

# STANDARD TERMS AND CONDITIONS

## 1. General

These terms and conditions of sale shall apply to the exclusion of all others, including any terms and conditions of customer (whether on customer's order form or otherwise).

No goods will be supplied by AUZPARTS PTY. LTD. A.B.N. 42 111 781 563 Trading as A.W.B. BEARINGS (hereafter referred to as "the Company") on any terms or conditions other than those set out herein and by taking delivery of goods, customer shall be deemed to agree that these terms and conditions shall apply to the exclusion of all others.

## 2. Prices

Unless agreed by the Company in writing to the contrary, price payable for goods supplied to the customer is the Company's current price for such goods at the date of delivery. Any and all freight rates, import duties, exchange rates, sales tax or any other tax, impost duty or levy included in price of goods are based on ruling rates as at date of quotation. Any and all variations thereto prior to delivery shall be to account of the customer and the Company may vary the price accordingly.

All prices are expressed in Australian dollars and unless expressly stated otherwise, prices quoted are for delivery free on road vehicle or FOT ex the Company's works.

## 3. Description

(A) Any description of the goods is approximate only and is given by way of identification only and the use of such description shall not constitute the contract a sale by description. The purchaser can not claim against the Company for any deviation.

(B) The customer warrants that any of the goods manufactured, constructed or supplied by the Company which are based upon designs, drawings or specifications supplied to the Company by or on behalf of the customer shall not infringe any letters patent, registered designs or any other intellectual property rights. The customer shall indemnify and keep indemnified the Company, its servants and agents against any action, loss, costs, claim or damage that may be brought against or suffered by the Company, its servants or agents for any breach of this warranty.

(C) The Company does not warrant or guarantee and it shall not be a term of any agreement between the Company and the customer that any goods manufactured, constructed or supplied by the Company which are based in whole or in part upon any designs, drawings or specifications supplied to the Company by or on behalf of the customer will achieve any standard of performance or any capacity whatsoever.

## 4. Payments

Nett cash 30 days from date of invoice, but the Company reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery should the credit worthiness of the purchaser at any time become in the Company's opinion unsatisfactory.

## 5. Retention of Title

(A) All goods supplied by the customer shall thereby be sold to the customer but full legal and equitable title in all goods sold shall remain vested in the Company until the Company has received payment in full from the customer of all amounts owing from the customer to the Company from time to time.

(B) The customer shall have the right to sell goods in which title remain vested in the Company in the ordinary course of trade.

(C) Goods supplied by the Company to the customer in which title has not been passed to the customer shall be held by the customer as a fiduciary bailee of the Company. Until the goods have been paid for by the customer in full or sold, the customer shall store such goods so that the same are identifiable as the property of the Company and are not commingled with the other property of the customer or a third party.

(D) The Company shall have the right to repossess at any time goods in respect of which payment is overdue, and to enter the premises of the customer for such a purpose without liability and without prejudice to the pursuit of any other legal remedy available to the Company.

## 6. Claims

Any claim by the purchaser for short or wrongful delivery of the goods MUST BE NOTIFIED TO THE COMPANY IN WRITING WITHIN 14 DAYS after delivery of the goods to the purchaser and any claim which the purchaser does not notify within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived.

## 7. Delivery

Unless otherwise agreed, the goods shall be transported by the customers preferred carriers, representatives or agents. Unless otherwise expressly agreed by the Company in writing the goods will be delivered ex-works. Any time quoted for delivery is an estimate only and the Company shall not be liable for any loss or damage howsoever arising as a result or consequence of any failure to deliver or delay in delivery arising from any circumstances of whatsoever nature including in particular but without limiting the generality of the foregoing fire, flood, explosion, strike, lock-out or other industrial act or dispute or the break-down of or accident to plant availability or shortage of raw materials labour power supplies or transport facilities or failure or inability to obtain licences or act of God or any order or direction of any local State or Federal Government authority or instrumentality. If the Company determines that it is or may be unable to deliver within a reasonable time or at all the contract may be cancelled by the Company. In the event of cancellation the purchaser shall have no claim against the Company for any damage loss cost or expense whatsoever. The purchaser shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery.

