

Tadano Oceania's Standard Terms and Conditions – Parts Sales & Services

1. Definitions

In these Conditions unless otherwise indicated by the context:

- 1.1 **Account Application** means an Application for a Commercial Account to Purchase Parts & Services from TADANO
- 1.2 **Collateral** means Goods and all other present and after acquired Goods supplied by TADANO to the Customer and any Proceeds of the sale of those Goods.
- 1.3 **Conditions** means these TADANO Oceania's Standard Terms and Conditions – Parts Sales & Services.
- 1.4 **Customer** means a Person whose Account Application is accepted by TADANO or a Person who is formally registered as a commercial account to purchase Parts and Services from TADANO without an Account Application, and its respective successors and assignees.
- 1.5 **Equipment** means mobile lifting equipment which Services are performed for or by TADANO (whether now or in the future) under a Service Contract
- 1.6 **Express Warranty** refers to an express written warranty which accompanies and covers Goods supplied by TADANO under a Part Sales Contract or Services Contract.
- 1.7 **GST** means the goods and services tax imposed by The New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 1.8 **Goods** means any tangible goods that are supplied to the Customer by TADANO (whether now or in the future) under a Parts Sales Contract or Service Contract.
- 1.9 **Insolvency Event** means the occurrence of any one of the following events:
 - (a) The Customer becomes insolvent as defined Corporations Act 2001
 - (b) The Customer commits an act of bankruptcy
 - (c) Proceedings are commenced to make the Customer bankrupt or the Customer becomes bankrupt
 - (d) An event analogous to any of those set out in the Clause 1.9(a) or 1.9(b) occurs
- 1.10 **Parts** means any goods supplied or to be supplied by TADANO being spare parts, consumables, accessories, manuals and models of mobile lifting equipment.
- 1.11 **Parts Order** means the placement of a purchase order for Parts by a Customer, whether orally or in writing
- 1.12 **Parts Price** means a price for Parts supplied or to be supplied by TADANO
- 1.13 **Parts Sales Contract** means where TADANO accepts the Parts Order and a binding contract between the Customer and TADANO arises on these Conditions
- 1.14 **Person** means an individual, a body politic, a corporation, an association (incorporated or unincorporated), a statutory or any other authority or persons identified as TADANO.
- 1.15 **PPSA** means the PERSONAL PROPERTY SECURITIES ACT 2009 (CTH).
- 1.16 **Related Bodies Corporate** has the same meaning as in the Corporations Act 2001.
- 1.17 **Secured Property** means all the Goods and Equipment.
- 1.18 **Service Contract** means where the Customer accepts the Service Proposal whether orally or in writing, and a binding contract arises between the Customer and TADANO on these Conditions
- 1.19 **Service Proposal** means the proposal provided to the Customer by TADANO that describes the Services that TADANO will perform, whether orally or in writing.
- 1.20 **Service Request** means the placement of a request for Services or purchase order by a Customer to TADANO, whether orally or in writing
- 1.21 **Services** mean any services performed by TADANO or its service agents on TADANO's behalf being the supply of repair, maintenance, inspection, customisation, rebuilding, painting, decoration, registration and transportation of Equipment and user training for operators of Equipment.

- 1.22 **Service Warranty Period** means six (6) months from the date of Services rendered.
- 1.23 **Service Workshop** means a workshop operated by TADANO or its service agent.
- 1.24 **Sublet** means Services performed by a third party on behalf of TADANO or any customised products not covered by TADANO's price list.
- 1.25 **TADANO** means Tadano Oceania Pty Ltd ABN 84 142 236 995, any Related Body Corporate of Tadano Oceania Pty Ltd, and their respective successors and assignees.
- 1.26 **Warranty of Services** means the warranty given by the Clauses 14.1 to 14.17.

2. Interpretation and Application

- 2.1 These Conditions:
 - (a) Replace all prior terms and conditions issued by TADANO to a Customer in respect of purchase by a Customer of Parts and/or Services from TADANO;
 - (b) Take precedence over any terms set out in Customer's purchase order, to the extent of any inconsistency;
 - (c) Are not applicable to any sale or hire of new or used mobile lifting equipment by TADANO to a Customer; and
 - (d) Shall be governed by the laws of the state or territory in which TADANO accepts the Customer's purchase order.
- 2.2 Headings are included for ease of reference and do not form parts of or affect the interpretation of these Conditions.
- 2.3 Words defined in the PPSA have the same meaning in these Conditions.
- 2.4 Words importing the singular number shall be deemed to include the plural and vice versa.
- 2.5 Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.
- 2.6 TADANO may vary these Conditions from time to time. Replacement of these Conditions shall be published at its website and distributed to the Customer.

