



Terms of Trade – JLG Industries (Australia)

1. Status of this document

These Terms of Trade constitute an agreement between JLG Australia Pty LTD ABN 29 663 368 938 trading as JLG Industries (Australia) and the Customer. The agreement applies to all supplies to the Customer by JLG Industries (Australia). These Terms of Trade may also be agreed to by a representative of the Customer signing a JLG Credit Application to which this document is attached or by the Customer placing an order on JLG Industries (Australia) after being given this document. JLG Industries (Australia) will not be bound by any conditions attached to the Customer's order and unless those conditions are expressly agreed by JLG Industries (Australia) in writing, the Customer acknowledges that those conditions are expressly excluded and always displaced by the terms of this document.

2. Return of Goods

- a. JLG Industries (Australia) will accept goods returned to it at its warehouse at the cost of the Customer within ten (10) days of supply provided that JLG Industries (Australia) determines they have not been used and are in new condition.
- b. Such goods will only be accepted for return by JLG Industries (Australia) subject to a restocking fee (currently 10%) being charged to the Customer, to the extent that is permitted by law.

3. Warranty Claims

- a. Requests for possible warranty parts or services are to be accompanied by an official customer order number to cover the value of the parts or services should the fault not be found to be a valid warranty claim.
- b. Where a part is supplied as a replacement for a faulty part which is under warranty, if the faulty part is not returned for warranty claim assessment within ten (10) days after the supply of the replacement then, an invoice will be raised for the value of the part and become payable within a period of thirty (30) days from the date of supply.
- c. Legislation may imply warranties or conditions or impose obligations upon JLG Industries (Australia) which cannot be excluded, restricted or modified or except to a limited extent. These terms and conditions must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which JLG Industries (Australia) is entitled to do so, its liability will be limited and its option to: in the case of goods, the replacement or resupply, repair or the payment of the cost of replacing the goods or acquiring equivalent goods; or the payment of the costs of having the goods repaired; and,
- d. in the case of services, the supply of the services again; or the payment of the costs of having the services supplied again.

4. Interpretation of Warranty

- a. The standard manufacturer's warranty shall apply to goods hereby sold and the conditions relating to that warranty are deemed to form part of this agreement. A copy of the applicable warranty will be forwarded on request.
- b. The JLG Warranty Parts and Service Policy and the current Service and Parts Policy manual are available for inspection at 11 Bolwarra Road, PORT MACQUARIE.

5. Acceptance

- a. All goods must be finally inspected by the Customer within ten (10) days after arrival of goods at point of delivery and the Customer shall, within that period give notice to JLG Industries (Australia) of any matter or thing by which the Customer alleges that the goods is not in accordance with the Customer's order. Failing such notice and, to the extent permitted by law, the goods shall be deemed to have been delivered and accepted by the Customer.
- b. CUSTOMER'S FAILURE TO SO INSPECT AND PROMPTLY SUBMIT A CLAIM SHALL SPECIFICALLY WAIVE THE CUSTOMER'S RIGHT TO MAKE ALL CLAIMS FOR DAMAGES OF OTHER RELIEF AGAINST JLG INDUSTRIES (AUSTRALIA), OTHER THAN UNDER THE TERMS OF MANUFACTURER'S WARRANTY.

