



Terms and Conditions of Business

Independant Parts Pty Ltd ABN 87 649 685 432
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These are the entire Terms and Conditions of supply for Independant Parts Pty Ltd ABN 87 649 685 432 and its associated, related, subsidiary and parent companies, successors and assigns (“the Supplier”).

These Terms create a security interest in our favour for the purposes of the *Personal Property Security Act 2009* (Cth). You should read these Terms carefully.

1 Terms

- (a) These are the entire terms and conditions of all Goods and Services supplied by Us to You. Except where the parties agree differently (which must be by a duly authorised officer and in writing) or where special terms and conditions are listed by Us on any Quote, these Terms apply notwithstanding any provisions to the contrary which may appear on any other document, including a Quote, Order or invoice.
- (b) You accept these Terms by signing and returning a copy of them to Us or by other conduct, for example by oral acceptance, making an Order, or by instructing Us to supply the Goods and Services.

2 Changes

- (a) From time-to-time, and at any time, We may update or alter these Terms, including prices. Any updated or altered Terms will apply from the date of alteration. A copy of our current Terms can be found on Our Website or by requesting a copy from Us. We will endeavour to notify You of any updated or altered Terms but we are not obliged to do so and You agree that You must regularly inspect Our Website for any updated Terms.
- (b) You must notify Us in writing of any material change to Your organisation, including a change of director, bank account details or change of address.

3 Defined terms

The meaning of defined terms (such as You) is explained below in clause 24.

4 Prices, Quotes and Orders

- (a) You may purchase Goods and Services by placing an Order with Us verbally or in writing. You warrant that each person who places an Order on Your behalf is authorised by You to do so.
- (b) We may accept or decline any Order by notifying You in writing, delivering the Goods or supplying the Services. The parties agree that these Terms apply to all Orders for the supply of Goods and Services.
- (c) We may issue a Quote to You, but a Quote is not an Order or an offer for Us to supply Goods and/or Services to You.
- (d) We may vary or cancel any Quote before an Order is accepted.

- (e) You cannot cancel an Order after acceptance without Our written consent and at Our absolute discretion. You must pay Us for any Loss that We suffer from Your Order being cancelled or varied, even if We have consented to the cancellation or variation.
- (f) Prices shown in Our price lists are subject to change without notice to You. You will be quoted or charged in accordance with Our current price list from time to time.
- (g) We may also change the price of Goods and Services to be supplied under these Terms at any time and from time-to-time.
- (h) Unless the parties agree differently in writing, the price You must pay for Goods and Services is specified in Our invoice and may include Additional Expenses.
- (i) We do not provide price protection or refunds in the event of a price reduction or promotional offering.

5 Supply and delivery

- (a) Specifications for the Goods and Services being supplied under these Terms are contained in the Order(s) You submit from time-to-time.
- (b) To supply the Goods and Services to You, we may make the Goods available for Your collection or deliver the Goods. Delivery may be by a third-party carrier and delivery may occur by instalments.
- (c) The method of delivery of the Goods and Services is at Our sole discretion. At any time, We may appoint an agent to perform Our delivery obligations under these Terms.
- (d) Delivery of Goods and Services may attract Additional Expenses and You agree to pay Us those Additional Expenses on demand.
- (e) You authorise Us to deliver the Goods to the place nominated by You. You also authorise Us to leave the Goods at this place whether or not any person is there to accept delivery.
- (f) We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of the Goods and Services being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods and Services being delivered.

