



## Terms & Conditions of Trade

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# Elite Service 2021 Limited

## **GENERAL TERMS AND CONDITIONS OF TRADE FOR GOODS AND SERVICES**

### **1. APPLICATION**

- 1.1 These general terms and conditions of sale ("this Agreement") will apply to all goods ("Goods") and services ("Services") supplied by Elite Service 2021 Limited ("the Company") to the purchaser ("the Customer") unless expressly varied in writing.
- 1.2 Goods are defined as all present and after acquired electrical golf and utility vehicle products but not limited to electrical golf and utility vehicle products supplied by the Company together with all proceeds arising from those goods.
- 1.3 Services are defined as meaning the provision of technical advice in respect of electrical golf and utility vehicle products and such other services as the Company may agree to provide to the Customer from time to time.

### **2. ORDERS**

- 2.1 All orders for Goods and/or Services ("Order") will be subject to acceptance by the Company, which may decline an Order, or accept an Order in whole or in part at its sole discretion. The Company may cancel any Order without liability if in the Company's opinion it is or becomes impractical or uneconomical to fulfil. An Order once placed by the Customer cannot be cancelled by the Customer. If however the company accepts a full or partial order cancellation, at the company's discretion, any costs incurred relating to the production, preparation or transport of the goods will be charged to the customer.
- 2.2 The Company will be entitled to cancel or terminate any part or the whole of an Order, following acceptance, if the Company becomes aware that in the Company's judgment the Customer's credibility, finances, or ability to perform this Agreement may be in jeopardy.

### **3. WARRANTIES**

- 3.1 Notwithstanding that the provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement as the Goods and/or Services are being provided for business purposes, but subject to clauses 3.2 and 3.3, the Company provides the guarantees, in relation to the Goods, as to title, acceptable quality, and compliance with description and sample, on the same terms and conditions as described in that Act.
- 3.2 The Company will not be liable, under clause 3.1, as a result of mismanagement by the Customer for the following: use of the Goods other than in accordance with the Company's documentation and other instruction from the Company; use of the Goods in a manner not reasonably contemplated by the Company; modification of the Goods not authorised by the Company; subjection of the Goods to unusual or non-recommended physical environments; damage to the goods whilst being transported by a 3<sup>rd</sup> party or the Customer, or the Customer's failure to comply with any terms of this Agreement.
- 3.3 The Company's liability is restricted, at its option and discretion, to: the replacement of the Goods or the supply of equivalent Goods; or the payment of the cost of an amount equivalent to the Goods or of acquiring equivalent Goods; or the supply of Services again or payment of an amount equivalent to the cost of the Services invoiced by the Company to the Customer in respect of such Services supplied.
- 3.4 Lead acid batteries hold a 12 month warranty as per manufacturer's specifications. Roypow Lithium Batteries hold a 4 year warranty as per manufacturer's specifications. Roypow Lithium battery chargers hold a 12 month warranty as per manufacturer's specifications. Eco Lithium Batteries Gen 2 8 year warranty as per manufacturers specifications, Gen 3 10 year warranty as per manufacturer's specifications. (Separate warranty policy available for Eco Lithium Batteries).
- 3.5 All other parts hold a 12 month warranty as per manufacturer's specification unless otherwise stated.
- 3.6 All warranty repairs are back to base, and do not include freight and/or collection fees unless otherwise specifically agreed in writing.

### **4. PRICES / RATES**

- 4.1 Prices will be stated on the Company's sales order form, or recommendation form and/or invoice or other like documentation.
- 4.2 Prices for Goods are based on the Company's supplier's prices and are quoted in New Zealand dollars at the Company's business premises unless stated or agreed otherwise. Any variation to such prices, including exchange rate variation, subsequent to the date of quotation may be chargeable to the Customer. Orders may be subject to a surcharge for handling or service.

- 4.3 Prices quoted are subject to the applicable Goods and Services Tax and any other tax or levy imposed by any government authority upon the Goods and/or Services. All such taxes or levies will be payable by the Customer in addition to the price of the Goods and/or Services.
- 4.4 Unless otherwise specifically agreed in writing all freight and dispatch charges will be borne by the Customer.
- 4.5 In addition to the price for Services, the Company may charge pre-approved expenses reasonably incurred in providing such Services.
- 4.6 Hourly rate \$125 + GST. Minimum charge out rate of 1 hour. Consumables per service invoice \$25.00 + GST Kilometres charged out at \$1.95 + GST per km.

