

Terms & conditions

Monchiero Australia Pty Ltd ACN 153 482 350 ('Monchiero Australia') agrees to sell to the Customer and the Customer agrees to purchase from Monchiero Australia, the Goods and the Services on the following terms and conditions.

1. **Definitions**  
A reference to:  
'business day' means a day that is not a Saturday or a Sunday or a public holiday, special holiday or bank holiday in Sunshine Coast Regional Council local authority area.  
'Customer' means the entity named in the quotation which is purchasing the Goods and the Services from Monchiero Australia;  
'Goods' means the Monchiero harvester specified in the quotation, sold by Monchiero Australia to the Customer in accordance with these terms;  
'invoice' means the invoice issued by Monchiero Australia to the Customer in respect of the Goods and the Services, to be paid by the Customer in accordance with these terms;  
'the Manufacturer' means Monchiero & C. s.n.c (Italy);  
'price' means the amount quoted by Monchiero Australia and accepted by the Customer, agreed by the Customer to be paid by the Customer to Monchiero Australia for the Goods and the Services in accordance with these terms;  
'quotation' means the document on the reverse side of these terms and which specifies the price and details of the Goods and the Services;  
'terms' means these terms and conditions;  
'Services' means the services specified in the quotation to be provided by Monchiero Australia to the Customer in accordance with these terms.
2. **Price**
- 2.1 The price to be paid by the Customer to Monchiero Australia for the Goods and the Services, is the amount shown on the quotation, accepted by the Customer in accordance with these terms.
- 2.2 To agree the price to be paid, the Customer must within two (2) business days of receiving the quotation from Monchiero Australia:-
  - (a) communicate the Customer's acceptance of the quotation in writing to Monchiero Australia; and
  - (b) pay a non-refundable deposit equal to 20% of the amount shown on the quotation, to Monchiero Australia.
- 2.3 If the quotation is not accepted by the Customer in accordance with Clause 2.2, the quotation will lapse and is no longer able to be accepted by the Customer.
- 2.4 Notwithstanding Clause 2.3, Monchiero Australia may, in its absolute discretion, recalculate the price and re-issue the quotation for acceptance by the Customer in accordance with Clause 2.2.
- 2.5 Once the quotation is accepted in accordance with Clause 2.2:-
  - (a) the quotation (including these terms) becomes the contract between Monchiero Australia and the Customer;
  - (b) unless the Customer in its written acceptance of the quotation, elects for the exchange rate upon which the price is calculated to be variable, the exchange rate upon which the price is calculated will not vary until six (6) business days after Monchiero Australia delivers the invoice to the Customer in accordance with Clause 3.1;
  - (c) Monchiero Australia will order the manufacture of the Goods by the Manufacturer.
3. **Payment**
- 3.1 Upon notification from the Manufacturer that the Goods have been manufactured and are available for delivery, Monchiero Australia will issue the invoice for the balance price payable, to the Customer.
- 3.2 The Customer will pay the invoice to Monchiero Australia within five (5) business days of receipt of the invoice.
- 3.3 If the invoice is not paid in accordance with Clause 3.2 Monchiero Australia may in its absolute discretion:-
  - (a) accept the Customer's repudiation of the contract and forfeit the deposit paid by the Customer;
  - (b) recalculate the price payable by the Customer to reflect the then current AUD/Euro exchange rate and reissue the invoice for the recalculated price, which invoice will be payable in accordance with Clause 3.2.
- 3.4 The Customer acknowledges and agrees that, in the absolute discretion of Monchiero Australia, the recalculated price to be paid by the Customer may include an account keeping fee of 2% of the price.
- 3.5 If the Customer fails to make any payment pursuant to these terms by any due date for payment:-
  - (a) Monchiero Australia is relieved of any responsibility to deliver the Goods or provide the Services, until all monies are paid in full;
  - (b) Monchiero Australia may suspend the manufacture or delivery of the Goods or the provision of the Services, until all monies are paid in full; and
  - (c) the Customer agrees to pay:-
    - (i) interest calculated at the rate of 18% per annum on any amount due but unpaid to Monchiero Australia, until all monies are paid in full; and
    - (ii) all costs associated with the collection of any monies owing to Monchiero Australia including (but not limited to) legal costs calculated on an indemnity basis, commissions to debt collectors and location and process serving costs.
4. **Delivery**
- 4.1 Monchiero Australia and the Customer acknowledge and agree that when the Goods are received by Monchiero Australia:-
  - (a) risk in the Goods passes to the Customer;
  - (b) the Customer will ensure that the Goods are fully insured; and
  - (c) Monchiero Australia shall bear no further responsibility for the Goods.
- 4.2 When the Customer has paid all monies payable pursuant to these terms, Monchiero Australia will:-
  - (a) arrange for the Goods to be delivered to the Customer; and
  - (b) commence the provision of the Services.
- 4.3 Title to and the ownership of the Goods will pass from Monchiero Australia to the Customer upon payment of all monies payable pursuant to these terms and delivery of the Goods to the Customer's delivery address specified in the quotation.
5. **Default**
- 5.1 If:-
  - (a) the Customer fails to pay any monies due to Monchiero Australia pursuant to these terms; or
  - (b) a receiver and manager, liquidator, provisional liquidator or other insolvency administrator is appointed to or a scheme of arrangement is proposed or approved in
