



What an auto store ought to be

TERMS AND CONDITIONS OF SUPPLY

1.0 Interpretation

1.1 In these terms and conditions, these meanings apply unless the contrary intention appears:

"**Australian Consumer Law**" means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth).

"**Contract**" means a contract for the supply of Goods and/or Services by Repco to the Customer.

"**Customer**" means any natural person, company, partnership or other entity which enters into a Contract with Repco.

"**Goods**" means all present and after-acquired automotive parts and accessories supplied by Repco to the Customer under a Contract.

"**Price**" means the amount in Australian dollars, inclusive of any GST, payable by the Customer to Repco in respect of the supply of Goods or Services, including any charges for delivery, freight and transportation.

"**Services**" means the services supplied by Repco to the Customer under a Contract.

1.2 In these terms and conditions:

- (a) a reference to a document (including these terms and conditions) includes any variation or replacement of it;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a person (including a party to a Contract) includes a firm, a body corporate, an unincorporated association or an authority, and includes the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (d) a reference to any legislation or to any provision of any legislation includes any enactment, modification, consolidation or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it; and headings are inserted for convenience and do not affect interpretation of these terms and conditions

2.0 Formation of Contract

2.1 A Contract is entered into between Repco and the Customer when Repco accepts, either in writing or by conduct, an order which a Customer places for Goods and or Services.

- 2.2 These terms and conditions are incorporated into each Contract.
- 2.3 A Contract constitutes the only agreement governing the supply of the Goods and Services to which it relates, and supersedes all previous communications and negotiations and agreements in connection with the supply of those Goods and Services.
- 2.4 Except as specifically provided in these terms and conditions, any terms in respect of the supply of Goods and Services contained in or relating to any other documents, including any of the Customer's documents (even if they purport to provide that they prevail), are excluded. By accepting the Goods and Services, the Customer acknowledges that these terms and conditions prevail over any qualification or condition purported to be imposed in any such other documents.
- 2.5 Repco may vary these terms and conditions from time to time by providing to the Customer reasonable notice of the variation, and the varied terms and conditions are incorporated into each Contract after such notice.

3.0 Payment

- 3.1 Unless otherwise agreed by Repco in writing, payment of the Price must be made within 30 days of the day on which the Goods and Services are supplied. Time is of the essence in relation to punctual payment.
- 3.2 Payments must be made in immediately available funds, without set-off, counterclaim or deduction.
- 3.3 If payment is not made by the due date, the amount due for payment attracts interest from the due date until payment, at the rate fixed from time to time under the *Penalty Interest Rates Act 1983* (Vic), calculated daily and compounding monthly.
- 3.4 The Customer charges all of its property, both real and personal, with the amount of any indebtedness to Repco, and the charge is separate and distinct from the reservation of title to the Goods referred to in clause 5 below. The Customer irrevocably consents to Repco lodging a caveat over any property of the Customer as security for the charge.

4.0 Supply and Delivery

- 4.1 Repco may:
- (a) accept or decline any order in whole or in part;
 - (b) if Repco has at any time reasonable doubts as to the solvency of the Customer, agree to accept any order only on conditions stipulated by Repco; or
 - (c) withhold supply of any Goods or Services.
- 4.2 Repco may deliver any Goods or Services to the Customer by instalments and this does not entitle the Customer:
- (a) to terminate or cancel a Contract; or
 - (b) to claim any loss or damage howsoever arising.
- 4.3 The Customer is liable to pay Repco any charges for delivery, freight and transportation, and such payment must be made as part of the Price.
- 4.4 Delivery of the Goods and Services will take place at Repco's premises. In the event that Repco agrees to supply the Goods or Services to the Customer at the Customer's address or to some other place nominated by the Customer, Repco is deemed to be a common carrier and Repco is not liable, whether in tort or contract or otherwise, for any loss or damage to or deterioration of the Goods or for misdelivery or failure to deliver, or delay in delivery or for any other loss or damage suffered by the Customer whether caused by the negligence or

wilful misconduct of Repco or by any other cause whatsoever, including (but not limited to) any act of God, flood, fire, lightning, storm, tempest, rain, enemy hostilities, strikes, lock-out or other industrial disturbances, riots, laws, rules or regulations, inability to obtain equipment or material or any other cause outside the control of Repco. If Repco enters into the Customer's premises to make supply of Goods or Services, the Customer releases Repco from claims for damage to the premises or personal injury. Further, the Customer indemnifies Repco against any loss, damage or expense suffered or incurred by Repco relating to damage to a third party's premises or personal injury in making supply of Goods or Services to the Customer, except where Repco is negligent.

