



# TERMS AND CONDITIONS

R & L Jones Engineering Pty Ltd  
ACN 34 006 805 527  
Trading as T-Rex Manufacturing



# TERMS AND CONDITIONS

## DEFINITIONS

### 1. Definitions

In this Agreement unless the context otherwise requires:

- (a) **“Agreement”** means this Agreement between the Parties, incorporating these Terms and Conditions;
- (b) **“Company”** means R & L Jones Engineering Pty Ltd ACN 34 006 805 527 in the Corporations Act 2001 (Cth) and each of its servants or agents;
- (c) **“Goods”** means the products provided by the Company to You by way of sale;
- (d) **“Intellectual Property Rights”** means any and all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both future and present, including rights in respect of or in connection with any copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks, designs, circuit layout and performance protection (whether or not now existing and where or not registered or registrable) and includes any right to apply for the registration of such right and all renewals and extensions.
- (e) **“Parties”** means the Company and You;
- (f) **“Price” or “Prices”** means the Price and/or Prices for the sale of the Goods and Services as quoted to You, in Australian Dollars, by an authorised employee of the Company after receiving your enquiry;
- (g) **“Services”** means installation of the Goods by the Company for you;
- (h) **“Terms and Conditions”** means these Terms and Conditions;
- (i) **“Warranty Period”** means:
  - (i) for Goods, twelve (12) months from delivery;
  - (ii) for Services, nine (9) months from the day the Services are completed; and
- (j) **“You” or “Your”** means any person, firm, corporation, government, semi-government or local government department or authority, its successors, assignees, trustees, administrators or liquidators, to whom or to which Goods are provided or sold to by the Company.

## GENERAL PROVISIONS

### 2. Applicability and Acceptance

- (a) By entering into this Agreement You accept to buy the Goods and Services from the Company and You accept and agree to be bound by these Terms and Conditions.
- (b) The Company may make changes to these Terms and Conditions from time to time without notice to You to accommodate changes in law, business practice or the introduction of new Goods or Services.

### 3. Supply of Goods

- (a) The sale of the Goods and Services to You is contingent upon You complying with this Agreement.
- (b) The supply of sale of Goods by the Company is subject to availability of the Goods.

### 4. Cancellation

- (a) Any order cancellation must be in writing and is subject to the Company’s approval.
- (b) You agree to compensate the Company for all loss and damage the Company suffers as a result of your cancellation, including any expenses incurred or cancellation charges applied by the Company.
- (c) If You breach any clause of this Agreement the Company may, by written notice, cancel Your order and resell the Goods in whole or in part.
- (d) You acknowledge that you have no claim against the Company for any loss, damage, cost or expense arising from a cancellation under this clause.

### 5. Prices

- (a) Unless otherwise stated, all Prices quoted to You are exclusive of settlement discount, GST, duty, taxes and/or any other statutory charge or fee payable in connection with the sale or hire of the Goods or the provision of the Services to You by the Company.



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(c) You are liable for all costs with respect to delivery of the Goods to You including but not limited to cartage, insurance, haulage and freight.

### 6. Delivery and Delays

(a) Unless otherwise agreed in writing by the Parties the Company may deliver the Goods in instalments and determine the route and manner of their delivery.

(b) The Company is not liable in respect of any delivery delays as a result of any industrial dispute, postage or courier delays, or other causes outside the Company's control.

(c) The Company:

(i) is liable for any loss suffered by You, limited to the total amount payable on the Goods; but

(ii) is not liable for any consequential loss, as a result of a delayed delivery where the delay was within the Company's control.

(d) You are liable for and indemnify the Company against any theft or damage of the Goods while in transit to Your delivery destination.

### 7. Title

At all times the Goods remain the property of the Company until payment in full of all Goods and Services is made.

### 8. Risk

(a) The risk of the Goods passes to You on delivery, or delivery to the carrier, should one be engaged, and which constitutes delivery. The Company accepts no responsibility of risk for the Goods once they have been delivered to You.

(b) You acknowledge that it is Your responsibility that all Goods delivered are insured from point of delivery should delivery be required.

(c) You acknowledge that the Goods required will be in fair working order and You are liable for any damage to the Goods whilst in your control at no cost to the Company.

