

Standard Trading Terms

These trading terms apply to all sales and are deemed to be incorporated into all contacts for the sale of goods and/or services and cannot be varied by you in any form including those that may be printed on a purchase order. These trading terms may be varied by us by updating the trading terms available on our website from time to time or by written agreement with you to include additional special conditions. Acceptance of these terms by you is demonstrated by you purchasing goods and/or services from us, operating an account with us or conducting business with us.

1 Basis of Contract – A quotation from us is not an offer. A contract exists once we accept your order (subject to the goods passing our pre-delivery inspection). The contract may not be cancelled without mutual agreement between the parties. If we agree to cancel a contract we may charge you a reasonable fee for any goods ordered including but not limited to a fee for processing your order and cancellation request, delivery (if applicable) and handling/restocking of the goods.

2 Prices – All prices are in Australian dollars and are subject to change without notice.

3 Payment – You agree to pay in full in accordance with the terms indicated on our invoice. If no terms are indicated on our invoice and you have an account with us then you agree to pay within 30 days of the end of the month in which the invoice is issued. If you do not have an account with us then you must pay in cash on or before delivery of the goods. A 0.96% surcharge will apply to all payments by credit card.

4 Credit Limit - We will determine the credit limit for your account and may change this credit limit at any time without notice or reason.

5 Delivery – Delivery of goods to your transport agent will constitute delivery to you, you will pay all delivery costs and any damage caused in transit will not be our responsibility.

If we agree to deliver the goods to you, you agree to pay the delivery fee (if any) notified to you from time to time.

You grant us a reasonable extension of time for delivery of goods delayed due to circumstances beyond our control. We will not be liable for any loss or damage arising from delays in delivery.

6 Deemed acceptance of goods – You are deemed to have accepted the goods as being of acceptable quality (e.g. damage and defect free) and as ordered unless you notify us of your intention to make a credit claim or claim a refund (if you are a COD customer) within 5 Business Days of the date of receipt of the goods.

7 Returns/credit claims – Subject to the express and implied warranty/condition provisions below, we may in our absolute discretion accept or reject a return/ credit claim. In order to make your claim you must, at your cost, return the goods to us within 30 days of the invoice date and provide us with proof of purchase by you (e.g. Original invoice or invoice number entered into APGiQ) and provide reason for return (e.g. you ordered the wrong goods or you no longer require the goods).

The goods' must be returned unaltered in original condition/undamaged, its original packaging and must also be received in a clean and resaleable condition.

If you want to make a claim outside of 30 days from invoice date you should provide details of the special circumstances to us and get the prior approval from us before returning the goods. If this approval is given you will be charged a restocking fee of 15% (if between 30 and 45 days) and 20% (if between 45 and 60 days) of the value of the goods returned.

We will not accept return /credit claims no matter what the special circumstances after 60 days from the invoice date.

We may reject a credit claim on any items having an invoice value of \$5 or less, on electrical goods, non stock items ordered at your request, trims or, items manufactured at the your request. If we reject your return, we will make the goods available for your collection at your cost. If the goods are not collected by you within 20 business days they will be deemed abandoned. If we accept the return we will issue you with a credit note for the price of the goods (less any restocking fee or delivery fees).

8 Implied Warranties/Conditions - All implied terms, conditions and warranties, other than those implied by any law that may not be excluded, are expressly excluded. Where permitted by law our liability for all implied terms, conditions and warranties including those implied by law that can not be excluded is limited to the following:

- (a) The cost of replacing the goods;
- (b) The cost of obtaining equivalent goods;
- (c) The cost of having the goods repaired.

9 Implied warranty/conditions credit claims- You may make a credit claim or claim for refund (if you are a COD Customer) for goods which breach the implied warranties/conditions that cannot be excluded by law. This claim must be made within a reasonable time. We will not accept claims made after deemed acceptance of the goods if the claim relates to matters which would be apparent from inspection such as damage, defect or goods not as ordered. If requested you must provide us with evidence of the date of receipt of the goods. To make a claim you must provide us with proof of purchase (e.g. the original invoice), reason for the claims (e.g. details of the implied warranty or condition which is claimed to be breached), proof of breach of the implied warranty/condition (e.g. a photo of the goods) and details of when the breach became known to you or your customer. You must, return the goods to us so that we can assess whether there has been a breach or in cases where the wrong goods have been supplied within 3 business days of the date the claim is made. Where the wrong goods have been supplied the returned goods must be unaltered in its original packaging and must also be

received in a clean and resale able condition.