6. Shipment, Risk of Loss and Title

- a. Until payment in full has been received by JLG Industries (Australia) for all money due to JLG Industries (Australia) for all goods supplied by JLG Industries (Australia) or otherwise due to JLG Industries (Australia) on any other account, and despite any credit arrangement between JLG Industries (Australia) and the Customer:
- b. title in the goods shall remain in JLG Industries (Australia);
- c. the Customer shall not attempt to sell, hire out, charge or otherwise deal with the goods, or part with possession thereof, nor permit or suffer any execution or distress to be levied to used against the goods or permit or suffer the goods to be seized or affected by any distress, execution or other legal process;
- d. where the Customer is a retailer/reseller, the Customer may only sell the goods in its ordinary course of business by a bona fide sale, in its own name, and not as the agent of JLG Industries (Australia);
- e. the Customer shall be responsible at all times for the goods while it is in Customer's custody, and be liable to JLG Industries (Australia) for any loss or damage to the goods (except in so far as it can be shown that any such loss or damage is attributable to the negligent act or omission of JLG Industries (Australia) and shall notify JLG Industries (Australia) immediately of any such loss or damage, or any other noticeable defects in the goods;
- f. the Customer must effect and maintain suitable insurance in respect of all relevant risks relating to the goods to cover any potential liability and otherwise in terms approved by JLG Industries (Australia), and shall also ensure that JLG Industries (Australia)'s name is endorsed on the relevant policy or policies as an insured party and provide a certificate of currency to JLG Industries (Australia) upon request;
- g. the Customer shall not add to, modify, interfere with or cause any attachments to be fitted to the goods except as authorised in writing by JLG Industries (Australia);
- h. the Customer shall keep the goods marked as the property of JLG Industries (Australia);
- i. the Customer shall permit JLG Industries (Australia) or its authorised representative(s) to inspect the goods at all reasonable times;
- j. Without prejudice to the terms of this Clause, JLG Industries (Australia) shall be entitled to maintain an action for the price of the goods at any time after payment becomes due.
- k. This Clause shall survive termination of these Terms of Trade for any reason.

7. Delivery and Risk

- a. Any delivery dates agreed to by JLG Industries (Australia) are only approximate and are subject to reasonable variation.
- b. All goods are at the Customer's risk immediately upon delivery to the Customer.
- c. For the purposes of these Terms of Trade delivery of the goods is deemed to occur at the earliest time when the goods are delivered to the Customer (including its nominees or agents) or are placed at the disposal of the Customer (including its nominees or agents) at JLG Industries (Australia)'s premises.
- d. In any event, JLG Industries (Australia) shall not be liable for any loss caused by its delays or failures in performance of an order, or default in delivery arising out of or resulting from causes beyond its control and without its fault or negligence, including a force majeure.

8. Price

Unless otherwise stated, the purchase price excludes packaging, freight and insurance. These additional costs are to be paid by the Customer.

JLG reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of purchase, or the costs of the provision of the Services to reflect any increase in the cost to JLG which is due to any factor beyond the control of JLG.

9. Taxes and Other Government Levies

The Customer must pay to JLG Industries (Australia) on demand any tax (other than income tax) payable on this agreement, any matter or thing done under this agreement or any payment, receipt, or other transaction contemplated by this agreement, including without limitation any goods and services or value added tax, customs duty, sales tax, excise duties, stamp duty, other duty, government charge, fee levy, or impost (together with any fine, penalty or interest payable because of a default of the Customer). The Customer must pay any amount it is required to pay under this clause in full despite any right of set off that it has. The Customer must pay to JLG Industries (Australia) an amount that leaves in the hands of JLG Industries (Australia) following payment of any relevant tax or other amount the same amount whether the tax or other amount is payable or not.

10. Payment

- a. Payment must be made and cleared prior to delivery unless otherwise agreed in writing.

- b. The Customer agrees that JLG Industries (Australia) may charge interest on any amount outstanding. Interest commences to accrue from the 31st day after delivery until payment is received by JLG Industries (Australia) in cleared funds. Interest is calculated daily on the basis of a 365 day year at the rate equal to the Reserve Bank of Australia's cash target rate from time to time plus a margin of 5% per annum. Interest is payable on demand.
- c. The Customer agrees, in addition, to pay any other amount whether legal costs or expenses or other fees, that JLG Industries (Australia) may incur in collection of any amount due.

