

Terms and Conditions of Parts Sale Agreement

1. Definitions

“ACL” means the Australian Consumer Law 2011 which is contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*, as amended from time to time.

“Agreement” means this Parts Sale Agreement which consists of the Parts Tax Invoice and these Terms and Conditions.

“Customer” means the person/s or entity named in the Parts Tax Invoice and includes their personal representatives, successors, administrators and assigns; for convenience the Customer may be referred to as “they” or “them” in this Agreement.

“GST” means the goods and services tax as defined in the GST Law.

“GST Law” means a *New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended.

“Parts” means the motor vehicle parts accessories and other products listed in the Parts Tax Invoice; they include parts added or substituted by the Supplier as provided for in these Terms and Conditions.

“Parts Tax Invoice” means the invoice detailing the Parts sold by the Supplier to the Customer.

“PPSA” means the *Personal Properties Securities Act 2009 (Cth)*, as amended.

“Supplier” means the company named as such in the Parts Tax Invoice and includes any other member of the Pickerings Group of Companies which supplies the Parts to the Customer.

“Tax Invoice” has the meaning given to it under the GST Law.

“Terms and Conditions” means the terms and conditions set out in this document and which are published on the Supplier’s website, varied from time to time as provided for in this Agreement.

“Total Price” means the total amount payable by the Customer to the Supplier for the purchase and delivery of the Parts, including GST, as detailed in the description section of the Parts Tax Invoice which may be varied by the Supplier in accordance with the provisions of this Agreement.

2. Formation of Agreement

2.1. Each time the Customer places an order for the supply of any Parts with the Supplier, the order constitutes an offer by the Customer to purchase the Parts as detailed in the Parts Tax Invoice on these Terms and Conditions.

2.2. Upon the Supplier accepting the Customer's order for the Parts, an Agreement is formed for the sale and purchase of the Parts ordered on the terms and conditions set out in this document. A copy of these terms and conditions will be available from the Supplier's premises and will be posted on the Supplier's website.

2.3. For the purposes of clause 2.2, the Supplier may accept the Customer's order for Parts by notifying the Customer that the Parts ordered are available. This notification may be given by phone, staff in person or email.

2.4. Except as imposed by the ACL or other applicable law, all other terms purported to be imposed or implied by the Customer in respect of the ordering, sale and supply of the Parts, including any standard term contained in the Customer's purchase order, are excluded from this Agreement.

2.5. These Terms and Conditions may be varied only in the following ways:

(a) for a particular sale of Parts – by a written notation of the variation on the Parts Tax Invoice expressly agreed to by both parties prior to delivery of the Parts; or

(b) generally – by the Supplier posting the proposed variation and notifying the Customer of the date that the variation will be effective on its website; the Customer agrees that the variation will apply on and from the date stated on the Supplier's website.

3. Price

3.1. The Customer acknowledges that the Total Price stated in the Parts Tax Invoice is the price of the Parts based on costs and circumstances as they existed when the Parts were ordered from the Supplier.

3.2. If there is any change in these costs and/or circumstances before delivery of the Parts, the Customer agrees to pay the Supplier the Total Price varied as provided for in this clause 3.3.

3.3. For the purposes of clause 3.2, a change in costs and/or circumstances includes any increase in the landed invoiced cost of the Parts payable by the Supplier to its usual provider (or to another provider if the Parts become unavailable after the Supplier accepts the Parts Order) any increase in taxes payable by the Supplier on the Parts.

3.4. While the Supplier will use its best endeavours to notify the Customer of any increase in the Total Price effected pursuant to this clause 3, the Customer will be bound to pay the increased Total Price upon delivery of the Parts and any increase in the cost to supply the Parts to the Customer.

4. Payment

4.1. The Total Price must be paid for the Parts in cash, by electronic funds transfer or direct deposit to the Supplier's bank account detailed in the Parts Tax Invoice or by credit card, prior to or upon delivery of the Parts.

4.2. If the supply of the Parts to the Customer is a supply in respect of which GST is payable, the Customer must pay GST in addition to the consideration payable for the Parts and in which case, the Supplier will provide the Customer with a Tax Invoice. The Customer accepts the Parts Tax Invoice as compliant with the GST Law.