Our Terms are accepted and agreed to in full on behalf of _____

Signature _____ Name _____ Position _____ Date _____

- (g) We may notify You when Goods are ready for collection from Our premises or another designated location. You must collect Goods ready for collection promptly (and within 48 hours) of the nominated collection date as notified by Us.
- (h) All delivery times indicated by Us are estimates only. Delivery times are subject to Goods and Services being available, Our reasonable ability to deliver on that date, and Us receiving the required co-operation from You and other organisations to supply the Goods and Services. We will endeavour to deliver Goods and Services at the time you need, but if We fail to deliver Goods and Services within a specified time or We fail to deliver any instalment, You are not allowed to cancel Your Order, refuse to accept delivery or refuse to pay for the Goods and Services.
- (i) Whenever we deliver Goods and Services to You, You must provide a suitable and safe area for Us to deliver the Goods and Services, including a Site that is compliant with all applicable occupational health and safety legislation for Our (or Our agents, employees or contractors) safe use.
- (j) If You do not provide, or delay in providing any co-operation that We reasonably require of You, We may charge Additional Expenses that are incurred as a result (in addition to any other rights We may have).
- (k) Delivery of Goods and Services is deemed to occur when the Goods and Services are:
 - (i) Handed to You or Your representative; or
 - (ii) Delivered to the Site nominated by You or appearing on Your invoice for the Goods and Services; or
 - (iii) Collected from Us by You or Your representative,
 whichever occurs first.
- (l) When delivery occurs Our obligation to supply is discharged.
- (m) If You do not collect the Goods by the nominated collection date, then We may deliver the Goods to any site nominated by You or appearing on Your invoice for the Goods. We may also store the Goods or refuse to store the Goods if full payment has not been received from You.
- (n) You agree to inspect and examine Goods immediately on delivery.
- (o) We are not liable for any Loss suffered by You whatsoever after delivery of the Goods and Services to You.
- (p) You must pay all costs and fees We incur due to:
 - (i) Our storage or delivery of the Goods where You have failed to collect them by the nominated collection date;
 - (ii) Any delay in delivery of the Goods and Services which is caused by You, the conditions of the nominated delivery site or the nature of the Goods and Services being delivered;
 - (iii) Any unexpected labour, occupational health and safety requirements, permit, licence or additional costs in connection with the delivery.

- (q) Entry onto Our premises is at Your own risk. It is also at the risk of Your agents, employees, contractors and other representatives. We are not liable for any Loss whatsoever that You (or any of Your agents, employees, contractors or other representatives) incur at Our premises.

6 Vehicle installations and repairs

- (a) You warrant in respect of each Vehicle You send or otherwise make available to Us:
 - (i) You own the Vehicle;
 - (ii) We are authorised to access, use, modify, repair and carry out any other works to or in respect of the Vehicle for the purposes of the Services;
 - (iii) the Vehicle Equipment is free from any defects other than those which are reasonably identifiable from the description of the Services as agreed in writing with Us;
 - (iv) the risk in the Vehicle remains solely with you while we perform the Services;
 - (v) the Vehicle is and will remain comprehensively insured by you while we perform the Services and that the insurance cover extends to drivers and other personnel who may drive or use the Vehicle as part of the Services.
- (b) You irrevocably authorise Us to do the following things in carrying out the Services:
 - (i) Order and otherwise purchase Goods, and/or carry out different or additional Services, on Your behalf (including parts, materials and Consumables) as We consider reasonably necessary in connection with the Services and you agree to pay Us the price of all such Goods, Services and Additional Expenses on demand;
 - (c) allow Our agents, employees, contractors and other representatives to operate the Vehicle anywhere and at any time for the purpose of carrying out the Services;
- (d) Unless the parties agree differently in writing, the Goods, Equipment and Consumable used in carrying out the Services is at Our sole discretion. At any time, We may appoint an agent to perform all or part of the Services under these Terms.
- (e) You acknowledge and agree that:
 - (i) Vehicle(s) and other Goods presented for Services (including but not limited to modification, refurbishment and repair) may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.
 - (ii) Goods, Equipment and/or Consumables as are considered "genuine" or otherwise recommended by the manufacturer may not be readily available at the time of carrying out Services and as such alternative Goods, Equipment or Consumables may be used for such Services.