5.0 Ownership and risk

- 5.1 Legal and beneficial title to the Goods is retained by Repco and does not pass to the Customer, and the Customer holds the Goods as Repco's fiduciary, agent and bailee, until the Customer pays Repco in full all moneys owing or payable by the Customer to Repco on any account (including in respect of the purchase of the Goods) and any payments have been cleared, at which time title to the Goods will pass to the Customer.
- 5.2 Until the payments are received by Repco and title to the Goods has passed to the Customer in accordance with clause 5.1 above:
- (a) the Customer has custody of the Goods and holds them as fiduciary, agent and bailee of Repco;
 - (b) the Customer must not encumber the Goods in any way;
 - (c) the Customer may sell the Goods but only at arm's length, in the ordinary course of business, on market terms, and only as the fiduciary, agent and bailee of Repco (and in that regard, the Customer has no right to bind Repco to any liability to a third party by contract or otherwise);
 - (d) Repco may inspect the Goods; and
 - (e) if an Event of Default occurs, Repco may repossess the Goods and resell them and apply the proceeds of sale to any amount owing or payable by the Customer to Repco on any account and return any excess proceeds of sale to the Customer (without prejudice to any other rights of Repco).
- 5.3 For the purposes of enabling Repco to inspect the Goods or retake possession of the Goods, Repco and its representatives are irrevocably authorised to enter (forcibly, if necessary) into any premises owned or occupied by the Customer on or in which the Goods may be located from time to time, and to recover and do all things necessary to recover the Goods, and the Customer appoints Repco as its agent to enter any premises not owned by the Customer and on or in which the Goods may be located from time to time.
- 5.4 The Customer:
- (a) agrees that Repco is not liable for any loss, damage, expense or cost whatsoever suffered or incurred by the Customer as a result of Repco or its agents exercising the powers conferred on Repco under clause 5.3 above; and
 - (b) releases Repco and its agents from any claim or action whatsoever if Repco takes possession of goods owned by the Customer in the reasonable belief that such goods are the Goods. Upon receipt of evidence from the Customer which satisfies Repco that the relevant

goods are not the Goods, Repco shall make the goods available for collection by the Customer.

- 5.5 Notwithstanding clauses 5.1 and 5.2 above, the Goods are at the sole risk of the Customer from the time the Goods are delivered to the Customer or its agent. The Customer must properly store, secure and insure the Goods from such time as the Goods are at the Customer's risk.
- 5.6 Where the Goods are part of a product line that is also comprised of goods that are owned by the Customer (for example, because other suppliers also supply the Customer with that product line) the Customer will not deal with the Goods in any way that is inconsistent with Repco's ownership of the Goods and acknowledges the applicability of the following legal principles if, at the time when Repco seeks to recover the Goods, the Goods have nevertheless been commingled with other goods in the same product line –
- (a) if there is sufficient stock of the product line to satisfy in full the interests of both Repco and the Customer, Repco and the Customer are tenants in common of the stock in that product line in portion to their respective contributions; or
 - (b) if the residual stock of the product line is insufficient to satisfy in full the interests of both Repco and the Customer, as an incident of the Customer's obligations as fiduciary, agent and bailee of the Goods, the Customer is presumed to have disposed of that part of the product line that is comprised of its own goods prior to disposing of the Goods.
- 5.7 The Customer waives any rights to receive notice of any verification statement issued under the Personal Properties Securities Act.

6.0 Customer's warranties

- 6.1 By entering into a Contract, the Customer warrants that:
- (a) it does not rely on the skill or judgment of Repco as to the suitability of any Goods or Services for a particular purpose, unless Repco acknowledges in writing that the Goods or Services are fit for a particular purpose; and
 - (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 Goods and not so as to constitute a sale by sample or a sale by description, nor does Repco warrant or agree that the bulk of the Goods sold conform with any such sample or description.

