

**LGMG AUSTRALIA PTY LTD**  
**CAPITAL MACHINERY SALES OCEANIA PTY LTD**  
**STANDARD TERMS AND CONDITIONS OF SALE**

## **1 ORDERS**

- 1.1 Each order for Products made by the Customer to the Supplier will be deemed to be an offer by the Customer to purchase those Products subject to these Standard Terms. The offer is not binding on the Supplier until the Supplier gives its express acceptance.
- 1.2 By making an Order, the Customer acknowledges that it has read, understood, and agreed to be bound by the terms and conditions in these Standard Terms.
- 1.3 When an Order is recorded in the Supplier's system and the Supplier has generated an order number, a contract will be formed between the parties. A separate Contract is formed in relation to each Order.
- 1.4 The Supplier may in its discretion impose minimum order conditions in relation to Products from time to time.
- 1.5 The Supplier may withhold the delivery of Products (whether or not an Order has been accepted) where the Customer owes any amount to the Supplier or there has been a breach of these Standard Terms by the Customer.

## **2 CANCELLATION**

- 2.1 The Supplier may cancel the acceptance of any Order for Products at any time before delivery. The Customer may only cancel an Order for Products with the Supplier's prior written consent.
- 2.2 If the Supplier advises the Customer that it will be unable to deliver the Products, it will advise the Customer and the Contract will be terminated without incurring any liability.

## **3 PRICE**

- 3.1 The Customer will be liable to pay the Supplier for the Products without deduction or set off in accordance with the Supplier's terms set out in their invoice.
- 3.2 Unless otherwise agreed in writing, Products will be invoiced in accordance with the Supplier's prevailing price lists. Prices are subject to change without notice.

## **4 GST**

- 4.1 All prices quoted or listed are exclusive of GST unless expressly indicated to the contrary.
- 4.2 Where a payment or consideration for the Products is not expressed to include GST, the Customer must pay, in addition to the payment or consideration expressed and without deduction or set off, the amount of GST applicable to the supply by Supplier to the Customer.
- 4.3 Payment of GST must be made at the same time as payment is due on the invoice for the Products.
- 4.4 The Supplier must issue the Customer with a correctly rendered tax invoice for any amount collected on account of GST.

## **5 PAYMENT**

- 5.1 Products must be fully paid for prior to dispatch, unless the Supplier has agreed that dispatch may occur after the payment of a deposit or use of credit has been approved by the Supplier.
- 5.2 If credit is satisfactorily established, unless otherwise agreed in writing invoices must be paid on or before 30

days from the date of the invoice (without deduction or set-off of any kind) unless otherwise agreed to by the Supplier in writing.

- 5.3 Any credit arrangement may be withdrawn at any time and without prior notice.
- 5.4 If the Customer fails to pay an amount on the due date, all amounts then owing to the Supplier immediately and automatically become due and payable.
- 5.5 The Customer expressly authorises the Supplier to charge the credit card set out in any credit application for any amounts not paid by the due date of the invoice. The Supplier may undertake this transaction without obtaining any further consent of the Customer.
- 5.6 The Customer is responsible for payment of all applicable taxes and duties in relation to the supply of the Products.
- 5.7 The Customer will pay the Supplier interest on all overdue amounts calculated daily from the due date for payment at the rate which is 1.5% per month or the maximum amount permitted by law.
- 5.8 The Customer will indemnify the Supplier for all rates and charges incurred by the Supplier in engaging debt collectors and/or lawyers in recovering overdue amounts.

## **6 TITLE, PROPERTY, RISK AND DELIVERY**

- 6.1 Delivery occurs when possession or control of the Products passes to the Customer, its agent or carrier, at the Customer's premises or any other location agreed between the Customer and the Supplier.
- 6.2 A receipt for the Products signed on behalf of the Customer will be conclusive evidence of delivery.
- 6.3 Any dates specified by the Supplier for delivery of the Products are estimates only. Time for delivery is not of the essence.
- 6.4 The Supplier may make partial deliveries or deliveries by instalments as it may determine and each such partial delivery or delivery by instalments is deemed to be a separate Contract to which these Standard Terms apply as if such partial amount comprised the "Products" under the Contract.
- 6.5 Orders for Products may incur a delivery fee, the amount of which will be notified to the Customer by the Supplier from time to time and subject to change without notice.