- (f) Further, you specifically acknowledge and agree that Goods may be supplied in connection with the Services which are not of "acceptable quality" for the purposes of section 54(4) of the Australian Consumer Law because of the use of Goods and Consumables as described above in clause 6(e).
- (g) Title to used Vehicle parts and materials which are replaced with Goods as part of the Services pass to Us on replacement free from security interests unless We elect to return such parts and/or materials to You in which case You must collect these parts and/or materials on delivery of the Goods.

7 Payment

- (a) Unless the parties agree differently in writing, You must pay for Goods and Services on or before the Due Date. Usually, the Due Date for Orders will be a date nominated by Us on or before delivery, unless We give You credit, in which case You must pay for all invoices within 30 days after the date of invoice (or such other date as required by Us).
- (b) All amounts payable by You for Goods and/or Services are exclusive of GST (unless expressly stated otherwise). You must pay Us GST imposed on any supply of Goods and Services made under these Terms. Payment of any GST must be made at the same time as payment for the Goods and Services.
- (c) At Our discretion, We may require payment (including part payment) for the Services before any Order or Quote is accepted, processed and/or fulfilled.
- (d) Payment must be made in a method approved by us. There may be Additional Expenses associated with Your chosen payment method and if so You must pay those Additional Expenses to Us on demand.
- (e) If You believe You have a set-off or claim against Us (including any query, dispute or claim), You cannot withhold any payment on that basis without Our prior written consent.
- (f) If any amount You owe Us is not paid by the Due Date We may:
 - (i) Charge You interest on all overdue accounts a rate which is 7% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;
 - (ii) Require You to pay cash-on-delivery of any further Goods and Services, or suspend or cease supplying Goods and Services to You;
 - (iii) Demand Your immediate payment of all outstanding monies;
 - (iv) Register a default with any credit reporting agency, where applicable;
 - (v) Charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);

- (vi) credit any payments received from You first against any interest charges and costs and all such charges will be payable on demand; and
- (vii) preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue

8 Credit Accounts

- (a) You may apply for a Credit Account with Us to purchase Our Goods and/or Services. We have no obligation to provide or continue to provide credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (b) You acknowledge and agree that any credit You obtain from Us will be applied wholly or predominantly for business purposes.
- (c) A Credit Account must only be used by You, which means it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent. Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us. We may change Your credit limit in Our sole discretion from time to time without giving You notice or any reasons for doing so.
- (d) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to return Your Credit Account to the credit limit before placing any further Orders.
- (e) You also authorise Us to debit Your Credit Account with the price of Goods and Services supplied to You and all other amounts owed by You to Us (including any Additional Expenses and interest payable under any Order, contract or these Terms).
- (f) We may also withdraw credit linked to a Credit Account at any time and without giving reasons (including, without limitation, whether you are in default of these Terms or not).
- (g) We are not liable for any Loss suffered by You or any other person whatsoever arising from or in connection with Our refusal to provide credit or Our increase, decrease, suspension, cancellation or termination of credit at any time.
- (h) If withdraw credit and/or terminate a Credit Account registered in your name, You must immediately cease using the Credit Account and all liabilities incurred by you through the Credit Account will become immediately due and payable to us.
- (i) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt owed to Us by You.
- (j) Time is of the essence in relation to this clause. This section survives expiry or termination of these Terms.

