

SUPERIOR RADIATOR SERVICE PTY LTD (ABN 44 002 924 414)
TERMS & CONDITIONS OF SALE

1. GENERAL

- 1.1 All new and used vehicles, machinery, plant and equipment ("plant and equipment"), spare parts, other goods and all services, including all parts used in the rebuilding or repair of any plant and equipment (all of which are collectively referred to as "Goods"), sold, serviced, repaired and/or supplied to you by Superior Radiator Service Pty Ltd and its subsidiaries ("Company") are sold, serviced, repaired and/or supplied on these terms and conditions. In these terms and conditions you are referred to as the "Customer".
- 1.2 These terms and conditions prevail over any prior agreement, arrangement or understanding and over any terms and conditions of the Customer, whether incorporated into the Customer's response to a quote or other instructions given to the Company in relation to the supply and sale of Goods to the Customer by the Company ("order").

2. QUOTATIONS

Any quotation or estimate or price given by the Company is not an offer to sell or contract, and no order given to the Company following a quotation, estimate or price, or otherwise, will bind the Company until it is accepted by the Company in accordance with clause 3.2. All quotations, estimates and prices are subject to withdrawal or variation by the Company at any time prior to acceptance of an order by the Company.

3. OFFER & ACCEPTANCE

3.1 Immediately upon acceptance by the Company of an order, a binding contract will exist between the Company and the Customer. Every contract shall automatically incorporate and be subject to these terms and conditions.

3.2 In this clause "acceptance" means the earlier of:

- 3.2.1 when the Goods are supplied or the order is filled; or
3.2.2 when notification of acceptance is provided to the Customer; or
3.2.3 72 hours after the Company receives an order consistent with the quote and does not dispute the order in that 72 hour period.

3.3 The Customer's "terms and conditions" (however expressed) will not apply to any dealing or contract with the Company, and any endeavour to incorporate them into the contract between the Company and the Customer will be of no force and effect, irrespective of any reference to any such terms or conditions in the Customer's order, or otherwise.

4. PRICE

4.1 Subject to clause 4.2, the price or amount due and payable by the Customer for the Goods ("price") in any order will be the amount specified in the Company's quotation but will be subject to any specific terms of the quotation.

4.2 The price will be the prevailing price charged by the Company for those Goods as applicable at the date and time when the Goods in question are delivered to the Customer, irrespective of the price stipulated in the quote for those Goods.

4.3 All prices are quoted net of GST.

4.4 The Customer is liable for and must on demand pay to the Company any amount that the Company is required to pay, or which is or becomes payable, in respect of GST plus any other taxes, or imposts or duties of any kind imposed on the importation and on sale of the Goods.

4.5 In the event of any dispute as to the amount of the price, a certificate by the Company's General Manager, at the time shall be conclusive and binding on the Customer.

5. NO RELIANCE

The Customer acknowledges, agrees and warrants that it has not entered into the contract incorporating these Terms & Conditions in reliance on any express or implied representation, warranty, promise or statement of any kind made by the Company, or on the Company's behalf, other than as expressly set out in the contract. The Customer warrants and represents that the Customer has made, and relies solely on, the Customer's own enquiries and inspections concerning the Goods.

6. PAYMENT

6.1 Payment for the Goods must be made to the Company in cleared funds before the Goods are delivered, unless the Customer has an approved credit account.

6.2 If an approved credit account has been established, unless otherwise expressly agreed in writing, the Customer must pay the Company for the Goods without deduction or set-off as follows:

- 6.2.1 for parts and services – within 30 days from the end of the month in which the Goods are delivered; and
6.2.2 for new and used plant and equipment – cash on delivery.

6.3 Irrespective of the terms thereof, the Company may withdraw any credit facilities at any time without any prior notice, including in respect of Orders that have been accepted and Goods already sold, supplied or delivered. In that event, all amounts outstanding become due and payable immediately such credit facilities are withdrawn.

6.4 Time is of the essence in relation to payment for Goods.

6.5 Where the Customer fails to pay to the Company any sum when due, the Company is entitled (without prejudice to any other remedies available to it, including the right to retake possession of the Goods) to charge interest, and the Customer must pay, on the amount unpaid at the rate which is 3% above the 30 day bank bill swap reference rate as published in the Australian Financial Review, or any equivalent source nominated by the Company from time to time, calculated daily and compounded monthly from the date of default to the date on which the amount is paid in full.