## **7 RISK AND TITLE**

- 7.1 Risk of damage or loss of the Products will pass to the Customer at the time when the Products are delivered to the Customer, its agent or carrier (as defined in clause 6 above).
- 7.2 Where it is agreed that delivery will be to a carrier, any claims for loss, damage or delay which are caused *in transit* are between the Customer and the carrier who is deemed to be the agent of the Customer. The Customer will have insurance in to cover these circumstances and will produce a certificate upon request by the Seller.
- 7.3 Title in the Products passes to the Customer when the Supplier has received (in cleared funds) the price for the Products in full together with any additional charges as set out in the relevant invoice and any interest due.

## **8 RECOVERY OF PRODUCTS**

- 8.1 Until title of the Products has passed to the Customer, the Customer must:
  - (a) hold the Products as bailee of the Supplier.
  - (b) store the Products (at no cost to the Supplier) separately from all other Products of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property.

- (c) not destroy, deface, or obscure any identifying mark or packaging on or relating to the Products; and
  - (d) maintain the Products in satisfactory condition insured on the Supplier's behalf for their full value against all risks to the reasonable satisfaction of the Supplier. This includes insurance against liability for accidents and injuries to the public or its employees, noting the interests of the Supplier and Customer. On request the Customer shall produce the policy of insurance to the Supplier.
- 8.2 Where payment is overdue in whole or in part for any of the Products, the Supplier or its nominee may (without prejudice to any of its other rights) recover and / or resell the Products and may enter the Customer's premises or any other place where the Products are stored by the Customer for that purpose without being liable for any loss or damage caused.
- 8.3 The Customer grants to the Supplier and its receivers and agents an irrevocable license and authority to enter the Customer's premises to recover the Products, provided that the Supplier may only recover and resell for its own account sufficient of the Products to satisfy all the Customer's unpaid liabilities in respect of the Products and cost of resale and account to the Customer for the balance of funds received.

## **9 PPSA**

- 9.1 All terms used in this clause which are defined in the PPSA shall have the meaning given to them in that legislation.
- 9.2 As security for payment of the price for the Products and the performance of the Customer's duties set out in this document, the Customer grants to the Supplier:
- (a) a purchase money security interest in relation to the Products, all items supplied by the Supplier, all Products held for lease, sale, demonstration and all related software, spare and repair parts, special tools, and equipment; and
  - (b) a general security interest in all present and after acquired personal property of the Customer.
- 9.3 The Customer agrees that the Supplier's interest in the Products is ongoing notwithstanding that they may be affixed to real property or converted to cash.
- 9.4 The Customer agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Supplier asks and considers necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; or
  - (b) enabling the Supplier to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Supplier; or
  - (c) enabling the Supplier to exercise all rights available at law in connection with the security interest.
- 9.5 For the purposes of section 115(1) of the PPSA, the Customer waives the rights and benefits of sections 95, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143.
- 9.6 Unless otherwise agreed and to the extent permitted by the PPSA, the Supplier and Customer agree not to disclose information of the kind referred to in section 275(1) of the PPSA. The Customer waives any rights it may have under section 275(7)(c) of the PPSA.
- 9.7 The Supplier may apply amounts received to satisfy obligations secured by a security interest in any way it determines in its absolute discretion.
- 10** Sellers rights under PPSR: If the Seller has a registered security interest under the Personal Property Securities Register (PPSR) for the Products:

- 10.1 The Seller retains the right to demand immediate payment of all outstanding amounts upon the Customer's payment default or insolvency (including but not limited to liquidation, administration, receivership or any other form of financial distress).
- 10.2 If the Customer fails to make payment or rectify the default within the period specified by the Seller, the Seller may:
- 10.3 Enter the premises of the Customer or any location where the Products are stored, recover possession of the Products, and resell them to recover unpaid amounts.
- 10.4 Exercise any other rights available under the Personal Property Securities Act 2009 (Cth) (PPSA) or other applicable laws.
- 10.5 The Customer acknowledges that the Seller's security interest in the Products continues until full payment is made, including all applicable charges, interest, and fees.