9 Risk and Ownership

- (a) Unless the parties agree differently in writing, all risk in the Goods and Services passes to You when the Goods and Services are delivered to You (or Your agent, representative or nominated carrier).
- (b) Legal ownership of any Goods and Services does not pass to You until We have received all amounts owing by You on any account whatsoever with Us including any Additional Expenses.
- (c) Until legal ownership of the Goods and Services passes to You, all Goods are held by You for Us as bailee. You must store the Goods separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Goods as Our property and prevents the Goods from being damaged or spoiled.
- (d) We license you to install the Goods. If the Goods are affixed to other material, We retain ownership of the totality of the Goods and the materials until legal ownership passes to you in accordance with these Terms.
- (e) If the materials that the Goods are affixed to is owned by a third party, the totality of the Goods and the materials is deemed to be owned as tenants in common by Us and the third party in shares corresponding to the amounts paid by the third party and payable by You.
- (f) You may resell any Goods before legal ownership passes to You, provided that You:
 - (i) resell the Goods to a third party in the ordinary course of business;
 - (ii) act in any transaction as Our fiduciary agent;
 - (iii) hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
 - (iv) account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
 - (v) allow us to inspect any records of any payments received for Goods.
- (g) We may terminate Your right to resell or use the Goods immediately on written notice of termination being delivered to You.
- (h) If You do not pay for any Goods by the Due Date or You suffer an Insolvency Event, then We may repossess the Goods and Our Equipment wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any Site or premises occupied by You without notice for the purpose of identifying and repossessing any of the Goods. We reserve these repossession rights without being liable to You or any other third party in any way.
- (i) You must insure the Goods at Your own cost and expense. Insurance must be to the full extent of the price paid or payable for those Goods and remain valid at all times. This includes, but is not limited to, between the time that risk in the Goods passes to You and the date that title in the Goods passes to You.

10 Vehicles under Service

- (a) All risk in Vehicles made available to Us remain at Your sole risk and, so far as permitted by law, we are not liable for any loss or damage to any Vehicle in our possession whether caused by the negligence of any of our servants, agents or employees or any other cause whatsoever. You remain solely responsible for effecting insurance over all Vehicles and We have no obligation to obtain or maintain any such insurance.
- (b) For each Vehicle, You acknowledge and agree:
 - (i) We have a lien over the Vehicle and You consent to the creation of that lien; and
 - (ii) We have the right to retain possession of the Vehicle until all amounts owing by You to Us have been paid in full and at our discretion sell the Vehicle as and when permitted by law;
 - (iii) You have no claim against Us for any loss or damage arising from Our exercise of the lien over the Vehicle; and
 - (iv) If the Vehicle is in the possession of Our agent, contractor or representative, then our lien may be effected upon the Vehicle by Our agent, contractor or representative as if We were exercising Our rights of lien directly against You.
- (c) Our lien will continue despite the commencement of proceedings or judgement for any moneys owing to Us having been obtained against You.
- (d) Our rights under this clause are in addition to and no not limit Our rights under these Terms or any applicable law.

11 Personal Property Securities Act 2009 (Cth)

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in:
 - (i) the Goods supplied by Us from time to time and any proceeds of the supply of the Goods; and
 - (ii) the Vehicle(s) sent to us from time to time and any proceeds,in each case, to secure payment for the Goods and Services including any Additional Expenses ("**Security Interest**").
- (b) Each supply of Goods and Services by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Vehicle(s) and/or Goods and the proceeds of supply of the Goods or Vehicle(s) (as applicable), including as a purchase money security interest (as that term is defined in the PPSA) ("**PMSI**"), pursuant to these Terms.

- (d) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods and/or Vehicle (as applicable), including for the purposes of:
- (i) ensuring that any Security Interest created under, or provided for, by these Terms:
 - (A) attaches to the Goods and/or Vehicle (as applicable) that is intended to be covered by that Security Interest; and
 - (B) is enforceable, perfected and otherwise effective; and
 - (C) has the priority required by Us.
 - (ii) enabling Us to prepare and register a financing statement or financing change statement;
 - (iii) enabling Us to register a PMSI pursuant to the PPSA; and
 - (iv) enabling Us to exercise and maintain any of the Our rights or powers in connection with any such Security Interest.
- (e) If You dispose of the Goods and/or Vehicle (as applicable), You must:
- (i) immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
 - (ii) not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (f) If a higher-priority security interest does arise in the Goods and/or Vehicle (as applicable) despite Your obligations under this clause, You must:
- (i) ensure that You receive cash proceeds for the Goods and/or Vehicle (as applicable) of at least equal to the market value of the Goods and/or Vehicle (as applicable); and
 - (ii) immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (g) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.
- (h) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
- (i) we do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
 - (ii) sections 142 and 143 are excluded;
 - (iii) for the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (i) To the extent permitted by law, You agree to waive:
- (i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
 - (ii) any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- (j) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).
- (k) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (l) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
- (i) disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
 - (ii) we disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (m) Notwithstanding the obligations of this clause, You must only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (n) Nothing in this clause prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.
- (o) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (p) Nothing in this part limits or is limited by any other provision of these Terms or any other agreement between the parties.

