



# GOLDACRES

*Australia's World Class Sprayers*



## **Special Evolution** MY14 Parts Manual

For further information about any of the products shown please visit - [www.goldacres.com.au](http://www.goldacres.com.au).

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# GOLDACRES - RESELLER TERMS AND CONDITIONS OF SALE

Goldacres Goods are only available for purchase upon the terms and conditions set out below.

## Interpretation

- In terms and conditions:
- "Goldacres" means Goldacres Trading Pty. Ltd. A.C.N. 061 306 732 trading as Goldacres Agricultural Equipment (its successors and assigns) which is the seller of the Goods;
- "Purchaser" means the purchaser of the Goods;
- "Goods" means the products and, if any, the services sold or provided by Goldacres to the Purchaser;
- "GST Act" and "GST" are given the meanings referred to in a New Tax System (Goods and Services Tax) Act 1999.
- "PPSA" means the Personal Property Securities Act 2009 (Cth) (as amended);
- Nothing in these terms and 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 Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

## General

- The Goods and all other products or services provided by Goldacres are provided subject to these terms and conditions. These terms and conditions and any terms and conditions incorporated herein by virtue of clause 3 hereto shall prevail over all other terms and conditions of the Purchaser or otherwise to the extent of any inconsistency.
- These terms and conditions may not be modified or amended without the expressed written consent of Goldacres endorsed by the Managing Director of Goldacres Trading P/L.

## Additional Terms and Conditions

- From time to time Goldacres may provide additional or extended warranties in respect of certain goods and/or services. Where such additional or extended warranties are provided to a Purchaser in writing they will be incorporated into these terms and conditions provided that in the event of any inconsistency between these terms and conditions and the terms of any additional or extended warranty, the provisions of the additional or extended warranty shall prevail.

## Goldacres quotations.

- Unless previously withdrawn, Goldacres quotations are open for acceptance within the period stated therein or, when no period is stated, with 14 days only of the quotation date. Goldacres reserves the right to refuse any order based on any quotation within 7 days of receipt of the order.

## Packing

- The cost of any special packing and packing materials used in relation to the Goods shall be at the Purchaser's expense notwithstanding that such cost may have been omitted from any quotation.

## Shortage

- The Purchaser waives any claim for shortage of any Goods delivered if a claim in respect thereof has not been lodged with Goldacres within (7) seven days from the date of receipt of the Goods by the Purchaser.

## Specifications, etc. Catalogues, etc: Quantities

- All specifications, (including but not limited to drawings, particulars of weights, volumes, capacities, dimensions, load factors) are approximate only and any deviation shall not be taken to vitiate any contract with Goldacres or form any claim against Goldacres. 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. Where specifications, drawings or other particulars are supplied by the Purchaser, Goldacres' price is made on estimates of quantities required. Should there be any adjustments in quantities above or below the quantities estimated by Goldacres and set out in a quotation, then any such increase or decrease shall be adjusted on a unit rate basis according to unit prices set out in the quotation.

## Performance, Capacities, Chemicals, Liquids, Application Methods, Environmental Effects

- Any performance, volumes, and/or capacity figures given by Goldacres are estimates only. Goldacres shall be under no liability for damages for failure to obtain such figures unless specifically guaranteed in writing and any such written guarantee shall be subject to the recognised tolerances applicable to such figures. The suitability of chemicals and other liquids for any application and the application methods and the environmental effects shall be the sole decision and responsibility of the Purchaser and the user of the Goods. Goldacres gives no warranty as to the suitability of any chemicals or other liquids for any application, nor the application methods nor the environmental effects, which may result from the use of the Goods. Goldacres shall be under no liability for damages arising out of the use of any chemicals, liquids, or mixtures in the Goods nor for any application, nor for the application methods nor for the environmental effects, which may result from the use of the Goods.