(d) Should the Goods be replaced in accordance with clause 15, risk of the Goods passes to the Company at the time the replaced Goods are despatched.

## CREDIT ACCOUNT

### 9. Credit Terms

(a) Payment of all credit accounts shall be made on or before thirty (30) days from end of month.

(b) The Company may at its discretion render a monthly progress invoice for up to 90% of the value of the Goods and Services, if necessary.

(c) When making a payment:

(i) You must forward Your remittance advice to the Company to ensure the payment is allocated to Your account in the correct manner; and

(ii) If Your payment does not reflect the statement amount, a brief note must be included regarding any variations.

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(i) You must forward Your remittance advice to the Company to ensure the payment is allocated to Your account in the correct manner; and

(ii) If Your payment does not reflect the statement amount, a brief note must be included regarding any variations.

(f) Suspended accounts may attract a default account keeping fee of two percent (2%) per month or \$25.00 per invoice, whichever is the greater amount, until the account is returned to the agreed trading terms. You agree that that this is a fair and reasonable charge and is directly relevant to the likely damage that the Company might suffer as a result of non-payment by You. Interest will be calculated on all outstanding amounts from the date of issue of the outstanding invoice.



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(g) All invoices shall immediately become due and payable in the event of default on payment by You of any invoice or account, regardless of whether or not some invoices may not otherwise have become due for payment.

(h) Account payments made by Credit Card may be charged a processing fee at the Company's discretion as follows: Visa / Master Card: 1.1%

### 10. Credit History

(a) You hereby give the Company authority to make enquiries as to the credit and financial responsibilities of You and/or Your Directors and/or Shareholders in order to suitably qualify Your capacity to incur debt and repay any amounts to the Company. These enquiries shall include but not be limited to obtaining reports from credit reporting agencies and references from current and/or past providers of credit to You.

(b) In accordance with section 18E(8)(c) of the Privacy Act 1988 (Cth), You acknowledge that the Company has informed You that certain items of personal information about You contained in/or relating to Your Application for Credit and permitted to be kept on a credit information file might be disclosed to a credit reporting agency. Furthermore, You agree, in accordance with s18H(3), s18K(1)(b), s.18K(1)(c), s18K(1)(h) and s18N(1)(b) of the Privacy Act 1988 that use by the Company of the relevant information referred to in those sections may occur for the purpose of assessing Your credit application.

## SECURITY AND CHARGES

### 11. Lien

The Company reserves the following rights in relation to the Goods until all amounts owed by You to the Company are fully paid:

(a) You authorise an authorised agent or representative of the Company to enter Your premises (or the premises of any associated company of Yours) where the Goods are located, without liability for trespass or any resulting damage, and retake possession of the Goods and You agree that the Company has an irrevocable license to do so.

(b) Notwithstanding the above, the Company shall be entitled to maintain an action against You for the invoice Price of the Goods.

(c) In connection with the Goods, while they remain the property of the Company, You agree that:

(i) You have no right or claim to any interest in the Goods to secure any liquidated or un-liquidated debt or obligation that the Company may owe You;

(ii) You cannot claim any lien over the Goods;

(iii) You are in possession of the Goods as a bailee of the Goods and owe the Company the duties and liabilities of a bailee.

### 12. Caveat

(a) As security for payment to the Company of all moneys payable by You and for Your obligations generally under this Agreement, You change in favour of the Company the whole of Your undertaking, property and assets (including without limitation all of Your interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired.

(b) You irrevocably appoint each of Your officers as Your attorney to do all things necessary to create and register each such charge.

(c) Upon demand by the Company, You agree to immediately execute a mortgage or other instrument in terms satisfactory to the Company to further secure payments of the money payable by You.

(d) If You fail within a reasonable time of such demand to execute such mortgage or other instrument, then You acknowledge that the Company may execute such mortgage or other instrument as Your attorney pursuant to the appointment of the Company as Your attorney set out in this Agreement.

### 13. Personal Properties Securities Act 2009 (Cth) ("PPSA")

(a) You acknowledge that this Agreement will constitute a security agreement which create a security interest in favour of the Company over all present and after acquired Goods supplied by the Company to You to secure the payment of the Price or any other amount owing under this Agreement from time to time including further advances.



