

**TILLY'S CRAWLER PARTS PTY LTD
SALE OF PLANT AGREEMENT**

SCHEDULE

Buyer	
Invoice Number	
Machine Number	
Equipment Details	
Sale Date DD/MM/YYYY	
Special Conditions	

Equipment Description and Details

Brand/Model/Type/Year	
Description and Technical Specifications	
Parts or Documentation Included	
Mileage/Hours	
Registration Status	Unregistered & No Statutory Warranty
Condition and Defects	

BUYER'S ACKNOWLEDGEMENT

The Buyer acknowledges:

- it has read, understands and agrees to the attached terms and conditions which, together with the Sale Information and Equipment Description and Details schedules above, constitutes the entire agreement between the Buyer and the Seller with respect to the Equipment;
- it accepts the Equipment including the defects and condition described under the schedules above;
- the Equipment is second-hand which, amongst other things, means its performance, safety and longevity is likely inferior to new equipment and there may be latent defects beyond those described in this Agreement and the Equipment may not be able to be used for its original purpose;
- except for those made explicitly in this Agreement, the Seller has not made any representations, warranties or undertakings with respect to the Equipment including whether or not it is fit for any particular purpose or use; and
- it has been afforded the opportunity to inspect and examine the Equipment and has relied on its own investigations, inspections and enquiries with respect to the Equipment and its fitness or otherwise for any intended purpose or use.

The person signing on behalf of the Buyer warrants to the Seller that they had the Buyer's authority to do so.

SIGNED by

Buyer:

.....
in the presence of:

Witness:

TERMS AND CONDITIONS

Buyer's Initials: _____

These terms and conditions, together with the Schedule, Buyer Acknowledgement and tax invoice apply to and form the Agreement between the Buyer and Tilly's Crawler Parts Pty Ltd ACN 010 800 352 (Seller) for the sale of the Equipment.

1. INTERPRETATION

1.1 In this Agreement:

ACL means the Australian Consumer Law being Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Claim means a claim, demand, remedy, suit, injury, damage, loss, cost, expense, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred, however arising and whether ascertained or unascertained, or immediate, future or contingent, and includes third party Claims.

Equipment means the Equipment specified and described in the Schedule.

GST has the same meaning as in the *New Tax System (Goods and Services Tax) Act 1999* (Cth).

Personnel in relation to a party means the party's officers, office-holders, employees, agents and contractors.

Purchase Price means the amount set out in the Tax Invoice provided by the Seller.

Schedule means the schedules annexed to this Agreement entitled Sale Information and Equipment Description and Details.

Terms used in the Schedule carry the meaning or description described in the Schedule.

2. EQUIPMENT SALE

2.1 The Buyer agrees to purchase, and the Seller agrees to sell, the Equipment for the Purchase Price.

2.2 In the manner and form reasonably directed by the Seller, the Buyer must pay the Purchase Price to the Seller on the earlier of the Sale Date or before it takes possession of the Equipment.

3. INSPECTION

3.1 The Buyer acknowledges that it has been afforded the opportunity to inspect the Equipment and have a suitably qualified person inspect the Equipment.

3.2 The Buyer acknowledges that the Seller and its Personnel have not made any representations, and the Buyer has not relied upon any representations made by the Seller or its Personnel, as to the quality or condition of the Equipment, its compliance with any relevant laws or standards or the suitability of the Equipment for any purpose.

4. TITLE, COLLECTION, DELIVERY AND RISK

4.1 **Subject to this clause 4, title in the Equipment will not pass to the Buyer until the Seller receives payment of the Purchase Price in full.**

4.2 Unless otherwise agreed in writing, any collection and/or delivery of the Equipment, including any dismantling work, is the responsibility of the Buyer and will be at the cost and risk of the Buyer.

4.3 You are responsible for collecting the Equipment from the Seller's premises within 14 days of the Sale Date.

4.4 Any dismantling work or removal of the Equipment can only take place after the Purchase Price is paid in full.

4.5 Subject to this clause 4, risk in the Equipment passes to the Buyer upon the earlier of title in the Equipment passing to the Buyer, or once the Equipment is in the possession or control of the Buyer, its Personnel or its representatives including any person arranged to collect and/or deliver the Equipment.