## **11 RETURNS**

- 11.1 It is the Customer's responsibility to inspect the Product(s) immediately upon delivery to ensure their compliance with the agreed specifications.
- 11.2 The Customer must notify the Supplier within 10 days of delivery of any short fall or defects or default in the Products (other than warranty defects) or, to the extent permitted by law, it will be deemed to have accepted the Products. If the Customer rejects the delivery, the Supplier will have the right to cure in any reasonable manner the defect, error or shortage giving rise to the rejection.
- 11.3 The Supplier does not offer returns for Products based on change of mind under any circumstances.

## **12 STORAGE, HANDLING AND USE OF PRODUCTS**

- 12.1 It is the Customer's responsibility:
- (a) to source and familiarise itself with all manufacturer directions, recommendations, manuals, warnings, notices, and instructional placards that may be provided in respect of the Product(s).
  - (b) to ensure that all applicable workplace health and safety regulations and all other applicable laws and requirements are observed, and all other appropriate steps taken in relation to the lawful, safe and proper handling and the use of the Products once they are delivered to the Customer; and
  - (c) to adequately train their Personnel in the use and handling of the Products.
  - (d) to provide safe facilities for the reception of Products.
- 12.2 Unless expressly agreed in writing, the Customer is solely responsible for the installation and erection of the Products purchased. If it is agreed that the Supplier may provide a serviceman, data or drawings to aid the Customer with installation or start up, the Supplier assumes no responsibility for proper installation or support of any Product when installed and disclaims and express or implied warranties with respect to such installation and support.
- 12.3 Any instructions given by the Supplier or manufacturer are intended to be a guide only and the Customer remains solely responsible for informing itself of, and complying with all applicable laws and standards in connection with the storage, installation and use of the Products.

## **13 CUSTOMER SPECIFICATIONS**

- 13.1 If the Customer wishes to change specifications or drawing previously supplied to the Supplier or wishes to modify

the specifications for Products ordered and as a result additional work or additional Products are required to be supplied, the additional expense shall be added to the price and payable by the Customer.

13.2 The Supplier reserves the right in its sole discretion to accept or reject any changes in specifications requested by the Customer.

## 14 TELEMATICS

If a telematics system is included with the Products, the following applies:

14.1 A third party will collect and have access to operational data about the Products including for example, usage, performance and reliability (**Telematics Data**).

14.2 The Customer provides its consent to the collection of Telematics Data by the Supplier and any third party and using that data for any purpose deemed desirable by the Supplier such as (without limitation) performance metrics, warranty, product improvement, marketing and customer support purposes.

14.3 The Customer must procure consent from its customer and other end users of the Products to the collection and use of Telematics Data as set out in this clause.

14.4 The Customer agrees that it is bound by the current Teletrack Telematics terms of use and privacy policy, the most recent versions which can be obtained from Teletrack.

## 15 USE AND RESALE OF PRODUCTS

15.1 Products purchased in Australia may only be used in Australia.

15.2 If the Customer fails to make any payment or provide any instructions to enable the Supplier to complete delivery within 5 days of the Supplier being ready to deliver the Products, the Supplier may resell the Products to a third party and retain any payments made by the Customer without being liable to refund or pay any damages or incur any liability to the Customer. Any resale in accordance with this clause shall not affect the Supplier's entitlement to claim for damages as a result of the Customer's breach of its obligations.

## 16 INDEMNITY

16.1 The Customer indemnifies the Supplier and its Personnel from and against any claim, action, demand, loss, fine or payment which any of the Supplier or its Personnel pays, suffers, or incurs or is liable for arising out of or in connection with:

- (a) a breach by the Customer of these Terms.
- (b) any negligent act or omission, unlawful conduct or other misconduct by the Customer, its Personnel or any third party relating to the Contract or the Products.
- (c) personal injury or death to any person or loss of or damage of any property caused or contributed to by the Customer.