- respect of, the Customer or a mortgagee enters in possession of any of the Customer's assets or an application is made to wind up of the Customer; or
- (c) the Customer is otherwise in default of these terms;
- the Customer authorises Monchiero Australia to:-
  - (d) take possession of the Goods and enter the Customer's premises for that purpose;
  - (e) sell the Goods; and/or
  - (f) cease the provision of the Services.
- 5.2 The Customer indemnifies and keeps indemnified Monchiero Australia, its servants and agents, in relation to any loss or damage as a result of the taking of possession and/or the sale, of the Goods.
- 5.3 If Monchiero Australia takes possession of and sells the Goods, the Customer agrees that any shortfall owing to Monchiero Australia after the Goods are sold, is due and payable as a debt by the Customer to Monchiero Australia.
6. **Personal Properties Securities Act 2009 ('PPSA')**
- 6.1 In this Clause the terms 'financing statement', 'financing change statement', 'security agreement' and 'security interest' have the meaning given by the PPSA.
- 6.2 On acceptance of the quotation in accordance with Clause 2.2, the Customer acknowledges and agrees that:-
  - (a) these terms constitute a security agreement for the purposes of the PPSA and create a security interest in favour of Monchiero Australia in the Goods; and
  - (b) Monchiero Australia is the holder of a purchase money security interest ('PMSI') by virtue of this agreement and pursuant to the PPSA.
- 6.3 The Customer undertakes to:
  - (a) promptly undertake such acts and sign any documents and/or provide any information which Monchiero Australia may require to:-
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register, and any other document registrable under PPSA; or
    - (ii) correct a defect in a statement referred to in this sub-Clause;
  - (b) not without the prior written consent of Monchiero Australia:-
    - (i) register any financing change statement in respect of a security interest which will or could compete with or affect Monchiero Australia's security interest in the Goods;
    - (ii) register or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party.
- 6.4 The parties agree that Sections 96, 115 and 125 of the PPSA do not apply to any security agreement created by these terms.
- 6.5 The Customer waives its rights to receive:
  - (a) notices under Sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA; or
  - (b) a verification statement in accordance with Section 157 of the PPSA, and agrees to ratify any actions taken by Monchiero Australia under this Clause and consents to and appoints Monchiero Australia to be an interested person and the Customer's authorised representative for the purposes of Section 275(9) of the PPSA.
7. **Defects and warranties**
- 7.1 Monchiero Australia warrants the Goods to be free of defects in material or workmanship, for 12 months from the date of delivery of the Goods to the Customer.
- 7.2 The Customer must within seven (7) days of delivery of the Goods, inspect the Goods and notify Monchiero Australia in writing of any defect in or damage to the Goods delivered.
- 7.3 The Customer must immediately upon discovering any fault in the Goods, notify Monchiero Australia in writing and return the Goods to Monchiero Australia for inspection or allow Monchiero Australia to inspect the Goods.
- 7.4 Monchiero Australia accepts no liability for faults in the Goods arising from the improper use or faulty maintenance of the Goods or the operation of the Goods beyond recommended specifications.
- 7.5 Monchiero Australia shall not be liable for any defect in or damage to the Goods which may be caused by or arise out of:-
  - (a) the Customer, its employees or contractors:-
    - (i) failing to properly use, operate, maintain, store or transport the Goods;
    - (ii) using the Goods for a purpose other than that for which they were designed or making any unauthorised modification to the Goods;
    - (iii) continuing the use of the Goods after any defect becomes apparent or should have become apparent to a reasonably prudent operator or user;
    - (iv) failing to strictly follow any instruction, guideline or manual provided by Monchiero Australia; or
    - (v) failing to provide proper procedures or training for the use of Goods by its employees and contractors;
  - (b) fair wear and tear or any accident or act of God.
- 7.6 Any modification to or attempted repair of, the Goods by the Customer or others without Monchiero Australia's express written approval, will void any warranty of the Goods.
- 7.7 Monchiero Australia's liability for any defect in or damage to the Goods is limited (at the election of Monchiero Australia) to:-
  - (a) the value of any express warranty provided to the Customer by Monchiero Australia;
  - (b) any warranty to which Monchiero Australia is entitled from the Manufacturer;
  - (c) in respect of the Goods, the replacement or repair of the Goods;
  - (d) in respect of the Services, the re-provision of the Services or the payment of the cost of having the Services provided by another; or
  - (e) the refund of any money the Customer has paid to Monchiero Australia for the Goods or the Services.
- 7.8 In no circumstances shall Monchiero Australia be liable for consequential or indirect loss, including loss of profits or damage suffered as a result of claims by any third party.
8. **Indemnity**
- 8.1 The Customer indemnifies and keeps indemnified Monchiero Australia from and against any and all loss, liability, damage, fee, fine, cost (including legal costs on a full indemnity basis), expense, suit, claim, demand, judgment or prosecution arising out of or in connection with any personal injury or death, or loss of or damage to property, as a result of the Customer's or its employees' or contractors' use of the Goods.
9. **Governing law**
- These terms are governed by the laws of Queensland. The contract between the Monchiero Australia and the Customer is deemed to be entered into at Caloundra, Queensland.