable for all costs and charges therein.

Unless otherwise agreed, delivery shall be deemed to have taken place:

- if the Goods are to be collected from APEX Mobility's premises, then:
- just prior to the Goods being loaded onto the carrier organised by the Customer; or
- at the time and date when the Goods are scheduled to be collected by the Customer, whichever occurs first; or
- if the Goods are to be delivered to Customer's address as nominated by the Customer on the order, then just prior to the Goods being unloaded from the carrier at the nominated address in accordance with the order, which order is delivered to the Customer at the Customer's expense.

Signature of any delivery note by any agent, employee or representative of the Customer or where delivery is to any independent carrier, by such carrier or its agent, shall be conclusive proof of delivery.

Risk in accepting the Goods passes on delivery to the Customer. The Customer must, from the date risk in the Goods passes to it until the date that title to the Goods passes to it, insure the Goods against all reasonably insurable risks for their full replacement value and, if required by APEX Mobility, store the Goods separately from any other goods and in a way that enables the Goods to be clearly identifiable as the property of APEX Mobility.

All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.

Any claims to be made against APEX Mobility for short delivery of Goods must be lodged with APEX Mobility in writing within 7 days of the delivery date. This can be done via email to . A read-receipt or response via email is required to validate this email notification.

DEFECTS & RETURNS

The Customer must inspect the Goods on delivery and notify APEX Mobility in writing within 7 days of delivery of any alleged defect, damage or failure of the Goods. If no notice is given within 7 days of delivery, the Customer will be deemed to have accepted the Goods.

If a notice of defect or damage is given the Customer must allow APEX Mobility access to inspect the Goods and determine whether or not that notice is valid. If APEX Mobility accepts that Goods

are defective or damaged the parties acknowledge that the Customer has remedies available to it as a consumer under the Australian Consumer Law.

APEX Mobility will not be liable for any defects, damage or failure of Goods which have not been stored or used in a proper manner. While in most cases APEX Mobility equipment is specially ordered/manufactured or customised to suit the client, therefore not returnable, APEX Mobility may, at their sole discretion offer a refund for equipment where a change of mind or change in need occurs. An offer will be put forward at the time, and will be based on purchase price, less costs, and a handing/restocking fee.

Goods will not be accepted for return in any circumstances (including any custom made, proceed or acquired Goods) other than those specified in this clause 4 or required by law.

Price and Payment

The Customer must pay the Purchase Price and the Additional Charges to APEX Mobility.

If the Customer is in default, APEX Mobility may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.

Where APEX Mobility has not agreed to grant credit to the Customer, all payments must be made by the Customer in advance or on delivery of the Goods. Where APEX Mobility has agreed to grant credit to the Customer, all payments are due within 30 days of the date of invoice.

Retention of Title

Ownership, title and property of the Goods remains with APEX Mobility until payment in full for the Goods and all sums due and owing by the Customer to APEX Mobility on any account has been made. Until the date of payment:

- the Customer has the right to sell the Goods in the ordinary course of business and;
- where the Customer is paid by the third party, the Customer must hold the whole of the proceeds of the sale on trust for APEX Mobility; or
- where the Customer has not paid by the third party, the Customer, at APEX Mobility's option, agrees to assign its claims against the third party to APEX Mobility upon APEX Mobility giving written notice to that effect;
- until the Goods have been sold by the Customer in the ordinary course of the Customer's business, the Customer holds the Goods as bailee for APEX Mobility;
- the Goods are always at the risk of the Customer.
- The Customer is deemed to be in default immediately upon the happening of any of the following events:
 - if any payment to APEX Mobility is not made promptly before the due date for payment;
 - if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to APEX Mobility is dishonoured.

In the event of a default by the Customer, then without prejudice to any other rights that APEX Mobility may have at law or under these Terms and Conditions:

APEX Mobility or its agents may without notice and without liability to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.

APEX Mobility may recover and resell the Goods;

- if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, APEX Mobility may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of APEX Mobility and the Customer may be ascertained. APEX Mobility must promptly return to the Customer any goods the property of the Customer and APEX Mobility is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.

