



## TERMS AND CONDITIONS OF TRADING OF THE COMPANY

Due to the nature of motorsports and technical risks involved with prototype and motorsport components, there are many factors not within control of the Seller that can cause failure - including, but not limited to, assembly, lubrication, load factors and type of use.

### 1. INTERPRETATION.

In these conditions:

- (1) "Seller" means Albins Off Road Gear Pty Ltd ACN 100 970 125 of 24 Wiltshire Lane, Delacombe, Victoria, which is the seller of the goods.
- (2) "Buyer" means the purchaser of the goods as specified on quotation or invoice.
- (3) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

### 2. GENERAL.

These conditions (which shall only be waived in writing signed by the seller) shall prevail over all conditions of the buyer's order to the extent of any inconsistency.

### 3. TERMS OF SALE.

The goods and all other products sold by Seller are sold on these terms and conditions.

### 4. TERMS OF PAYMENT.

- (1) For Buyers with credit accounts, terms of payment are strictly within 28 days of end of month in which goods are delivered and invoiced. For all other Buyers, terms of payment are strictly full payment prior to delivery.
- (2) All expenses incurred by the Seller in recovering monies due, inclusive of solicitor's charges, debt collector's fees and disbursements, any costs or charges in relation to security documents, any fees on dishonour shall be due and owing by the Buyer.
- (3) Any accounts overdue will, at the discretion of the Seller, bear an account fee of \$30.00 for each and every month the account is overdue. Overdue accounts may, at the discretion of the Seller, have interest charges at a rate of 1.5% per month from the date it becomes due until paid.
- (4) All accounts will be closed after a period of 12 months from nil activity.

### 5. SELLER'S QUOTATIONS.

Unless previously withdrawn, Seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 28 days only after its date. The Seller reserves the right to refuse any order based on this quotation within 7 days after the receipt of the order.

### 6. PACKING.

The cost of any special packing and packing materials used in relation to the goods are at the Buyer's expense notwithstanding that such cost may have been omitted from any quotation.

### 7. DELIVERY.

- (1) The delivery times made known to the Buyer are estimates only and the Seller will not be liable for late delivery or non-delivery.
- (2) The Seller will not be liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the goods.
- (3) The Seller may at its option deliver the goods to the Buyer in any number of installments unless there is a written endorsement to the effect that the Buyer will not take delivery by installments.
- (4) If the Seller delivers any of the goods by installments, and any one of those installments is defective for any reason:
  - (a) it is not a repudiation of the contract of sale formed by these conditions; and
  - (b) the defective installment is a severable breach that gives rise only to a claim for compensation.

### 8. LOSS OR DAMAGE IN TRANSIT.

- (1) The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not the Seller is legally responsible for the person who caused or contributed to that loss or damage).
- (2) The Seller must provide the Buyer with such assistance as may be necessary to press claims on carriers so long as the Buyer:
  - (a) has notified the Seller and the carriers in writing immediately after loss or damage is discovered on receipt of goods; and
  - (b) lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the goods.

### 9. SELLER'S OBLIGATIONS.

- (1) The Seller's liability for goods manufactured by it is limited to making good any defects by repairing the defects or at the Seller's option by replacement, within a period not exceeding twelve (12) calendar months after the goods have been dispatched so long as: defects have arisen solely from faulty materials or workmanship; the goods have not received maltreatment, inattention or interference; accessories or modifications of any kind used by the Buyer are manufactured by or approved by the Seller; the seals of any kind on the goods remain unbroken; and the defective parts are promptly returned free of cost to the Seller.
- (2) If the goods are not manufactured by the Seller the guarantee of the manufacturer of those goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- (3) The Seller is not liable for and the Buyer releases the Seller from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing. In any event the Seller's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with paragraph 9(1) of these conditions.
- (4) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of the Seller's negligence or in any way whatsoever.

### 10. LIMITATION OF LIABILITY.

- (1) The Seller's liability for a breach of a condition or warranty implied by Div 2 of Pt V of the Trade Practices Act 1974 (other than s 69) is limited to:
  - (a) in the case of goods, any one or more of the following:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
    - (iv) the payment of the cost of having the goods repaired; or
  - (b) in the case of services:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.

