



We supply all goods and services to you subject to these terms and conditions.

1 Acceptance

1.1 By placing an order with us, you accept these terms and conditions, despite anything stated to the contrary on your order, terms and conditions of purchase or similar document.

2 Price

2.1 All orders will be filled at the prices quoted to you at the date of ordering of the goods or as otherwise agreed in writing. Unless otherwise stated all prices are exclusive of: GST or other taxes payable on goods supplied or on any amount payable under clause 7; freight costs, insurance and any other charges, all of which you must pay unless we agree otherwise with you in writing.

3 Terms of Payment

3.1 A deposit of 10% is payable when you place the order. Unless otherwise agreed by us in writing, the balance is due on delivery or completion of the goods, whichever is the earliest. You must make payment of all moneys without set-off or deduction of any kind.

4 Delivery

4.1 Dates given for delivery are stated in good faith but are not to be treated as a condition of sale. If delivery of the goods is delayed for any reason at all, we will not be responsible or liable in any way to you or any other party for loss suffered due to that delay. We will not accept claims for any discrepancy in orders unless you make written claims to us within 48 hours of delivery.

4.2 Delivery by us to a carrier, your agent or employee will be deemed to be delivery to you.

5 Warranties and Conditions

5.1 Where this agreement would otherwise be subject to the Consumer Guarantees Act 1993 ("Act"), you agree that you are acquiring the goods for business purposes and that the Act does not apply to the supply of goods to you.

5.2 With the exception of the express written warranty we give at clause 5.3, no warranty or condition will be implied against us by any statute, at common law or otherwise and no representation, condition, warranty or variation of these terms and conditions will bind us unless in writing and signed on our behalf.

5.3 If within 12 months of the date of delivery a new vehicle, or within 3 months in the case of a repair, is found to be defective in materials or workmanship, we will replace (free of charge) any defective part or parts from the goods, provided you return the goods to us at your cost, together with a copy of the invoice and a claim specifically identifying the defect, and provided that we have a reasonable opportunity to investigate the claim. This warranty does not apply to tyres, used equipment, accessories and other items not manufactured by us, nor to equipment which has been repaired, altered or modified in any way by other than us or our duly authorized service agent, nor for use in a manner outside of intended use or specification, nor for after-hours service. If you do not comply with the above requirements, you will be deemed to have accepted the goods and we will not incur any liability whatsoever to you in relation to the goods.

5.4 If the account of the Customer with Fairfax is in arrears at the time of a claim, the warranty undertakings by Fairfax shall be suspended, and no liability shall arise, during the period that such account is in arrears.

6 Security Interest

6.1 Ownership and risk in any goods supplied by us shall pass to you on delivery, subject as hereinafter set out.

6.2 You hereby charge in favour of and grant a security interest to us in all of the customer's right, title and interest in all goods supplied by us to you and in the proceeds of sale thereof, as security for the payment by you to us of:

- the purchase price of such goods;
- any other monies owing to us from time to time whether in relation to this agreement or any other agreement with us ("your other indebtedness")

6.3 Notwithstanding the security interest in the goods created by you in favour of us, you are authorized by us to sell the goods for full consideration in the ordinary course of business.

6.4 Pursuant to section 109 of the Personal Properties Securities Act 1999 ("the Act") we may take possession of and sell the goods if you are in default under this agreement, or if the goods are "at risk". In accordance with section 109 of the Act, goods are "at risk" if we have reasonable grounds to believe that the goods have been or will be destroyed, damaged, endangered, disassembled, removed, concealed or otherwise disposed of contrary to the provisions of this agreement.

6.5 Any payments made to us by you or on behalf of you on an unspecified basis shall be deemed to be applied in the following order:

- to your other indebtedness;
- to payment of goods supplied by us which have been sold by you;
- lastly, to the payment of goods supplied by us and which have not been sold by you.

6.6 The security interest in the goods created by this agreement extends to the proceeds of any dealing with the goods in accordance with the Act.