If an implied warranty/condition that may not be excluded at law is breached then a credit or refund (for COD customers) will be granted for the price of the goods. We are not liable for freight or delivery costs for the delivery of the original goods to you or the return of them to us. If requested by us, you must destroy damaged or defective the goods if not returned to us and provide us evidence of this.

10 Express Warranties – Some of the goods are sold with express warranties, details of these express warranties are available on our website, in our cataloguing or on request. Credit claims may be made for goods which breach our express warranties.

11 Express warranty credit claims – You may make a credit claim for goods which breach an express warranty in accordance with the terms and procedures detailed in the express warranty. You must make the claim within the times specified in the express warranty and meet all the conditions of the express warranty (including use, installation and maintenance of the goods). You must provide us with proof of purchase, the reason for the claim (details of how the express warranty has been breached) and proof of breach of the express warranty. You must return the goods to us, within 3 business days of the date the claim is made, at your cost, so we can assess whether there has been a breach or if agreed by us provide us with a photo to evidence the breach. If an express warranty is breached then a credit (or refund for COD Customers) will be granted for the price of the goods. If the credit claim is granted you must destroy the goods if not returned to us.

12 Passing of title and risk – The risk in the goods passes to you on delivery to you or your transport agent. We retain the legal and equitable title to the goods until payment is made for all goods that have been from time to time supplied to you. Until such payment is made you will hold the goods as fiduciary agent and bailee for us and will return them to us if requested. You may as a fiduciary agent sell or deal with the goods in the ordinary course of your business. Any right to bind us to any liability to any third party by contract or otherwise is expressly negated. You receive all proceeds of any dealing with such goods in trust for us and will keep such proceeds in a separate account until your liability to us has been discharged. We have the power to appropriate payments to such accounts as we think fit notwithstanding any appropriation by you to the contrary. Until such time as you become owner of the goods you will store them separately and ensure they are kept in a good and saleable condition, secure from risk and damage or theft and fully insured against such risks.

13 PPSR - You agree the above retention of title clause gives rise to a security interest as defined in the Personal Properties Securities Act 2009 ("PPSA") in all goods and/or services present and acquired after the execution of these terms. You acknowledge that we may perfect such security interest by registration on the Personal Properties Security Register ("PPSR"). You waive any entitlements under the PPSA regarding notices. You agree to do all things and execute or arrange execution of all documents we require to perfect a first ranking security interest in the goods and/or services. Non-compliance by you with this clause will constitute a breach of this agreement. Any cost associated with the enforcement of our rights under the PPSA will be payable by you.

14 Default by You - If you default or fail to make due payment for any goods and/or services supplied to you from time to time, without prejudice to our other rights, we may do any or all of the following:

- (a) Withdraw all credit facilities without notice until your account is brought within terms;
- (b) Change your credit limit;
- (c) Notify you that all monies owing under your account are immediately due and payable;
- (d) Charge interest on overdue monies daily until payment at the rate of 15% per annum;
- (e) Charge you, at our discretion, an administration fee of \$25 per outstanding invoice which is immediately due and payable;
- (f) Require you to pay on demand legal costs on a solicitor and own client basis or any other expenses whatsoever incurred by us in respect of the enforcement or attempted enforcement of our rights under this agreement (including collection agent costs, entry and removal costs and dishonored cheque fees);
- (g) Cancel any trade discounts or revise your pricing structure;
- (h) Cancel any rebate or incentive arrangements;
- (i) Withhold any further deliveries of goods whether in transit or not;
- (j) Where goods have been delivered, enter your premises or any premises under your or your agent's control where the goods are stored and use reasonable force to recover the goods without any liability of whatever nature to you or your agent;
- (k) Where goods have been recovered we may dispose of the goods to any person on any terms we deem necessary without liability of any kind to you and we shall be entitled to recover the difference between the purchase price owed by you and the net proceeds of the sale of the repossessed goods;
- (l) Resell any goods repossessed for our own benefit without liability to you for any loss resulting from the resale;
- (m) Suspend and/or terminate performance without penalty of any other contract for sale;
- (n) Require payment in cash before or upon delivery of further goods to you;
- (o) Withhold documents which are in our possession;
- (p) Appropriate and apply all monies and credits/adjustment notes received by us at our discretion. For example we may apply them firstly to payment of our recovery costs, then to interest due, then towards payment of the debt for supply of the goods;
- (q) Terminate your website registered user access or access to any of our systems or third party systems with access ours; and/or;

