

TERMS OF SALE (Ver 2.0, Aug 2018)

1.0 DEFINITIONS

- 1.1 The following definitions are used in these terms and conditions of sale ("Terms"):
- i "You" or "Your" means the person(s) or company named in the Legal Name section on the front side.
 - ii "We", "our" and "us" means the Company that supplies the Goods to you and its officers, employees, agents, contractors and advisers.
 - iii "Company" means Truck Stops (NZ) Limited.
 - iv "Goods" means all parts and services supplied by us to you.
 - v "The Credit Limit" means a dollar amount set by us which may be amended by us from time to time.

2.0 ACCEPTANCE

- 2.1 These Terms apply to all Goods supplied by us to you under any order made by you. They supersede and exclude all prior or subsequent discussions, representations, terms and/or conditions of trade, all prior written or oral agreements and understandings between us and you and any other terms and conditions which you seek to extend to the supply of Goods by us, whether by way of incorporation into your order or otherwise.
- 2.2 We may amend these Terms at any time and from time to time, and such amendments shall take effect or be binding from the date of notice to you.

3.0 AUTHORISED REPRESENTATIVES

- 3.1 Unless otherwise limited as per clause 3.2 you agree that if you introduce any third party to us as your duly authorised representative, then that person shall have the full authority of you to order any Goods and/or request any variation on your behalf (such authority to continue until you notify us in writing that said person is no longer your authorised representative).
- 3.2 In the event that your authorised representative as per clause 3.1 is to have limited authority to act on your behalf then you must specifically and clearly advise us in writing of the authority limits.

4.0 DELIVERY AND RISK

- 4.1 Where parts are supplied by us:
- i Delivery shall be deemed complete when we give possession of the parts to a carrier for delivery to you, or as you have directed. We reserve the right to deliver the Goods by instalments and each instalment shall be deemed to be a separate order subject to these Terms. Failure by us to deliver one or more instalment, shall not entitle you to cancel your order; and
 - ii Risk shall pass to you when the Goods are delivered. If you request and we agree to a delay in delivery, risk shall pass upon the date of your request for such delay.
- 4.2 Where we service your vehicle:
- i Whilst all care is exercised, risk shall remain with you at all times, including if applicable where we gratuitously collect and deliver your vehicle to and from our premises.
 - ii You agree to indemnify us fully for any losses or costs we incur as a result of us collecting or delivering your vehicle to you.
- 4.3 Title in all Goods remains with us until such time as all amounts owing to us for all Goods delivered by us have been paid for, in full with cleared funds by you.
- 4.4 You grant a security interest to us in each and every part of the Goods as security for payment for that part and of each other part or parts of the Goods and for any other amounts owing by you to us from time to time, and for the performance by you of all your other obligations to us from time to time (your indebtedness and obligations). For the purpose of section 36(1)(b) of the Personal Properties Securities Act 1999 ("PPSA"), and to ensure maximum benefit and protection for us by virtue of section 36(1)(b)(iii) of the PPSA, you confirm and agree that you intend to and do grant us, as security for your indebtedness and obligations, a security interest in all of your present and after-acquired property.
- 4.5 You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest.
- 4.6 You agree that nothing in sections 114(1)(a), 133 or 134 of the PPSA shall apply to these Terms, or the security under these Terms, and waive your rights under sections 121, 125, 129, 131 and 132 of the PPSA.
- 4.7 At any time after a default occurs under these Terms, we may (whether or not we have exercised any other right) appoint any person to be a receiver of all or any of the Goods.

5.0 PRICE AND TAXES

- 5.1 Unless otherwise agreed by us in writing and subject to clause 5.2, the price of Goods shall be our price ruling at the time of delivery in New Zealand dollars and exclude any GST, sales tax or duty, which are payable by you.
- 5.2 Where the quoted Goods are to be imported by us then we reserve the right to charge you the exchange rate and/or freight costs incurred by us at the time of delivery rather than quoted.
- 5.3 No price list or quotation given by us constitutes an agreement to deliver Goods referred therein. We can amend or withdraw our price lists or quotations at any time. All price lists and quotations are subject to these Terms.

