

## Terms of Trade

### Definitions

In these Terms of Trade:

"Seller" means Davimac Group Pty Ltd trading as Davimac Group which is the seller of the goods.

"Buyer" means the purchaser of the goods specified on the Order.

"Goods" means the products and, if any, services specified on the Order.

"SUI" means Safe Use Instruction report

"PDI" means Pre Delivery Instruction report

Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australian Consumer Law) and which by law cannot be excluded, restricted or modified.

### General Terms

- i. These general agreed terms apply to all transactions between us, in conjunction with the terms in the Davimac Group Dealer Manual. Other documents relating to our transactions will include any specific terms and conditions.
- ii. If you are a company we require a guarantor of your obligations.
- iii. Price means our fixed and published price or the amount agreed between us or the amount established by a course of dealing between us. The price unless otherwise agreed does not include delivery costs.
- iv. The observation of agreed time frames is of primary importance.
- v. If you must make a payment or do any other thing on or by a day that is not a business day you must make the payment or do the thing on or by the next business day.
- vi. Unless otherwise agreed normally payment is a condition precedent to delivery of the goods.
- vii. By accepting payment of any sum after its due date we do not waive our right either to require payments as they fall due or to suspend or end our arrangements.
- viii. You and any guarantor will be in default if you do not pay us when money is due for payment or fail to comply with any other obligation under our business arrangements.
- ix. If you are in default under our agreement we may send you a default notice. The notice will tell you what the default is and what you are required to do to correct the default. You will have 14 business days to rectify the default.
- x. If you do not comply with the default notice you become immediately liable to pay us all money owing with interest on that amount from the due date until payment over at the rate of 6% per annum. In these circumstances, as title to the goods do not pass to you until we

have been paid, we may repossess and sell the goods and apply the proceeds of the sale towards repayment of the money owed under the agreement.

- xi.** You also agree to pay on default all costs and expenses incurred in exercising our rights of recovery from you and the guarantor if any and indemnify us against any losses resulting from the default.
- xii.** Title in the goods does not pass to you until we have received payment in full.
- xiii.** To protect our security interest in the goods until payment we may choose to register the agreement between us under the Personal Properties Securities Act 2009. You agree to do all things necessary to facilitate such registration.
- xiv.** On default in payment you irrevocably permit us or any person authorised by us in writing upon reasonable notice to enter your premises or the premises where the goods are reasonably believed by us to be held on your behalf. You also agree to indemnify and hold us harmless for all reasonable costs and expenses of recovery of the goods and losses if any on their resale.
- xv.** You agree to sign documents or do all things necessary to perfect our rights under the agreement and appoint us as your attorney to sign any document or do anything that may reasonably be required to enforce our rights on default.
- xvi.** Unless otherwise agreed risk passes to you at the time we ship FOB our ordinary place of business to your specified location. You assume all responsibility for filing claims for damage against the carriers and other agents. You must insure the goods against loss or damage until payment has been made to us.
- xvii.** If any of the goods are damaged or destroyed after shipment you must direct the insurer to make payment to us of all insurance money payable in respect of the insurance claim made on the damaged or destroyed goods.
- xviii.** Insurance money received by us will be applied firstly against the outstanding price of the goods that are damaged or destroyed, secondly against the outstanding price of all goods supplied under the agreement, thirdly against the outstanding balance payable to us by you on any account under our agreements and fourthly in payment of any balance to you.
- xix.** You represent and warrant to us that all information and representations that you, or any person acting on your behalf has given in connection with our transactions are true and correct and that you have not failed to disclose to us anything relevant to our decision to have dealings with you and that no court proceedings or dispute is current that may have an adverse effect on performing your obligations under this agreement.
- xx.** Acceptance of the goods must take place immediately following delivery and is established if you signify by words or conduct that the goods are conforming or that you retain them in spite of their nonconformity or deal with them in a way inconsistent with our ownership. You may reject them on good grounds after a reasonable opportunity to inspect them. The rejection must immediately be communicated to us with full particulars of the nonconformity. On acceptance if payment arrangements are in place then they must be honoured. If payment has been made then it will either be refunded by us or credited towards payment of replacement goods for the nonconforming goods.

