

# Gough Group Australian Terms of Trade

## 1 Application

These Terms govern all purchase orders issued by you to the Supplier to the exclusion of all other terms unless specifically agreed in writing.

## 2 Defined Terms

Unless the context otherwise requires:

"Australian Consumer Law" means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as given effect under Part XI of the *Competition and Consumer Act 2010* (Cth), as amended or replaced from time to time.

"Consumer" means a consumer within the meaning of section 3 of the Australian Consumer Law.

"Goods" means all goods supplied from time to time to you by a member of the Gough Group, provided that:

- (a) where the goods supplied are your Inventory, then all references to Goods in these Terms shall be read as references to Inventory; and
- (b) where the goods supplied are not Inventory then all references to Goods in these Terms shall mean the goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) relating to those goods, on the basis that each such document shall be deemed to be incorporated in, and form part of, these Terms.

"Gough Group" means Gough Transport Solutions and Palfinger Australia and their Related Bodies Corporate from time to time and includes any one or more of them or any combination of any of them (whether or not acting jointly and/or severally).

"Gough Transport Solutions" means Gough Transport Solutions Pty Ltd ACN 006 368 583.

"GST" has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Inventory" has the meaning given to that term in the PPSA.

"member of the Gough Group" means any individual entity in the Gough Group.

"Palfinger Australia" means a trading entity of Gough Transport Solutions.

"Personal Property Securities Register" means the Personal Property Securities Register established under section 147 of the PPSA.

"PPSA" means the *Personal Property Securities Act 2009* (Cth) as amended or substituted from time to time.

"Related Body Corporate" has the meaning given to that term in the *Corporations Act 2001* (Cth).

"Services" means all services supplied from time to time to you by a member of the Gough Group.

"Supplier" means, in relation to particular Goods or Services, the member of the Gough Group that supplies those Goods or Services.

"Terms" means the terms and conditions contained in this document.

Unless otherwise defined by this agreement or unless the context otherwise requires, words and phrases shall have the meanings given to them in, or by virtue of, the PPSA.

## 3 Terms of contract

Any Goods or Services supplied to you shall be subject to these Terms unless the Supplier agrees in writing to change them. If you accept delivery of Goods from any member of the Gough Group, or deliver Goods to any member of the Gough Group for repairs or servicing, those actions by you will be deemed to be acceptance of these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order. These Terms do not apply to any Goods sold to you on hire

purchase or leased to you by any member of the Gough Group.

## 4 Price

4.1 Unless otherwise agreed in writing all freight, insurance, delivery and travel charges will be additional to any price quoted. Unless otherwise agreed in writing any quoted price may be altered prior to delivery of Goods to you, or before completion of repairs or Services by the Supplier, if its costs fluctuate materially. The Supplier may withdraw any quotation before it is accepted and, in any event, any quotation will lapse without notice 30 days after it is given. GST will be payable by you as an additional amount on all prices and charges.

4.2 The price for Goods and Services will be either as quoted to you in writing or, if no written quote is provided, pursuant to the Supplier's standard charges applying at the time.

## 5 Payment

5.1 Unless otherwise agreed in writing you must pay, in full, the price for Goods prior to delivery or for Services prior to supply, unless you have an approved trading account with the Supplier, in which case, subject to any applicable credit limit, you must pay for the Goods or Services by the due date, which will normally be the 20<sup>th</sup> of the month following the month of delivery or supply.

5.2 If full payment for the Goods or Services is not made on or by the due date, then without prejudice to any other remedies available to any member of the Gough Group:

- (a) all monies owing to each member of the Gough Group shall become immediately due and payable;
- (b) each member of the Gough Group may cancel or withhold supply of further Goods or services; and
- (c) interest on monies overdue shall be charged on a monthly basis and be calculated at a rate of 2% of the outstanding balance per month, and interest shall continue to accrue both before and after judgment. You shall be responsible for all costs incurred by any member of the Gough Group in recovering such monies.

5.3 Each member of the Gough Group shall have a full right of set-off with respect to amounts owed by you to it under these Terms, in relation to any monies owing by any member of the Gough Group to you howsoever arising. Your obligation under these Terms shall be to pay the full amount owing under these Terms free of all deductions or rights of set off.

