

TERMS AND CONDITIONS OF SALE

1. Conditions

An order placed by a buyer is deemed to be accepted by the seller on these conditions.

2. Inconsistency

In the event of an inconsistency between these conditions and a buyer's order then:

2.1 Unless otherwise expressly agreed in writing by the seller these conditions shall apply;

2.2 Any additional terms or conditions added by the buyer outside these conditions shall not be binding on the seller.

3. Quotations

3.1 A quotation given by the seller does not constitute an offer and no agreement shall arise until the buyer's order is accepted by the seller in writing or the seller commences work on the order whichever is the earlier.

3.2 Prices quoted by the seller are valid for 30 days unless otherwise agreed in writing.

4. Price

Unless expressly stated the price of the goods and services does not include GST which, in addition to the price, must be paid to the seller at the time the seller's invoice is paid.

5. Description

Any description of the goods is given by way of identification only and the use of such description shall not make the contract a sale by description.

6. Fitness for Purpose

6.1 Unless expressly agreed otherwise the buyer makes its order in reliance upon its own inquiries and judgment as to the fitness of the goods for any purpose and does not rely upon any advice or representation of the seller as to whether the goods are fit for any particular purpose.

6.2 Unless otherwise agreed in writing all goods supplied (including manufactured goods) are intended for use on passable sealed roads. The buyer agrees that the use of the goods on damaged or unsealed roads and rough or corrugated sealed roads or roads that have the effect of transferring additional stresses to the goods to what they were designed for shall constitute abnormal use.

7. Terms of Payment

7.1 Unless otherwise agreed payment of all invoices must be made in full prior to delivery of manufactured goods or return of repaired goods.

7.2 A purchase on credit will entitle the seller to register a financing statement in respect of;

7.2.1 a PMSI under PPSA;

7.2.2 an all monies Security Interest;

7.2.3 any other Security Interest permitted under the PPSA.

7.3 The expiry date of and Security Interest created shall be following payment of the goods in full.

7.4 A PMSI granted in favour of the seller will continue to apply to any goods coming into existence or proceeds of sale of goods coming into existence

7.5 The seller will continue to hold a PMSI despite the goods being processed, commingled or incorporated in other goods.

7.6 A PMSI will be a continuing and subsisting interest in the goods with priority to the fullest extent permitted by law over all other registered or unregistered security interests;

7.7 Sections 96, 125 and 132(3)(d) and 132(4) PPSA do not apply to any security agreement created with the seller.

7.8 The buyer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

7.9 The buyer waives its rights as a grantor and/or a debtor under sections 142 and 143 PPSA.

7.10 Unless otherwise agreed in writing by the seller, the buyer waives its right to receive a verification statement in accordance with s.157 PPSA.

8. The goods (which includes components in the case of a repair) supplied by the seller to the buyer shall remain the sole and absolute property of the seller as legal and equitable owner, and property and title to the goods shall not pass from the seller to the buyer, until the buyer has paid for the goods in full whether or not the goods are incorporated in or used as material for other goods.

9. Until the goods are paid for in full, the buyer shall store the goods separately from its own goods or those of any other person in a manner which renders them clearly identifiable as the goods of the seller.

10. The seller may at any time without the need to give notice to the buyer take possession of all goods (which includes components in the case of a repair) which remain the property of the seller and for that purpose, the buyer hereby irrevocably:

(i) authorizes the seller to enter any premises where the seller's goods are or may be situated and to use such reasonable force as may be required to enter any such premises, including the breaking of locks or chains which secure the premises;

(ii) authorizes the seller to remove the goods from any equipment of the buyer even if this renders the buyer's goods useless;

- (iii) undertakes to the seller to procure the consent of any person having any interest in the premises where the seller's goods are or may be situated to entry of those premises by the seller, and
 - (iv) indemnifies the seller against any cost or expense of all claims, actions or suits whatsoever arising from the entry by the seller into or upon any premises where the seller's goods are or may be situated, for purposes of the seller taking possession of its goods pursuant to this clause.
 - (v) The rights of Howard Porter existing under these terms and conditions exist in addition to the rights it has under Chapter 4 of the PPSA.
 - (vi) The buyer agrees that repossession and retention of Goods pursuant to the PPSA will only satisfy so much of the amounts owing by the buyer to Howard Porter as is equivalent to Howard Porter's estimation of the market value of the Goods as at the date of repossession, and the repossession and retention will immediately extinguish any rights or interest the buyer has in the Goods.
- 11. Consumer Warranties**
- In relation to goods or services provided to Consumers, the seller's goods come with guarantees that cannot be excluded under the ACL. The buyer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The buyer 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.
- 12. Commercial Warranty**
- 12.1 In relation to goods or services provided to persons other than Consumers, the seller warrants:
- (i) new equipment it has manufactured for a period of 12 months from the delivery date;
 - (ii) replacement parts it has manufactured for a period of 90 days from the delivery date; and
 - (iii) service labour for a period of 30 days from the service.
- 12.2 The seller's warranty is limited to defects arising from design, materials and workmanship but does not include damage attributable to fair wear and tear, abnormal use, freight charges, labour costs and travelling expenses incurred by the seller on warranty work.
- 12.3 The seller agrees to warrant goods supplied but not manufactured by the seller on the same terms offered by the manufacturer and will take reasonable steps to provide a copy of those terms on request.
- 12.4 The seller's liability under this warranty shall:
- (a) in relation to goods supplied be limited to:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (b) in relation to services be limited to:
 - (i) the supplying of the services again; and
 - (ii) the payment of the cost of having the services supplied again.
- 12.5 The seller shall not be liable to the buyer for any economic or consequential loss, damage or other expense or loss and damage to the buyer arising out of or in consequence of any fault or defect in the goods whether or not such fault or defect was caused by the negligence of the seller.
- 12.6 All warranty claims must be made in writing and if the buyer makes a warranty claim the goods must be returned to the seller at the buyer's risk and at their cost.
- 12.7 This warranty may be avoided by the seller if the buyer:
- (i) has misused the products;
 - (ii) has failed to follow operating or maintenance instructions given by the seller;
 - (iii) has failed to use reasonable care.
- 12.8 Warranties expressed in or implied by any written law or which arise by common law or in equity or by trade usage are excluded to the maximum extent permissible by those laws.
- 12.9 The seller shall be under no liability to the buyer for any loss or damage to persons or property or for death or injury caused by an act or omission (including any negligent acts or omissions) of the seller, its employees or agents.
- 13. Property and Risk**
- 13.1 The risk and loss or damage to the goods shall pass to the buyer on:
- (i) the passing of property to the buyer; or
 - (ii) the physical delivery of the goods to a carrier;
- whichever event occurs first.
- 13.2 Once the risk of loss or damage to the goods passes to the buyer the goods shall be at the buyer's risk absolutely and the buyer shall be responsible for obtaining insurance cover against all possible risk and contingencies.
- 13.3 The buyer authorizes the seller and its employees and agents to use any property of the buyer (including a vehicle, goods, equipment or machine) delivered to the seller for any reason.
- 13.4 All property of the buyer shall be stored at the seller's premises at the risk of the buyer absolutely.
- 13.5 The buyer shall have no claim whatsoever against the seller, its employees or agents in respect of any damage or loss to the