11. Personal Property Security

- a. In this clause PPS Act means the Personal Property Securities Act 2009 (Cth) as amended, repealed or replaced from time to time.
- b. The Customer agrees that this agreement is a security agreement under the PPS Act. The Customer acknowledges and agrees that the collateral is the goods supplied by JLG Industries (Australia), including those described in any purchase order, invoice, receipt or any other document provided in connection with the supply of goods to the Customer. The collateral includes material handling and access equipment including equipment such as telescopic material handlers, elevating work platforms, boom and other lifts and hoists and all parts and accessories and tools for all such equipment.
- c. Despite any other term or condition of this agreement, JLG Industries (Australia) will be entitled to all rights and remedies of a secured party and an owner (including but not limited to a secured party and owner after default) under the PPS Act or any other applicable law. For the avoidance of doubt, such rights and remedies will not limit and will be in addition to all other rights provided to JLG Industries (Australia) under this agreement or by law (including in equity). They include the right to retain, deal or dispose of the goods in any way JLG Industries (Australia) sees fit.
- d. All goods supplied by JLG Industries (Australia) pursuant to this agreement will forever remain personal property, and will not become or be deemed a fixture or a part of any real estate on which it may be located.
- e. The Customer must do everything (including providing information, executing any security agreement or other document, and granting any other or substitute security interest) requested by JLG Industries (Australia) to perfect a security interest in:
 - i. collateral supplied by it pursuant to this agreement; and
 - ii. the proceeds of such collateral, so as to maintain an effective and first priority security interest in favour of JLG Industries (Australia).
- f. JLG Industries (Australia) may at its absolute discretion effect and maintain a registration on the register under the PPS Act (in any manner it considers appropriate, including as a purchase money security interest) in relation to any security interest arising or contemplated by this agreement. The Customer waives the right to receive notice of a verification statement in relation to any registration event. The Customer must not register a financing change statement in respect of a security interest contemplated by this agreement without the prior written consent of JLG Industries (Australia). The Customer agrees that such consent may be given or withheld by JLG Industries (Australia) in its absolute discretion.
- g. If Chapter 4 of the PPS Act applies to the enforcement of a security interest under this agreement, the parties irrevocably agree to contract out of the following provisions of the PPS Act (and therefore such provisions will not apply and the Customer agrees it will forever have no rights under them): s.95; s.121(4); s.125; ss.129(2) and 129(3); s.130; s.132(3)(d); s.132(4); s.135; s.142; and s.143.
- h. To the fullest extent permitted by the PPS Act, and unless otherwise agreed in writing, JLG Industries (Australia) and the Customer agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Customer unconditionally agrees to waive any right it has or would have had but for this clause, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.
- i. Despite any other term or condition of this agreement, JLG Industries (Australia) may unconditionally apply the whole or any part of any amounts received by it in connection with this agreement, to satisfy or partly satisfy any obligations secured by a security interest in any way it determines in its absolute discretion.
- j. The Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in the PPS Act) in the collateral other than with the express written consent of JLG Industries (Australia). The Customer must not lease, hire, bail or give possession ('on-hire') of the collateral to anyone else unless JLG Industries (Australia) (in its absolute discretion) first consents in writing. Any such on-hire must be in writing in a form acceptable to JLG Industries (Australia) and must be expressed to be subject to the rights of JLG Industries (Australia)

- under this agreement. The Customer may not vary an on-hire without the prior written consent of JLG Industries (Australia) (which may be withheld in its absolute discretion).
- k. The Customer must ensure that JLG Industries (Australia) is provided at all times with up-to-date information about the on-hire including the identity of the on-hirer, the terms of and state of accounts and payment under the on-hire and the location and condition of the collateral.
 - l. The Customer must take all steps including registration under the PPS Act as may be required to:
 - i. ensure that any security interest arising under or in respect of the on-hire is enforceable, perfected and otherwise effective under the PPS Act;
 - ii. enabling the Customer to gain (subject always to the rights of JLG Industries (Australia) first priority (or any other priority agreed to by JLG Industries (Australia) in writing) for the security interest; and
 - iii. enabling JLG Industries (Australia) and the Customer to exercise their respective rights in connection with the security interest.
 - m. To assure performance of its obligations under this agreement, the Customer hereby gives JLG Industries (Australia) an irrevocable power of attorney to do anything JLG Industries (Australia) considers the Customer should do under this document. JLG Industries (Australia) may recover from Customer the cost of doing anything under this clause (Personal Property Security), including registration fees.
 - n. The Customer indemnifies JLG Industries (Australia) in respect of all loss, damage or expense (including legal and other professional fees and disbursements):
 - i. incurred by JLG Industries Australia) in enforcing or seeking to enforce its rights or alleged rights (whether or not such enforcement action is completed or successful); and
 - ii. resulting or arising from any breach or failure by the Customer to comply with its obligations under this clause (Personal Property Security), the PPS Act and any similar legislation.