In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for APEX Mobility. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the APEX Mobility at the time of the receipt of such proceeds. The Customer will pay APEX Mobility such funds held in trust upon the demand of APEX Mobility.

The Customer must pay to APEX Mobility all reasonable costs and disbursements incurred by APEX Mobility in pursuing any recovery action, or any other claim or remedy against the Customer, including debt recovery fees and legal fees incurred by APEX Mobility on a solicitor client basis and as a liquidated sum.

Personal Properties Securities Act ("PPSA")

Capitalised terms used in this clause but not defined in clause 1 have the same meaning as given to them in the PPSA.

APEX Mobility and Customer acknowledge that:

- these Terms and Conditions constitute a Security Agreement in respect of the Goods;
- the Goods are Collateral for the purposes of the PPSA;

APEX Mobility holds (as a Secured Party) a Security Interest over all of the present and after acquired Goods supplied by APEX Mobility to the Customer and any Proceeds of the sale of those Goods;

- that any purchase by the Customer on credit terms from APEX Mobility or retention of title under clause 6 will constitute a Purchase Money Security Interest;
- the Purchase Money Security Interest granted will continue to apply to any Goods coming into existence or proceeds of sale of Goods coming into existence;

APEX Mobility will continue to hold a Security Interest in the Goods in accordance with, and subject to, the PPSA, notwithstanding that the Goods may be processed, co-mingled or become an accession with other goods.

Any APEX Mobility Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interests;

- until title in the Goods passes to the Customer, it will keep all Goods supplied by APEX Mobility free of any charge, lien or Security Interest and not otherwise deal with the Goods in a way that will or may prejudice any rights of APEX Mobility under these Terms and Conditions or the PPSA; and
- in addition to any other rights under these Terms and Conditions or otherwise arising, APEX Mobility may exercise any and all remedies afforded to it as a Secured Party under

Chapter 4 of the PPSA, including entry into any building or premises owned, occupied or used by the Customer to search for and seize, dispose of or retain those Goods over which APEX Mobility holds a Security Interest.

The Customer undertakes to:

- sign any further documents and provide such information which APEX Mobility may reasonably require to register, amend or update a Financing Statement or a Financing Change Statement in relation to a Security Interest on the Personal Securities Register;
- indemnify, and on demand reimburse, APEX Mobility for all expense incurred in registering a Finance Statement or Financing Change Statement on the Personal Property Securities Register or releasing any Security Interests;
- not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of APEX Mobility; and
- provide APEX Mobility not less than 7 days prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or other change in the Customer's details registered on the Personal Property Securities Register to enable APEX Mobility to register a Financing Change Statement if required.

APEX Mobility and the Customer agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under these Terms and Conditions.

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
- as a Grantor and / or a Debtor under sections 142 and 143 of the PPSA; and
- to receive a Verification Statement in accordance with section 157 of the PPSA.

The Customer must unconditionally ratify any actions taken by APEX Mobility under this clause 10.

The Customer appoints and authorises APEX Mobility to be its attorney to sign in the Customer's name all documents which APEX Mobility reasonably considers necessary to protect, preserve and enforce its rights and powers under these Terms and Conditions and the PPSA.

Intellectual Property

The Goods may contain Intellectual Property rights that belong to APEX Mobility. Property, right and title in that Intellectual Property will remain with APEX Mobility despite the Customer acquiring the Goods.

The Customer agrees to do all things reasonably required and execute all documents to ensure APEX Mobility retains ownership in the Intellectual Property.

The Customer must not pass any Intellectual Property to third parties without APEX Mobility's prior written approval.

The Customer agrees to indemnify and keep indemnified APEX Mobility against any claim for infringement of Intellectual Property where the claim arises out of information supplied by the Customer or as a result of APEX Mobility complying with the Customer's order.

Specifications

Specifications, drawings and particulars of weights and dimensions provided by the Customer are subject to the accuracy of the information provided. The Customer acknowledges that APEX Mobility may deviate from the specifications provided by the Customer if APEX Mobility believes it is reasonably necessary to do so and any such deviation does not vitiate any contract with APEX Mobility or form grounds for any claim against APEX Mobility by the Customer.