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(b) You acknowledge that by accepting this Agreement and by virtue of the retention of title clause as provided for in Clause 7 of this Agreement, the security interest is a purchase money security interest (“PMSI”) as defined under Section 14 of the PPSA for all present, after acquired Goods including any commingled Goods.

(c) The security interest will continue to apply as an interest in the collateral for the purposes of PPSA with priority over registered or unregistered security interest.

(d) The Company may register the security interest as PMSI on the Personal Property Securities Register (“PPSR”) under the PPSA without providing further notice to You.

(e) You agree the Company is not required to disclose information pertaining to the Company’s security interest to an interested party unless required to do so pursuant to the PPSA or under general law.

(f) You agree and undertake:

(i) to sign any documents and/or provide further information reasonably required by the Company to register a financing statement or financing change statement on the PPSR;

(ii) to indemnify the Company for all expenses and/or costs incurred by the Company in registering a financing statement or financing change statement on PPSR including the costs of amending, maintaining, releasing and enforcing any security interest in the Goods;

(iii) not to register and/or make a demand to alter a financing statement in the collateral without prior written consent of the Company;

(iv) to provide the Company with seven (7) days written notice of any change or proposed change to Your company name, address, contact details, or other changes in Your details registered on the PPSR;

(v) to waive any rights of enforcement under Section 115 of the PPSR for collateral not used predominantly for personal, domestic or household purposes; and

(vi) to waive any rights to receive a verification statement in respect of any financial statement or financing charge statement under Section 157 of the PPSA.

### 14. Charge

(a) As security for payment to the Company of all moneys payable by You and for Your obligations generally under this Agreement, You charge in favour of the Company the whole of your undertaking, property and assets (including without limitation all of your interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired.

(b) You irrevocably appoint each officer of the Company as your attorney to do all things necessary to create and register each such charge.

(c) Upon demand by the Company, You agree to immediately execute a mortgage or other instrument in terms satisfactory to the Company to further secure payments of the money payable by You.

(d) If You fail within a reasonable time of such demand to execute such mortgage or other instrument, then You acknowledge that the Company may execute such mortgage or other instrument as Your attorney pursuant to the appointment of the Company as your attorney set out in this Agreement.

## WARRANTY

### 15. Warranty and Replacement

(a) Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

(i) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.



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**(b)** Subject to law and during the Warranty Period, the Company's obligations to You in respect of a breach of any term, warranty or condition of these Terms and Conditions (whether implied by statute or otherwise) shall, at the Company's option be limited to:

(i) in the case of Goods, the repair or replacement of any Goods and their components which the Company, in its absolute discretion, determines to be defective in materials or workmanship under normal use and service; and

(ii) in the case of Services, the resupply of services or paying for the cost of resupplying services.

(c) The Company's obligations in the event of Clause 15(b) applying do not include:

(i) the cost of removal of the defective Goods whether installed or otherwise;

ii) the cost of installation of replacement for defective Goods;

(iii) the cost of transporting the Goods to and from the Company for investigation or repair; or

(iv) defects in Goods caused by improper installation or maintenance of the Goods or related components or normal wear and tear and damage.

**(d)** Risk in the Goods remains with You at all times whilst they are being investigated or repaired by the Company and the Company and its employees or agents will not be liable for any damage to the Goods unless the damage is caused by the gross neglect of the Company or its employees or agents.

**(e)** Subject to law, the Company will not be liable to You or any other person under any circumstances for any direct, incidental or consequential loss or damage (including loss or damage caused by negligence or wilful acts or default of the Company, its employees or agents) whatsoever arising from a breach of any of these Terms and Conditions or any other statutory implied warranty, terms or conditions in relation to the Goods and/or Services.

**(f)** Subject to law, the Company will not be liable for any costs, claims, damages or demands arising from personal injury, loss or damage to Goods whatsoever occurring to You or Your employees or agents by reason of:

(i) the Goods and/or Services, their design, production or processing;

(ii) any act or omission of the Company, its servants and agents; or

(iii) any statement or representation made by an employee or agent of the Company.

**(g)** The Company will not be responsible for the consequences of any technical advice given by its employees in relation to the design, specifications, installations or use of the Goods.

