

## 1. Terms of Sale

1.1. The Company is LANDSEER MOTOR INVESTMENTS AUCKLAND T/A Andrew Simms. The Company will contract to sell and supply goods on these standard terms and conditions only. By placing or confirming an order with the Company, the Customer is accepting these standard terms and conditions, and anything to the contrary in the Customer's enquiries, orders or confirmations will not apply.

## 2. Price and Payment

2.1 The Customer may pay the price indicated on the invoice, order form or other document or statement issued by the Company. All freight packaging and other relevant costs are charged to the Customer's account as shown on the Invoice.

2.2 All prices are subject to adjustment by any increase in the costs to the Company of manufacturing or providing the goods that may occur between the dates of quotation and delivery or deliveries of the goods.

2.3 If credit is granted by the Company to the Customer, payment is due upon delivery of vehicle(s), or on or before the 20th of the month following the date on the invoice, for Parts and Services Customers.

2.4 If the Company at any time deems the credit of the Customer to be unsatisfactory, it may immediately terminate its credit arrangement with the Customer and require the Customer to pay the price (in cleared funds) on delivery of the Goods.

2.5 The Company may charge interest on any monies which are overdue under this Contract commencing on the due date until the date of the actual payment. The interest rate will be the then current overdraft interest rate charged by the Company's bank plus 2.5% per month.

2.6 The Customer agrees to pay on demand all costs (including commission and legal fees as between solicitor and own client and any other costs) incurred by the Company or the Company's agents relating to the recovery of any amounts payable by the Customer to the Company.

2.7 All payments by the Customer must be made in full and without any deduction or right of set off or counterclaim. The Customer agrees, however, that all monies which the Company may owe the Customer on any account whatsoever may, at the Company's option, be set off against payments due by the Customer to the Company.

2.8 Goods and services tax or any other sales tax (if any) will be charged in addition to any invoice price on all goods.

## 3. Delivery

3.1 Delivery of the goods is deemed to be made:

a. when the Customer or the Customer's agent is given possession of the goods at the Company's warehouse or elsewhere (loading is then at the Customer's risk); or

b. when the goods arrive at the Customer's premises (unloading is then at the Customer's risk); whichever is the earlier.

3.2 On delivery, the goods are at the Customer's sole risk, and with effect from the time of delivery, the Customer will have in place all risks insurance to cover both its interest as bailee of the goods and the Company's interest as owner of the goods under clause.

3.3 The Company may choose the carrier and the method of transport, unless otherwise agreed by the Company in writing. The Company may choose to deliver by instalments and may treat each delivery as a separate contract. Should the Company fail to deliver or make defective delivery of one or more instalments, this will not entitle the Customer to repudiate the main contract.

3.4 If the Company believes that the Customer may not make any payment when due, then the Company may suspend or cancel any delivery.

3.5 Any delivery date agreed by the Company is approximate only, and no delay in delivery will entitle the Customer to cancel its order for the goods.

## 4. Retention of Title

4.1 Property (both legal and equitable) in all goods delivered by the company to the customer does not pass (and the Customer is a bailor only in respect of those goods) until payment in full is made for all goods supplied by the Company to the Customer. Until property has passed, the Customer will store all goods in such a way that they are clearly identifiable as the property of the Company.

4.2 Until the Customer has paid the Company in full for all goods supplied, the Customer may not sell, dispose of or charge the goods and must hold or deal with the goods for and on behalf of the Company. However, if the goods are sold prior to property passing to the Customer, the proceeds of that sale must be held by the Customer on trust for and on behalf of the Company.

4.3 Prior to the Customer acquiring full property in the goods, the Company or the Company's agents may at any time enter upon any land, premises or property where it believes such goods may be, to view and inspect them, and, if the Customer has not paid for them in full, retake possession of the goods. The Customer will indemnify the Company on demand in respect of any costs or liabilities incurred by the Company in exercising its rights under this clause.

## 5. Personal Property Securities Act

5.1 The Customer grants to the Company a security interest in the goods and the proceeds of the goods and the Customer acknowledges that this contract creates a purchase money security interest in the goods and the proceeds of the goods.

The Customer will, if the Company requests, sign any documents (including any new contracts), provide all necessary information and do anything else required by the Company to ensure that the Company's purchase money security interest is a perfected security interest.

5.2. The Customer will not enter into any security agreement that permits any other person to register any security interest in respect of the goods or the proceeds.

5.3. If the goods are for the Customer's business use the Customer agrees, to the extent Part 9 of the PPSA applies, that it will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation:

a. the Customer will have no rights under sections 114(1)(a) (to receive a notice of sale), section 117(1)(c) (relating to distribution of surplus), and section 133 (reinstating this Contract):

b. The Customer waives its rights under section 116 (to receive statement of account), section 119 (to recover surplus) and sections 120 (2) and 121 (to receive notice of any proposal to retain the goods and object to any proposal).

5.4. The Customer waives its right under the PPSA to receive a copy of any verification statement or financing change statement.

5.5. The Customer agrees that where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

5.6. For the purposes of this clause "PPSA" means the Personal Property Securities Act 1999.

5.7 The expressions "personal property", "purchase money security interest", "security agreement", "security interest", "perfected security interest", "verification statement" and "financing change statement" have the meanings given to them under, or in the context of the PPSA.

## 6. No Warranty

6.1 Except as provided in clause 7:

a. under no circumstances is the Company liable for any claim, action, demand, suit, loss, legal fee or other cost or expense of any kind whether directly or indirectly arising from the use or inability to use any goods;

b. no warranties are given by the Company in respect of goods whether in respect of quality, fitness for intended purpose, or otherwise and all warranties implied by law are expressly excluded.

6.2 If the Company is ever liable to the Customer, or any other person, and the Company cannot rely on the exclusions of representations, warranties or liabilities set out above, then the liability of the Company is in all cases limited to the amount of the price of the goods.

## 7. Guarantee

7.1 If the Customer is acquiring the goods or services for the purpose of a business, then all of the guarantees and remedies in the Consumer Guarantees Act 1993 are excluded.

7.2 The only guarantee given is the guarantee which may accompany the goods. The Company reserves the right (at its sole discretion) to either repair, replace or offer credit for Goods returned pursuant to any guarantee.

## 8. Returns

8.1 The Company may in its discretion accept the return of goods in return for a credit and will not be bound to provide a cash refund. The Customer must, at its expense, return the goods in 'as new' condition to the Company within 7 days of having accepted delivery of the goods. All returned goods must be accompanied by the relevant invoice issued by the Company.

8.2 The Company will be entitled to charge a handling fee of 15% for goods returned and such charge will be deducted from the amount of credit to which the Customer may be entitled.

8.3 All goods that have been specifically procured by the Company for the Customer, at the Customer's request are not eligible for return.

## 9. General

9.1 These terms and conditions, all invoices, order forms or other documents or statements describing the goods and the provisions in the Application for Credit Account (together "the Contract") are the full agreement between the Company and Customer.

9.2 The Company may, and the Customer may not, vary or replace the Contract and it will be a condition of the Company continuing to supply goods to the Customer that the Customer agrees to sign any variation or replacement of this Contract where required under the terms of this Contract.

9.3 To be effective, any waiver of any or all of these terms and conditions by the Company must be in writing.

9.4 The Customer may not assign all or any of its rights or obligations under this Contract without the prior written consent of the Company.

9.5 The Company is not bound by any error or omission on any invoice order form or other document or statement issued by the Company.

9.6 The Contract between the Company and the Customer is governed by the laws of New Zealand.