4.3. If the Customer pays by credit card, the Customer agrees to pay the credit card surcharge notified by the Supplier, the amount of which the Supplier will determine in accordance with applicable legislation.

4.4. The Supplier may, but is not obliged to, accept payment for the Parts by cheque, whether personal or drawn on a bank or other financial institution. If the Supplier accepts a cheque in payment for the Parts which is not duly honoured upon presentation, the Customer agrees to pay the Supplier all bank charges associated with the dishonourment.

4.5. The Customer acknowledges that unless and until they have a fully signed credit arrangement in place with the Supplier, all Parts must be paid for by one of the methods set out in this clause 4.

4.6. Notwithstanding the provisions of any credit arrangements entered into between the Supplier and the Customer, the Supplier may at any time and without the need to provide any reason, vary or withdraw any credit granted to the Customer and instead insist on payment of the Total Price in one of the methods provided for in this clause 4.

4.7. If the Total Price is not paid in cleared funds by the time the Supplier intends to deliver the Parts to the Customer, then the Supplier may at its election, defer delivery of the Parts or cancel this Agreement upon giving notice of cancellation to the Customer by phone, in person or by email and in that event:

(a) the Customer releases the Supplier from any liability for loss or damage occasioned by the Customer arising from the deferral of delivery of the Parts or cancellation of this Agreement; and

(b) the Customer will be liable to compensate the Supplier for any loss or damage it suffers for loss of profit, the cost of restocking and/or the cost of holding Parts specifically obtained to fulfil its obligations under this Agreement.

5. Supply and Delivery

5.1. Any statement as to the intended time and date for availability or delivery of the Parts is accepted by the Customer as an estimate only and will not be binding upon the Supplier.

5.2. The Customer will accept delivery of the Parts by instalments if the entire consignment of Parts ordered by the Customer is not available to the Supplier at the proposed time of delivery.

5.3. Delivery of the Parts will be effected at the Supplier's premises at the address shown in the Parts Tax Invoice, regardless of whether the Customer or the Supplier

arrange for the collection and transport of the Parts to the Customer's premises or another address.

5.4. Risk in the Parts passes to the Customer upon delivery.

5.5. Delivery of the Parts is effected when the Supplier notifies the Customer that the Parts are available for collection.

5.6. The Supplier is not obliged to deliver or release the Parts to the Customer until the Total Price is paid.

5.7. If the Supplier itself or through a contractor agrees to transport the Parts to the Customer or to an address nominated by the Customer, then risk in the Parts remains with the Customer and neither the Supplier nor its contractor will be liable to the Customer for any loss or damage to or deterioration of the Parts or for misdelivery, failure to deliver or delay in delivery of some or all of the Parts.

5.8. If the Supplier or its contractor enter upon the Customer's premises or other nominated premises in the course of transporting the Parts at the direction of the Customer, the Customer releases the Supplier and its contractor from any claims for damage to the premises or injury to any person in or about the premises which occurs during delivery to such premises and will indemnify the Supplier against any loss, damage or expense suffered by the Supplier in consequence of any such damage or injury.

5.9. The Customer will be solely responsible to effect insurance over the Parts during transit to any address.

6. Title and Security

6.1. Legal and beneficial title in and to the Parts will pass to the Customer upon the Supplier receiving the Total Price in cleared funds.

6.2. If the Customer comes into possession of the Parts before title passes, the Customer:

- (a) holds the Parts as fiduciary bailee of the Supplier;
- (b) must not encumber the Parts in any way;
- (c) must store the Parts separately and make them available for inspection by the Supplier upon reasonable notice being given;
- (d) may sell the Parts in the ordinary course of the Customer's business but in that case, the sale proceeds of the Parts are charged with the Customer's obligation to pay the Total Price in full to the Supplier; and
- (e) authorises the Supplier to enter upon the Customer's premises or any premises under the Customer's control and repossess the Parts, resell them and apply the proceeds of sale against any amount owing by the Customer to the Supplier.