6.0 PAYMENT AND DEFAULT

- 6.1 Payment must be made in full on delivery of the Goods without deduction, set-off or counterclaim. Where credit facilities have been granted then invoices must be paid by the 20th of the month following invoice date.
- 6.2 If you believe an invoice is incorrect then you must give us written notice within 14 days of receiving our invoice. If you have not given us valid notice then you must treat our invoice as correct. You must make payment of the undisputed amount due on any disputed invoice by the due date. Within 3 working days of the dispute being resolved you must pay to us the resolved amount due.
- 6.3 If you default in any payment due to us or at our sole discretion, we consider you are at risk of defaulting in paying your debts as and when they fall due then we may, at our option:
- a) stop delivering Goods to you and/or cancel any accepted order without notice to you and without prejudice to any other action or remedy which we have or might otherwise have had;
 - b) reclaim the Goods in your possession or under your control and may enter premises where we believe those Goods are stored or held to do so, and recover from you all costs of doing so; and/or
 - c) all monies owing and outstanding by you to us on any account whatsoever will become immediately due and payable (without the requirement for notice from us) and for future orders you must pay in full prior to delivery of the Goods.
- 6.4 We will not be liable to you for any losses you incur as the result of our exercising any of our rights under this clause.
- 6.5 Without in any way limiting our other rights, we may charge interest on overdue accounts at the compounding rate of 2.5% per month from the due date until payment has cleared.
- 6.6 You agree to pay us for any collection costs, agency commission fees, full legal expenses and any other expenses incurred by us in attempting to recover payment from you.
- 6.7 In addition to our rights in clause 4, you hereby grant us a purchase money security interest in all Goods (and any proceeds thereof) and to protect our security interest you agree to allow us to register or otherwise perfect our security interest as permitted by law in any relevant jurisdiction. On our request, you must promptly give us all assistance and information (including signing any documents) as we request to enable us to register or otherwise perfect our security interest under PPSA.
- 6.8 You agree that we can set and subsequently adjust The Credit Limit at our sole discretion at any time.
- 6.9 Should the amount that you owe us exceed The Credit Limit, you agree to pay us the difference between the amount you owe and The Credit Limit immediately regardless when payment would otherwise be due.

7.0 RETURNS AND CANCELLATION

- 7.1 Returns are only accepted if returned within 30 days of purchase accompanied by documentation showing the reason for return, the invoice number or delivery advice number and date.
- 7.2 Special Order parts (non-stock lines and indent) can only be returned by prior written approval from us and then only on such terms and conditions as we may agree.

- 7.3 No claims will be accepted once Goods have been used, damaged or converted in any way.

8.0 WARRANTY AND LIABILITY

- 8.1 Nothing in these Terms excludes, limits, restricts or is intended to prejudice you from any conditions, warranties and limitations implied by law however where permitted by law to exclude such warranties, such exclusions shall apply; and no guarantees, warranties, representations or agreements made on our behalf shall be binding on us unless made in writing.
- 8.2 Subject to clause 8.1, we:
- a) make no representations or warranties concerning fitness for purpose or appropriateness for your needs of any Goods, and you must assure yourself of these matters having regard to your circumstances;
 - b) exclude all conditions and warranties implied into these Terms or any of your orders; and
 - c) are not and will not be liable for any claim by you under these Terms unless notice is given in writing to us within the period prescribed in these Terms.
- 8.3 The warranty for new parts is 12 months from purchase date based on unlimited mileage.
- 8.4 Special Order parts have the current warranty provided by the manufacturer of those parts. We shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the parts.
- 8.5 Second hand parts warranty replacements and repairs must be carried out by an authorised Company workshop. The warranty period for used parts is set out below:
- a) Rebuilt used parts (including engines & gearboxes) have a 90 day warranty from purchase date. This warranty period is increased to 12 months, unlimited mileage for Volvo rebuilt parts.
 - b) Tested and serviceable gearbox, differential head, alternator starter, brake chamber, crankshaft and conrod used parts have a 60 day warranty from purchase date.
 - c) All other used parts have a 30 day warranty from purchase date.
- 8.6 We undertake to remedy any defects arising from faulty workmanship or parts supplied by us which occur under proper and normal conditions of use and are notified to us within 90 days of delivery.
- 8.7 Any Goods supplied in remedying any defects shall not extend our liability under these Terms and our liability shall cease upon expiration of the initial time period stipulated in these Terms.
- 8.8 You cannot claim warranty service if your account is overdue. We reserve the right to withhold or refuse warranty service until you correct the arrears.
- 8.9 In no circumstances will we be liable to you or any other person, whether in contract, tort (including negligence) or otherwise for:
- a) Any minor variation in product specifications including but not limited to colour or design, which may occur from time to time; or
 - b) Any loss of profits, consequential, indirect or special loss; or
 - c) Any loss or damage to person or property; or
 - d) Any delay in delivery; or
 - e) Any cost or loss of any kind arising directly or indirectly from any breach of our obligations to you.
- 8.10 To the maximum extent permitted by law:
- a) Our maximum aggregate liability for all claims however arising in relation to delivery of Goods is limited to the price you paid for the Goods to which the claim relates, or direct damages that you actually incur or suffer, whichever is less; and
 - b) Your sole remedies for any breach of these Terms or loss or damage arising from the subject matter of these Terms are expressly set out in these Terms.