6.7 You will do such acts and provide such information as in our opinion (acting in our absolute discretion) may be necessary or desirable to enable us to perfect under the Act the security interest (as defined in the Act) created by this agreement as a first priority interest, with respect to the goods and any proceeds (as defined in the Act) of the sale of the goods.

6.8 To the fullest extent permitted by the law, you hereby waive any right you may have now or in the future to receive a copy of any verification statement or other confirmation related to the interest created or provided for, or perfected in the manner contemplated, by this agreement.

6.9 You acknowledge that we will register (and as appropriate register a renewal of) the security interest created by this agreement in the Personal Properties Securities Register established under the Act.

6.10 You will pay to us each cost, loss and expense (including legal expenses on the solicitor and own client basis) incurred or sustained by us as a result of any default by you under this agreement or as a result of us having to exercise, protect or otherwise enforce our rights under this agreement, in each case on demand on a full indemnity basis.

7 Default

7.1 Where we consider you may be unable to meet your payment obligations to us, we may, without prejudice to our other rights and remedies, do all or any of:

- Require you to stop selling or otherwise disposing of the goods or mixed goods;
- Demand payment of all or part of any sums due and/or require security for your obligations before we make any further supplies to you;
- Without notice, withhold deliveries of goods ordered by you and suspend our warranty obligations.

7.2 Where you are in breach of any of these terms and conditions, or you become insolvent or are adjudicated bankrupt or an application is made for your liquidation or a liquidator or receiver is appointed in respect of assets, or your ownership or effective control is transferred or the nature of your business materially altered, then, without prejudice to our other rights and remedies, we may do all or any of the following:

- Where you have failed to make payment on the due date require you to make payment to us on demand of interest as liquidated damages on the amount due from the due date until the date of payment at a rate equal to two (2) percent above the current overdraft rate which we have with our principal trading bank (in addition to you remaining liable for the full amount outstanding);
- Cancel this and any other contract of supply with you;
- Recover and/or resell any of the goods and/or mixed goods and enter any premises where we believe the goods and/or mixed goods are stored and you grant us an irrevocable right and authority to do so. We may only recover and resell sufficient goods or mixed goods to satisfy all unpaid liabilities, the cost of recovery and resale and the costs referred to in clause 7.3. If we recover any excess, we will not be liable in damages to you but must account to you for the excess.

7.3 You will pay all costs and expenses (including solicitor/client and debt collectors' cost) we incur in enforcing or attempting to enforce our rights under this clause. We may deduct any costs and expenses incurred from the proceeds of sale of any goods or mixed goods recovered from you.

7.4 Your payments will be applied first in reduction of interest, liquidated damages and costs due under this clause, with the balance being applied in reduction of any amounts due under clause 3.

8 Limitation of Liability

8.1 Without restricting the limitations of liability contained elsewhere in these terms and conditions, our liability in relation to the supply of the goods and the goods themselves is limited to the purchase price of the goods in respect of which such liability arises. We have no further liability or responsibility for any cargo loss, loss of use of equipment or any other direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising.

8.2 We are not responsible for any damage whatsoever caused either to the goods supplied or as a result of the malfunction of the goods if the goods are titled by unqualified tradespersons or in an unprofessional manner, or are adapted to a use for which they are not specifically intended, or added to or repaired using components not recommended by us.

9 General

9.1 **Force Majeur:** We will not be in breach of these terms and conditions because of any failure on our part directly or indirectly due to wars, strikes, lockouts, delays or defaults of manufacturers or suppliers, acts of God or any other cause (whether similar or dissimilar) beyond our reasonable control.

9.2 **Indemnity:** You indemnify us against any liability for any direct, indirect or consequential injury, loss or damage arising out of any act, default or omission of or any representation made by you or your servants or agents.

9.3 **Severability:** If any of these terms or conditions is held by a Court to be ineffective because of non-registration, illegality or any other reason, then that term or condition or part of it will be severed from all other terms and conditions without affecting the validity or enforceability of all other terms and conditions or part of them.

9.4 **Variation:** We may vary these terms and conditions at any time by notice in writing to you. You may not vary these terms and conditions unless we agree in writing.