buyer caused by the seller or its employees or agents arising out of the use or storage of the property including negligence on the part of the seller, its employees or agents and theft.

14. Delivery

14.1 The seller shall use reasonable endeavours to deliver the goods within the time specified in the order.

14.2 In the event of a delay in delivery the seller shall not be liable for penalties or damages to the buyer.

14.3 The seller shall be entitled to extensions of time for delivery of the goods should the seller experience any delay by reason of any matter or circumstance beyond its control, including without limiting the generality thereof, industrial disputes, accidents, breakdown in plant or machinery, inability to obtain materials, labour, power supplies or transport, riots, fire, flood, explosion and war.

14.4 If in the reasonable opinion of the seller the events referred to in clause 14.3 will result in the seller being unable to deliver within a reasonable time then the seller may terminate the contract.

14.5 Unless stated otherwise all delivery of goods is at the seller's premises. In the event that delivery is expressed to be elsewhere, the goods are at the buyer's risk from the time the goods leave the seller's premises for delivery to the buyer.

14.6 In the event that the buyer requests the seller provide an employee to drive, test, operate, adjust or otherwise handle the goods or any vehicle machinery or equipment of the buyer (whether or not incorporating the goods), the buyer shall indemnify and keep indemnified the seller from and against all claims and demands whatsoever for loss or damage suffered by any person as a result of any act or omission on the part of such employee,

negligent or otherwise, in handling the goods or the equipment or vehicle incorporating the goods.

15. Other Claims

Any claims for short or wrongful delivery of goods must be notified to the seller within 14 days after delivery and any claim not notified within that time (time being of the essence) shall be deemed to have been absolutely waived.

16. Waiver

Failure by the seller to insist upon strict performance of any term, warranty or condition of the contract shall not be deemed a waiver thereof or of any rights the seller may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

17. Instalments

The seller may, in its absolute discretion, elect to deliver goods by instalments and upon delivery of each instalment the buyer shall be required to pay the proportion of the price notified by the seller. Failure of the seller to deliver any instalment by the due date shall not entitle the buyer to cancel the balance of the order. If the buyer makes a default in respect of any instalment, the seller may elect to treat the default as a breach of contract relating to each other instalment.

18. Interest on Overdue Accounts

If payments are not made within 7 days of the due date interest may be charged at the rate of 2% above the interest from time to time charged by the seller's bankers on advances on overdrawn current accounts (on amounts not exceeding \$100,000) calculated from the due date of payment until payment is made in full.

19. Notice

Any notice to be given by either party may be sent by facsimile transmission, email or by prepaid mail to the party's address shown on the order. A notice given by email or facsimile transmission shall only be deemed to have been given if it is actually received.

20. Governing Law

Contracts shall be governed by and construed in accordance with the laws of Western Australia and the buyer submits to the non-exclusive jurisdiction of the courts of Western Australia

Defined Terms

“**ACL**” means the Australian Consumer Law

“**Collateral**” means the meaning given under the PPSA and in particular for the purposes of these Terms and Conditions the personal property that is not used predominately for personal, domestic or household purposes to which the Security Interest has attached.

“**Consumer**” means a person who is a consumer under the ACL.

“**Goods**” includes goods manufactured or imported by the seller and property of the buyer left with the seller for repair.

“**Grantor**” has the same meaning as given in the PPSA and for the purposes of these Terms and Conditions means Howard Porter.

“**PMSI**” means a purchase money security interest under section 14 of PPSA.

“**PPSA**” means the Personal Property Securities Act 2009 and its Regulations.

“**Price**” means the price stated in the order form.

“**Security Interest**”: has the same meaning as given in the PPSA.

“**Secured Party**” means Howard Porter.