9.0 CONSUMER GUARANTEE ACT

- 9.1 The parties confirm for the purposes of sections 2 and 43(2) of the Consumer Guarantees Act 1993 ("CGA") that the provisions of the CGA shall not apply because:
- a) the Goods are supplied and acquired in trade (as defined in the CGA);
 - b) they are in trade and have agreed to contract out of the provisions of the CGA; and
 - c) it is fair and reasonable that the parties are bound by this provision of the Terms.

10.0 FORCE MAJEURE

- 10.1 Neither you nor we shall be liable for any failure or delay in performing their obligations (other than an obligation to pay money) where such failure or delay results from any cause that is beyond your or our reasonable control.

11.0 DISPUTES

- 11.1 These Terms and your order, and any dispute which arises under, out of or in connection with these Terms or your order, their negotiation or their subject matter are governed by New Zealand law and the exclusive jurisdiction of the New Zealand courts.
- 11.2 You and we must seek to resolve any differences by direct negotiation for not less than 14 days before resorting to legal action.

12.0 PRIVACY ACT

- 12.1 We are authorised to collect and hold personal information from any source we consider appropriate for the purposes of considering your (or your directors or principals or Guarantors) creditworthiness or debt collection purposes. We are also authorised to use that information for marketing activities and any other purpose related to us providing Goods to you. Any personal information held by us may be disclosed to any third party for the purposes set out above. This authority is given by you, and any of your directors or principals (if any) and any Guarantors.

13.0 GENERAL

- 13.1 All notices under these Terms must be in writing and delivered by you or us to the other at the address in New Zealand that the other specifies from time to time.
- 13.2 You may not assign or subcontract any of your rights and obligations under these Terms.
- 13.3 Any variation to, or amendment or replacement of, these Terms as they apply to you must be authorised in writing by us through a duly authorised signatory on our behalf.
- 13.4 If any part of these Terms is illegal, unenforceable or invalid, that part is to be treated as modified or removed to the extent required to make it effective. The rest of these Terms are not affected.
- 13.5 All advice and information provided by us to you, in whatever form, is given gratuitously and without liability. Illustrations are not binding as to detail.
- 13.6 No delay or failure to exercise any of our rights or remedies will be a waiver of any of our rights or remedies.
- 13.7 Any typographical, clerical or other error or omission in any acceptance of offer, invoice or other document or information issued by us shall be subject to correction without any liability on us.
- 13.8 You will give us not less than fourteen (14) days prior written notice of any proposed change of ownership of your entity and/or any other change in your details (including but not limited to, changes in your name, directors, address, contact phone or email, or business practice). You shall be liable for any loss incurred by us as a result of your failure to comply with this clause.

14.0 GUARANTEE

- 14.1 In consideration for us agreeing to supply Goods and/or services and to provide credit to you at your request and the Guarantors, each Guarantor unconditionally, and where there is more than one guarantor, jointly and severally, guarantees to us the due and punctual payment by you of all moneys as and when they shall become due and payable by you to us in respect of any Goods and services supplied by us to you, and the due observance and performance by you of all of your obligations under these Terms.
- 14.2 Each Guarantor's liability under this guarantee constitutes a principle obligation of that Guarantor and such liability is not relieved or in any way affected in a manner prejudicial to us by the granting of time, waiver or forbearance to sue by us or by any other act, omission, matter, circumstance or law whereby the Guarantor as a surety only would but for the provisions of this clause been released from liability.
- 14.3 This guarantee shall be an irrevocable and continuing guarantee and shall remain in force and effect in respect of a Guarantor until we have provided a written release of such guarantee to that Guarantor. Each Guarantor agrees to waive any rights of subrogation in respect of any security held by the Guarantor in respect of your obligations to the Guarantor until you have paid all moneys due to the Company under these Terms.

I/We acknowledge that I/we have read and understood the terms of sale. Signed: _____ Date: _____