The descriptions, illustrations and performances contained in APEX Mobility's catalogues, price lists and other advertising material do not form part of the contract of sale of the Goods.

Where specifications, drawings or other particulars are supplied by the Customer, APEX Mobility's quotation is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by APEX Mobility and set out in a quotation, then any such increase or decrease are to be adjusted on a unit rate basis according to unit prices set out in any attached document or in the quotation.

Any performance figures given by APEX Mobility are estimates only. APEX Mobility is not liable for loss or damage resulting from failure of the Goods to attain such figures unless specifically guaranteed in writing by APEX Mobility.

The Customer must comply with APEX Mobility's instructions and recommendations in relation to the Goods including instructions relating to installations. To the extent permitted by law, APEX Mobility is not liable for any loss or damage resulting from the Customer failing to follow such instructions.

Default and termination

In relation to any amounts payable to APEX Mobility that has not been paid by the due date:

- default interest will accrue daily at the rate of 2% per calendar month; and
- the Customer agrees to indemnify APEX Mobility from and against all costs and disbursements incurred by APEX Mobility in pursuing the debt (including legal costs on a solicitor and own client basis and collection agency costs).

In the event that the Customer's payment is dishonoured for any reason the Customer will be liable for any dishonour fees incurred by APEX Mobility.

If the Customer:

- is in default of any payment obligation;
- fails to remedy a breach of any non-payment related obligation within 14 days of having been given a written notice to remedy the breach by APEX Mobility;
- becomes unable to pay its debts and when they fall due; or
- commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up; then APEX Mobility may, without prejudice to any other rights or remedies available to it under these Terms and Conditions or otherwise, by notice in writing to the Customer:
- suspend further supply of the Goods and require payment in advance for any future supply;
- recover possession of any Goods for which payment has not been made;
- terminate all or any Orders which have been accepted by APEX Mobility;

- claim immediate payment of all moneys due by the Customer in respect of all Goods which will then be immediately due and payable notwithstanding the due date or dates for payment; and/or
- continue to enforce its rights against and recover from the Customer such payments and any other amounts owing as and when they fall due.

Force Majeure

APEX Mobility is not liable for delay in performing, or non-performance, of any of its obligations under these Terms and Conditions caused by unforeseeable circumstances beyond APEX Mobility's reasonable control (including, without limitation, acts of God, civil or military authority, accidents, earthquakes, strikes, the elements, labour disputes, shortage of suitable part or components or other materials, mechanical breakdown, fire, flood, tempest and war) and in such circumstances, APEX Mobility will be entitled to a reasonable extension of time for the performance of its obligations.

GST

If GST is imposed on any taxable supply under these Terms and Conditions then the recipient of that taxable supply must pay the supplier an additional amount equal to the GST payable on the taxable supply at the same time as payment for the taxable supply is due.

General

These Terms and Conditions are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia.

These Terms and Conditions contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.

No waiver of any of these terms and conditions or failure to exercise a right or remedy by APEX Mobility will be considered to imply or constitute a further waiver by APEX Mobility of the same or any other term, condition, right or remedy.

The Customer must keep confidential all information including these Terms and Conditions, the price of the supply of the Goods, and any information which APEX Mobility may reasonably consider is confidential, unless the Customer is required by law to disclose such information or the information has become public information or with prior written consent of APEX Mobility.

The Customer must not assign or otherwise deal with any of its rights or obligations under these Terms and Conditions without the prior written consent of APEX Mobility.

No failure to exercise or delay in exercising any right under these Terms and Conditions constitutes a waiver and any right may be exercised in the future. A waiver of any right these Terms and Conditions must be in writing and is only effective to the extent set out in that written waiver.

If any provision these Terms and Conditions is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the relevant sub-clause is to be severed from these Terms and Conditions and if this cannot be done, then the

entire relevant clause is to be severed from these Terms and Conditions, in each case, without affecting the validity or enforceability of the remaining provisions.

Indemnity

To the full extent permitted by law, Customer will indemnify APEX Mobility and keep APEX Mobility indemnified from and against any liability and any loss or damage APEX Mobility may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms and Conditions by Customer or its representatives.