6.6 In addition, the Company is entitled to recover from the Customer, and the Customer must on demand pay, all costs and expenses incurred or to be incurred by the Company in connection with the recovery of any Goods not returned by the Customer and the recovery of any amount due by the Customer, including collection charges and legal costs, on a full indemnity basis. A certificate signed by the General Manager of the Company stating the amount owing by the Customer, is conclusive evidence of that amount and is final and binding on the Customer. Any payments received by the Company following a default will be credited first against interest, then against costs and expenses and then in respect of the amount due for the Goods.

7. DELIVERY

7.1 The Company will endeavour to deliver the Goods on the date specified in the contract. If no date is specified, the Company will notify the Customer when the Goods are available for delivery.

7.2 The Customer will have no claim of any kind against the Company for any late delivery or non-delivery, for whatever reason.

7.3 The Customer must take delivery of the Goods within 7 days of the Company notifying the Customer that the Goods are available for delivery.

7.4 If the Customer fails to take delivery within 7 days of notification by the Company, the Company may terminate the contract by written notice to the Customer, whereupon any deposit paid will be forfeited to the Company and the Company will be entitled to claim as and by way of pre-estimated agreed liquidated damages from the Customer a sum equal to 15% of the total price of the Goods, less any deposit forfeited.

7.5 If the Company is unable to deliver the Goods to the Customer within 3 months of the date of acceptance of the order to purchase by the Company (or such longer period as may be agreed), the Company may terminate the contract by written notice to the Customer. In that event, the Company will return to the Customer any deposit monies paid, but the Company will not be liable for payment of interest, nor for any claim, loss or damage of any kind whatsoever directly or indirectly arising from, in connection with, or as a consequence of, the Company's failure to deliver the Goods to the Customer on due date, or at all.

7.6 Delivery of the Goods will take place at the Company's premises. If the Customer requests, and the Company agrees, the Goods may be delivered at a place other than the Company's premises. Where the Goods are to be delivered at a place other than the Company's premises the Customer agrees to and must indemnify and hold harmless the Company from any claim, loss or damage of any kind incurred, suffered or made directly or indirectly arising from, in connection with, or as a consequence of with such delivery.

7.7 Save as otherwise agreed in writing, delivery will be deemed to have occurred when the keys for the plant and equipment are handed to the Customer, or its representative, and in the case of no keys, when loading of the Goods commences, and in the event of any unresolved dispute as to the time of delivery, delivery will be deemed to have occurred, at the time when the Goods leave the Company's premises, irrespective of who is in control of the Goods at that point.

8. RISK

Risk in the Goods passes to the Customer on Delivery. The Customer must insure the Goods for their full replacement value from the time that risk in the Goods passes to the Customer until the time that title in the Goods passes to the Customer.

The Customer must whenever requested to do so provide the Company with copies of Certificates of Currency for all insurance as required and must provide the Company with all such other documentation as may be required from time to time to substantiate the continued existence of adequate protection and insurance cover and the payment by the Customer of all premiums and charges due in respect of such insurance.

Any insurance effected by the Customer must, until the time when the title in the Goods passes to the Customer, cover the respective rights and interests of the Customer and the Company and must include a cross liability clause, to the intent that each insured party shall be deemed to be separately insured against any claims of any kind by the other party and shall include a waiver of subrogation and an express provision that the insurer will give the Company not less than 30 days' written notice of its intention to cancel any such policy of insurance, prior to cancellation thereof.

Irrespective of any insurance cover, the Customer must indemnify the Company and hold the Company harmless from any claim, loss or damages of any kind, howsoever arising in respect of, or in connection with the Goods once the risk has passed until the time when title in the Goods passes to the Customer.

9. RETENTION OF TITLE

9.1 Title, property and ownership in any Goods sold or supplied will not pass to the Customer but will remain in the Company until payment of the purchase price of the Goods and of all other amounts owing by the Customer to the Company has been made in full, in cleared funds. Until such time the Customer:

- (a) holds the Goods as bailee and fiduciary agent for the Company;
(b) must store the Goods separately from all other property possessed by it in a way which makes the Goods readily identifiable as being Goods belonging to the Company;
(c) must not affix the Goods to any item of real or personal property without the prior written consent of the Company.