## Delivery/Service Times

- The delivery times and service times made known to the Purchaser are estimates only and Goldacres shall not be liable for late delivery, non-delivery or delay and under no circumstances shall Goldacres be liable for any loss, damage or delay occasioned by the Purchaser or its customers arising from the late or non-delivery or late installation of the Goods.

## Loss or damage in transit

- Goldacres is not responsible for any loss or damage to Goods in transit. Goldacres shall render the Purchaser such assistance as may be necessary to press claims on carriers provided that the Purchaser shall have notified Goldacres and the carriers immediately the loss or damage is discovered on receipt of Goods and shall lodge a claim on the carrier within three days of the date of receipt of the Goods. Insurance of Goods in transit is the responsibility of the Purchaser.

## Limit of Liability

- (1) Goldacres liability for Goods manufactured by it is limited to:
  - where the law implies consumer guarantees into these terms and conditions pursuant to Part 3.2 Division 1 of Schedule 2 to the Competition and Consumer Act 2010 (Cth) ("consumer guarantees") which cannot be excluded and Goldacres breaches a consumer guarantee, the loss and damage the Purchaser is entitled to at law which cannot be excluded by these terms and conditions; and, in all other cases
  - making good any defects by repairing the same or at Goldacres option by replacement within a period not exceeding either 1000 hours or twelve calendar months, whichever comes first, after the Goods have been dispatched provided that:
    - the defects have arisen solely from faulty materials or workmanship;
    - the Goods have not received maltreatment, inattention or interference;
    - accessories of any kind used by the Purchaser are manufactured or approved by Goldacres;
    - where applicable, the seals on the Goods remain unbroken;
    - there has been no improper adjustment, calibration or operation;
    - the use of accessories including consumables, hardware or software (not manufactured by Goldacres) has been approved in writing by Goldacres;
    - no contamination or leakage has been caused or induced;
    - any modification to the Goods have been authorised in writing by Goldacres;
    - there has been no inadequate or incorrect use, storage, handling or application of the Goods;
    - there has been no use or operation of the Goods outside of the physical, electrical or environmental specifications of the Goods;
    - there has been no inadequate or incorrect site preparations;
    - there has been no inadequate or improper maintenance of the Goods;
    - the Goods have not been caused by fair wear and tear; and
    - firstly the Goods have been thoroughly inspected and any damage (from whatever cause) to the Goods (and in particular – the structure, welding, seams, bolts, booms) has been repaired prior to the Goods being operated, used driven or moved and on each occasion the tanks are filled; and
  - there has been no failure to comply with the requirements of all present or future laws or regulations relating to the Goods and/or the use and/or the operation of the Goods; and
  - there has been no failure to maintain a record of hours of operation (which record shall contain full details of all inspections, repairs and maintenance) and produce same to Goldacres at the time of the claim;
  - the defective Goods or any damaged part of the Goods are promptly returned free of cost to Goldacres or a representative of Goldacres;
  - all warranty related repairs have been carried out with the prior authorisation of Goldacres;
- If Goods or any part thereof are not manufactured by Goldacres, in particular engines, engine accessories, transmissions, transfer cases, differentials, tyres, tubes, batteries, radios and UHF's, the guarantee of the manufacturer thereof shall be accepted by the Purchaser and is the only guarantee given to the Purchaser in respect of the Goods or that part provided always that this clause does not seek to exclude the consumer guarantees;
- In the case of hydraulic systems, Goldacres shall replace defective parts in accordance with clause 11(1) of these conditions, provided that the failure of the part was not related to contamination within the system. Goldacres shall not be liable for labour in the case of repairing hydraulic system defects;
- Goldacres will not accept liability for damage attributed to fair wear and tear including but not limited to fair wear and tear to nozzles, chains, belts, filters, brake pads, polyethylene bushes and liquid pump valves, valve O-rings, diaphragms and seals;
- Goldacres shall not be liable for and the Purchaser releases Goldacres from any claims in respect of faulty or defective design of any Goods supplied unless such a design has been wholly prepared by Goldacres and the responsibility for any claim has been specifically accepted by Goldacres in writing and in any event. Goldacres liability hereunder shall be strictly limited to the replacement of defective parts in accordance with paragraph 11(1) of these conditions provided always that this clause does not seek to exclude the consumer guarantees;
- Except as provided herein, all express and implied warranties, guarantees and conditions under statute or general law as to the merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded and Goldacres shall not be 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 Goldacres negligence or in any other way whatsoever;
- The benefit of any warranty provided under these terms and conditions shall only be available to the Purchaser and shall not be transferable by the Purchaser;
- The warranties provided under these terms and conditions do not extend to second hand or used Goods that may be sold by Goldacres.