16.2 The Customer further indemnifies the Supplier for any loss or damage it sustains or incurs in respect of a breach of contract or cancellation of an Order for Products made to the Customer's specifications where those specifications mean the Products have a limited market, specific application or are otherwise specially made for the Customer.

## 17 WARRANTY

17.1 Where the Products comprise, the products set out in Schedule 1, they may be subject to a warranty, the terms of which are set out in Schedule 1.

17.2 Other than as specifically set out in these Standard Terms, all warranties implied by statute or law are excluded to the fullest extent permitted by law.

17.3 The Products may come with all consumer guarantees that cannot be excluded under the Australian Consumer Law (ACL).

## **18 LIABILITY**

18.1 To the maximum extent permitted by law, the liability of the Supplier (whether under statute, in contract or in tort including for negligence or otherwise) is limited to any one or more of the following at the option of the Supplier, in its absolute discretion:

- (a) the replacement of the Products.
- (b) the supply of equivalent Products.
- (c) repair of the Products.
- (d) payment of the cost of replacing the Products.
- (e) payment of the cost of acquiring equivalent Products; or
- (f) payment of the cost of having the Products repaired.

18.2 To the extent permitted by law, in no event will any repair or replacement of any defective equipment covered by the Supplier's warranty extend beyond the length of the warranty period set out in Schedule 1.

18.3 Under no circumstances will the Supplier be liable for any consequential or indirect loss, direct or indirect loss of profits, loss of business or any special or exemplary damages suffered or incurred in connection with the Contract or the Products or any party's actions or omissions under the Contract.

## **19 INTELLECTUAL PROPERTY**

19.1 The parties acknowledge and agree that the Supplier holds title in or a license to use the Intellectual Property.

19.2 The Customer must not deface, modify, or obscure the Supplier's intellectual property incorporated into the Products.

19.3 The Customer is not permitted to use any of the Intellectual Property for any purpose without the Supplier's prior written consent.

19.4 The Customer must not allow the Supplier's marks to remain on the Products if there is any modification or alteration from the Products supplied by the Supplier unless prior written agreement is obtained from the Supplier.

19.5 The Customer must assign all of its right title and interest for the sole benefit of and exploitation by the Supplier including waiving any moral rights it may have in any customisations, developments, modifications, alterations, and updates to the Intellectual Property unless prior written agreement is obtained from the Supplier.

19.6 No right, title, interest or license in any of the Supplier's Intellectual Property is granted to the Customer under the Contract apart from what is necessary for the Customer to use the Products in accordance with their express purpose set out in these Standard Terms or agreed in writing by the Supplier.

## **20 FORCE MAJEURE**

The parties shall be excused for delays in performance or failure of performance (except payment of amounts due) to the extent arising from causes beyond such party's reasonable control, including without limitation, strikes, wars, fires, acts of terror or acts of God, such as floods and earthquakes. In the event of any such event or condition occurring, the party whose performance is excused shall notify the other party as soon as practicable and shall make diligent efforts to perform its obligations at its earliest opportunity.

## 21 CONFIDENTIALITY

The Customer shall keep in confidence and shall not, without securing the Supplier's prior written consent, originate any publicity (including any news release or public announcement) or disclose to any third party any Confidential Information, except:

- (a) to its employees or representatives requiring the information for the purposes of the Order, provided they are made aware of these restrictions; or
- (b) if the Customer is required to do so by law or by a stock exchange (except this does not permit the Customer to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7) of the PPSA applies); or
- (c) if the Customer is required to do so in connection with legal proceedings relating to the Products or the Contract but having first given the Supplier an opportunity to object to that disclosure unless it is unlawful for the Supplier to be given that opportunity.

## 22 DISPUTE RESOLUTION

22.1 Nothing in this clause prevents a party from seeking urgent injunctive or similar interim relief from a court.

22.2 If a dispute arises between the parties in connection with the Contract, the parties undertake in good faith to use all reasonable endeavors to settle the dispute by way of good faith negotiation.