## 8. Service

Any service or advice which may be offered by the Company, its servants or agents to users of its goods is rendered in all good faith but the Company shall not be liable for any loss or damage arising therefrom whether such loss or damage arises from the negligence of the Company, its servants or agents or otherwise.

## 9. Warranty

(A) All warranties and conditions (other than those referred to in paragraph 6 above) whether express or implied and whether statutory or otherwise as to goods supplied by the Company and as to quality, fitness or suitability for any purpose or otherwise are hereby excluded except to the extent of any non-excludable warranty, condition or liability of the Company provided for by the Trade Practices Act or any other relevant and applicable State and/or Federal Legislation and to the extent to which any such warranty, condition or liability of the Company for breach of the warranty, condition or liability (apart from any warranty, condition or liability implied to any one or more of the following as determined by the Company in its absolute discretion) is hereby limited to:

i) In the case of goods, any one or more of the following:

- a) the replacement of the goods or the supply of equivalent goods.
- b) the repair of the goods.
- c) the payment of the cost of replacing the goods or of acquiring equivalent goods.
- d) the payment of the cost of having the goods repaired.

ii) In the case of services:

- a) the supplying of the services again.
- b) the payment of the cost of having the services supplied again.

(B) No servant, agent or contractor of the Company has any authority to alter any items or conditions of paragraph 6 or this paragraph.

## 10. Indirect Loss

In no event shall the Company be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the purchaser as user arising from or caused or contributed to by negligence of the Company, its servants or agents, nor shall the Company be liable for special, incidental, indirect or consequential loss or damage suffered by the purchaser as user as a result of a breach by the Company of its obligations or otherwise including but not limited to economic loss, loss of profits or revenue or costs arising from such breach.

## 11. Loss and Damage

Save as herein expressly provided the Company shall not be liable for any loss or damage direct or consequential, whether in contract, tort or otherwise and whether caused or arising out of or through the negligence of the Company, its servants or agents or otherwise, of whatsoever nature or to whomsoever or whatsoever caused or arising out of or through the use of any of the goods supplied by it. The customer shall indemnify the Company against all claims made against the Company by any third party in respect thereof.

## 12. Cancellation

The company will not accept any cancellation and/or variation to any order placed except with the express written approval of the Company and on terms under which the Company will be indemnified against any losses resulting therefrom.

## 13. Exclusions

Any conditions introduced by the customer (instar as they differ from these conditions) shall not apply to the order and the order shall be deemed to have been placed without them unless written agreement has been given by the Company modifying these conditions. The return of the customer's standard order acknowledgment form does not constitute a written agreement to the modification of these conditions by the Company.

## 14. Severability

(A) If any provision of these terms and conditions of sale is void or voidable by any party or unenforceable or illegal but would not be void or voidable, or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.

(B) Notwithstanding sub-paragraph (A) if a provision of these terms and conditions of sale is still void or voidable or unenforceable or illegal:

- 1) if the provision would not be void or voidable, or unenforceable or illegal as aforesaid if a word or those words (as the case may be) were omitted, that word or those words are hereby severed:  
and
- 2) in any other case, the whole provision is hereby severed;

and the remainder of these terms and conditions of sale have full force and effect.

## 15. Change of Customer Ownership

The customer agrees to indemnify the Company against any loss incurred by it due to any change in ownership of the customer unless written advice of such is received by the Company prior to the first delivery of any goods after the change of ownership.

## 16. Default by the customer

If the customer makes default in payment, commits an act of bankruptcy, has a receiver appointed to all or any part of its assets or undertaking, calls a meeting for the purposes of or goes into liquidation, or has a winding up petition presented against it the Company may at its option:

- 1) Require payment in cash before delivery notwithstanding the terms of payment specified herein or agreed; or
- 2) Terminate an order or suspend further deliveries and recover and resell the goods and the customer hereby grants to the Company a licence for access to the customer's premises of such recovery and to examine the goods:

and such action shall be without prejudice to any other rights it may have.

## 17. Waiver

Failure by the Company to insist upon strict performance of any terms or condition shall not be deemed a waiver thereof or of any rights the Company may have, and shall not, and nor shall any express waiver, be deemed a waiver of any subsequent breach of any term or condition.

## 18. Governing Law

These conditions and the contract to which this document relates shall in all respects be construed and operated in accordance with the law of the State of Queensland.