12. Changes by Manufacturer

- a. It is acknowledged by the Customer that the manufacturers of goods reserve the right to make changes in design of additions to or improvements in their goods without liability and to install such change, addition or improvements in any goods previously manufactured.

13. Intellectual Property

- a. Unless otherwise set out in these Terms of Trade, JLG Industries (Australia) hereby grants Customer a non-exclusive, non-transferable license to use the Software (as defined below) solely in conjunction with the purpose for which it is provided and without the right to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the Software. Customer may transfer the foregoing license to another party which purchases the goods provided the other party accepts and agrees in writing to be bound by these Terms of Trade. Customer shall notify JLG Industries (Australia) of such transfer and such notice must occur within thirty (30) days of the sale.
- b. SOFTWARE AND ANY ASSOCIATED DOCUMENTATION IS AND SHALL REMAIN THE EXCLUSIVE PROPERTY OF JLG INDUSTRIES (AUSTRALIA) AND/OR ITS LICENSORS, AND NO TITLE TO, OWNERSHIP OF, OR OTHER INTEREST IN THE SOFTWARE OR DOCUMENTATION IS HEREBY TRANSFERRED TO CUSTOMER.
- c. For purposes of these Terms of Trade, “**Software**” shall mean software, including any updates to that Software, provided to Customer in standalone form or embedded in goods sold by JLG Industries (Australia), including, but not limited to, application project files for control programming, design, configuration, and visualization in source code and/or scripting code created by JLG Industries (Australia) and/or its service providers and licensors.
- d. If Customer is in default of any of these Terms of Trade, Customer’s license to use the Software and documentation will automatically terminate.
- e. No license under any patent, patent application, copyright, trade secret, trademark, trade name, service mark, or other intellectual property right is granted or implied by either party.

14. Embedded Software

- a. To the extent that the Software and/or documentation is embedded in goods sold by JLG Industries (Australia), the sale of such goods shall not constitute the transfer of ownership rights or title in such Software and/or documentation, and all references to “sale” or “sold” of any Software or documentation shall be deemed to mean a license.
- b. In connection with Software and documentation: (i) JLG Industries (Australia), and/or its service providers and licensors, reserve all right, title and interest, together with all intellectual property rights thereto, in all Software and documentation provided or made available to Customer, and (ii) no other express or implied license, right or interest in or to any patent, patent application,

copyright, trade secret, trademark, trade name, service mark or other intellectual property right is granted under these Terms of Trade.

- c. JLG Industries (Australia), and/or its service providers and licensors, reserve the right to, in its sole discretion, access, update, and modify the Software at any time, including modifications that prevent the goods or Software from connecting to cellular or Internet services.
- d. To the extent goods sold by JLG Industries (Australia) contains Software, Customer agrees that JLG Industries (Australia) may access the Software. Customer agrees that JLG Industries (Australia) may collect data regarding such goods itself and the operation of the goods, including, but not limited to, its location, fault codes, status number of cycles, hours of use, and driving speed (“**Equipment Asset Data**”).
- e. Customer agrees that Equipment Asset Data or any other data of Customer and/or any data of any third-party may be transmitted through or across the good sold by JLG Industries (Australia) hereunder.
- f. Customer further agrees that Equipment Asset Data or any other data of Customer may be transmitted through or across third-party-owned goods. JLG Industries (Australia) will take reasonable steps to protect Equipment Asset Data or any other data of Customer that is transmitted through or across third-party-owned goods from unauthorised access by any third parties.
- g. Customer grants JLG Industries (Australia) a perpetual, irrevocable, worldwide, right and license to use Equipment Asset Data for JLG Industries (Australia)’s business purposes, including to conduct research to develop and improve JLG Industries (Australia)’s products and services, and to provide connected products related services.

