

Engine Supplies & Services Pty Limited

A.B.N. 16 123 225 936

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

1. APPLICABILITY OF THESE GENERAL TERMS AND CONDITIONS OF SALE

- a) These General Terms and Conditions shall apply to all offers, contracts and agreements for the Vendor to supply products ("Products") to the Purchaser.
- b) These General Terms and Conditions shall always remain in force and may not be varied, unless otherwise agreed upon in writing.
- c) In these General Terms and Conditions, "Vendor" shall always refer to Engine Supplies & Services Pty Ltd ACN 123 225 936., and the party to whom the Vendor offers, contracts or agrees to supply Products shall be referred to as "Purchaser".

2. DELIVERY

- a) The Vendor shall make its best endeavours to ensure delivery of Products within the agreed term of delivery. However:
 - i) If delivery is delayed for any reason, whether or not such delay is beyond the control of the Vendor, the Vendor shall not be responsible for any loss or damage suffered by the Purchaser as a result of such delay.
 - ii) The Purchaser shall not be entitled to cancel the order, contract or agreement for sale of the Products.
 - iii) Both the Vendor and Purchaser are entitled to waive or change this clause by written agreement.

3. PAYMENT

- a) Unless otherwise agreed in writing all payments by the Purchaser to the Vendor shall be made in the currency quoted on the Vendor's quotation.
- b) The Purchaser shall make prompt payment within 7 days from receipt of invoice, or as otherwise stated on the Vendor's quotation. In these terms, and in any quotation "receipt of documents" means receipt by the Purchaser of the Vendor's invoice and, if so stated in the Vendor's quotation, copies of bills of lading or airway bills.
- c) Where it is agreed that payment or part payment of the contract amount will be upon evidence of shipping, a copy of the bill of lading or airway bill shall be deemed to constitute evidence of shipping.
- d) The Purchaser shall not be entitled to make any deduction from any monies otherwise payable to the Vendor in respect of any claim by the Purchaser against the Vendor.
- e) Any monies due from the Purchaser to the Vendor but unpaid shall carry interest at the Reserve Bank Cash Rate applicable when the money fell due for payment, plus 10%, commencing on the date the payment concerned becomes due and payable. The Vendor shall be entitled to recover all collection costs, including court fees, from the Purchaser, without prejudice to the other rights vested in the Vendor.

4. GUARANTEE AND LIABILITY

- a) If there is any defect in any part of the Products at the time they were delivered to the Purchaser, and if such defect is covered under the manufacturer's warranty, then the Vendor shall repair, or at the Vendor's option, replace such parts. The Vendor shall carry out such repair and/or replace any parts either at the site of use or at the Vendor's workshops as the Vendor shall decide. This clause 4(a) is referred to hereafter as "the Guarantee".
- b) In circumstances where repairs are made on site, liability for all additional costs, such as transportation, travel and accommodation expenses of such personnel, as are required to effect the repair or replacement as reasonably determined by the Vendor shall be borne by the Purchaser.
- c) In no circumstances shall the Vendor have any liability to the Purchaser (whether in contract, tort or otherwise) in respect of the Products, other than the Guarantee, and other than any liability which cannot be legally excluded. Without limiting the foregoing, the Vendor shall not be responsible for any loss of business or profit or for any other consequential loss of the Purchaser howsoever arising including as a result of the negligence of the Vendor its servants or agents. Without limiting the foregoing, any liability of the Purchaser shall be limited to the amount paid by the Purchaser for the Products.
- d) The obligations of the Vendor under the Guarantee shall cease if the Purchaser shall fail to observe instructions for installation, operation or maintenance of the Products and (without limiting the foregoing) the Vendor excludes all responsibility and liability for normal wear and tear and deficiencies, and for loss or damage due to the carelessness of the Purchaser.
- e) In carrying out the Vendor's obligations under the Guarantee, the Purchaser shall grant to the Vendor such time and opportunity as shall be reasonably necessary therefore, otherwise the Vendor shall be discharged from all obligations in respect of defect.
- f) Without limiting clauses (g), (h) and (i), the Vendor shall not be responsible for any claim under the Guarantee unless a claim shall be made in writing within 5 days of any fault becoming apparent to the Purchaser.
- g) The Vendor shall have no liability under the Guarantee or otherwise, for any defects in any used Products (other than reconditioned products) unless otherwise agreed in writing.
- h) The Guarantee shall apply to new Products only for defects notified to the Vendor in writing before 12 months from the date they were delivered ex-factory by the manufacturer or 500 running hours, whichever occurs first.
- i) The Guarantee shall apply to reconditioned Products only for defects notified to the Vendor in writing before 6 months from the date they were delivered to the Purchaser or 500 running hours, whichever occurs first.