6.3. The Customer acknowledges and agrees that:

- (a) this Agreement constitutes a security agreement for the purposes of the PPSA and the rights given to the Supplier under this clause 6 constitute a purchase money

security interest over all Parts provided or to be provided to the Customer under this Agreement, to secure the payment of the Total Price payable by the Customer to the Supplier from time to time;

- (b) the Customer expressly consents to the granting of this security interest;
- (c) the Supplier is entitled to take all steps necessary to protect and register the purchase money security interest in the Parts under the PPSA;
- (d) upon request, the Customer will promptly sign any documents and provide any information which the Supplier may request, as necessary to register, perfect or otherwise protect and enforce the Supplier's security interest in the Parts;
- (e) as the grantor of the security, the Customer waives the requirement for notices under the PPSA;
- (f) until the Total Price has been paid and title in the Parts has passed to the Customer, it will not register, or permit to be registered, any security interest in the Parts without the prior written consent of the Supplier; and
- (g) it is responsible for all costs and expenses incurred by the Supplier (including legal costs and expenses on a solicitor and own client basis) to enforce the security granted pursuant to this clause 6.

6.4. The Customer grants to the Supplier a lien over all Parts which have been ordered but neither paid for in full nor collected by the Customer. Pursuant to this lien:

- (a) the Supplier has the right to retain possession of the Parts until the Total Price has been paid;
- (b) if, within 7 days of receiving a notice of intended sale from the Supplier, the Customer fails to pay the Total Price or the balance of the Total Price then owing, the Supplier may sell the Parts and deduct the net sale proceeds from any amount owing by the Customer to the Supplier, whether under this Agreement or any other agreement that it has with the Supplier;
- (c) this lien is a specific property interest created by agreement and does not interfere with or replace any other security interest granted by the Customer to the Supplier under this Agreement or by effect of Law;
- (d) the Customer has no claim against the Supplier for any loss or damage arising from the exercise of the lien over the Parts by the Supplier.

7. Returns

7.1. The Supplier may, at its discretion, accept "change of mind" return of Parts in exchange for a cash refund or credit. The Customer must provide its invoice number, date of purchase and, if the Supplier agrees to accept the return of Parts, the Customer must pay all return freight charges.

7.2. The amount of refund or credit to be provided to the Customer for a return accepted by the Supplier under clause 7.1 will be, unless otherwise agreed by the Supplier:

- (a) 100% of the sale price (inclusive of GST) paid by the Customer for the Parts, if returned within 7 days of initial delivery;
- (b) 10% of the sale price (inclusive of GST) paid by the Customer for the Parts, if returned 8 to 30 days (inclusive) after initial delivery; and

- (c) Nil, if the Parts are returned more than 30 days after delivery; and
- (d) Nil, if the Parts were specifically procured for the Customer.

7.3. If the Customer claims that any of the Parts were damaged on delivery, were not as ordered or the consignment of those Parts was short or misdelivered, then this claim must be brought to the attention of the Supplier within 7 days of delivery, failing which the Customer waives any claim arising.

7.4. The Supplier will provide the Customer with the correct Parts and/or quantity at no additional cost to the Customer within a reasonable time of accepting the claim.

7.5. The Supplier's acceptance of a claim under clause 7.3 is conditional upon the Parts being unused, in a re-saleable condition and being returned by the time specified by the Supplier.

8. Warranty and Liability

8.1. Subject to clause 8.2, the Supplier sells the Parts to the Customer with only the guarantee or warranty given by the manufacturer and/or importer of the Parts.

8.2. Clause 8.3 applies if the Customer is a "consumer" for the purposes of the ACL. For this purpose, "you" means the Customer, "our" means the Supplier and "goods" means the Parts.

8.3. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are 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.

8.4. If the Customer is not a "consumer" for the purposes of the ACL, then the Customer agrees that:

- (a) it does not rely on the skill or judgment of the Supplier as to the suitability of the Parts for any particular purpose;
- (b) any sample, catalogue or brochure shown to the Customer is solely for the purpose of enabling the Customer to judge the normal commercial quality and finish of the Parts and not so as to constitute a sale by sample or a sale by description;
- (c) all warranties which may be excluded by agreement relating in any way to the Parts are excluded;
- (d) the Supplier is not obliged to accept a return of any Parts or to replace or repair any defective Parts beyond its obligation to do so under the manufacturer's and/or importer's guarantee or warranty; and
- (e) if notwithstanding the exclusion of liability provided in this clause 8, the Supplier is liable for a breach of warranty or a breach of this Agreement as regards the acceptability or quality of the Parts, then the Supplier's liability shall be limited, at its option, to repairing or replacing the Part/s or paying a repairer or a supplier the cost to repair or replace the Parts.