- xxi.** Your right, as against us to retain or dispose of the goods or services delivered or supplied is conditional upon you honouring our payment arrangements.
- xxii.** When a dispute arises between us you agree to comply with our dispute resolution process. To this end a party with a complaint against the other is first required to notify the other of the dispute by giving written notice specifying the nature of the dispute, the outcome required and the action believed necessary under the circumstances that will assist both in settling the dispute.
- xxiii.** Each party will then in good faith attempt to resolve the dispute by negotiation, and if the dispute in some aspect involves payment of money, the party withholding payment is required immediately upon receipt of the notice to deposit the disputed amount into an escrow account with instructions pertaining to the release of funds. Undisputed amounts must be paid forthwith.
- xxiv.** Notices must be in writing and be given by facsimile transmission or email with receipt confirmation and delivery by facsimile or email will be taken to mean that the recipient has read and understood the material contained in the thing delivered.
- xxv.** All principals of a company trust or partnership are required to sign a personal guarantee.
- xxvi.** All guarantors shall be jointly and severally liable for performance of all of the terms, covenants, and conditions of our agreements.
- xxvii.** You and the guarantors jointly and severally authorise us to exchange information about the creditworthiness of either yourself or the guarantors with any credit reporting agency at any time during the term of the agreement.

### ***Scope of Works***

- 4. The buyer acknowledges that the work that the seller has been asked and is obliged to perform is limited to the fabrication and manufacture of certain agriculture equipment specified in the Davimac Group Dealer Manual and that the seller has no obligation to ensure the safe delivery or installation of the goods.

### ***Seller's quotations***

- 5. Unless previously withdrawn, seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 10 days only after its date. The seller reserves the right to refuse any order based on this quotation within 7 days after the receipt of the order.

### ***Packing***

- 6. The cost of any special packing and packing materials used in relation to the goods are at the buyer's expense notwithstanding that such cost may have been omitted from any quotation.

### ***Shortage***

7. The buyer waives any claim for shortage of any goods delivered if a claim in respect for short delivery has not been lodged with the seller within seven (7) days from the date of receipt of goods by the buyer.

### ***Drawings***

8. All specifications, drawings, and particulars of weights and dimensions submitted to the seller are approximate only and any deviation from any of these things does not vitiate any contract with the seller or form grounds for any claim against the seller and the descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the goods or of the description applied to the goods and where specifications, drawings or other particulars are supplied by the buyer, the seller's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by seller and set out in a quotation, then any such increase or decrease are to be adjusted on a unit rate basis according to unit prices set out in this document or in the quotation.

### ***Performance***

9. Any performance figures given by the seller are estimates only. The seller is under no liability for damages for failure of the goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

### ***Delivery***

10. The delivery times made known to the buyer are estimates only and the seller is not be liable for late delivery or non-delivery and the seller is not be liable for any loss, damage or delay occasioned to the buyer or its customers arising from late or non-delivery or late installation of the goods and the seller may at its option deliver the goods to the buyer in any number of instalments unless there is an endorsement in the Davimac Group Dealer Manual to the effect that the buyer will not take delivery by instalments and if the seller delivers any of the goods by instalments, and any one of those instalments is defective for any reason it is not a repudiation of the contract of sale formed by these conditions; and the defective instalment is a severable breach that gives rise only to a claim for compensation.

### ***Loss or damage in transit***

11. The seller is not responsible to the buyer or any person claiming through the buyer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not the seller is legally responsible for the person who caused or contributed to that loss or damage) and the seller must provide the buyer with such assistance as may be necessary to press claims on carriers so long as the buyer has notified the seller and the carriers in writing immediately after loss or damage *is* discovered on receipt of goods and lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the goods.