15 Charge and Caveat in Land

To secure your punctual payment under this agreement for goods and the performance of your obligations and other money that may become owing to us as a result of your actions:

- (a) You agree to an equitable mortgage and/or charge in our favour of all joint and several interests in any land or realty in which you now own or which you may later acquire any such interest in, to secure all amounts and other monetary obligations payable by you under this Agreement; and
- (b) You acknowledge and agrees that we are entitled to lodge a caveat or any other document necessary to secure:
 - (i) Payment of any money you are required to pay; and
 - (ii) Your payment of any damages payable by you for your failure or delay to fulfil any of your obligations, in connection with this Agreement.

16 Security Interest of present and after acquired property.

- (a) To secure your punctual payment under this agreement for goods and the performance of your obligations and other money that may become owing to us as a result of your actions, you grant to the us a security interest (as defined in the PPSA) over all PPS Property.
- (b) Nothing in this Agreement may be interpreted that any Security Interest attaches later than the time contemplated by section 19(2) of the PPSA.
- (c) At our request, you must promptly provide us with all required information necessary to ensure that any registration of our Security Interests on the PPS Register is, and remains, fully effective or perfected, or both, and that each Security Interest in favour of us has the priority required by us.
- (d) You acknowledge that we have not agreed to subordinate any Security Interest that we have in any of the PPS Property to any other interest in any of the PPS Property.
- (e) You acknowledge, if you dispose of or otherwise deals with the PPS Property or an interest in it in breach of this clause, that we have not authorised the disposal or agreed that the dealing would extinguish any Security Interest that we holds over the PPS Property, and that our Security Interest continues in the PPS Property or interest, despite the disposal or dealing.
- (f) You will promptly execute or procure the execution of all documents required by us to register the Security Interest in all PPS Property.
- (g) You will pay for all costs associated with registering the Security Interest in the PPS Property
- (h) The Security Interest in your PPS Property will be deregistered upon:
 - (i) The return of goods to us in the condition and state required by this agreement; and
 - (ii) The full payment to us of all money you is required to pay in accordance with this Agreement.

17 Bank Guarantee Security

In consideration of us granting a credit account to you, we may require you to provide a bank guarantee security in the amount of the credit limited approved by us for a period fixed by us to secure your performance under this Agreement.

You agree we may have recourse to the bank guarantee security if you fail to pay an amount in accordance with this agreement and 5 days have elapsed since we gave you notice that we intend to have recourse to the bank guarantee security."

18 Representations - Subject to the express and implied warranty provisions above, we are not liable for any advice given by our agents or employees in relation to the suitability for any purpose of goods or material supplied by us and all such advice relied upon is at your own risk. Our agents and employees are not authorised to vary or add to our trading terms.

19 Liability and release – Subject to the express and implied warranty provisions above, we are not liable for and you release us from all liability for any direct, indirect, consequential or punitive loss or damages (including loss of profit) arising out of anything done or not done by us, our employees, officers or agents in relation to the supply of the goods (whether arising through negligence or otherwise) including any loss or damages arising from injury, death, property damage, use of the goods, infringement of intellectual property rights or defects in the goods. Where such liability occurs to a third party you hereby indemnify us against all third party liability to the fullest extent permitted by law.

20 Rebates/Incentives – We may enter into an incentive/rebate arrangement with you and if so, it will form a special condition to these Standard Trading Terms and be interpreted as if a term of them. The following conditions will specifically apply to the rebate/incentive arrangement:

- (a) **Preferred Supplier Status** - If the rebate/incentive agreement requires you to appoint us as a preferred supplier you must promote us to all your branches/outlets including:
 - (i) Promoting us as a preferred supplier (on your website and other marketing materials);
 - (ii) Hard coding us as a preferred supplier on each ordering platform and provide us evidence of this;
 - (iii) Arranging for each branch/outlet to become our customer and open an account (if applicable);
 - (iv) Promoting and providing information to each branch/outlet on us and our products;
 - (v) Create marketing opportunities for us to present and distribute information to the branches/outlets directly such as your group trade shows, forums or training nights;
 - (vi) Negotiating and agreeing on behalf of your branches/outlets to discounts, pricing structure, payment terms and service improvement from time to time; and
 - (vii) Not doing anything to cause our reputation or good will to be detrimentally affected.