8.5. The Customer acknowledges that the Supplier advised the Customer that Parts be fitted by suitably qualified persons. The Supplier makes no representation that all

Parts will be delivered with fitment instructions, as they are intended for fitment by qualified persons.

8.6. Parts damaged during installation or off-road use will not be considered faulty and will not be accepted for return by the Supplier.

8.7. Warranty claims

(a) The Customer acknowledges that the Parts may need to be returned to the Supplier to determine the fault/issue and whether the Customer is entitled to a warranty claim.

(b) The Customer is responsible for all postage or freight costs associated with the return of the Parts to the Supplier for assessment and replacement of Parts pursuant to a warranty claim.

(c) Where the manufacturer's and/or importers warranty covers the replacement of the Parts only, the Customer is responsible for any labour, fitting or other expenses of or incidental to obtaining a repair or replacement of the Part.

(d) Where the Customer has contributed to the failure of the Parts, the Supplier may reject the warranty claim in which case, the Customer is responsible for the cost of retrieving the Parts.

(e) Any warranty is void if the Part has been modified, altered or tampered with by a person not authorised by the Supplier.

8.8. To the extent permitted by Law and except as expressly provided to the contrary in these Terms and Conditions, the Supplier shall not be liable (contractual, tortious or otherwise) to the Customer in respect of any loss or damage (including without limitation, consequential loss or damage) howsoever caused which may be suffered or incurred by the Customer directly or indirectly in respect of the supply and/or use of the Parts.

8.9. The Customer acknowledges that:

(a) if it elects to purchase for onsale or use in the repair or servicing of any vehicle, any part which is non-genuine or non-approved by the manufacturer of the vehicle involved, then the Customer or the owner of the vehicle concerned may be in breach of the terms of the vehicle's warranty;

(b) for the purposes of section 54(4)(b) of the ACL, this clause 8 has the effect of specifically drawing to the Customer's attention the possibility that the Part/s are not of acceptable quality because they are non-genuine or non-manufacturer approved Parts; and

(c) the Supplier does not warrant that the Parts are legal or safe for use with the intended vehicle or equipment. The Customer is responsible for ensuring that the intended use of the Parts is appropriate and compatible with the intended vehicle or other equipment and complies with all laws which apply to the Customer's vehicle or equipment.

9. Personal Information

9.1. The Customer agrees that the Supplier may use any personal information supplied by the Customer for the purposes of, and strictly in accordance with, the Supplier's Privacy Policy which appears on the Supplier's website.

9.2. If the Customer no longer wishes the Supplier and the other parties referred to in the Supplier's Privacy Policy to have access to the personal information supplied by the Customer, then the Customer must notify the Supplier of this requirement in writing. The Supplier will, within a reasonable time of notification, cease all access to such information.

10. General

10.1. Any unlawful, invalid or unenforceable term will not invalidate or affect the interpretation of the balance of this Agreement, but such unlawful, invalid or unenforceable term will be severed from this Agreement.

10.2. No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver.

10.3. The Supplier may subcontract the supply or delivery of the Parts.

10.4. The Customer cannot assign this Agreement without the consent of the Supplier.

10.5. The parties consent to the application of the Electronic Transactions Act (Qld) to this Agreement.

10.6. (a) Notices posted to the Customer by ordinary pre-paid mail to the Customer's address shown in this Agreement shall be sufficiently given to the Customer and shall be deemed to have been received by the Customer on the second working day after posting.

(b) Notices sent to the Customer by email shall be deemed to have been received when the email becomes capable of being retrieved by the addressee at the addressee's email address.

10.7. This Agreement shall be governed by the laws of the State of Queensland and the parties submit to the jurisdiction of the Courts of Queensland.