3. Parts Sales Contract

- 3.1 Placement of a Parts Order constitutes an offer by the Customer to purchase Parts from TADANO on these Conditions.
- 3.2 The Parts Order is accepted only when TADANO notifies the Customer that TADANO accepts the Parts Order. Such notice may be made by sending the Customer an e-mail or orally stating this, or displaying a confirmation on its website. Delivery of parts also constitutes notice of TADANO's acceptance of the Parts Order.
- 3.3 The Parts Sales Contract may be amended only by written agreement between TADANO and the Customer.
- 3.4 A quotation for sale of Parts is not to be constructed as an obligation to sell Parts but merely an invitation to treat and no contractual relationship shall arise until a Parts Sales Contract is constituted. All quotations lapse 7 days after issues but TADANO may vary or withdraw quotation at any time.
- 3.5 Every Parts Sales Contract is subject to and conditional upon obtaining necessary import, export, or other licence.

4. Services Contract

- 4.1 A Service Request constitutes an offer by the Customer to purchase Services from TADANO on these Conditions. The Service Request is deemed as placed when:
 - (a) The Service Request is submitted to TADANO; or
 - (b) The Customer takes Equipment for Services into a Service Workshop; or
 - (c) The Customer permits TADANO or its service agents to access Equipment for Services.
- 4.2 After the Service Request is placed, TADANO will provide a Service Proposal
- 4.3 A Service Proposal is not to be constructed as an obligation to perform Services but merely an invitation to treat and no contractual relationship shall arise until a Service Contract is formed.