## **Guarantee**

12. The seller's liability for goods manufactured by it is limited to making good any defects by repairing the defects or at the seller's option by replacement, within a period not exceeding twelve (12) calendar months after the goods have been dispatched so long as defects have arisen solely from faulty materials or workmanship or the goods have not received maltreatment, inattention or interference and provided that accessories of any kind used by the buyer are manufactured by or approved by seller and the seals of any kind on the goods remain unbroken and that the defective parts are promptly returned free of cost to the seller. If the goods are not manufactured by the seller the guarantee of the manufacturer of those goods is accepted by the buyer and is the only guarantee given to the buyer in respect of the goods. The seller agrees to assign to the buyer on request made by the buyer the benefit of any warranty or entitlement to the goods that the manufacturer has granted to the seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable and the seller is not liable for and the buyer releases the seller from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by the seller and the responsibility for any claim has been specifically accepted by the seller in writing and in any event the seller's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with these conditions and except as provided in these conditions, all express *and* implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of the seller's negligence or in any way whatsoever.'
13. The seller's liability for a breach of a condition or warranty implied the Australian Consumer Law is limited to in the case of goods, any one or more of the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; the payment of the cost of having the goods repaired; or in the case of services the supplying of the services again; or the payment of the cost of having the services supplied again.'
14. The seller's liability under the Australian Consumer Law is expressly limited to a liability to pay to the purchaser an amount equal to the cost of replacing the goods; the cost of obtaining equivalent goods; or the cost of having the goods repaired, whichever is the lowest amount.'

## **Prices**

15. Unless otherwise stated all prices quoted by vendor are net, exclusive of Goods and Services Tax (GST) and all prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, cost of materials and other charges affecting the

cost of production ruling on the date is made and any price quoted by the seller is valid and binding on the seller for thirty days from the date it is issued to the buyer and if the seller makes any alterations to the price of the goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the buyer's account.

### **Payment**

- 16 (a) All payments:
- (i) are to be made in accordance with the progress payment schedule specified in the Davimac Group Dealer Manual;
  - (ii) to be by way of bank cheque payable to the seller; or
  - (iii) by way of cleared funds deposited into the bank account nominated by the seller.
- (b) The buyer must pay the seller a deposit of 20% of the quoted purchase price within 30 days of the quote being issued by the seller.
- (c) Until the 20% deposit is paid, the seller will not commence any work on the goods.
- (d) The balance of the purchase price is payable net and in accordance with the payment schedule specified in the Davimac Group Dealer Manual unless other terms of payment are expressly stated in these conditions. For the avoidance of doubt, the balance of the purchase price must be paid prior to the goods being dispatched.
- (e) This clause may be amended from time to time by the seller, as detailed in the Dealer Manual.

### **Rights in relation to the goods**

- 17 In connection with the goods while they remain the property of the seller, the buyer agrees with the seller that the buyer has no right or claim to any interest in the goods to secure any liquidated or unliquidated debt or obligation the seller owes to the buyer and that the buyer cannot claim any lien over the goods and that the buyer will not create any absolute or defeasible interest in the goods in relation to any third party except as may be authorised by the seller and that where the buyer is in actual or constructive possession of the goods the buyer will not deliver them or any document of title to the goods to any person except as directed by the seller and the buyer is in possession of the goods as a bailee of those goods and owes the seller the duties and liabilities of a bailee.
18. In connection with the goods, the seller states to the buyer that the seller has the right to supply the goods to the buyer and that the activities of the buyer in supplying the goods do not infringe the rights of the owner of the goods (where the seller is not the owner of the goods) and that if the goods are not owned by the seller, that the seller is authorised to supply the goods to the buyer.
19. The seller and the buyer agree that the property of the seller in the goods remains with the seller until the seller has been paid in full for the goods under all individual contracts for the

supply of the goods between the seller and the buyer and that the buyer is a bailee of the goods until such time as property in them passes to the buyer and that this bailment continues in relation to each of the goods until the price of the goods has been paid in full and that pending payment in full for the goods, the buyer must not supply any of the goods to any person outside of its ordinary or usual course of business and must not allow any person to have or acquire any security interest in the goods and must insure the goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the buyer carries on business and must not remove, deface or obliterate any identifying plate, mark or number on any of the goods.

20. Despite clause 19, if the buyer supplies any of the goods to any person before all moneys payable by the buyer have been paid to the seller (and have not been claimed or clawed-back by any person standing in the place of or representing the buyer), the buyer agrees that it holds the proceeds of re-supply of the goods on trust for and as agent for the seller immediately when they are receivable or are received and that it must either pay the amount of the proceeds of re-supply to the seller immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the seller and that any accessory or item which accedes to any of the goods by an act of the buyer or of any person at the direction or request of the buyer becomes and remains the property of the seller until the seller is paid in accordance with clause 19 when the property in the goods (including the accessory) passes to the buyer and that if the buyer fails to pay for the goods within the period of credit (if any) extended by the seller to the buyer, the seller may recover possession of the goods at any site owned, possessed or controlled by the buyer and the buyer agrees that the seller has an irrevocable licence to do so.