- Goldacres liability for breach of a consumer guarantee is hereby limited (in the case of goods and services not used for personal, domestic or household purposes) to:
  - in the case of Goods, any one or more of the following:
    - 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 acquiring the equivalent Goods;
    - the payment 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.

## Prices

- Unless otherwise stated in writing by Goldacres, all prices quoted by Goldacres are inclusive of GST for supplies within Australia and exclusive of GST for exports outside of Australia. Prices quoted are those ruling at the time of quotation or the date the price is given and are based on rates of freight, insurance, customs, duties, taxes, exchange, shipping expenses, sorting and stacking charges, cartage, cost of materials and other charges affecting the cost of production ruling on that date and any alterations thereto either before acceptance of or during currency of the contract shall be to the Purchaser's account.
- For the purpose of 3B-1B5 of the GST Act, the day upon which the seller gives the invoice for the supply shall be the date of the invoice.

## Payment

- (1) The purchase price in relation to the Goods and the cost of the service shall be payable without deduction and or set off and payment thereof shall be made on or before the thirtieth day of the month following the delivery of the Goods or performance of the services unless other terms of payment are expressly stated in writing.
- A decreasing or increasing adjustment and or the issuing of an adjustment note, pursuant to Division 21 and Division 29-C of the GST Act, shall not, in any way, constitute a release, waiver, and/or forgiveness of the debt incurred by the Purchaser.

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- A decreasing or increasing adjustment and or the issuing of an adjustment note, pursuant to Division 21 and Division 29-C of the GST Act, shall not, in any way, constitute a release, waiver, and/or forgiveness of the debt incurred by the Purchaser.

## Interest on overdue payments

- If Goldacres is not paid for any Goods or services on the due date specified in this agreement without prejudice to any other right or remedy, all outstanding money shall bear interest at the rate set, pursuant to the Penalty Interest Rates Act, Victoria, 1986, as such money, together with interest shall be recoverable forthwith from the Purchaser.