## 6 Ownership and Security Interest

Ownership in the Goods shall not pass upon delivery, but shall remain with the Supplier until full payment for all monies owing by you to the Supplier has been made. Until all monies owing by you to the Supplier have been paid:

- (a) you hold the Goods supplied as fiduciary for the Supplier and will deal with them as agent for and on behalf of the Supplier (but will not hold yourself out as agent of the Supplier to any third parties);
- (b) you shall store the Goods separately consistent with the Goods being the Supplier's property, and ensure such Goods are able to be separately identified;
- (c) if you resell the Goods supplied, the proceeds of any resale will belong to the Supplier and you will pay the same into a separate account for which separate records are kept and all claims which you hold against third parties will be handed over to the Supplier;
- (d) you irrevocably give the Supplier and its agents the right to enter your premises to

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- remove any of the Goods supplied and resell them;
- (e) if any of the Goods become part of a product or mass (through or by whatever process) such that the identity of those Goods is lost in the product or mass, the security interest created by this clause continues in the product or mass in accordance with the PPSA; and
- (f) if any of the Goods are installed in, or affixed to, and become an accession to, other goods, the security interest continues in the accession in accordance with the PPSA.
- 7 Liens**
- All Goods delivered to or in the Supplier's possession for repair or servicing are subject to a lien for any sums owing by you to the Supplier for repairs or servicing carried out on the Goods. Where the Supplier retains a lien over any of your Goods and you are more than three months overdue with any monies owing, the Supplier without further notice may sell the Goods in such a manner and upon such terms as it thinks fit and may, from sale proceeds, repay the amounts owing to it for work done, and any expenses of sale.
- 8 Risk and Delivery**
- 8.1 Unless otherwise agreed, you shall be responsible for the cost of and arranging transportation of all Goods. If the Supplier or any other member of the Gough Group is delivering the Goods to you, it will use its best endeavours to see that deliveries are made according to schedule, but shall not be responsible for delivery delays due to causes beyond its control.
- 8.2 Risk in respect of the Goods sold shall pass to you when the Goods are delivered to you or your carrier, or at the time you pay for the Goods, whichever is the earlier. Risk in the Goods in the Supplier's possession for servicing remains with you. It is your responsibility to insure the Goods, even if a member of the Gough Group has arranged transportation of the Goods.
- 9 Warranties**
- 9.1 This clause 9 does not apply to the supply of goods or services to a Consumer.
- 9.2 Details of written warranties available, if any, will be provided upon request but are subject to clauses 9.4 or 9.5. Where any written warranty conflicts with clauses 9.4 or 9.5, the provisions of clauses 9.4 or 9.5 as applicable shall apply.
- 9.3 Except to the extent of written warranties given by the Supplier to you pursuant to clause 9.2, to the extent permitted by law, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or conferred by statute, custom or general law that impose any liability or obligation on the Supplier are excluded under these Terms. For the avoidance of doubt, nothing contained in these Terms excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other Acts of a State or Territory of Australia, the exclusion, restriction or modification of which may be void or unenforceable.
- 9.4 The Gough Group shall not be liable:
- (a) where you have altered or modified the Goods, mis-applied the Goods, or have subjected them to any unusual or non-recommended use, servicing or handling;
- (b) for loss caused by any factors beyond its members control;
- (c) for loss of revenue, loss of profits, loss of production, loss of use, loss of contract, loss of business or loss of opportunity, whether arising directly or indirectly, together with indirect or consequential loss of any kind;
- (d) for any second hand Goods; or
- (e) where the terms of any written warranty have not been complied with or any manufacturer's handbook provided to you has not been complied with.
- 9.5 The Supplier's total liability (including any special, indirect, incidental or consequential damages of any character, including but not limited to loss of use of production facilities or equipment, lost profits, property damage, expenses incurred in reliance on the Supplier's performance, or lost production, whether suffered by you or any third party) in connection with defective or damaged Goods supplied by it or in relation to the provision of Services is limited at the Supplier's option to:
- (a) replacing or repairing the defective or damaged Goods; or
- (b) refunding the price of the defective or damaged Goods or provision of service.
- 9.6 In the event of a short delivery or errors in dispatch which would be apparent by inspection on delivery, the Supplier will accept no liability unless notified by you in writing within three days of delivery.
- 9.7 If permitted under the Supplier's parts return policy, goods may be returned to the Supplier. These must be freight paid. Where the Supplier elects to repair defective Goods, the Supplier will use all reasonable endeavours to repair the Goods as soon as possible, but will not be liable for any delay in completing the repairs.
- 10 PPSA**
- 10.1 *Security:*  
You acknowledge and agree that:
- (a) these Terms create a security interest in favour of the Supplier in all Goods supplied by the Supplier to you. In addition, you grant the Supplier a charge in all Goods previously supplied by the Supplier to you (if any) and all after acquired Goods supplied by the Supplier to you (or for your account), which charge secures the performance by you of your obligations to the Supplier; and
- (b) these Terms shall apply notwithstanding anything, express or implied, to the contrary contained in your purchase order.
- 10.2 *Financing Statement:*  
You undertake to:
- (a) sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and up-to-date in all respects) which a member of the Gough Group may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
- (b) not permit the registration of a financing change statement or make an amendment demand in respect of the Goods (as those terms are defined in the PPSA) without the Gough Group's prior written consent; and
- (c) give the Gough Group not less than 14 days prior written notice of any proposed change in your name and/or any other change in your details including, but not limited to, changes in your address, facsimile number, trading name or business practice.
- 10.3 *Waiver and contracting out*  
(a) Unless otherwise agreed to in writing by the Gough Group, you waive your right to receive any verification statement or notice under the PPSA (to the extent such notices can be excluded). You also agree to irrevocably waive any rights