## **5. DELIVERY**

- 5.1 If the parties agree that the Company is to provide delivery services for the Goods to the Customer, the Company will use reasonable endeavours to make delivery at any times specified or estimated but will not be responsible for any loss or damage whatsoever sustained by the Customer or any person by reason of any delay in delivery or failure to fulfill an order, whether caused by circumstances beyond the control of the Company or not. No delay, failure or other default in respect of delivery, performance, part delivery or part performance will entitle the customer to treat the agreement for that order as repudiated. If the goods are not delivered to the customer as agreed the customer will promptly notify the customer no later than seven days from the expected date of delivery.

- 5.2 In the case of delays caused by circumstances beyond the control of the Company or by suppliers to the Company, the Company will have the right either to suspend deliveries without notice or to cancel the Order without liability.

## **6. CONFORMITY**

- 6.1 The Customer may only return the Goods to the Company if the Goods delivered do not conform to the Company's documentation accompanying the delivery and if the Customer returns the Goods to the Company immediately and no later than seven days from delivery, including details of the non-conformity of the Goods with the Company's documentation. The Company's liability for returned Goods is restricted to that set out in clause 3.3.

## **7. PAYMENT**

- 7.1 Unless otherwise expressly stated by the Company in writing, the Customer must pay the Company by the 20<sup>th</sup> of the month following the month in which the Goods and/or Services are invoiced ("Due Date").

- 7.2 Failure to make payment in full on the Due Date will be a default, and without prejudice to the Company's other rights in respect of such default the Customer will pay interest on all overdue amounts based on the Company's then current overdraft rate plus 4% per annum from the Due Date until the date of payment in full.

- 7.3 If the Company should deem the credit of the Customer to be unsatisfactory it may at any time require security for payment and may withhold supply until provision of sufficient security, or the Company may at its option suspend supplies or cancel this Agreement. In addition, payment for all Goods and/or Services supplied to the date of such suspension and any other monies payable will immediately become due and payable without further notice.

- 7.4 The Company will be entitled to recover from the Customer all legal and other costs arising from or in relation to the collection of any overdue monies or return of Goods or in relation to any other default made by the Customer. Those legal costs will be on a solicitor to client basis.

- 7.5 The Customer will not be entitled to withhold payment or make deductions on account of payments due in respect of Goods or Services claimed to be defective or not in accordance with the Company's documents.

## **8. RISK**

- 8.1 The risk in the Goods will pass to the Customer immediately upon delivery of the Goods by the Company to the Customer or in the case of delivery by the Company to the Customer's premises (unless otherwise agreed in writing).

- 8.2 Notwithstanding that risk and possession may pass to the Customer, ownership and title in the Goods will remain with the Company until the Customer has discharged all outstanding indebtedness to the Company.

## **9. TITLE**

- 9.1 Until payment in full of all outstanding debts owed to the Company has been made by the Customer, the Customer acknowledges that prior to entering into this Agreement it has been informed and hereby accepts and agrees that:

(a) The Goods are held by the Customer as Bailee for and on behalf of the Company and the Customer will store the Goods in such a way as is clear that they are the Company's property;

(b) The Customer irrevocably gives the Company, its agents and servants licence and leave, without providing notice, to enter the premises occupied by the Customer to search for and remove any of the Goods in which the Company has ownership without in any way being liable to the Customer or any other person or company;

(c) If the Goods have been resold by the Customer prior to repayment in full of the outstanding indebtedness of the Customer, then the proceeds of such resale will be the property of the Company (but only to the extent necessary to discharge such outstanding indebtedness) and the Customer will hold such proceeds in trust for the Company. Any bank or secured creditor of the Customer will be made aware of the terms of this Agreement and the basis upon which the Company conducts business with the Customer;

(d) This clause is intended to protect the Company in all circumstances including the event of insolvency or default in payment by the Customer;

(e) By accepting delivery of the Goods, the Customer agrees:

(i) that this Agreement constitutes a security agreement for the purposes of section 36 of the Personal Property Securities Act ("PPSA")

(ii) that a purchase money security interest exists in all Goods (and their proceeds) previously supplied by the Company to the Customer (if any) and the Customer grants a security interest in all Goods (and their proceeds) supplied in the future by the Company to the Customer;

(iii) that on the enforcement of those security interests created by this Agreement to which the PPSA applies, section 114(1)(a), 133 and 134 of the PPSA will not apply;

(iv) to waive any rights the Customer may have under sections 116, 120(2) and 121 of the PPSA on such enforcement;