5. OFFER AND CONFIRMATION OF THE ORDER

- a) Any offer or quotation to supply Products shall not constitute a contract binding on the Vendor, until the Vendor has confirmed the Purchaser's order in writing.
- b) The Vendor shall not be bound by any additions or changes to the offer or quotation unless the Vendor so agrees in writing.
- c) All technical data supplied by the Vendor shall be deemed to have been given to the Purchaser as an approximation.
- d) Any materials, including any drawings, illustrations, dimensions and weights given by the Vendor may be used by the Purchaser only for the purpose of using the Products. The Purchaser shall have no entitlement to any copyright or patent attaching to such materials or to the Products, other than a licence to use the Products and to use the materials for the purpose of using the Products. The Purchaser shall not be entitled to copy any of the said materials, to make them available for inspection to any third party or to make them otherwise available to any such third party.

6. RESERVATION OF OWNERSHIP

a) Until the Vendor has received full payment for the price of the Products:

(i) The Products shall remain the Vendor's property.

(ii) The Purchaser shall maintain the Products in good repair and condition and insure the Products against loss or damage for at least an amount equal to the monies payable to the Vendor for the Products.

(iii) The Purchaser charges its interest in all of the Products by way of security for all money owing to the Purchaser from time to time, in respect of any Products supplied by the Vendor.

(iv) The Purchaser shall not process or work the Products up or convert them into a new chattel until it has paid all monies owing to the Vendor in respect of the Products.

(v) If the Products supplied or object made from the same are built by the Purchaser into or incorporated in any real estate, ship or plant of any third party so that they shall become essential parts thereof, the Purchaser's claim against any sub-Purchaser or third party in respect of such Products or object shall be deemed to have been assigned to the Vendor against the Purchaser without the necessity of formal assignment.

(vi) The Purchaser shall be entitled to sell any Products supplied at usual market price in the normal course of business but shall not pledge or attempt to pledge or enter into form of mortgage of the same and the Purchaser shall forbid pledging and assignment in security by any Sub-purchaser and shall immediately inform the Vendor of any attempts so to do and of any other act to the prejudice of the interests of the Vendor or the Purchaser.

b) If the Purchaser shall fail to pay any monies payable to the Vendor on the due date for payment thereof or shall fail to comply with any of its obligations hereunder, the whole remaining balance of monies owing to the Vendor shall forthwith become due including any sums payable upon post-dated cheques, Bills of Exchange or other negotiable instruments whatsoever. In the event that any money is due and owing to the Vendor and has not been paid, the Vendor shall be entitled to demand immediately re-delivery of the Products at the expense of the Purchaser and the Purchaser shall not be entitled to set up any right of set off or counter-claim or upon any other ground to resist or delay such re-delivery. The Vendor shall thereupon be entitled to re-sell the Products and any part or parts thereof to any third party at such price as shall then be readily obtainable and shall apply the proceeds of such sale to the Purchaser's debt and all incidental expenses and any deficit remaining outstanding to the Vendor shall be forthwith payable by the Purchaser.

7. TRANSPORT

b) The Purchaser shall check the condition the Products are in upon their arrival and shall forthwith notify the Vendor of any damage to, defect in or non-delivery of any of the Products.

8. PASSING OF RISK

a) Risk will pass to the Purchaser upon dispatch of the Products by the Vendor or the Vendor's suppliers as the case may be.

b) The Purchaser will arrange for a contract of insurance with an insurer approved by the Vendor to cover the full contract price of the Products. Such contract of insurance will nominate the Vendor as the insured and will cover the Products against all risks for the period commencing with the date of delivery and concluding when the Products have been fully paid for.