9.2 The Customer must not sell the Goods unless and until title to the Goods has passed to the Customer.

9.3 Notwithstanding clause 10.2 above, if the terms of the order accepted by the Company provide that the Goods, or any of them may be on-sold by the Customer, then although title to the Goods has not passed to the Customer (and is retained by the Company as provided for above), the Customer may sell such Goods in the ordinary course of the Customer's business, provided that the Customer:

- (a) keeps full and complete separate records of all such sales.

10. DEFAULT

10.1 If the Customer:

(a) breaches any provision of these terms; or
(b) fails to pay any amount owing to the Company by due date; or
(c) enters into, or proposes to enter into, a compromise of any kind with any creditor, or any steps are taken to enter into a scheme of arrangement, deed of company arrangement, or composition or compromise with any creditor or creditors, or it proposes a moratorium, reorganisation or other administration or arrangement involving any creditor; or
(d) takes any steps to obtain protection, or is granted protection, from its creditors, or any of them, under any applicable legislation; or
(e) stops payment of its debts, or ceases, or threatens to cease, to carry on any of its businesses; or
(f) has judgement for more than \$1,000.00 entered against it in any Court and it is not satisfied or set aside within 14 days; or
(g) has any credit or financing arrangements and an event or circumstance occurs which entitles a person to cancel, terminate or demand repayment of any credit or financial accommodation extended to the Customer, or to exercise any right under any security for such credit or financial accommodation; or
(h) is a company which is not listed on a recognised Australian Stock Exchange and there is a change in the ownership (at the date of this contract) of more than 20% of the issued voting shares in the Customer, or if the Customer is a listed Company and there is a change in the control of the Customer; or
(i) is a company and in the opinion of the Company there is a change in the persons who control the Customer or in the activities of the Customer; or
(j) has a receiver, receiver and manager or controller (as defined in the Corporations Act) appointed in respect of all or any of the Customer's assets; or
(k) has an administrator appointed in respect of the Customer; or
(l) has any resolution to wind up the Customer proposed or an application is made to a court for the winding up of the Customer; or
(m) has any action taken which could result in the Customer becoming "an insolvent under administration" within the meaning of section 9 of the Corporations Act; or
(n) is unable to, or fails to, pay its debts as they fall due, or is, or states that it is, insolvent, or is deemed or presumed insolvent under any applicable legislation; or
(o) if any other event occurs or circumstance arises, financial or otherwise, which in the opinion of the Company is likely to materially affect the ability of the Customer to meet its obligations to the Company, then:

(i) all amounts owing by the Customer shall immediately become due and payable without notice, irrespective of any credit arrangements;
(ii) the Customer must immediately pay to the Company the proceeds which have been held by the Customer in trust for the Company;
(iii) the Company shall immediately be entitled to retake possession of all Goods then in the possession or under the control of the Customer for which full payment has not been made;

(iv) where the Company has supplied and fitted parts and materials to a machine, the Company may take possession of the entire machine in question (and remove the machine to the Company's premises) for the purposes of removing the Company's parts and materials from the machine; and
(v) the Company may sell such Goods.

10.2 For the purpose of enabling the Company to retake possession of the Goods and in conjunction of these terms, the Company is irrevocably authorised by the Customer to enter the Customer's premises in which the Goods are located and the Customer irrevocably appoints the Company as its agent to enter any premises not owned by the Customer and in which any Goods may be located from time to time.

10.3 The Customer, or anyone claiming under or through the Customer, shall not have any claim of any kind howsoever arising against the Company, or any of its servants or agents, as a consequence of any act or omission under this clause and the Company shall not be obliged to restore the machine after removing the Company's parts and materials.

10.4 The provisions of this clause shall apply notwithstanding any arrangement between the Company and the Customer, whether set out in these terms or not, whereby the Company grants (or has granted) to the Customer credit for the purchase of the Goods.

10.5 If the Customer cancels or defers an order it will be liable for all loss, damage and expense sustained by the Company as a result of the cancellation or deferral including any holding costs, freight costs, foreign exchange and treasury costs, expenses the Company may have incurred in assembling the Goods to the Customer's specification and any other loss, damage and expense arising out of or connected with the cancellation or deferral.

11. CLAIMS

11.1 The Customer must inspect the Goods upon delivery and if the Customer believes the Goods are damaged, incorrect or otherwise not in conformity with the Customer's order, the Customer must give written notice to the Company, setting out full details, within seven (7) days of delivery. If the Company has not received any written notice from the Customer within that seven (7) day period, the Customer is deemed to have accepted the Goods and the Customer waives and abandons any claim against the Company in respect of those Goods that the Customer has or may have.