## Rights in relation to Goods.

- (1) Title to the Goods supplied by Goldacres to the Purchaser shall remain with Goldacres until the total amount due in respect of the Goods and all monies owing to Goldacres have been paid in full (the "Debts"). Risk in the Goods shall pass to the Purchaser upon delivery.
- The Purchaser shall have the right to resell Goods but only as fiduciary agent and trustee for Goldacres by way of bona fide sale at full market value and in the ordinary course of its business.
- Until all the Debts have been paid in full:
  - the Purchaser shall take custody of the Goods as trustee, fiduciary agent and bailee for Goldacres;
  - the Purchaser shall keep the Goods separate from any other goods and properly marked, stored, protected and insured;
  - the Purchaser must hold all of the money it receives ("Proceeds");
  - from the sale of any property into which Goods supplied have been incorporated; and
  - from the sale of Goods or provision of services including the Goods supplied by the Goldacres as bailee, fiduciary agent and trustee for Goldacres, but the Purchaser need not hold on trust any money exceeding the amount of the Debts at the time the money is received. The Purchaser expressly acknowledges that it is bound by the fiduciary obligation created in the preceding paragraph and acknowledges that:
    - it must hold the Proceeds on trust for Goldacres;
    - it must place the whole of the Proceeds in an account separate from its own moneys (the "Proceeds Account");
    - it must maintain the Proceeds Account separate from its own moneys at all times.
    - it must maintain proper records for the Proceeds Account.
    - it must not assign or encumber any book debts arising from sales made in circumstances set out in clauses 16(c)(i) and (ii) or do any other act in derogation of Goldacres' legal or beneficial interests; and
    - it must account to Goldacres on demand for all moneys standing to the credit of such account.
  - For the purposes of identification of different consignments of Goods purchased from Goldacres and receipt of Proceeds, the Purchaser agrees that the principle of "Last In, First Out" shall be applied to any items that cannot be distinguished.
  - Goldacres may trace the Proceeds in equity.
  - Goldacres may at any time, without notice to the Purchaser and without prejudice to any other rights which it may have against the Purchaser, terminate any contract connected with the Goods and the bailee referred to in clause 16(3) and enter upon any premises owned or occupied by the Purchaser where Goldacres reasonably believes the Goods may be stored, and repossess the Goods without liability for any damage caused, and subsequently dispose of the Goods at Goldacres' discretion if:
    - the Debts are not paid in accordance with these terms and conditions or any other contract or arrangement between Goldacres and the Purchaser; or
    - Goldacres receives notice of or reasonably believes that:
      - a third person may attempt to levy execution against the Goods; or
      - the Purchaser is insolvent (within the meaning of the Corporations Act 2001) or bankrupt; or
      - the Purchaser has entered into any arrangement or composition with its creditors, gone into liquidation, or has appointed a receiver, a receiver and manager or administrator.
  - If after repossession under clause 16(4) Goldacres sells the Goods, Goldacres shall account to the Purchaser for any proceeds of sale (less expenses of repossession and sale) that exceeds the amount of the outstanding Debts.
  - If any Goods belonging to Goldacres are disposed of by the Purchaser or an insurance claim is made in respect of them, Goldacres shall be entitled to trace the sale or insurance proceeds, which proceeds shall be held by the Purchaser in a separate bank account on trust for Goldacres.
  - The Purchaser agrees and acknowledges that in the event it sells Goods to a third party on account, it will include in its terms and conditions of sale a provision under which the Purchaser retains title to the Goods until such time that the total amount due in respect of the Goods and all monies owing to the Purchaser have been paid in full by that third party debtor. The Purchaser also agrees and acknowledges that in these instances, it will register its PMSI in accordance with the PPSA in respect of its security interest in the Goods.

## PPSA provisions

- (1) The Purchaser acknowledges that these terms and conditions constitute a security agreement for the purposes of section 20 of the PPSA and that a security interest exists in all Goods (and any associated Proceeds from their sale) previously supplied by Goldacres to the Purchaser (if any) and in all in future Goods (and any associated Proceeds from their sale) that may be supplied to the Purchaser by Goldacres.
- The Purchaser acknowledges that Goldacres has a first ranking purchase money security interest ("PMSI") (as defined in section 14 of the PPSA) in the Goods and the Purchaser must not jeopardise such ranking (whether by act or omission).
- The Purchaser acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to Goldacres under these terms and conditions.
- The Purchaser will execute documents and do such further acts as may be required by Goldacres to register the security interest granted to Goldacres under these terms and conditions under the PPSA.
- Until ownership of the Goods passes, the Purchaser must not give to Goldacres a written demand or allow any other person to give Goldacres a written demand requiring Goldacres to register a financing change statement under the PPSA in respect of Goldacres' interest in the Goods.
- The Purchaser must indemnify Goldacres and on demand reimburse Goldacres for all costs and expenses incurred by Goldacres in respect of these terms and conditions including but not limited to Goldacres registering its security interest in the Goods, lodging, discharging or amending any financing statement or financing change statement, or otherwise complying with the PPSA.
- The Purchaser agrees (other than as provided in these terms and conditions) not to sell, lease, mortgage, deal with, dispose of or create or attempt to create any other security interest in or affecting the Goods unless and until the Purchaser's Debts have been satisfied.
- The Purchaser waives its rights under the following provisions of Chapter 4 of the PPSA:
  - to receive a notice on enforcement action against liquid assets (section 121(4)),
  - to receive a notice to seize collateral (section 123);
  - to receive a notice of disposal of Goods by Goldacres purchasing the Goods (section 129);
  - to receive a notice to dispose of Goods (section 130);
  - to receive a statement of account following disposal of Goods (section 132(2));
  - to receive a statement of account if no disposal of Goods for each 6 month period (section 132(4));
  - to receive notice of any proposal of Goldacres to retain Goods (section 135(2));
  - to object to any proposal of Goldacres to either retain or dispose of Goods (section 137(2));
  - to redeem the Goods (section 142);
  - to reinstate the security agreement (section 143);
  - to receive a notice of any verification statement (section 157(1) and section 157(3));
- The rights Goldacres may have under the PPSA are supplementary and in addition to those set out in these terms and conditions and do not derogate from the rights and remedies of Goldacres under these terms and conditions or under any other statute or under general law.
- The Purchaser must give 10 business days prior written notice of any proposed change in the Purchaser's name or other identifying characteristics and details.