**h)** Any claim by You in respect of defective or damaged Goods or defective Services must be made in writing within fourteen (14) days of delivery or collection of those Goods or provision of those Services.

(i) The Company is not responsible for damages caused by other contractors or outside influences.

**(j)** To make a claim under this clause 15 You must request a return of goods authority form from the Company and give submit the completed form to the Company within the Warranty Period.

## INTELLECTUAL PROPERTY

### 16. Intellectual Property Rights

**(a)** For the purpose of this Agreement, a reference to "using" the Intellectual Property means any engagement whatsoever with the Intellectual Property, including without limitation:

(i) copying, transmitting, communicating, accessing and storing the Intellectual Property or any data comprising the Intellectual Property; and

(ii) exploiting the Intellectual Property or otherwise engaging in any activity for advantage or value (whether immediate or anticipated or incidental) with the benefit of the Intellectual Property.

**(a)(b)** Neither party may use the Intellectual Property of the other party except as expressly permitted by this Agreement.

**(b)(c)** For the purpose of this Agreement, a reference to the Intellectual Property of the Principal means Intellectual Property owned, licensed or registered by the Principal, including the Product IP Rights and Contract Material.

**(c)** Without limiting clause 16 (a), neither party may:





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(i) use any Intellectual Property of the other as part of its corporate name, trade mark, sign, business name, social media, trading name, logo or style, without prior written approval of the other party;

(ii) register or apply to register any Intellectual Property of the other party; or

(iii) do anything concerning the Intellectual Property of a party which might:

**(A)** challenge or affect a party's rights to and interests in its Intellectual Property;

**(B)** lead or contribute to the dilution of the Intellectual Property of a party; or

**(C)** cause confusion or deception to any person concerning the origin, ownership and control of the rights and interests which are the subject of the Intellectual Property of a party.

**(d)** Unless otherwise expressly stated in this Agreement, nothing in this Agreement operates to assign or otherwise transfer any right, interest or title in or to any Intellectual Property of a party.

### 17. End of Agreement

**(a)** The term of this agreement is ongoing.

**(b)** This agreement may terminate with:

(i) written notice from the Company to You

(ii) written notice from You to the Company

**(c)** Upon termination of this Agreement, You will:

(i) immediately pay all amounts due and owing to the Company

(ii) immediately cease holding itself out or representing itself as a member of the T-Rex Manufacturing OEM Program;

(iii) promptly deliver up to the Company all advertising and promotional material concerning the Product;

**(iv)** immediately cease using any Intellectual Property and Confidential Information of the Company;

**(v)** promptly deliver up to the Company or destroy (as directed by the Company) all Intellectual Property and Confidential Information of the Principal; and

**(vi)** at the request of the Company, promptly procure a sworn declaration from the directors of Your Business attesting to the fulfillment of paragraphs 17(c)(i) to 17(c)(v) (inclusive).

## MISCELLANEOUS

### 18. Limitation of Liability

(a) The Company shall not be liable for any contingent, consequential, direct/indirect or punitive damages or loss arising, in relation to the use of the Goods, whatsoever. You acknowledge this express limit on liability and You agree to limit any claim accordingly.

(b) The Company will not be held liable for any loss or damage incurred due to a Force Majeure, which means any cause outside the Company's reasonable control, including but not limited to an act of God, government or quasi government, act or regulation, riot, act of terrorism, war, flood, fire, industrial disputes and epidemics or any risks to health or safety.

### 19. Default

You must pay to the Company any costs, charges and expenses (including legal fees and costs on a full indemnity basis as a liquidated debt) incurred by the Company in connection with the entry into this Agreement, the exercise or attempted exercise of any power, right or remedy under these Terms and Conditions and/or the failure of You to comply with any of these Terms and Conditions.

### 20. Jurisdiction

This Agreement is deemed to have been entered into in the jurisdiction where You signed this Agreement. Any legal action arising out of, or in respect of this Agreement and/or its interpretation can be brought only in the State the Agreement is signed in or another jurisdiction if it is deemed appropriate by the Company.

### 21. Amendment

These Terms and Conditions are binding, and cannot be altered except by clear, written acceptance of the alteration by the Company and You.