12 Australian Consumer Law

- (a) The following information is provided if the Australian Consumer Law to the extent that the Australian Consumer Law applies and You are a "consumer" as that term is defined under the Australian Consumer Law:

The Goods and Services under this agreement come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Services, You are entitled:

- to cancel Your Services Contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or Services does not amount to a major failure, You are entitled to have the failure rectified in a reasonable time. If this is not done You are entitled to a refund for the Goods and to cancel the Contract for the Services and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Services.

13 Returns

- (a) We are not required to accept returned Goods from You or issue You with a credit for Goods unless We agree differently in writing or We are required to do so by law. Returns and provision of credit are at our sole discretion.
- (b) If You think any Goods are defective, damaged, missing or misdelivered, You must notify Us of any complaint in writing and within seven (7) days of delivery/collection of those Goods. You must take all steps necessary to mitigate any Loss arising from any defect in the Goods and Services supplied. You will be deemed to accept the Goods and Services (including any defects) if You do not make a complaint in accordance with these Terms.
- (c) Any complaint under this clause must be accompanied by:
- (i) proof of purchase;
 - (ii) written details of the alleged defect including photographs;
 - (iii) appropriate documentation (such as installation and maintenance records).
- (d) You must allow Us or Our authorised representatives access to the Goods for inspection.
- (e) We do not accept return of Goods for change of mind.
- (f) If We agree to accept Goods by return or provide You with a credit, You must provide Your proof of purchase for the Goods and all evidence of the damage or short delivery (including photographs). We may charge You reasonable restocking, disposal or repacking charges which We incur from the Goods being returned.
- (g) Any Goods which are not in original or resaleable condition cannot be returned, including Goods which are not in their original shipping cartons. If Goods are returned in this manner you may not be entitled to a refund.
- (h) You are responsible for any Additional Expenses associated with any return of Goods and must pay to Us such Additional Expenses on demand.

- (i) Credits may only be redeemed against future orders and are subject to Our minimum order policy. No cash refunds will be issued for credits.

14 Warranties and Exclusions

- (a) Neither party excludes or limits the application of any statute (including the *Competition and Consumer Act 2010* (Cth) as amended from time to time ("**the Act**")), where to do so would contravene that statute or cause any provision of these Terms to be void. Nothing in these Terms modifies, restricts or excludes the conditions, warranties, and undertakings and other legal rights under the Act and any other law applicable to the supply of Goods or Services which cannot be modified, restricted or excluded. Except as expressly set out in the Act or these Terms, We make no warranties or other representations under or in connection with these Terms, and in that regard Our liability is limited to the fullest extent permitted by law.
- (b) To the extent permitted by law, all implied terms, guarantees, conditions and warranties are excluded from these Terms, including:
- (i) all conditions and warranties as to the quality or merchantability of the Goods or their fitness for any particular purpose (whether express or implied and even if that purpose is made known to Us); and
 - (ii) no sale under these Terms constitutes a sale by sample or description. You acknowledge that a sample Good may vary from the Goods supplied and that any description of Goods is for identification purposes only. You are responsible for ensuring that the Goods are suitable for Your intended use.
- (c) You agree that You have not relied on any inducement, representation or statement made by Us or on Our behalf in purchasing the Goods and/or Services.
- (d) You acknowledge that We make no representations or warranties as to the fitness or suitability for any purpose of any of the Goods and/or Services (whether express or implied and even if that purpose is made known to Us). You are responsible for ensuring that the Goods and Services are suitable for Your intended use.
- (e) To the extent permitted by law, all other implied conditions and warranties are excluded, including any sale by sample or description.