4.6 If the Buyer fails to remove the Equipment or any part of it within 14 days of the Sale Date by the Seller, the Seller has the option of removing and storing the Equipment at the Buyer's sole expense and risk or deeming all deposits or partial payments as having been forfeited by the Buyer, in which case the Seller may resell (without notice) at public sale or otherwise dispose of such Equipment at the Buyer's sole risk and expense. The Buyer will remain liable for fees, expense and damages arising from any default.

5. THE EQUIPMENT

5.1 Except to the extent of any inconsistency with any representations, warranties or undertakings made explicitly by the Seller in this Agreement:

- (a) the Equipment is sold on an as is basis and is not fit for any particular purpose or use; and
- (b) the Seller makes no representations or warranties that the Equipment complies with applicable laws or standards.

5.2 The Buyer acknowledges and agrees it:

- (a) accepts the Equipment as described in this Agreement;
- (b) without limiting the generality of the above sub-clause, is aware of and accepts the Equipment's Condition and Defects; and

(c) is aware of and accepts the Equipment's condition and defects as discovered, or as should have been discovered by the Buyer had they had the Equipment inspected and examined by an appropriate qualified person.

5.3 Unless explicitly described in this Agreement or otherwise agreed in writing by the Seller:

- (a) the Equipment is not provided with any documentation or spare parts; and
- (b) repair facilities or spare parts will not be made available by the Seller.

6. WARRANTIES, LIABILITIES AND INDEMNITIES

6.1 The Seller makes no warranty as to the description or possible uses of the Equipment.

6.2 The Buyer purchases and uses the Equipment at its own risk and, to the fullest extent permitted by law, the Buyer indemnifies the Seller and its Personnel from, and the Seller and its Personnel will not be liable for, all Claims resulting directly or indirectly from the Buyer or its Personnel's use of the Equipment or negligence.

6.3 If the Seller has complied with all its obligations under this Agreement, the Seller's maximum aggregate liability in relation to this Agreement or the sale and subsequent use of the Equipment will not exceed the Purchase Price.

6.4 The Seller will be under no liability for any special, indirect or consequential loss, damages or expenses suffered by the Buyer or for any liability to third parties incurred by the Buyer.

6.5 All warranties and conditions whether implied by statute or otherwise are excluded to the extent permitted by law.

6.6 The Buyer acknowledges and agrees that it acquires the Equipment for business purposes, and accordingly the guarantees, rights and remedies provided under the Competition and Consumer Act 2010 (Cth) do not apply.

6.7 Notwithstanding any provision of this Agreement except clause 6.8, and subject always to clause 6.8, if the Buyer is a consumer for the purposes of the ACL, the Equipment comes with guarantees that cannot be excluded and the Buyer may be entitled to certain remedies including refunds, repairs and compensation.

6.8 For the purposes of clause 6.7, if the Buyer is a consumer for the purposes of the ACL, the Seller makes each guarantee required of a supplier to a consumer under Part 3-2 of the ACL but only to the extent required by the nature of the Equipment, Buyer and the transaction.

6.9 The Seller is not liable to the Buyer for any acts or omissions of any Personnel supplied by the Seller where the Personnel is acting under the Buyer's direction and control and you indemnify the Seller against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against the Seller and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

6.10 The Seller's liability with respect to any Equipment sold to Buyer will be limited to refunding payment of the Purchase Price made. In no event will the Seller be liable for indirect, incidental or consequential damages.

7. INSURANCE

If the Buyer needs to dismantle or perform some other work on the Equipment on premises owned or controlled by the Seller, the Seller may require you to take out worker's compensation, public liability and property insurance noting the Seller's interest on the policy.

8. MISCELLANEOUS

8.1 This Agreement will be construed in accordance with the laws in force in Queensland and the parties submit to the jurisdiction of the courts of Queensland.

8.2 The person who executes this Agreement on behalf of the Buyer warrants to the Seller that they had the Buyer's authority to do so.

8.3 Unless specified otherwise, the Purchase Price and any other monies payable by the Buyer under or in connection with this Agreement is exclusive of GST.

8.4 No amendment or variation to this Agreement has any force unless it is in writing and agreed to by the parties.

8.5 Including but not limited to the provisions of clauses 3, 4, 5 and 6, the provisions of this Agreement which by their nature are intended to survive termination of this Agreement or the completion of the sale contemplated by it, shall survive termination of this Agreement or the completion of the sale contemplated by it.

8.6 In the event of any inconsistency between any parts of this Agreement, the Schedule prevails over these terms and conditions, and these terms and conditions in turn prevail over the Buyer's Acknowledgment.

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Buyer's Initials: _____