## Purchasers property

- Any property of the Purchaser under Goldacres' custody or control shall be entirely at the Purchaser's risk as regards loss or damage caused to the property or by it.

## Storage

- Goldacres reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Purchaser within (14) fourteen days of a request by Goldacres for such information.

## Returned Goods

- Goldacres shall not be under any obligation to accept Goods returned by the Purchaser and will do so only on terms to be agreed in writing in each individual case.

## Goods sold

- All Goods to be supplied by Goldacres shall be described on the purchase order agreed by Goldacres and the Purchaser and the description on such purchase order modified as so agreed shall prevail over other descriptions including any Purchaser's specification or enquiry.

## Cancellation

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

## No waiver

- The failure of any party to enforce the provisions of these terms and conditions or to exercise any rights expressed in these terms and conditions shall not be a waiver of such provisions or rights and shall not affect the enforcement of this agreement. The exercise by any party of any of its rights expressed in this agreement shall not preclude or prejudice such party from exercising the same or any other rights it may have irrespective of any previous action taken by that party.

## Force Majeure

- If by reason of any force, circumstance, matter or thing beyond the reasonable control of Goldacres is unable to perform in whole or in part any obligation under these terms and conditions then Goldacres shall be relieved of that obligation under these terms and conditions to the extent and for the period that it is so unable to perform and shall not be liable to the Purchaser in respect of such liability.

## Passing of risk

- Risk in the Goods shall pass to the Purchaser upon delivery of the Goods to the Purchaser or collection of the Goods by the Purchaser's agent or carrier as the case may be.

## Exclusion of liability

- To the extent permitted by law Goldacres shall not be liable to the Purchaser in contract or in tort arising out of, or in connection with, or relating to, the performance of the Goods or any breach of these conditions or any fact, matter or thing relating to the Goods or error (whether or not it is negligent or a breach of contract) in information supplied to the Purchaser or a user before or after the date of the Purchaser's or user's use of the Goods and Goldacres shall be under no liability for damages arising out of the use of any chemicals, liquids, or mixtures in the Goods, nor for any application, nor for the application methods nor for the environmental effects, which may result therefrom or from the use of the Goods.

## Exclusion of representations and arrangements

- To the extent permitted by law the terms and conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods or any part thereof including, but without limiting the generality of the foregoing, those relating to the performance of the Goods or any part thereof or the results that ought to be expected from using the Goods.

## Place of contract

- The contract for sale of the Goods and the provision of the services is made in the State of Victoria and the Purchaser agrees to submit all disputes arising with Goldacres to the courts of such State and any court competent to hear appeals therefrom.