15 Limitation of liability

- (a) If We are lawfully allowed to limit our liability to You in respect of the Goods and Services, then Our liability to You is limited to Our choice of:
- (i) re-supply of the Goods and/or Services; or
 - (ii) the cost to replace the Goods and/or Services with equivalent Goods and/or Services; or
 - (iii) repair of the Goods, or cost to repair the Goods; or
 - (iv) reimbursement of some or all of the price paid by You for the Goods and/or Services.
- (b) In any other situation, including but not limited to Our breach of these Terms, tort law or negligence, then Our liability to You will not exceed the price of the Goods and/or Services supplied by Us (to the extent that is permitted by law).

- (c) We are not liable to You for any Consequential Loss of any kind howsoever arising.
- (d) We will not be liable to You if:
 - (i) Goods and/or Services have not been paid for;
 - (ii) Goods have been abused, misused or neglected by You;
 - (iii) We cannot establish any defect in the Goods after inspection;
 - (iv) You have used the Goods other than for the purposes for which they were designed, including for an illegal purpose or in a manner contrary to Our or any relevant manufacturers care and maintenance recommendations or industry-accepted standards;
 - (v) Goods have been repaired, altered or modified by someone other than Us;
 - (vi) Goods have been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure or other stress.
- (e) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for the Goods and/or Services and any Additional Expenses.

16 Indemnities

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any Loss that We may suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) in relation to the Goods and Services and/or these Terms, including but not limited to any breach of these Terms by You, Your negligence, Your failure to perform the obligations in these Terms and any claim made by You against Us.
- (b) Specifically, you must indemnify Us for and hold Us harmless (or Our agents, employees or contractors) from:
 - (i) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms, however that breach, act or omission arises. This includes, but is not limited to, legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Goods and any action taken to secure any charge;
 - (ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with the Credit Account, supply of Goods and Services and any deed of guarantee, indemnity and charge;
 - (iii) Any Loss incurred by Us as a result of You cancelling Your Order including but not limited to any Additional Expenses;
 - (iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
 - (v) Any and all Loss arising out of damage to Our Equipment on Site (including any loss of or damage to property) except to the extent that such Loss is caused by Our negligence or breach;

- (vi) Any and all Loss arising out of delivery of the Goods (including any loss or damage caused by delivering the Goods to an unattended site, any loss and damage suffered as a result of third party carriers nominated by You and any loss or damage suffered by Us as a result of any property damage or personal injury caused by the delivery and unloading the Goods);
- (vii) Any Loss (including but not limited to damage and costs) associated with a complaint or warranty claim where no defect is found or the Goods and/or Services are subject to any of the circumstances in clause 15(d) above;
- (viii) Any and all Loss arising out of Your (or Your agent, employee, contractor or other representative's) attendance at Our premises;
- (ix) Any and all Loss arising out of Your failure to provide a safe, suitable and compliant Site for Goods and Services (including any personal injury or death) except to the extent that We (or Our agents, employees or contractors) have committed an act of negligence, breach of the law or breach of the Terms;
- (x) Any Loss including liability that We incur in connection with Our reliance on information provided by You or on Your behalf which is inaccurate, incomplete or misleading, or Your failure to provide Us with relevant information.
- (xi) Any Loss (including, but not limited to damage, destruction or theft) occasioned to the Goods between the time that risk in the Goods passes to You and the time that the full price of the Goods is paid by You to Us.
- (c) This indemnity is a continuing obligation which is separate and independent from Your other obligations under these Terms or at law and this indemnity survives termination of these Terms. For clarity, this indemnity does not apply to Loss which is caused by Our breach of these Terms.