22.3 Each party agrees to appoint a senior member of its Personnel with authority to settle the dispute to meet the other party within 10 days of a dispute arising. Neither party may institute legal proceedings until a mediation has been attempted and failed despite good faith negotiation.

## 23 ENTIRE AGREEMENT

23.1 Subject to any variation under clause 25.2, the Contract will be on these Standard Terms to the exclusion of all other terms and conditions (including, without limitation, any terms or conditions which the Customer applies to or under any purchase order, confirmation of order, specification or other document whether or not objected to by the Supplier).

23.2 The Supplier may revise these Standard Terms at any time by giving notice to the Customer and the revised standard terms will be immediately effective for all Orders made after notice has been given to the Customer.

## 24 PRIVACY

24.1 The Customer agrees to the handling of personal information in accordance with the terms of the Supplier's privacy policy which is available on its website.

## 25 GENERAL

25.1 **Notices:** any notice or other communication to a party must be in writing and delivered to that party in one of the following ways:

- (d) delivered personally.
- (e) posted to the address set out in any invoice to be treated as having been received on the second business day after posting; or
- (f) sent by email to the email address set out in any invoice, when it will be treated as received upon transmission.

25.2 **Variation:** these Standard Terms once they apply to a Contract may only be varied by written agreement between the parties.



25.3 **Whole Agreement:** these Standard Terms form the whole agreement between the parties in respect of the Products to the exclusion of any prior terms and conditions previously issued, any catalogues, technical circulars, price lists, illustrations, drawings or any oral arrangements not contained in this document. Any such documents and advice is given for the Customer's guidance only and shall not constitute representations by the Supplier or be considered binding on the Supplier.

25.4 **Assignment:** The Customer must not assign or otherwise transfer any or all of its rights or obligations arising out of these Standard Terms without the prior written consent of the Supplier.

25.5 **Severance:** a term or part of a term of these Standard Terms that is illegal or unenforceable for any jurisdiction may be severed from these Standard Terms for that jurisdiction and the remaining terms or parts of the terms under the Standard Terms continue in force.

25.6 **Governing law:** these Standard Terms are governed by the laws of, and any dispute will be heard in the courts of, Queensland.

## 26 INTERPRETATION

26.1 In this document, the following words have the following meanings:

**"Confidential Information"** means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties relating to Supplier's business, technology or other affairs and includes the Contract and any pricing arrangements or discounts discussed or agreed by the parties.

**"Contract"** means the contract for the supply of Products between Supplier and the Customer on these Standard Terms.

**"Customer"** means the person(s), firm or company who purchases the Products from Supplier.

**"Intellectual Property"** means the Supplier's rights and interest in copyrights, patents, trademarks, service marks, trade names, business names, company names, domain names, designs, improvements, trade secrets, know-how (including patentable inventions) and similar industrial commercial and intellectual property.

**"Order"** means a purchase order which identifies the Products the Customer wishes to obtain together with applicable quantities and specifications, the location for delivery and with reference to any applicable quotes given by the Supplier.

**"Personnel"** of a party includes an employee, servant, agent, officer or director of that party.

**"PPSA"** means *the Personal Property Securities Act 2009* (Cth).

**"PPSR"** means *the Personal Property Securities Register*.

**"Products"** means any parts or equipment to be supplied to the Customer by the Supplier as set out in an Order which has been accepted by the Supplier.

**"Supplier"** means LGMG Australia Pty Ltd.

### ***Interpretation***

26.2 In these Standard Terms, except where contrary intention is expressed:

- singular includes the plural and vice versa.
- another grammatical form of a defined word has a corresponding meaning.
- a reference to \$ is to Australian currency.



- a reference to a party is to a party to these Standard Terms, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes.
- 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.
- the meaning of general words is not limited by specific examples and the word 'includes' in any form is not a word of limitation.
- a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- if a day on or by which an obligation must be performed is not a business day in Queensland, the obligation must be performed on or by the next business day.

