
Precise Truck Centre – Terms & Conditions of Trade

1. Definitions

- 1.1 "PTC" means AFR Investments Pty Ltd ATF AFR Investment Trust T/A Precise Truck Centre, its successors and assigns or any person acting on behalf of and with the authority of AFR Investments Pty Ltd ATF AFR Investment Trust T/A Precise Truck Centre.
- 1.2 "Client" means the person/s buying the Parts, as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Parts" means all Parts or Services supplied by PTC to the Client at the Client's request from time to time (where the context so permits the terms 'Parts' or 'Services' shall be interchangeable for the other, for the purposes of this agreement where the context so permits 'Services' shall also include the supply of "Labour").
- 1.4 "Price" means the Price payable for the Parts as agreed between PTC and the Client in accordance with clause 5 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Parts.
- 2.2 These terms and conditions may only be amended with PTC's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and PTC.
- 2.3 These terms and conditions may be meant to be read in conjunction with PTC's Hire Form and/or Labour Hire Form, and:
 - (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment/Labour, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Electronic Transactions Act (Queensland) 2001

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Client shall give PTC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by PTC as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At PTC's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by PTC to the Client; or
 - (b) the Price as at the date of delivery of the Parts according to PTC's current price list; or
 - (c) PTC's estimated Price (subject to clause 5.2) which shall not be deemed binding upon PTC as the actual Price can only be determined upon completion of the Services. PTC undertakes to keep the Client informed should the actual Price look likely to exceed the original estimate.
 - (d) PTC's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 PTC reserves the right to change the Price:
 - (a) if a variation to the Parts which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to safety considerations, hidden faults etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to PTC in the cost of labour or materials which are beyond PTC's control.
- 5.3 At PTC's sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Parts being of the essence, the Price will be payable by the Client on the date/s determined by PTC, which may be:
 - (a) on delivery of the Parts;
 - (b) before delivery of the Parts;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by PTC.
- 5.5 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three and a half percent (3.5%) of the Price), or by any other method as agreed to between the Client and PTC.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to PTC an amount equal to any GST PTC must pay for any supply by PTC under this or any other agreement for the sale of the Parts. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Parts

- 6.1 Delivery ("**Delivery**") of the Parts is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Parts at PTC's address; or
 - (b) PTC (or PTC's nominated carrier) delivers the Parts to the Client's nominated address even if the Client is not present at the address.
- 6.2 At PTC's sole discretion the cost of delivery is included in the Price.
- 6.3 The Client must take delivery by receipt or collection of the Parts whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Parts as arranged then PTC shall be entitled to charge a reasonable fee for redelivery of the Parts and/or the storage of the Parts.
- 6.4 Any time or date given by PTC to the Client is an estimate only. The Client must still accept delivery of the Parts even if late and PTC will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

Precise Truck Centre – Terms & Conditions of Trade

7. Risk to Parts

- 7.1 Risk of damage to or loss of the Parts passes to the Client on Delivery and the Client must insure the Parts on or before Delivery.
- 7.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Client, PTC is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by PTC is sufficient evidence of PTC's rights to receive the insurance proceeds without the need for any person dealing with PTC to make further enquiries.
- 7.3 If the Client requests PTC to leave Parts outside PTC's premises for collection or to deliver the Parts to an unattended location then such Parts shall be left at the Client's sole risk.
- 7.4 Where PTC is requested to store the Client's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four hours of advice to the Client that they are ready for collection, then PTC (at its sole discretion) may charge a reasonable fee for storage.
- 7.5 PTC shall not be liable for the loss of or damage to the vehicle, its accessories or contents while garaged being serviced or being driven in connection with the work authorised unless caused by the negligence of PTC or PTC's employees.
- 7.6 It is the Client's responsibility to ensure that the vehicle is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored on PTC's premises. The vehicle is at all times stored and repaired at the Client's sole risk.
- 7.7 If PTC has been requested by the Client to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 7.8 If a vehicle or component is submitted for repair under a warranty or insurance claim, and the claim is declined or payment delayed, the Client is liable for payment and agrees to pay for any such repair.
- 7.9 The Client authorises PTC to engage the services of a tow truck on the Client's behalf and at the Client's expense, if, in PTC's opinion, it is deemed necessary.
- 7.10 If PTC is requested to organise other supplies or Services on behalf of the Client, the Client agrees to pay the third party supplier on invoice by the due date.
- 7.11 The Client acknowledges and agrees that PTC shall be entitled to:
- (a) retain any components replaced during the supply of the Services; and
 - (b) retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.