17 Dispute Resolution

If a dispute arises between the parties, the following procedure applies:

- (a) Either party may give the other a notice of the dispute. This means that the dispute must be dealt with in accordance with this clause;
- (b) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless the dispute has been referred for resolution under this clause;
- (c) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible, but at least within 30 days (or other period as agreed between the parties);
- (d) At Our sole discretion, We may elect to refer the dispute to Resolution Institute, (ACN 008 651 232; Suite 602, Level 6 Tower B, Zenith Centre, 821-843 Pacific Hwy, Chatswood NSW 2067; email: infoaus@resolution.institute; telephone: +61 2 9251 3366, for facilitation of a mediation in accordance with Resolution Institute's Mediation Rules.

- (e) The parties must co-operate with Resolution Institute as facilitator.
- (f) If within 10 business days after referral of the dispute to Resolution Institute the parties have not agreed upon the mediator or other relevant particular the mediator and any other relevant particular will be determined in accordance with Resolution Institute's Mediation Rules.
- (g) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists (including the referral of the dispute to mediation);
- (h) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.
- (i) This clause survives the termination or expiration of these Terms.

18 Our termination rights

- (a) Our termination rights are:

What we can do

We can:

- Suspend or cancel delivery of Goods and Services or any current Order(s) for the supply of Goods; and/or
- Suspend or terminate Your Credit Account; and/or
- Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired; and/or
- Register a default with any credit reporting agency, where applicable; and/or
- Enforce Our rights under any Security Interest; and/or
- Suspend or terminate the contract created by these Terms.

- (b) When We can exercise Our termination rights:

When We can exercise Our termination rights

- When You have not paid for Goods by the Due Date; and/or
- You exceed the limit of Your Credit Account; and/or
- You breach a material term of these Terms; and/or
- either of the parties suffer a Force Majeure Event which delays or prevents performance of the whole or any part of these Terms; and/or

When We can exercise Our termination rights

- You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA; and/or
- You engage in illegal activity related to the sale of Goods and Services;
- You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation; and/or
- An Insolvency Event occurs.

19 Termination rights

- (a) Either party may terminate these Terms:

- (i) Immediately by written notice if the other party is in breach of a material term of these Terms and the breach is not rectified within 7 days of the termination notice; or
- (ii) In all other circumstances, by giving the other party 21 days' written notice.

Termination under this clause does not limit our rights under clause 18.

- (b) If a termination notice is given to a party for breach of these Terms, the terminating party may also:

- (i) Recover any of its property and all related data, documentation and records in the possession, custody or control of the party at fault;
- (ii) Recover any sums paid to the party at fault on any account or for services which have not been fulfilled or performed;
- (iii) Subject to any limitation on liability applicable to the party at fault, recover from the party at fault the amount of any loss or damage sustained as a consequence of the termination, including loss of the benefits which the performance of these Terms would have conferred on the terminating party;
- (iv) Be regarded as discharged from any further obligations under these Terms; and
- (v) Pursue any additional or alternative remedies provided by law.

20 Privacy

We may collect Your personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with Our Privacy Policy pursuant to the *Privacy Act 1988* (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012* (Cth), and the Australian Privacy Principles. You consent to that information being collected. You can obtain a copy of Our Privacy Policy by contacting Us in writing or by visiting Our Website.

21 Intellectual Property

You acknowledge that the sale and purchase of Goods and/or Services under these Terms does not confer on You any licence or rights under any patent, trademark or copyright which is ours property. All intellectual properties including but not limited to copyrights, trade names, trade marks, patents, and designs (whether registered or unregistered) in connection with any Goods and Services provided by us under these Terms will vest in us.

22 Applicable law

You agree that these Terms are interpreted according to the laws of the State or Territory as We may determine in Our sole discretion. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of Western Australia applying the laws of that State.

23 Miscellaneous

- (a) We may assign and transfer all or any of Our title, estate, interest, benefit, rights, duties and obligations in these Terms to any person, provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (b) You must not assign, transfer, charge, encumber or otherwise deal with any of Your rights and obligations under these Terms, or attempt or purport to do so, without Our prior written consent.
- (c) If any provision (whole or part) of these Terms is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If modification is not possible, the relevant provision (whole or part) will be deleted. Any modified or deleted provision will not affect the validity and enforceability of the rest of these Terms.
- (d) You warrant that You have obtained all the necessary authorisations to enter into and perform the contract created by these Terms.
- (e) Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.
- (f) You engage Us to provide Goods and Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (g) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (h) If any part of these Terms becomes void or unenforceable for any reason, then that part will be severed and, to the extent possible, all remaining parts continue with full force and effect without being affected by the severance of any other parts.