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- 4.4 A Service Proposal lapses 7 days after issues but TADANO may withdraw the Service Proposal at any time.
- 4.5 The scope and terms of the Service Proposal may change at any time even after acceptance by the Customer as a result of:
- Updated instructions from the Customer;
 - Additionally required Services which have been identified through out a process of differential diagnosis; or
 - Any other adjustments in the original estimates required on rational grounds.
- 4.6 The Service Contract may be amended only by written agreement between TADANO and the Customer.
- 5. Parts Price and Invoices**
- 5.1 TADANO will issue a tax invoice for Parts on delivery. TADANO reserves the right to separately invoice for delivery in instalments The tax invoice may include:
- Parts Price for Parts ready for shipping;
 - Freight costs which may include any costs incurring/incurred for international/domestic transportation and exporting/importing of Parts chargeable as per the Clause 5.1(a);
 - Any other expenses which are not expressly included in Parts Price and are paid or being paid by TADANO on behalf of the Customer;
 - TADANO's handling/administrative charges up to 10% of any costs chargeable as per the Clauses 5.1(b) and 5.1(c); and
 - Any amount equal to the GST applicable to the prices and charges listed in the Clauses 5.1(a), 5.1(b), 5.1(c) and 5.1(d).
- 5.2 The Parts Price applicable to a Parts Sales Contract:
- Is TADANO's list price at the time the order is placed unless TADANO notifies the Customer of an amended price prior to TADANO's acceptance of the order and the Customer confirms the order with the amended price, whereupon the Parts Sales Contract is formed with the Parts Price as the amended price
 - Is expressed as net price excluding GST; and
 - Does not include freight, installation and commissioning.
- 6. Service Charges and Invoices**
- 6.1 TADANO will issue a tax invoice for any Services have already been performed. It is TADANO's full discretion whether to issue a single invoice after full completion of Service Proposal or to issue more than one invoices at any times in progress and at the full completion.
- 6.2 In the absence of a contrary expressed agreement, TADANO may charge for:
- Internal labour hours and travelling distances at TADANO's prevailing rates at the time of Services performed;
 - Parts consumed, fitted or provided in a course of the Services performed at TADANO's list prices ruling to the date of Services performed;
 - Freight costs which may include any costs incurring/incurred for international/domestic transportation and exporting/importing of Parts chargeable as per the Clause 6.2(b);
 - Any amount quoted for Sublet by TADANO's representative or costs actually incurred for Sublet;
 - Any other expenses paid or being paid by TADANO on behalf of the Customer, including but not limited to registrations, certificates, fuels, import duty and other charges and storage costs;
 - TADANO's handling/administrative charges up to 10% of any costs chargeable as per the Clauses 6.2(c), 6.2(d) and 6.2(e); and
 - Any amount equal to the GST applicable to the prices and charges listed in the Clauses 6.2(a), 6.2(b), 6.2(c), 6.2(d), 6.2(e) and 6.2(f).
- 7. Payment & Credit**
- 7.1 If the Customer makes payment to TADANO at any time, whether in connection with this agreement or otherwise, TADANO may, at its absolute discretion, apply that payment in any manner it sees fit.
- 7.2 The Customer agrees that it must pay an amount billed in a tax invoice, without any deduction or setoff, immediately after the tax invoice is issued, or, if credit terms are offered by TADANO, by a due date specified by the payment terms offered by TADANO.