- (b) **Trade Marks** – We consent to you and your branches/outlets using our trade marks on your websites and marketing materials associated with promoting us as a preferred supplier to yourself and/or your branches/outlets. This consent may be revoked at any time by us by notice in writing.
- (c) **Branch/Outlet Knowledge** - you represent and warrant to us that each branch/outlet (if not wholly owned by you) has:
- (i) Appointed you as their agent to negotiate and agree on matters relating to their businesses including:
 - (A) Rebates to be paid to you directly for products supplied to the branch/outlet by us; and
 - (B) Forming a strategic alliance to improve service and increasing sales of our product;
 - (ii) agreed that the rebate may be paid directly to your nominated bank account or as a credit to you account with us;
 - (iii) agreed that we may provide their account information directly to you;
 - (iv) agreed that you may provide us your and their data including providing us access to obtain data from third parties; and
 - (v) agreed that you may negotiate and agree with us, the branch/outlets discount, pricing structure, payment terms and service improvements.
- (d) **Adding Branches/outlets** – Branches/outlets may be added to or removed by you giving us written notice setting out their details and requesting that they be added to or removed from the branch/outlet group which you represent or wholly own
- (e) **Rebate/Incentive** – If a special condition regarding a rebate/incentive is agreed with you then it will set out the rate and the structure of the rebate/incentive (e.g based on sales less credits, credit/return claim targets, use of our IT platforms and/or exchange of data). These will form part of the conditions of the rebate and the rebate will not be paid or adjusted as agreed, if these conditions and any other conditions set out in these Standard Trading Terms are not met.
- (f) **Within Payment Terms** - It is a condition of the rebate that you and the branches/outlets have paid their accounts within our payment terms. If you or any of the branches/outlets are outside our payment terms then the Rebate amount will be adjusted by us. If it has been credited in advance we may reissue statements with the credit removed or make an adjustment of the months' statements.
- (g) **Method** - If the rebate is payable, we will pay the rebate by processing a credit to your account or making a payment into your nominated account (only if you, as a group consolidator, do not have an account with us).
- (h) **Term/Termination** – The special condition regarding a rebate/incentive may terminated by either party giving at least 5 business days notice before the end of the month and the termination will be effective at the end of the current month. These Standard Trading Terms will continue notwithstanding the termination of the special condition.

21 Confidential Information – Any information relating to our business communicated to you by us will be treated as confidential and valuable to us. You must maintain the information in the strictest confidence and use the information solely as a user or reseller of our goods. These confidentiality obligations continue notwithstanding the end of our trading relationship. You are not required to maintain information as confidential if you are required to disclose it by law or it is in the public domain (other than by breach of your obligation to keep it confidential).

22 VIN Searches – If we offer you the service, you may purchase VIN searches which may only be used for your internal purposes and only for vehicle identification in order to purchase and promote APG's products. The pricing for VIN searches will vary from time to time. VIN searches may be purchased in packages which do not expire. If we issue bonus/free VIN Searches based your APG purchases, these may expire at a time determined by us and any offer may be capped. VIN Searches are non-refundable and non-transferable. VIN Searches and their results form part of our Marketing Materials and are subject to the IP Licence below (including our disclaimer and reservation of rights).

23 IP licence – We grant you a non-exclusive licence to use Marketing Materials (including electronic catalogues, data files, pictures, our website and information and materials accessible from our website) provided to you by us provided that:

- (a) Should you require modifications to our standard Marketing Materials then you may request we undertake this work and of we agree we will charge you our standard hourly rate for undertaking this work.
- (b) You agree that we may terminate this licence at any time in which case you will immediately return to us all copies of the Marketing Materials and cease to copy and/or use the Marketing Materials. You agree to erase all Marketing Materials from your systems and return all hard copies to us;
- (c) You agree that the disclaimer and reservation of rights below is deemed to apply to each item of Marketing Materials provided to you;
- (d) You acknowledge that we made a substantial investment in creating the Marketing Materials and should you breach the terms of this licence or continue to use our Marketing Materials after we have notified you of the termination of this licence then you must pay us a licence fee of \$500 per day; and
- (e) You agree you have no right to sub-licence the rights granted to you by us.