(v) to keep records of the Goods until payment in full;

(vi) (without prejudice to the Company's other rights and remedies) to return the Goods if requested to do so by the Company following non-payment of any amount due to the Company or non-fulfilment of any other obligation of the Customer under this Agreement;

(vii) that the Company has the right at all reasonable times to inspect the Goods and any parts of them;

(viii) to keep the Goods free and clear of all liens, taxes, charges, pledges, encumbrances or adverse claims of any nature;

(ix) that it will not register or allow any person to register a financing change statement or a change demand in respect of the Goods;

(x) that it will execute all other documents and do all other things that the Company may reasonably require for the purpose of registering a financing statement or financing change statement on the Personal Property Securities Register;

(xi) that its proper legal name appears in this Agreement and it will not change its name, address or contact details without providing the Company with 28 days prior written notice;

(xii) to waive any right to receive any verification statement, financing and their statement or financing change statement; and

(xiii) that it has not agreed to postpone the time for attachment of the security interest granted in this Agreement.

Terms defined in the PPSA have the same meaning in this Agreement.

## **10. CUSTOMER'S SPECIFIC ACKNOWLEDGEMENTS, WARRANTIES AND UNDERTAKINGS**

10.1 The Customer acknowledges that the Goods and/or Services (including any ancillary items, accessories, replacements or parts) are being acquired for the purposes of the Customer's business.

10.2 The Customer enters into this Agreement solely in reliance upon its inspections of the Goods and upon the Customer's own skill and judgment as to the quality of the Goods and/or Services and the fitness of the Goods and/or Services for the Customer's purpose.

10.3 The Customer, and not the Company or any employee or agent of the Company, has the skill for and is capable of assessing and has singularly assessed and determined and judged that the Goods and/or Services are fit for any particular purpose for which the Goods and/or Services are required.

10.4 No representation, warranty, promise or statement has been made in regard to the Goods and/or Services except for any express warranty in writing given by the Company or the manufacturer in respect of the Goods and/or Services.

10.5 The Customer acknowledges that all intellectual property rights in relation to the Goods and/or Services belong exclusively to the Company and/or its licensors or manufacturers of the Goods, and any intellectual property rights developed in the provision of the Services are and will be the exclusive property of the Company.

#### **11. LIABILITY**

11.1 Except as expressly provided in this Agreement all representations or warranties (statutory, express or implied) apart from any which may not be lawfully excluded are expressly excluded.

11.2 This Agreement constitutes the entire agreement between the parties in respect of the Goods and/or Services.

11.3 To the extent that the Customer may, notwithstanding clauses 11.1 and 11.2, have any claim for damages against the Company at law, such claim will:

(a) not include, under the law of tort, contract or otherwise, damages for indirect special or consequential loss of any kind (including loss of profits); and

(b) be restricted to the purchase price paid by the Customer for the Goods and/or Services giving rise to the claim.

11.4 The Customer acknowledges and agrees that it will be fully responsible for, and indemnify the Company against, any liability, cost or loss arising out of, from or as a result of improper, unlawful or illegal use of the Goods and/or Services or modification to the Goods, or in

11.5 connection with combination or attempted combination of the Goods with other products and the Customer will not in any way interfere with the intellectual property of the Company in or about the Goods.

11.6 The Company will not be in default by reason of any failure to perform its obligations under this Agreement caused by any act or event beyond the Company's control.

#### **12. WAIVER**

12.1 No waiver of any breach of this Agreement will be deemed to be a waiver of any other or any subsequent breach. The failure of any party to enforce any provision of this Agreement at any time will not be interpreted as a waiver of the provision.

#### **13. THE PRIVACY ACT**

13.1 The Customer authorises the Company to contact any credit agency, referee or any other source (each a "Source") to obtain, check, disclose and exchange information (both now and in the future) in connection with this Agreement.

13.2 The Customer acknowledges that by signing this Agreement the Customer has authorised each Source to provide the Company with any information about the Customer which it may require in connection with this Agreement.

13.3 If the Customer is a natural person, the Privacy Act 1993 entitles the Customer to have access to personal information held by the Company about the Customer and to request correction of that information if necessary.

#### **14. SEVERABILITY**

14.1 If any provision of this Agreement is deemed to be invalid, illegal or unenforceable, the remaining provisions will remain in full force and effect.

The customer together with the person signing as Director/Manager/Authorised Person, hereby accepts and agrees to all of the above general terms and conditions of trade

Dated ..... / ..... / .....

Signed .....