### Warranty

#### Business details:

Name: LGMG Australia Pty Ltd

Address: 2 Neon Street, Sumner Park QLD 4074

Telephone: +61 429 603 556

Email: service@lmgau.com.au

#### Warranty Period

Machine	From date of delivery
Slab-scissor RT-scissor Boom lifts	24 months

#### Spare Part Warranty and Non-Warranty

The warranty period for spare parts purchased is 12 months from the date of delivery. The warranty period for consumables or fragile parts is set out below.

Machine	Spare part type	Parts/specifications	From date of delivery
Slab-scissor	Structure parts	Chassis, scissor (without pins & bushings), platform	60 months
	Wear parts	Hydraulic oil, slip block, grease fitting, filter, lubrication grease, control panel stick, rubber plate, ribbon, clamp, alarming light cover, battery, tire, pins & bushings	No warranty
RT-scissor Boom lifts	Structure	Chassis, turntable, beams & boom, basket, scissor, Platform	60 months
	Engine	Engine assembly	12months
	Wear parts	Hydraulic oil, slip block, grease fitting, gear oil, engine oil, lubrication grease, control panel stick, rubber plate, cylinder sleeve, ribbon, clamp, air filter, engine	No warranty

	filter, fuel filter, fuses, belt alarming light cover, battery, tire	
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### Warranty conditions:

LGMG Australia Pty Ltd warrants the Product(s) will be free of defects in materials or workmanship for a period as set out above from the date of delivery, on the following conditions:

1. Prior to installation, the Product(s) was properly and prudently stored.
2. The Product(s) was installed correctly by adequately qualified and experienced persons.
3. The Product(s) are put to their normal use.
4. The Product(s) have not been modified, altered, customised, or had any additions, deletions, or variations.
5. The Product(s) have been maintained and serviced regularly by adequately qualified and experienced persons and in accordance with any applicable operating manuals.
6. Any spare parts are genuine spare parts manufactured and/or supplied by LGMG Australia Pty Ltd or use fuel, lubricating oil, batteries, tires, motors and cylinders.
7. Serial numbers must not be altered, defaced, or removed.
8. This warranty is provided only to the purchaser listed on the invoice and is not transferable. Evidence of the purchase of the Product(s) (e.g., invoice) must be provided at the time of the claim; and
9. Inspection and verification of the condition to the Product(s) to be covered by the warranty and all telematics data and service records, by a representative or nominee of LGMG Australia Pty Ltd.

### Exclusions and Limitations

To avoid doubt, this Warranty does not extend to loss caused by normal wear and tear, misuse or application of the Product(s) other than for the intended purpose, negligence, misadventure, abuse, neglect, fire, water (liquid spillage or ingress), natural fading, rust, theft, sabotage, vandalism, act of God, or where the warranty conditions above have not been met.

No action or inaction by either party may extend or revive the warranty period beyond its expiration date described in this document.

### Notice

Immediately upon the purchaser becoming aware of a defect, it must advise LGMG Australia Pty Ltd.

### Cost of returns:

The cost of return to LGMG Australia Pty Ltd will be reimbursed by LGMG Australia Pty Ltd in the event of a valid Warranty claim. The Customer will be required to meet the cost of return if, upon receipt of the Product(s), the Product(s) is found not to meet the warranty conditions or otherwise qualify for a remedy under the Australian Consumer Law.

### Warranty claims:

To make a claim under this warranty:

1. Email [service@lmgau.com.au](mailto:service@lmgau.com.au) and advise the issue with the Product(s) and that you want to make a warranty claim.

2. Attach evidence of the purchase of the Product(s) (e.g., invoice).
3. Attach evidence (including photos and/or video) of the condition of the Product(s) being claimed under the warranty.
4. Make the Product(s) available for inspection by LGMG Australia Pty Ltd or its nominee at a place nominated by LGMG Australia Pty Ltd.

If the Customer cannot provide appropriate evidence, the warranty claim may be denied.

**Australian Consumer Law**

This warranty is in addition to the consumer guarantees which cannot be excluded under Australian Consumer Law. Other than warranties which cannot be excluded under Australian Consumer Law, this document is expressly in lieu of and excludes all other express and implied warranties and all other obligations and/or liability of LGMG Australia Pty Ltd and Capital Machinery Sales Oceania Pty Ltd.