### ***Buyer's property***

21. Any property of the buyer under the seller's possession, custody or control is completely at the buyer's risk as regards loss or damage caused to the property or by it.

### ***Storage***

22. The seller reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the buyer within fourteen days of a request by the seller for such instructions. The parties agree that the seller may charge for storage from the first day after the seller requests the buyer to provide delivery instructions.

### ***Returned goods***

23. The seller is not under any duty to accept goods returned by the buyer and will do so only on terms to be agreed in writing in each individual case and if the seller agrees to accept returned goods from the buyer under this clause, the buyer must return the goods to the seller at the seller's place of business referred to at the head of these conditions.

### ***Goods sold***

24. All goods to be supplied by the seller to the buyer are as described on the purchase order agreed by the seller and the buyer and the description on such purchase order modified as so agreed prevails over all other descriptions including any specification or enquiry of the buyer.

### ***Cancellation***

25. No order may be cancelled except with consent in writing and on terms which will indemnify the seller against all losses.

### ***Place of contract***

26. The contract for sale of the goods is made in the laws of New South Wales, Australia. The parties submit all disputes arising between them to the courts of such state and any court competent to hear appeals from those courts of first instance.

### ***Indemnity***

27. The Seller indemnifies the buyer on an actual indemnity basis absolutely against losses, damages, claims, demands, suits, actions, proceedings, orders or judgments whatsoever arising out of or in respect to the supply of the products by the buyer to the buyer's customers and the buyer is not liable for any loss arising in the course of its conduct as supplier of products to its customers including without limiting the generality of the foregoing in respect of any breach of any conditions or warranty given by the buyer expressly or by operation of any statute in respect of any products; the buyer being deemed "manufacturer" of the products by operation of the Australian Consumer Law ; any claim arising by reason of the use of the products including all claims for actual or alleged infringement of any letters patent, trade marks, copyright, design, confidential information or similar protection whether granted by the Commonwealth of Australia or any foreign state or the common law. If the seller makes representation that the products ordered are protected by one or more patents and any such patent is found to be invalid the buyer may forthwith cancel this order to any contract arising from this order and recover any money paid to the seller so long as the buyer returns the products to the seller.
28. The seller agrees and declares that the existence of any alternative means available to the buyer to obtain the payment of the moneys due or to enforce the due and punctual observance and performance of the conditions and covenants expressed in and implied by this agreement shall not operate to vary, affect or modify all or any one or more of the obligations or covenants of the vendor expressed in or implied by this agreement and that no extension of time, or other indulgence granted to any person or company by the buyer varies, affects or modifies any of the obligations of the seller expressed in or implied by this agreement and that no transfer, assignment or other dealing with any product nor any modification of the terms of these terms by the buyer or any other person varies, affects or modifies any of the obligations or covenants of the purchaser expressed in or implied by this agreement and that any account stated by the buyer is prima facie evidence of the balance of the amount then appearing due to the buyer by the seller and that if any amount



owed by the seller to the buyer at any time or from time to time is discharged in part or in whole by reason of the receipt by buyer from any person whatsoever of moneys or other consideration in satisfaction of such debt and if the buyer is subsequently called upon to refund any moneys so paid or to return any consideration so given whether by reason of such payment or consideration being a preference under the laws for the time being relating to bankruptcy or insolvency or being avoided by any other statutory provision or for any other reason whatsoever, then notwithstanding these terms may have been wholly or partially terminated, cancelled or discharge, these terms are taken to have remained in full force and effect to the same extent as if these terms had never been wholly or partially terminated, cancelled or discharged and the parties are taken to have been restored to the rights which each respectively would have had if such payment or consideration had not been made or given.