7.0 Customer's default

- 7.1 If:
- (a) the Customer does not pay an amount owing to Repco when due in the manner required;
 - (b) the Customer breaches any term of a Contract or of the Application for Commercial Credit Account;
 - (c) any representation or warranty made by the Customer to Repco is not true when made;
 - (d) the Customer disposes of, or threatens to dispose of, its assets other than in the ordinary course of business;
 - (e) the Customer or any of its officers is or becomes insolvent, bankrupt, in liquidation, in administration, or makes any arrangement with or assignment for the benefit of its creditors, or has a receiver or receiver and manager or similar officer appointed in respect of any of its property; or,

(f) any of the matters set out in paragraph (d) above is likely to happen in the opinion of Repco's Credit Manager or equivalent officer, (each an "**Event of Default**"), then Repco may do one or more of the following:

(g) require immediate payment of all amounts owing by the Customer to Repco;

(h) immediately without notice take any steps to repossess the Goods and resell them under clause 5 above;

(i) immediately without notice terminate any Contract between Repco and the Customer and any credit facility extended to the Customer;

(j) charge the Customer interest on any amount owing by the Customer to Repco at the rate fixed from time to time under the Penalty Interest Rates Act 1983 (Vic), calculating daily and compounding monthly, from the due date until the date of payment in full;

(k) add to the Customer's account and require immediate payment of all expenses incurred as a consequence of the actions taken by Repco to recover amounts owing by the Customer to Repco; and

(l) charge a monthly service fee as determined by Repco from time to time on account statements and add to the Customer's account that charge together with all charges incurred by Repco in connection with the customer's account, including respect of any cheques not met upon presentation.

7.2 A certificate signed by the Credit Manager of Repco stating the amount owing by the Customer to Repco is conclusive evidence of the Customer's indebtedness to Repco in that amount.

7.3 Termination of a Contract or of a credit facility does not affect any accrued rights.

8.0 Indemnity

The Customer agrees to indemnify and keep indemnified Repco from and against all losses, claims, proceedings, damages, costs and expenses in respect of or arising directly or indirectly from:

(a) the Goods or Services or their use;

(b) any advice given by Repco to the Customer; and

(c) any breach by the Customer of a Contract.

9.0 Returns and faulty Goods

9.1 Any claim against Repco must be made within 7 days of delivery of the Goods, except claims relating to non-delivery, which must be made in writing within 14 days of the date of the invoice. No claim may be made outside this period. All claims must refer to the invoice number and date and state the reason for the claim.

9.2 Where Repco makes Goods to the Customer's specification, the Customer acknowledges that:

(a) Repco makes no representation to the Customer in relation to the suitability of the specification or Goods for any disclosed purpose; and

(b) Customer will indemnify Repco in respect of any loss or damage where that loss or damage is caused by the Customer's specifications; and

(c) Customer will indemnify Repco in respect of any loss or damage if Repco infringes a third party's rights in using the specification.

9.3 The following Goods cannot be returned for credit: Goods specially cut to length; Goods specifically made, plated or otherwise treated or purchased for

the Customer; or Goods damaged or altered by the Customer or the Customer's customer.

- 9.4 If Repco elects to accept any of the returned Goods, the acceptance is on such terms as Repco may determine (which may or may not involve a credit), and a re-stocking fee of not less than 5% of invoice value (inclusive of GST) shall apply. Repco may refuse to accept any returns or replace unused Goods.
- 9.5 Repco is not liable for any loss arising as a result of Repco's failure to give credit or its delay in doing so.
- 9.6 Goods returned are at the Customer's expense, and the Customer must pay all freight charges for the return of the Goods.
- 9.7 Goods returned must have been purchased from Repco, be in original packaging and saleable condition and the relevant invoice number supplied.
- 9.8 The provisions and tolerances contained in the standard specification to which Repco or its suppliers manufacture the Goods apply to all orders accepted, unless the parties agree to the contrary in writing.
- 9.9 If Repco accepts a deposit from the Customer in relation to the supply of "Core" goods, then when the Customer returns the "Core" goods to which the deposit relates ("**Core Return**"), unless otherwise agreed in writing:
- (a) the Customer represents and warrants that it has title to the Core Return and it is registered for the purposes of GST;
 - (b) title to the Core Return passes to Repco when the Customer delivers it to Repco;
 - (c) Repco may issue to the Customer a Recipient Created Tax Invoice for the purposes of GST, within 28 days of Repco's receipt of the Core Return or determination of the value of the Core Return (whichever is the latter); and
 - (d) the Customer will not issue a tax invoice in respect of any supply to Repco associated with that Core Return.