- (i) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (j) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in any credit application, Order or subsequently notified. A notice has no legal effect unless it is in writing.
- (k) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after sending.
- (l) In addition to any other delivery method, You agree to receive Our invoices via email.

24 Defined terms

Additional Expenses means any duties, fees, taxes (including GST), imposed by these Terms including delivery charges, merchant fees and surcharges, account keeping fees, PPS Law registration charges, demurrage charges, transport and freight charges, permit and licence fees, installation fees, storage fees and levies and additional costs on account of the use of Consumables.

Business Day means a day other than a Saturday, Sunday or public or bank holiday in Perth, Western Australia.

Consumables means all fuel, oil, fuses, light globes, fire extinguishers, fire systems, buckets, dump bodies (including liner packages), ground engaging tools, undercarriage, tyres, hydraulic hoses (external/work equipment/lift cylinder area only), brake linings (operational wear), drive and ancillary belts, and all other non-OEM items (including fast fuels, service couplers, isolation switches).

Consequential Loss means any of the following: loss of revenue; loss of profits; loss of opportunity to make profits; loss of business; loss of business opportunity; loss of use or amenity, or loss of anticipated savings; loss of data; special, exemplary or punitive damages; and any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into any agreement subject to these Terms, including any of the above types of loss arising from an interruption to a business or activity.

Credit Account means the approved commercial account You have with Us to purchase Goods and Services on credit pursuant to these Terms.

Customer means any person, firm or company placing an Order with Us for the purchase of Services pursuant to these Terms, including Your associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "You" and "Your").

Due Date means the date shown on Our invoice for Your payment of the Goods, Services and Additional Expenses.

Equipment means any property, machinery or equipment which We supply to Your Site for Our use in supplying Goods and Services to You including without limitation any tools, spare parts or Consumables.

Force Majeure means something outside a party's reasonable control, including war, cyber-attack, strikes, lockouts, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm or flood, theft and vandalism; materials or labour shortages; or acts or omissions of third party suppliers.

Goods means any goods, products and merchandise supplied by Us to You pursuant to any Quote, Order and/or these Terms including without limitation transmissions and differentials, drivelines, brake parts, trailer parts, and general truck parts and accessories.

Insolvency Event means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

Loss means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which Were contemplated by the parties at the time of entering into these Terms.

Order means a request to purchase Goods and Services placed by You.

PPS Law means:

- (a) the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

Quote means Our written description and price of the Goods and Services to be supplied to You.

Site means any place at which You request Services to be supplied.

Services means all services provided by Us to You pursuant to any Quote, Order and these Terms, including without limitation driveline rebuilding services and other services relating to the repair, rebuild, service or maintenance of any Vehicle in accordance with an Order.

Supplier means the entity specified in these Terms as supplying Goods and Services to You and includes any associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "**Us**", "**We**" and "**Our**").

Terms means the contract(s) between the Customer and Supplier created by these Terms and Conditions of Business.

Vehicle means any vehicle, trailer, machinery, equipment or other property which You supply or make available to Us for Services pursuant to any Quote, Order or these Terms including without limitation any part of that vehicle, property or equipment and any accessories, modifications, implements, manuals, licences or items relating thereto.

Website means www.ipparts.com.au as redirected from time to time.

25 Interpretation

In these Terms:

- (a) A Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods and Services are being supplied;
- (b) a reference to writing includes email and any communication through Our Website;
- (c) a reference to a clause or paragraph is a reference to these Terms;
- (d) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings and any explanatory notes and paragraphs are for ease of reference only and do not affect the meaning or interpretation of these Terms; and
- (g) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

Version: February 2023