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under sections 95, 118, 123(2), 130, 132(4) and 135 of the PPSA.

- (b) You agree that sections 116(2), 120, 125, 132(3)(d), 142 and 143 and (if permitted by section 115(7)) Part 4.3 (other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2)) of the PPSA will not apply.

### 11 General Terms

#### 11.1 Mediation

If a dispute arises and the Supplier considers the dispute is one which is suitable for mediation, the parties will try to settle the dispute by mediation before resorting to litigation or arbitration. Any party may initiate mediation by giving written notice to the other. Mediators should be agreed upon by the parties, but if the parties cannot agree on one within seven days after the mediation has been initiated, then the mediator shall be appointed by the chair of the State chapter of LEADR.

#### 11.2 Cancellation

You may not cancel any order for Goods or part of it without the Supplier's written consent. If you do so, in addition to any other rights the Supplier may have, the Supplier may retain any deposit paid. The Supplier shall have the right to cancel any orders for Goods which it has accepted, if due to circumstances beyond the Supplier's control it would be impractical or unreasonable to fill the order, if any information supplied by you is materially incorrect or, if in the Supplier's opinion, a satisfactory servicing or repair cannot be achieved.

#### 11.3 Waiver or variation

Waiver or variation of these Terms by any member of the Gough Group will only be effective if given in writing by an authorised person. If any member of the Gough Group waives any of these Terms the waiver will not affect that member's rights under these Terms at any future time or the rights of any other member of the Gough Group at any time.

#### 11.4 Changes to these Terms

We may change these terms of trade at any time by changing or removing existing terms or adding new ones. Any change applies from the time it is published on our web sites at [www.goughtransport.com.au](http://www.goughtransport.com.au) and [www.palfinger.com.au](http://www.palfinger.com.au).

#### 11.5 Governing law

Where the Supplier is any member of the Gough Group other than Palfinger Australia, these Terms are governed by and will be construed in accordance with the laws of the State of Victoria and the each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria. Where the Supplier is Palfinger Australia, these Terms are governed by and will be construed in accordance with the laws of the State of Queensland and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Queensland.

#### 11.6 The Privacy Act

You and any guarantor (if relevant) authorise each member of the Gough Group to collect and hold personal information from any source it considers appropriate, but at all times subject to the requirements in the Privacy Act 1988 (Cth), to be used for the purposes of providing Goods and Services to you, determining credit worthiness, for communicating promotional activities and product information on behalf of the Gough Group and its business partners and for debt collection purposes or for any other related purpose. You further authorise each member of the Gough Group to use personal information held by it for the purposes set out above and to disclose that personal information for those purposes to each other and to any other parties. For example, we may disclose personal information to our

contractors or professional advisors. We may also disclose personal information where we are authorised or required to do so by law. Personal information may also be disclosed to members of the Gough Group located in New Zealand. You understand that you have a right of access and may request correction of personal information held by the Gough Group about you. You may also make a complaint if you consider that the Gough Group has not complied with its privacy obligations to you in relation to personal information. You can find out more about how you can access or seek correction of personal information or make a complaint by contacting us at [http://www.goughtransport.com.au/contact\\_details](http://www.goughtransport.com.au/contact_details)

#### 11.7 Notices

A notice or other communication given to a member of the Gough Group under these Terms must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post, facsimile or email to the recipient's address as specified on the relevant order form, packing slip or invoice, or as otherwise notified by that member of the Gough Group.

#### 11.8 Electronic Messages

You and any guarantor (if relevant) consent to receiving electronic messages (including commercial electronic messages and promotional electronic messages) from any member of the Gough Group from time to time.