- 7.3 Any amount not paid by the due date will incur interest at a rate of 5% above the Reserve Bank of Australia Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charged exceed 20% per annum.
- 7.4 The Customer agrees to pay all costs and expenses (including legal costs, commissions paid by TADANO to any commercial or mercantile agent and dishonour fees) incurred by TADANO in connection with the recovery of overdue amounts.
- 7.5 The Customer has no entitlement to credit unless in TADANO's sole discretion TADANO extends credit to the Customer.
- 7.6 If in a particular case, TADANO gives the Customer credit, TADANO still reserves the right at any time and for any reason in TADANO's sole discretion to refuse to supply any further Parts or Services to the Customer or to refuse to supply any Parts or Services (or both) to the Customer on credit.
- 7.7 If TADANO does decline to give the Customer further credit then that decision does not affect the credit terms which apply to any amounts the Customer then owes to TADANO.
- 7.8 The Customer must advise TADANO in writing of the occurrence of any Insolvency Event any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring. The Customer acknowledges that, despite any such event, change, or step the Customer remains liable to pay the amounts billed for all Parts and Services supplied.
- 7.9 If the Customer fails to comply with any of the terms of these Conditions or in respect of any obligation to pay money to any entity of TADANO when due, suffers an Insolvency Event or makes any misrepresentation to any entity of TADANO, the balance of the Customer's account to the other entities of TADANO will become due and payable immediately.
- 7.10 A statement in writing signed by an authorised officer of TADANO setting out the moneys due or owing to TADANO at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.
- 8. Delivery of Parts and Services**
- 8.1 TADANO reserves the right to deliver Parts and complete Services in instalments and all such instalments, where separately invoiced, shall be paid for without regard to subsequent instalments. A part delivery of a Parts Sales Contract or part completion of a Services Contract shall not invalidate the balance of the Parts Sales Contract or Services Contract respectively.
- 8.2 While TADANO shall use all reasonable endeavours to meet agreed delivery dates and agreed service times, TADANO shall not be liable to the Customer for any loss or damage whatsoever should it be delayed or prevented from delivering Parts, supplying devices, supplying Services or otherwise performing any of its contractual obligations due to any cause or circumstances beyond TADANO's reasonable control. In the event of any delay in delivery, supply, or service, the due dates shall be deferred for a period equal to the time lost by reason of the intervening cause or circumstances. Delivery duties are to be treated as a condition of the sale.
- 8.3 Subject to the Clause 8.2, the delivery date and service completion date shall not be varied once agreed, without TADANO's and the Customer's mutual consent. Should TADANO agree to postpone delivery or delay the completion of Services at the Customer's request, the Parts in question shall be stored at the Customer's risk and TADANO reserves the right to impose a weekly storage charge. Where delivery of Parts is postponed for more than 3 months, any prices for the Parts Sales Contract may be increased by TADANO, at TADANO's discretion, to reflect the current TADANO's list price.

