

Instant Weight Pty Ltd T/A Instant Weighing – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Service Provider" shall mean Instant Weight Pty Ltd T/A Instant Weighing its successors and assigns or any person acting on behalf of and with the authority of Instant Weight Pty Ltd T/A Instant Weighing.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Service Provider to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Service Provider to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Service Provider to the Client.
- 1.5 "Services" shall mean all Services supplied by the Service Provider to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between the Service Provider and the Client in accordance with clause 5 of this contract.
2. **The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**
- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
3. **Application of these terms and conditions to consumers**
- 3.1 Clause 9 (Defects) and clause 10 (Warranty) shall NOT apply to the Client where the Client is purchasing Goods or Services not for resale or hire where the Price of the Goods or Services does not exceed \$40,000, or where the Price of the Goods or Services does exceed \$40,000 and are of a kind ordinarily acquired for personal, domestic or household use or consumption, or where the Client is in any other way a consumer within the meaning of the TPA or the FTA of the relevant state or territories of Australia.
4. **Acceptance**
- 4.1 Any instructions received by the Service Provider from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Service Provider shall constitute acceptance of the terms and conditions contained herein.
- 4.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 4.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Service Provider.
- 4.4 The Client shall give the Service Provider not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Service Provider as a result of the Client's failure to comply with this clause.
5. **Price And Payment**
- 5.1 At the Service Provider's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Service Provider to the Client in respect of Goods supplied; or
 - (b) the Service Provider's quoted Price (subject to clause 5.2) which shall be binding upon the Service Provider provided that the Client shall accept the Service Provider's quotation in writing within thirty (30) days.
- 5.2 The Service Provider reserves the right to change the Price in the event of a variation to the Service Provider's quotation.
- 5.3 At the Service Provider's sole discretion a deposit may be required.
- 5.4 At the Service Provider's sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment for approved Client's shall be due thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 5.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 5.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two and one half percent (2.5%) of the Price), or by direct credit, or by Barter Card or by any other method as agreed to between the Client and the Service Provider.
- 5.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
6. **Delivery Of Goods**
- 6.1 At the Service Provider's sole discretion delivery of the Goods shall take place when:
 - (a) the Client takes possession of the Goods at the Service Provider's address; or
 - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Service Provider or the Service Provider's nominated carrier); or
 - (c) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
- 6.2 At the Service Provider's sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Client's account.
- 6.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Service Provider shall be entitled to charge a reasonable fee for redelivery.
- 6.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.5 The failure of the Service Provider to deliver shall not entitle either party to treat this contract as repudiated.
- 6.6 The Service Provider shall not be liable for any loss or damage whatever due to failure by the Service Provider to deliver the Goods (or any of them) promptly or at all due to circumstances beyond the control of the Service Provider.
7. **Risk**
- 7.1 If the Service Provider retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Service Provider is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Service Provider is sufficient evidence of the Service Provider's rights to receive the insurance proceeds without the need for any person dealing with the Service Provider to make further enquiries.
8. **Title**
- 8.1 The Service Provider and Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid the Service Provider all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to the Service Provider in respect of all contracts between the Service Provider and the Client.
- 8.2 Receipt by the Service Provider 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 and until then the Service Provider's ownership or rights in respect of the Goods shall continue.
- 8.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until the Service Provider shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from the Service Provider to the Client the Service Provider may give notice in writing to the Client to return the Goods or any of them to the Service Provider. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Service Provider shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Client fails to return the Goods to the Service Provider then the Service Provider or the Service Provider's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
 - (e) the Client is only a bailee of the Goods and until such time as the Service Provider has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Service Provider; and
 - (f) the Client shall not deal with the money of the Service Provider in any way which may be adverse to the Service Provider; and
 - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Service Provider; and
 - (h) the Service Provider can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
 - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Service Provider will be the owner of the end products.
9. **Defects**
- 9.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Service Provider of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Service Provider an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Service Provider has agreed in writing that the Client is entitled to reject, the Service Provider's liability is limited to either (at the Service Provider's discretion) replacing the Goods or repairing the Goods.
- 9.2 Goods will not be accepted for return other than in accordance with 9.1 above.
10. **Warranty**
- 10.1 Subject to the conditions of warranty set out in clause 10.2 the Service Provider warrants that if any defect in any workmanship of the Service Provider becomes apparent and is reported to the Service Provider within twelve (12) months of the date of delivery (time being of the essence) then the Service Provider will either (at the Service Provider's sole discretion) replace or remedy the workmanship. The conditions applicable to the warranty given by clause 10.1 are:
 - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Service Provider; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and the Service Provider shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Service Provider's consent.
 - (c) in respect of all claims the Service Provider shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
 - (d) the Client shall be liable for all travel expenses including, but not limited to, transportation of certified test weights (if required), meals and accommodation for any warranty claim, where the equipment is located outside of a forty (40) kilometre radius of the Perth GPO.
- 10.3 For Goods not manufactured by the Service Provider, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Service Provider shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
11. **Default & Consequences of Default**
- 11.1 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 one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 11.2 If the Client defaults in payment of any invoice due, the Client shall indemnify the Service Provider from and against all costs and disbursements incurred by the Service Provider in pursuing the debt including legal costs on a solicitor and own client basis and the Service Provider's collection agency costs.
- 11.3 Without prejudice to any other remedies the Service Provider may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Service Provider may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Service Provider will not be liable to the Client for any loss or damage the Client suffers because the Service Provider has exercised its rights under this clause.
- 11.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.5 Without prejudice to the Service Provider's other remedies at law the Service Provider shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Service Provider shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Service Provider becomes overdue, or in the Service Provider's opinion the Client will be unable to meet its payments as they fall due; or
 - (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.
12. **Security And Charge**
- 12.1 Despite anything to the contrary contained herein or any other rights which the Service Provider may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Service Provider or the Service Provider's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Service Provider (or the Service Provider's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Service Provider elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Service Provider from and against all the Service Provider's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Service Provider or the Service Provider's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.
13. **Cancellation**
- 13.1 The Service Provider may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Service Provider shall repay to the Client any sums paid in respect of the Price. The Service Provider shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Service Provider (including, but not limited to, any loss of profits) up to the time of cancellation, as well as the cost of installation.
14. **Privacy Act 1988**
- 14.1 The Client and/or the Guarantor/s agree for the Service Provider to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Service Provider.
- 14.2 The Client and/or the Guarantor/s agree that the Service Provider may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by 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 credit worthiness of Client and/or Guarantor/s.
- 14.3 The Client consents to the Service Provider being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(b) Privacy Act 1988).
- 14.4 The Client agrees that personal credit information provided may be used and retained by the Service Provider for the following purposes and for other purposes as shall be agreed between the Client and Service Provider or required by law from time to time:
 - (a) provision of Goods; and/or
 - (b) marketing of Goods by the Service Provider, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 14.5 The Service Provider may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
15. **Unpaid Service Provider's Rights**
- 15.1 Where the Client has left any item with the Service Provider for repair, modification, exchange or for the Service Provider to perform any other Service in relation to the item and the Service Provider has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Service Provider shall have:
 - (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Service Provider is in possession of the item;
 - (c) a right to sell the item.
- 15.2 The lien of the Service Provider shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
16. **General**
- 16.1 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.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
- 16.3 The Service Provider shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Service Provider of these terms and conditions.
- 16.4 In the event of any breach of this contract by the Service Provider the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 16.5 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 the Service Provider.
- 16.6 The Service Provider may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.7 The Client agrees that the Service Provider may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Service Provider notifies the Client of such change.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 16.9 The failure by the Service Provider to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Service Provider's right to subsequently enforce that provision.