10.0 Exclusion and limitation of liability

- 10.1 Nothing in these terms and conditions operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:
- (a) contravene that statute; or
 - (b) cause any term of these terms and conditions or a Contract to be void, ("**Non-excludable Obligation**").
- 10.2 Except in relation to Non-excludable Obligations, Repco expressly excludes all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute.
- 10.3 Except in relation to Non-excludable Obligations:
- (a) Repco is not liable to the Customer or any other person for any direct or indirect loss, including without limitation consequential loss, damage to persons or property, and death or injury, caused by any act or omission, including without limitation negligent acts or omissions of Repco or of Repco's employees, servants or agents, except for any liability which cannot be excluded by law. In this clause, "consequential loss" includes, without limitation, loss of profit or goodwill (or similar financial loss), any payment made or due to any third party and any loss or damage caused by delay in the supply of Goods or Services. The Customer indemnifies Repco against any claims made against Repco by any third party in respect of any such loss; and

- (b) Repco's total liability to the Customer is limited to the lowest of the total Price paid by the Customer for the Products the subject of the claim; or the Price payable under the Contract the subject of the claim; and the Price paid by the Customer in the 30 days preceding the relevant cause of action arising.
- 10.4 In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which Repco's liability is not limited under these terms and conditions), Repco's liability to the Customer for a failure to comply with any Non-excludable Obligation is limited to:
- (a) in the case of Services, the cost of supplying the Services again or payment of the cost of having the Services supplied again; and
 - (b) in the case of Goods, the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired, or payment of the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired.
- 10.5 Every exclusion or exemption from liability and every right, defence and immunity of whatsoever nature applicable to Repco or to which Repco is entitled under this clause 10 is also available and extends to protect every employee or agent of Repco (including every independent contractor from time to time engaged by Repco) while acting in the course of or in connection with his employment or engagement, and for these purposes Repco is deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be its employees or agents from time to time (including independent contractors) and all such persons are to that extent deemed to be parties to the Contract.
- 10.6 The provisions of this clause 10 survive the termination of a Contract.

11.0 Changes to Customer's business

The Customer undertakes to advise Repco by registered post within 7 days of any actual or proposed change in:-

- (a) the address of the business and the address at which the Goods will be located (if it differs to the business address);
- (b) the trading name of the Customer's business;
- (c) the person(s), the directors, the trustee or the partnership conducting the Customer's business; and
- (d) the ownership or structure of the Customer's business (for example, if the business is converted into a trust or company or is sold); or
- (e) the status, or details of, the Customer's registration for GST purposes or Australian Business Number.

Where such a change occurs Repco may require a new application for a credit account to be made for Repco's approval and the Customer will sign all documents and do all acts and things appropriate to such new application for a credit account.

12.0 Notices

All notices between Repco and the Customer are deemed to have been delivered if mailed in the ordinary course of post or sent by facsimile to the last known address or facsimile number of Repco or the Customer respectively. Notices are deemed to have been delivered two (2) days after mailing, or upon completion of a facsimile transmission.

13.0 Governing law, jurisdiction and service of process

- 13.1 Each Contract is governed by the law of the State of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and the federal courts of Australia.
- 13.2 Without preventing any other mode of service, any document in a proceeding may be served on a party by delivering it or leaving it for the party at its last notified address.

14.0 General

- 14.1 Any of Repco's rights under a Contract can be waived by Repco only in writing. The waiver by Repco of any breach by the Customer of any term of a Contract does not prevent the subsequent enforcement of that term and is not be deemed a waiver of any other or subsequent breach.
- 14.2 Subject to clause 2.5 above, a Contract may not be amended, modified or varied except in writing signed by both parties.
- 14.3 Repco may exercise a right, remedy or power under or in connection with a Contract in any way Repco consider appropriate in its absolute discretion.
- 14.4 If Repco does not exercise a right, remedy or power at any time, this does not mean that Repco cannot exercise it later.
- 14.5 Repco's rights, remedies and powers under a Contract are in addition to any rights, remedies and powers provided by law.
- 14.6 The Customer agrees to do comply with all Repco's reasonable requests in order to bind the Customer under a Contract and to show whether the Customer is complying with its obligations under a Contract.
- 14.7 If a term of a Contract (including these terms and conditions) is held to be void, voidable, invalid or unenforceable in whole or in part, it may be severed without affecting the validity and enforceability of the remaining terms.