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- 8.4 The Customer is to inspect all Parts and Goods the subject of Services upon delivery and TADANO shall not be liable for shortage or errors in delivery or servicing unless Customer submits a written claim to TADANO within 7 (seven) days of delivery. (and liable under warranty later in this agreement.
- 9. Risk of Goods**
- 9.1 Risk of Goods will pass to the Customer
- (a) Upon the Goods exiting the TADANO warehouse and being placed upon the vessel or vehicle which is to deliver the Goods to the Customer under a Parts Sales Contract; or
- (b) When the Goods are consumed, fitted or provided in a course of the Services performed under a Service Contract.
- 9.2 Customer shall be responsible for arranging the insurance of the Goods. TADANO shall not be liable to the Customer in the event of any failure to arrange insurance.
- 10. Retention of Title**
- 10.1 Title to the Goods shall remain with TADANO until the total amount due in respect of the Goods and all monies owing to TADANO have been paid in full. If the Customer fails to pay to TADANO all monies due under these Conditions by the due date, TADANO has the right and irrevocable licence from the Customer, to, at any time and without notice, via its representatives, enter the Customer's premises and to repossess the Goods or any part of them. The Customer must:
- (a) Keep the Goods in its possession and control;
- (b) Keep the Goods in good repair and condition, excluding fair wear and tear;
- (c) Keep the Goods stored separately and marked so that the Goods are clearly and easily identifiable as TADANO's property and if requested, promptly inform TADANO of the location of the Goods; and
- (d) Not sell, assign or lease the Goods or any interest in them, or permit any charge, pledge, lien, Security Interest or other encumbrance to be created in relation to them.
- 11. PPSA**
- 11.1 The Customer, as Grantor, grants a Security Interest in the Collateral to TADANO, as the Secured Party, to secure payment of the Secured Money
- 11.2 Without limiting the foregoing clause, the Security Interests taken by the Secured Party under these Conditions extend to all of the Collateral being all of the Grantor's present and after acquired property.
- 11.3 Any purchase by the Customer on credit terms from TADANO will constitute a Purchase Money Security Interest in favour of TADANO.
- 11.4 The Customer consents to TADANO effecting a registration on the Personal Property Securities Register (in any manner TADANO considers appropriate) in relation to the Security Interest arising under or in connection with this agreement and the Customer agrees to provide all assistance required by TADANO to facilitate this.
- 11.5 The Customer acknowledges and agrees that in relation to the part of the Secured Property that is inventory, the Customer will not allow any further Security Interest to arise in respect of that Secured Property unless TADANO has perfected its Security Interest in the Secured Property prior to the Customer's possession of the Secured Property.
- 11.6 The Customer waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 11.7 To the extent the law permits:
- (a) For the purposes of sections 115(1) and 115(7) PPSA, TADANO need not comply with sections 95, 96, 121(4), 123, 125, 126, 127, 128, 129, 130, 132(3)(d), 132(4), 134, 135, 136(3), 136(4), 136(5), 137, 142, 143
- (b) If the PPSA is amended after the date of this document to permit TADANO and the Customer to agree not to comply with or to exclude other provisions of the PPSA, then TADANO may notify the Customer that any of these provisions is excluded, or that the TADANO need not comply with any of these provisions, as notified to the Customer by TADANO.
- 11.8 Any notices or documents which are required or permitted to be given to TADANO for the purposes of the PPSA must be given in accordance with the PPSA.
- 11.9 The Customer agrees to:
- (a) do anything TADANO requests the Customer to do (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):
- (i) to provide more effective security over the Secured Property;
- (ii) to register in respect of a Security Interest constituted by this agreement at any time;
- (iii) to enable TADANO to exercise its rights in connection with the Secured Property; and
- (iv) to show TADANO whether the Customer has complied with this agreement.
- (b) immediately notify TADANO of any changes to its name, address, contact numbers, business practice or such other change in the Customer's details registered on the PPS Register to enable TADANO to register a Financing Change Statement (as specified in this agreement).
- (c) pay on demand any losses arising from, and any costs and expenses incurred in connection with, any action taken by TADANO under or in relation to the PPSA, including any registration, or any response to an amendment, demand or a request under section 275 of the PPSA.
- 11.10 These Clauses 11.1 to 11.9(c) will survive the termination of the Contract to the extent permitted by law.
- 12. Disclosure**
- 12.1 The Customer agrees not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d), if TADANO approves.
- 12.2 Nothing in the Clause 12.1 will prevent any disclosure by TADANO that it believes is necessary to comply with its other obligations under the PPSA or under any other applicable law.
- 12.3 To the extent that it is not inconsistent with the Clauses 12.1 or 12.2 above constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, the Customer agrees that TADANO may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that TADANO is not doing so in response to a request by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- 13. Warranty of Goods**
- 13.1 Subject to the Clause 13.3, to extent permitted by law, the Express Warranty is substitution for all other terms, conditions, warranties and representations, express or implied by statute or otherwise.
- 13.2 The Customer shall immediately notify TADANO in writing upon the discovery of any defect in the Goods. The Customer shall not carry out remedial work or instillation to alleged defective Goods without first obtaining the written consent of TADANO to do so.
- 13.3 Certain legislation may imply warranties, terms and conditions which cannot be excluded, restricted or modified. If these statutory provisions apply, to the extent to which TADANO is entitled to do so, its liability is limited at its option to:
- (a) The replacement or resupply of Goods;
- (b) The repair of the Goods;
- (c) The payment of the cost of replacement of the Goods; or
- (d) Payment of the cost of repair of the Goods
- 13.4 The Customer expressly acknowledges and agrees that it has not relied upon and TADANO is not liable for any advice given by TADANO, its agents or employees in relation to the suitability for any purposes of Goods.
- 13.5 The Customer acknowledges that to the extent TADANO has made any representations which is not otherwise stated in these Conditions, TADANO has been provided with an opportunity to independently verify the accuracy of that representation.
- 14. Warranty of Services**