15. Default and Termination

- a. Without prejudice to any rights that JLG Industries (Australia) may have under these Terms of Trade, JLG Industries (Australia) may terminate its agreement with the Customer upon seven (7) days notice, if the Customer is in breach of these Terms of Trade.
- b. If the Customer becomes subject to any form of insolvency administration, or any application is made to subject it to any form of insolvency administration and such proceedings are not dismissed within twenty one (21) days from filing of such proceedings, or a person is in a position to attempt to levy execution against the goods, or if any reason, in JLG Industries (Australia)’s reasonable opinion, the Customer is unlikely to be able to make payment for the goods on the due date, JLG Industries (Australia) may immediately, at its election, and without prejudice to its other legal rights and remedies;
 - i. terminate any purchase order of the Customer;
 - ii. suspend further deliveries of goods;
 - iii. require payment in advance for all or any further deliveries of goods to the Customer;
 - iv. repossess any goods held by the Customer to which JLG Industries (Australia) has title and enter onto any premises on which the goods are stored, without notice, for this purpose.

16. Privacy and disclosure

- a. The Customer and each guarantor of the Customer’s obligations agree that JLG Industries (Australia) may, at any time when credit is or may be extended to the Customer:
- b. obtain a banker’s opinion about them;
- c. obtain and use a credit report and any related information about them for any purpose and in any way that is permitted by any law including the Privacy Act 1988, and the Customer and any guarantor each hereby provide their consent accordingly. The purposes include assessing whether credit can be provided or continued to the Customer and whether to accept or require any guarantee, and for purposes in connection with collecting any overdue payment; and
- d. disclose credit information including to a credit reporting agency in any way and for any purpose that is permitted by any law including the Privacy Act 1988, and the Customer and guarantor each hereby provide their consent accordingly. This includes reporting any default in payment and any purposes in connection with collecting any overdue payment.

17. Liability of JLG Industries (Australia)

- a. To the extent permitted by law, JLG Industries (Australia) will under no circumstances be held liable to the Customer for any loss, damage, injury or debt sustained or incurred by the Customer or any other party including any indirect, consequential, punitive, exemplary, incidental damages, loss of profits resulting directly or indirectly out of any negligence of JLG Industries (Australia), the supply, performance or use of any goods or services of JLG Industries (Australia) or out of any breach of JLG Industries (Australia) under any contract incorporating these terms and conditions.

18. Trade Ins

- a. Any trade-in machines will only be accepted on terms agreed to by JLG Industries (Australia) and the Customer will be responsible to ensure that full unencumbered title in the trade-in passes to JLG Industries (Australia) at time of delivery of the trade-in to JLG Industries (Australia).
- b. Should JLG Industries (Australia) suffer any loss or damage as a result of the Customer's oversight (whether intentional or unintentional) to disclose any encumbrances, charge and/or lien, the Customer and/or the officers of the purchasing company will fully indemnify JLG Industries (Australia) of such loss or damage including any legal fees and expenses incurred.

19. Financing of Purchases

- a. If the Customer chooses to purchase goods from JLG Industries (Australia) through external funding whether by lease, hire purchase, rental or otherwise, the Customer must notify the financier of these terms and in particular of the fact that title in goods sold by JLG Industries (Australia) is retained on the terms of this document.

20. General

- a. These Terms of Trade shall be governed by the law of New South Wales and the parties to these terms submit to the jurisdiction of the Courts of that State.
- b. Any indulgence or extension of time which JLG Industries (Australia) may grant to the Customer in relation to these Terms of Trade or any other matter will not prejudice or interfere with JLG Industries (Australia)'s rights under these Terms of Trade and will not constitute a waiver of rights of JLG Industries (Australia).
- c. If any provision of the Terms of Trade is held invalid, unenforceable or illegal for any reason, these Terms of Trade will remain otherwise in full force apart from such provision which will be deemed otherwise deleted.
- d. References to any statutory provision include references to a provision that amends or replaces it.
- e. The person signing below warrants and represents that s/he has the power and authority to sign this document on behalf of the Customer and to have these terms be legally binding on the Customer.