11.2 Where a written notice is given to the Company within 7 days as provided for above, the relevant Goods must be returned to the Company at the Customer's cost in the condition they were in at delivery (and in the case of packaged Goods, in their original packing) and with the original invoice within seven (7) days of the notice, and the Company may, but is not obliged to do so, in its absolute discretion, repair the Goods, credit to the Customer the price of the returned Goods, or replace the Goods.

11.3 In the case of new parts, the Company will credit to the Customer the price of the Goods if returned within fourteen (14) days of the date of the notice. Thereafter, the credit will be reduced by 15% if the Goods are returned within 28 days. No credit will be given after 28 days.

11.4 Used parts, parts not stocked by the Company and any gaskets, seals, belts, hoses and opened kits cannot be returned under any circumstances.

12. LIABILITY

Except to the extent implied by law, or as set out elsewhere in these terms, the Company gives no express warranty in relation to Goods sold and supplied to the Customer and the Customer acknowledges that it has not relied on any representation or warranty made by or on behalf of the Company. The Company will notify the Customer of any applicable manufacturers' warranty in relation to the Goods. To the extent permitted by law, the Company's entire responsibility with respect to any warranties for the Goods is to pass on to the Customer the benefit of any such manufacturers' warranties. To the extent permitted by law, the manufacturers' warranties are in substitution for all other terms, conditions and warranties, whether implied by statute or otherwise and all such terms, conditions and warranties are expressly excluded. Certain legislation may imply conditions and warranties into these terms. To the extent that any conditions and warranties can be excluded lawfully, all such conditions and warranties are excluded. The liability of the Company under or arising out of the sale and supply of Goods, for breach of any term, condition or warranty implied in or imposed upon the sale or supply of Goods by law is limited, at the option of the Company:

- (a) in the case of Goods:
(i) to the replacement of the goods or the supply of equivalent goods;
(ii) to the repair of the goods;

(b) in the case of services:
(i) to the supply of the services again;

Except as expressly provided above, the Company is not under any liability to the Customer in respect of any loss or damage (including consequential or indirect loss or damage or loss of profits) howsoever caused which may be suffered or incurred or which may arise directly or indirectly in respect of the Goods or the failure of the Company to comply with these terms.

13. SERVICE REPAIR WARRANTY

Any repair work carried out by the Company is warranted by the Company to be free from defects in material and workmanship provided, however, that any defect must be discovered and notified to the Company within three (3) months after the date of completion of the repair work by the Company. The entire extent of the Company's liability is limited to the replacement or repair of the defective material or the repair of the defective workmanship if, upon the Company's inspection, the repair is found to be defective in material supplied or workmanship. This warranty does not cover labour for removal or installation, or parts or exchange components. The Customer shall bear all transportation and handling costs. This warranty is void if the invoice for Goods is marked with "No Warranty" or words to that effect.

14. FORCE MAJEURE

The Company is not obliged to perform any obligation pursuant to these terms to the extent and for the period that, by reason of any fact, circumstance, matter or thing beyond the Company's control, the Company is unable to perform, in whole or in part, that obligation.

15. GOODS & SERVICES TAX

Unless otherwise stated expressly all prices are exclusive of Goods and Services Tax and the Customer must on demand pay to the Company, and the Company reserves the right to recover from the Customer, all Goods and Services Tax payable in respect of the supply of the Goods to the Customer.

16. LAW & JURISDICTION

These terms and conditions are governed by and will be construed in accordance with the laws of New South Wales and the parties consent to the jurisdiction of the Courts of that State.

17. CHANGES TO TERMS

The Company reserves the right to change these terms and conditions at any time and the Customer acknowledges and agrees that written notice to the Customer given by ordinary mail is deemed to be sufficient notice of any change and will bind the Customer in respect of any supply of Goods after the date of deemed notification.

18. MISCELLANEOUS

If the Customer is more than one person, each person shall be jointly and severally liable to the Company. A failure by any party to execute, or to properly execute, or to be bound by, any order or this contract shall not relieve any other party of liability under the contract. The Customer shall be liable for any stamp duty that may be payable on, or as a consequence of, this contract.

19. SEVERABILITY

If any part of the terms and conditions are void or unenforceable, that part is severable from this Agreement to the intent that the parts that are not void or unenforceable shall remain in full force and effect and be unaffected by any such severance.

Customer Name: _____

Authorised Signature: _____

Title: _____

Date: _____