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- 14.1 TADANO warrants that all Services under a Service Contract will comply with manufacturers' specifications of the Equipment and be rendered with due care and skill in the workmanship of TADANO subject to these Conditions for the Service Warranty Period.
- 14.2 In the event that any of the Service is found to be defective in either materials or workmanship during the Service Warranty Period, in accordance with these Conditions and subject to a formal approval by TADANO of warranty claim made by the Customer, TADANO shall at its cost and at its option:
- (a) Resupply the Services (which may include in TADANO's sole discretion, repairing or replacing any service items rendered unusable by the defective Service such as coolants and oils); or
 - (b) Pay the cost of resupply of any defective Services by a third party.
- 14.3 Any Services to which the Customer is entitled under the Warranty of Services shall be provided to the Customer by TADANO or its service agent appointed by TADANO during normal trading hours of TADANO or the service agent.
- 14.4 Transportation, repair or replacement costs for the Equipment or required Goods for resupply of Services and any transport costs for any repaired or replacement Equipment incurred under the Warranty of Services are at the Customer's expense unless TADANO advises the Customer otherwise in writing and subject always to these Conditions.
- 14.5 All claims and associated enquiries by the Customer under the Warranty of Service must be notified in writing to TADANO.
- 14.6 TADANO has no obligation under the Warranty of Services unless the Customer notifies TADANO of any warranty claim promptly and no later than seven (7) days from becoming aware of any potential claim and allow TADANO or its service agent appointed by TADANO reasonable access to the Equipment subject of the warranty claim in order to evaluate the claim.
- 14.7 In order to lodge a valid claim under the Warranty of Services, the Customer must:
- (a) Provide TADANO with a purchase order stating 'Subject to Warranty' and specifying the details of the warranty claim;
 - (b) Provide evidence to TADANO that the Services were provided by TADANO and is under the Warranty of Services as at the claim date;
 - (c) Provide all documents relevant to the Equipment including without limitation, warranty registration documents, commissioning documents and maintenance records to TADANO;
 - (d) Pay for or provide all non-warranted labour and bear all non-warranted labour costs;
 - (e) Pay for any non-warranted shipping charges if any;
 - (f) Pay for any non-warranted travel costs if any; and
 - (g) Pay the non-warranted transport costs if any, associated with moving the Equipment to a Service Workshop;
 - (h) Pay the costs of making the claim and the costs incurred if any, to investigate any claim found not to be covered by the Warranty of Services.
- 14.8 Warranty of Services ceases at the end of the Service Warranty Period. If TADANO resupplies any Services, then such Services are warranted for the balance of the Service Warranty Period. If TADANO pays for the resupply of any Services by any third party, then the applicable warranty offered by the third party shall apply.
- 14.9 Warranty of Services applies only to the Equipment used within the same State of Australia or the country if outside of Australia where the original Services were provided within the Service Warranty Period.
- 14.10 This Warranty is conditional upon the Equipment being maintained by the Customer with due care and diligence and only in accordance with recognised methods and standards for Equipment of its type.
- 14.11 Warranty of Services does not apply:
- (a) If the Customer breaches or does not comply with obligations in these Clauses 14.5, 14.6 and 14.7 above or otherwise;
 - (b) If any defect is caused or contributed to by the Customer's misuse, negligence, accident, or failure to maintain or use the Equipment in accordance with recognised methods and standards for Equipment of its type;
 - (c) If any defect arises as a result of or in connection with, a condition identified through TADANO's Services or otherwise, for which TADANO has recommended certain action to the Customer and the Customer fails to comply with that recommendation;
 - (d) In relation to alterations, modifications or repairs to the Equipment, including the fitting of attachments, parts or use of consumables, that are not authorised or approved by the manufacture and which in TADANO's reasonable judgment, cause or contribute to the defect;
 - (e) To repairs or replacements required due to normal maintenance or operating service for the Equipment, including but not limited to inspections, adjustments, tune-ups, fuel, lubricants, or consumables, parts repairs or replacements;
 - (f) If the Customer has unreasonably delayed in providing the Equipment to TADANO after first becoming aware of it; or
 - (g) If the Customer fails to adhere to any recommendation made by TADANO.
- 14.12 To the extent permitted by law, Warranty of Services is exclusive and is in lieu of all other express or implied warranties, conditions and representations of merchantability or fitness for any particular purpose, whether statutory or otherwise.
- 14.13 Without limiting the generality of the Clause 14.12, no Warranty of Services is given and TADANO disclaims and excludes all express and implied warranties, conditions and representations in respect of:
- (a) Any services other than Services provided by TADANO or TADANO's service agent on its behalf; or
 - (b) Defects caused or contributed to, or arising as a result of, or in connection with, any Services which are provided by TADANO's service agent for and on behalf of TADANO but with any expressed or implied warranty independently offered by the service agent.
- 14.14 The liability of TADANO to the Customer for loss, damage, injury or property damage, whether direct or indirect, special, consequential or otherwise, arising out of breach of the Warranty of Services, shall be limited to requiring TADANO to comply with the Clause 14.2.
- 14.15 Nothing herein shall limit those provisions of the Competition and Consumer Act 2010 Including the Australian Consumer Law, nor statutes, rules or regulations from time to time in force in Australia which imply or guarantee certain conditions or warranties or impose obligations on TADANO which conditions, warranties and obligations cannot, or cannot except to a limited extent be excluded, restricted or modified. If any such statutory provisions apply, then to the extent to which TADANO is entitled to do so, its liability under those statutory provisions shall be limited at its option to the supply of the Services again or the payment of the cost of having the Service supplied again.
- 14.16 Subject to the Clause 14.15, the benefits to the Customer given by the Warranty of Services are in addition to any other rights and remedies you may have as a consumer under a law in relation to the Services to which the Warranty of Services relates. If the Customer is acquiring Goods from TADANO as a consumer as defined under Australian Consumer Law then the following applies subject to the Clause 14.15. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. The customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is 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.
- 14.17 The Customer shall not assign or transfer any of its rights or obligations under the Warranty of Services unless in accordance with TADANO's then current Warranty transfer procedure.
- 15. TADANO's Cancellation**