8. Title to Parts

- 8.1 PTC and the Client agree that ownership of the Parts shall not pass until:
- (a) the Client has paid PTC all amounts owing to PTC; and
 - (b) the Client has met all of its other obligations to PTC.
- 8.2 Receipt by PTC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.3 It is further agreed that:
- (a) until ownership of the Parts passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Parts and must return the Parts to PTC on request.
 - (b) the Client holds the benefit of the Client's insurance of the Parts on trust for PTC and must pay to PTC the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Parts then the Client must hold the proceeds of any such act on trust for PTC and must pay or deliver the proceeds to PTC on demand.
 - (d) the Client should not convert or process the Parts or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of PTC and must sell, dispose of or return the resulting product to PTC as it so directs.
 - (e) the Client irrevocably authorises PTC to enter any premises where PTC believes the Parts are kept and recover possession of the Parts.
 - (f) PTC may recover possession of any Parts in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Parts nor grant nor otherwise give away any interest in the Parts while they remain the property of PTC.
 - (h) PTC may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Client.

9. Personal Property Securities Act 2009 ("PPSA")

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Parts and/or collateral (account) – being a monetary obligation of the Client to PTC for Services – that have previously been supplied and that will be supplied in the future by PTC to the Client.
- 9.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which PTC may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 9.2(a)(i) or 9.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, PTC for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Parts charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of PTC;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Parts and/or collateral (account) in favour of a third party without the prior written consent of PTC;

Precise Truck Centre – Terms & Conditions of Trade

- (e) immediately advise PTC of any material change in its business practices of selling Parts which would result in a change in the nature of proceeds derived from such sales.
- 9.4 PTC and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by PTC, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Client must unconditionally ratify any actions taken by PTC under clauses 9.2 to 9.5.
- 9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10. Security and Charge

- 10.1 In consideration of PTC agreeing to supply the Parts, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies PTC from and against all PTC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising PTC's rights under this clause.
- 10.3 The Client irrevocably appoints PTC and each director of PTC as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 11.1 The Client must inspect the Parts on delivery and must within one (1) working day of delivery notify PTC in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Parts as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow PTC to inspect the Parts.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.3 PTC acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, PTC makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Parts. PTC's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Client is a consumer within the meaning of the CCA, PTC's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If PTC is required to replace any Parts under this clause or the CCA, but is unable to do so, PTC may refund any money the Client has paid for the Parts.
- 11.7 If PTC is required to rectify, re-supply, or pay the cost of re-supplying any Services under this clause or the CCA, but is unable to do so, then PTC may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.
- 11.8 If the Client is not a consumer within the meaning of the CCA, PTC's liability for any defect or damage in the Parts is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by PTC at PTC's sole discretion;
 - (b) limited to any warranty to which PTC is entitled, if PTC did not manufacture the Parts;
 - (c) otherwise negated absolutely.
- 11.9 Subject to this clause 11, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 11.1; and
 - (b) PTC has agreed that the Parts are defective; and
 - (c) the Parts are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Parts are returned in as close a condition to that in which they were delivered as is possible.
- 11.10 Notwithstanding clauses 11.1 to 11.9 but subject to the CCA, PTC shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Client failing to properly maintain or store any Parts;
 - (b) the Client using the Parts for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of the Parts after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by PTC;
 - (e) fair wear and tear, any accident, or act of God.
- 11.11 In the case of second hand Parts, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Parts prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by PTC as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that PTC has agreed to provide the Client with the second hand Parts and calculated the Price of the second hand Parts in reliance of this clause 11.11.
- 11.12 PTC may in its absolute discretion accept non-defective Parts for return in which case PTC may require the Client to pay handling fees of up to sixty percent (60%) of the value of the returned Parts plus any freight costs.
- 11.13 Notwithstanding anything contained in this clause if PTC is required by a law to accept a return then PTC will only accept a return on the conditions imposed by that law.