## TERMS AND CONDITIONS OF TRADING OF THE COMPANY – CONTINUED

(2) The Seller's liability under s 74H of the Trade Practices Act 1974 is expressly limited to a liability to pay to the Buyer an amount equal to:

- (a) the cost of replacing the goods;
- (b) the cost of obtaining equivalent goods; or
- (c) the cost of having the goods repaired, whichever is the lowest amount.

(3) The Seller is not liable for, and the Buyer releases and indemnifies the Seller against claims made in respect of any goods which:

- (a) are designed by any person not being the Seller but manufactured by the Seller in accordance with the design;
- (b) are modified, changed, damaged or used in a manner not approved or recommended in writing by the Seller or (if the Seller is not the manufacturer) the manufacturer of the goods;
- (c) are used in any official or unofficial motor sport event (notwithstanding that the goods may be sold for that particular use); or
- (d) are claimed to be defective:
  - (i) more than 1 month after the goods are first used by the Buyer (or any subsequent buyer of the goods); or
  - (ii) after the time period referred to in paragraph 9 (1).

### 11. PRICES.

- (1) Unless otherwise stated all prices quoted by Seller are net, exclusive of Goods and Services Tax (GST).
- (2) Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, cost of materials and other charges affecting the cost of production ruling on the date is made.
- (3) If the Seller makes any alterations to the price of the goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Buyer's account.

### 12. PAYMENT.

For Buyers with a credit account, the purchase price in relation to goods is payable net and payment of the price of the goods plus GST must be made on or before the twenty-eighth day of the month next following the delivery of the goods unless other terms of payment are expressly stated in these conditions in writing.

### 13. RIGHTS IN RELATION TO GOODS.

- (1) The Seller reserves the following rights in relation to the goods until all accounts owed by the Buyer to the Seller are fully paid:
  - (a) ownership of the goods;
  - (b) to enter the Buyer's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the goods; and
  - (c) to keep or resell any goods repossessed pursuant to (b) above.
- (2) If the goods are resold, or products manufactured using the goods are sold, by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the invoice price of the goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of the Seller and shall pay such amount to the Seller upon request. Notwithstanding the provisions above the Seller shall be entitled to maintain an action against the Buyer for the purchase price and the risk of the goods shall pass to the Buyer upon delivery.
- (3) All intellectual property rights vesting in or about the goods, including without limitation any trade mark, copyright, patent or similar registerable intellectual property rights, vest in and remain the property of the Seller. Without limiting the foregoing, the copyright in any design commissioned by or specific to the Customer vests in, and remain the property of the Seller.

### 14. BUYER'S PROPERTY.

Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

### 15. STORAGE.

The Seller reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Buyer within fourteen days of a request by the Seller for such instructions. The parties agree that the Seller may charge for storage from the first day after the Seller requests the Buyer to provide delivery instructions.

### 16. RETURNED GOODS.

- (1) The Seller is not under any duty to accept goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.
- (2) If the Seller agrees to accept returned goods from the Buyer under paragraph 15(1), the Buyer must return the goods to the Seller at the Seller's place of business referred to at the head of these conditions.

### 17. GOODS SOLD.

All goods to be supplied by the Seller to the Buyer are as described on the purchase order agreed by the Seller and the Buyer and the description on such purchase order modified as so agreed prevails over all other descriptions including any specification or enquiry of the Buyer.

### 18. CANCELLATION.

No order may be cancelled except with consent in writing and on terms which will indemnify the Seller against all losses.

### 19. WARRANTY OF AUTHORITY.

The signatory on behalf of the Buyer hereby warrants that he or she is authorised to make the order or enter into the credit agreement on behalf of that Buyer and the signatory covenants to indemnify and keep indemnified the Seller should the signatory not have that authority.

### 20. PLACE OF CONTRACT.

- (1) The contract for sale of the goods is made in the state or territory of Australia from which this document is issued.
- (2) The parties submit all disputes arising between them to the courts of such state or territory and any court competent to hear appeals from those courts of first instance.