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- 15.1 TADANO reserves the right to immediately cancel any Parts Sales Contract or Service Contract without incurring any liability to Customer in any of the following circumstances:
- (a) Customer is overdue with any payment or otherwise in breach of these Conditions; or
 - (b) Customer suffers an Insolvency Event
 - (c) Contractual performance is delayed or prevented due to any circumstances.
- 15.2 Cancellation by TADANO under the Clause 15.1 shall be without prejudice to TADANO right to recover payment from the Customer for the Parts Sales Contract or Service Contract.
- 16. Customer's cancellation and returns**
- 16.1 Customer's may return Parts supplied under a Parts Sales Contract for a credit against subsequent purchase orders within 21 (twenty-one) days of delivery provided the following conditions are satisfied:
- (a) TADANO's written approval has first been obtained and the invoice number and date have been quoted for reference;
 - (b) The Parts are returned in their original condition;
 - (c) Return freight and insurance is arranged at the Customer's cost; and
 - (d) Customer agrees to pay TADANO a handling charge equal to 15% of the price paid for the Parts.
- 16.2 To the extent permitted by law, no return of Goods provided under a Service Contract is available.
- 16.3 Customer may cancel, in whole or in part, any Parts Sales Contract or Service Contract before supply of Parts or performance of Services has been made providing the following conditions are satisfied:
- (a) TADANO's written approval has been obtained; and
 - (b) Customer agrees to pay any cancellation charges, being a genuine pre-estimate of TADANO loss that TADANO shall specify.
- 17. Liability of TADANO**
- 17.1 Except as expressly provided herein and to the extent permitted at law, TADANO shall not be:
- (a) Bound by any condition attaching to the Customer's request, purchase order or acceptance of sale or service, unless such conditions are expressly accepted by TADANO in writing.
 - (b) Liable to the Customer or to any other third parties in contract, tort or equity, for breach of any statute (to the fullest extent permitted by law) or in any other action, including but not limited to:
 - (i) Direct or indirect loss of profit or revenue, loss of use of any Equipment, Part, part, component, or associated equipment, cost of capital, cost of substituted equipment, facilities or service, downtime costs, labour costs in connection with or arising out of the supply, performance or use of the Equipment or any Services or Services performed by TADANO; or
 - (ii) any direct or indirect losses or special or consequential loss or damage or otherwise of any kind whatsoever, arising directly or indirectly from any act, omission, breach, error, default, or delay of TADANO or its employees or representatives in connection with, or arising out of, the supply, performance or use of the Service in the performance of, or in relation to the Warranty of Services.
 - (c) Liable for any alterations or variation in the Goods made by the manufacturer or the supplier where TADANO is acting as an *agent of a manufacturer or supplier*.
 - (d) Bound by any clerical errors which are subject to correction.
- 17.2 Except as expressly provided herein and to the extent permitted at law, the Customer indemnifies TADANO against:
- (a) any liability to or action by a third party for infringement of alleged infringement of a patent, registered design, trademark or copyright in respect of Goods manufactured to the Customer's specifications; and
 - (b) Any liability for any direct, indirect or consequential injury, loss or damage out of any act, default or omission of, or any representation made by the Customer or its servants or agents.
- 17.3 If in the performance or observance of its obligation TADANO is prevented, restricted or affected by reason of force majeure including strike, lock out, industrial dispute, material shortage, stock shortage, breakdown of plant, transport of Equipment or any other cause beyond the reasonable control of TADANO, TADANO may, in its absolute discretion give prompt notice of such cause to the Customer whereupon TADANO is excused from such performance or observance to the extent of such prevention, restriction or affection.
- 18. Privacy**
- 18.1 TADANO will comply with all applicable privacy legislation, including the Privacy Act 1988 (Cth).
- 18.2 TADANO's privacy policy is available at its website or will be provided to a Customer as requested.
- 18.3 A Customer consents to TADANO using its personal information for the following purposes, unless otherwise notified in writing to TADANO by a Customer:
- (a) TADANO's internal marketing activities, including direct marketing, database compilation, analysis of demographics and the processing or creation of other marketing information;
 - (b) Customer surveys and individual follow-up calls, letters or emails enquiring as to the Customer's satisfaction with TADANO's products and services;
 - (c) Reminders that the Customer's mobile lifting equipment may be due for a service or that its registration may be due for renewal;
 - (d) Advising the Customer of information which may be relevant to the Customer, including workshop closures or openings; and
 - (e) Advising the Customer of offers that TADANO feels may be of interest to the Customer.
- 18.4 The Customer acknowledges that if it does not consent to TADANO collecting personal information, TADANO may not be able to complete the Service Contract or Part Sales Contract.
- 18.5 TADANO and its subsidiaries and affiliates may jointly use any personal information collected, within the scope of the purposes outlined in the Clause 18.3. These entities may be outside of Australia, including but not limited to Japan. TADANO will take reasonable steps to ensure that any overseas recipient is under obligations that as near as practicable correspond to the obligations imposed by the Australian Privacy Principles.
- 18.6 If, at any time, the Customer wishes to withdraw its consent to any one or more of the purposes given in the Clause 18.3, would like to access its personal information, to correct any personal information, or have any other privacy concerns, such correspondence shall be addressed to 1300 823 266 or ar.au@tadano.com.