Precise Truck Centre – Terms & Conditions of Trade

12. Intellectual Property

- 12.1 Where PTC has designed, drawn or developed Parts for the Client, then the copyright in any designs and drawings and documents shall remain the property of PTC.
- 12.2 The Client warrants that all designs, specifications or instructions given to PTC will not cause PTC to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify PTC against any action taken by a third party against PTC in respect of any such infringement.
- 12.3 The Client agrees that PTC may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Parts which PTC has created for the Client.

13. Default and Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at PTC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes PTC any money the Client shall indemnify PTC from and against all costs and disbursements incurred by PTC in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PTC's contract default fee, and bank dishonour fees).
- 13.3 Further to any other rights or remedies PTC may have under this contract, if a Client has made payment to PTC by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by PTC under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 13.4 Without prejudice to any other remedies PTC may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions PTC may suspend or terminate the supply of Parts to the Client. PTC will not be liable to the Client for any loss or damage the Client suffers because PTC has exercised its rights under this clause.
- 13.5 Without prejudice to PTC's other remedies at law PTC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to PTC shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to PTC becomes overdue, or in PTC's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14. Cancellation

- 14.1 PTC may cancel any contract to which these terms and conditions apply or cancel delivery of the Parts or the supply of Labour at any time before the Parts are delivered by giving written notice to the Client. On giving such notice PTC shall repay to the Client any money paid by the Client for the Parts or the supply of Labour. PTC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Parts or the supply of Labour the Client shall be liable for any and all loss incurred (whether direct or indirect) by PTC as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.3 Cancellation of orders for Parts made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

15. Privacy Act 1988

- 15.1 The Client agrees for PTC to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by PTC.
- 15.2 The Client agrees that PTC may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 15.3 The Client consents to PTC being given a consumer credit report to collect overdue payment on commercial credit.
- 15.4 The Client agrees that personal credit information provided may be used and retained by PTC for the following purposes (and for other agreed purposes or required by):
 - (a) the provision of Parts; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Parts; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Parts.
- 15.5 PTC may give information about the Client to a CRB for the following purposes:
 - (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 15.6 The information given to the CRB may include:
 - (a) personal information as outlined in 15.1 above;
 - (b) name of the credit provider and that PTC is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);

Precise Truck Centre – Terms & Conditions of Trade

- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and PTC has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of PTC, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.7 The Client shall have the right to request (by e-mail) from PTC:
- (a) a copy of the information about the Client retained by PTC and the right to request that PTC correct any incorrect information; and
 - (b) that PTC does not disclose any personal information about the Client for the purpose of direct marketing.
- 15.8 PTC will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 15.9 The Client can make a privacy complaint by contacting PTC via e-mail. PTC will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 16. Confidentiality**
- 16.1 PTC and the Client agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).
- 17. Unpaid Seller's Rights**
- 17.1 Where the Client has left any item with PTC for repair, modification, exchange or for PTC to perform any other service in relation to the item and PTC has not received or been tendered the whole of any moneys owing to it by the Client, PTC shall have, until all moneys owing to PTC are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 17.2 The lien of PTC shall continue despite the commencement of proceedings, or judgment for any moneys owing to PTC having been obtained against the Client.
- 18. General**
- 18.1 The failure by PTC to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect PTC's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which PTC has its principal place of business, and are subject to the jurisdiction of the Mackay courts in that state.
- 18.3 Subject to clause 11 PTC shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by PTC of these terms and conditions (alternatively PTC's liability shall be limited to damages which under no circumstances shall exceed the Price of the Parts hire).
- 18.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by PTC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.5 PTC may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.6 The Client agrees that PTC may amend these terms and conditions at any time. If PTC makes a change to these terms and conditions, then that change will take effect from the date on which PTC notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for PTC to provide Parts to the Client.
- 18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 18.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.