### ***Force Majeure***

29. Neither Party is liable to the other for any failure to perform any of the stipulations of this Contract (other than an obligation to pay money) caused by any an event meaning an Act of God; the outbreak of hostilities (whether or not accompanied by any formal declaration of war), riot, civil disturbance or acts of terrorism; the act of any government or competent authority (including the cancellation or revocation of any approval, authority or permit); fire, explosion flood, inclement weather, or natural disaster; the declaration of a state of emergency or the invocation or martial law having an effect on commerce generally; industrial action (including strikes and lock-outs that is of widespread nature affecting the Supplier personally or the industry or sector of which the Supplier is a part (whether in a vertical sense or horizontal sense); the default of any suppliers under any material contracts to which the Supplier is a party; any other cause, impediment or circumstance beyond the reasonable control of any Party which could not be taken into account on the formation of this contract whose consequences could not be avoided in this Contract and which makes performance of this Contract impossible, not more onerous or uneconomic.
  
30. Where an event takes place, the Party claiming this must immediately notify the other Party of this and provide complete details of the event and notify the other Party within a reasonable time after the giving of the notification of the event under of any methods or procedures know to it to circumvent the event and the Parties must consult with the purpose of agreeing and taking any steps or measures to circumvent the event and must implement and perform, according to its tenor, any agreement reached as a result of the consultations undertaken and the Parties must immediately pay each other any moneys that are owing under this Contract as at the date of the event and the unperformed obligations of this Contract are suspended for the duration of the event unless they are substantially replaced by any other obligations agreed under the consultations conducted
  
31. Where an event continues for a period of three (3) months, the Parties must consult with a view to reaching an agreement whether or not this Contract should continue and, if so, under what modifications to take into account the event.

32. Where an event ceases, the Parties must immediately commence performing the duties that were affected by the event.

**Safe Use Instruction/Pre Delivery report**

33. The seller will provide to the buyer through its dealer portal on the website [www.agrowplow.com.au](http://www.agrowplow.com.au) [www.davimac.com.au](http://www.davimac.com.au) and/or in the product user manual documents called i) a Safe Use Instruction, and ii) Pre Delivery Inspection reports
34. It is an essential terms of this agreement that the buyer complete each of the SUI and PDI reports and return each to the seller within fourteen (14) days of the goods being sold by the seller to a third party and failure to comply with this term will give rise to a right in the seller to terminate this agreement.
35. The seller will pay to the buyer the SUI and PDI incentive noted on the attached invoice upon receipt of a completely and properly executed SUI and PDI.
36. The use of the product contrary to any recommendation, in contravention of the user manual, operating, handling or storage guide will invalidate the warranty.
37. Damage to the products, normal wear and tear, malfunction or failure caused by incorrect voltage, power surges, alteration, accident, misuse, neglect, abuse, misjudgement, lightning strike, thunderstorm, fail, flood, fire, infestation, corrosion, other forces of nature, sea air, pollution, gas, tampering by unauthorised persons, non-authorized electrical connections, allowing any foreign matter to enter or obstruct the product, non-maintenance of filters, optical blocks etc, or other conditions beyond the control of the seller shall in no way be considered a defect of the product/s and are excluded from any warranties.
38. The removal of or change of the products serial number or any rating label will invalidate this warranty.
39. Parts and transportation charges will apply for any non-warranty parts supplied.

**Termination**

40. Either party has the right to terminate this agreement without cause by providing 28 days' notice to the other.
41. A breach of a term described as an essential term gives right to an immediate right to terminate in each party.
42. All terms relating to payment, indemnities and warranties do not merge on termination of this agreement.
43. The seller may terminate the Agreement immediately if it reasonably believes that the buyer is or is about to cease trading or has become insolvent or has entered into or is about to enter into receivership or liquidation or have an administrator appointed. If the goods have

been delivered but have not been paid for, the seller is entitled to the return of the goods immediately and any outstanding amounts payable by the buyer shall become immediately due and payable notwithstanding any previous arrangement or arrangements to the contrary.

**Mandatory Guarantees**

- 44. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law, if this is applicable to the goods you purchase. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
  
- 45. For a major failure of our goods, you are entitled to choose a refund or replacement . If the failure does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this does not occur you are entitled to a refund for the goods. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods.

**Notices**

- 46. Any notice under the Agreement shall be in writing and sent either by email or post to the other party. If sent by email, it shall be deemed to have been received upon delivery, if sent by post, it shall be deemed to have been received two clear business days after posting.

By signing here and initialling each page I agree that I have read and agree to the Terms of Trade

**Company Name:** \_\_\_\_\_

**ABN/ACN:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_

By signing here, you have read and agreed to the Terms of Trade.

**Witness Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_