“Disclaimer and reservation of rights - Access to and use of this item of Marketing Material (including information or material contained in or accessed from this item) is subject to the following disclaimer and reservation of rights:

Purpose – It is intended that this item may be used by you for the purchase and promotion of Auto Parts Group Pty Ltd’s products only. Use of this item (including information or material contained in or accessed from this item) is at your own risk.

No Warranty or liability – We make no representation or warranty, express or implied, as to the currency, accuracy, reliability or completeness of the information or material contained in, referred to in or accessed from this item. To the maximum extent permitted by law we shall not have any liability (whether arising from negligence or otherwise) in respect of the use of the item or the information contained in, referred to in or accessed from this item (including any reliance on the currency, accuracy, reliability or completeness of the information).

Intellectual Property Rights - © 2011 Auto Parts Group Pty Ltd is the owner of the copyright in this item. All rights reserved. All material is subject to copyright under the Copyright Act 1968 (Commonwealth) and permission must be obtained in writing from Auto Parts Group Pty Ltd. Auto Parts Group Pty Ltd is the owner of all the other intellectual property rights in the contents of the information or material contained in or accessed from this item (including documents, text and images). To remove any doubt you must not commercialise the information or material contained in, down loaded or accessible from this item. No modifications or derivative works may be created based on the information or material contained in, down loaded or accessible from this item.

Permission to Copy – Auto Parts Group Pty Ltd hereby grants you permission to copy this item for the purpose of purchasing and promoting Auto Parts Group Pty Ltd’s products only.

Third Party Data – Some of the information or material accessed or contained in an item may incorporate third party data (including Motor Vehicle Data such as vehicle identification number (VIN) and registration plate matching services and such other data and information or other content provided by third party data providers). Such information may only be used internally by you and only for the purpose for which it is provided e.g. vehicle identification in order to purchase our products. Third party data use is subject to the following additional terms:

- (a) You acknowledge that all right, title and interest in and to the third party data is retained by the third party data provider and you must not commit or permit any act or omission that would impair such rights;
- (b) We do not claim any copyright in relation to third party data, the copyright is claimed by the third party data provider and you acknowledge this;
- (c) The third party data is provided on a “as is” “as available” basis. Any use or reliance on it will be at your risk. There are no warranties given (express or implied) including but not limited to implied warranties of merchantability or fitness for a particular purpose;
- (d) In no event will we or our third party data providers be liable for any indirect, special, incidental or consequential damages, including but not limited to, loss of income or lost revenue whether based in contract, tort or any other theory;
- (e) You may not advertise or disclose or in anyway publically announce through any media or directly to third parties the use or source of the Motor Vehicle Data.

To the extent permissible at law, Auto Parts Group Pty Ltd is not liable to any person for loss or damage arising from reliance upon information contained herein.

Parts are not genuine (unless specifically stated) and manufacturer references are for application purposes only. Only APG part numbers ending in ‘G’ are genuine parts. The OEM part number is not our part number and is provided for searching purpose only.

Auto Parts Group is not sponsored, approved, affiliated or otherwise associated with any genuine or original parts manufacturer, distributor or dealer. The statutory warranties/consumer guarantees under the Australian Consumer Laws and any other contractual warranties against defects are provided by Auto Parts Group only.

Parts are not genuine (unless specifically stated) and the manufacturer references are for application purposes only. Only our part numbers ending in “G” are genuine parts. The OEM part number is not our part number and if provided, is provided for searching and application purposes only.

We are not sponsored, approved, affiliated or otherwise associated with any genuine or original parts manufacturer, distributor or dealer. The statutory warranties/consumer guarantees under the Australian Consumer Law and any other contractual warranties against defects are provided by us only.

Photos are for identification purposes only and may be of either genuine or non-genuine parts. List prices, if provided, are for guidance and identification purposes only.”

24 APG Client Data - All data that you input, upload or otherwise submit into our website, applications, Marketing Materials, software or other software interfaces is not required to be maintained as confidential information by us (subject to our privacy policy) and any intellectual property in the data is hereby assigned by you to us to use for any purpose.

25 Third Party Client Data - You authorise us to obtain directly from third parties (such as platform providers like PartsCheck) information and data relating to you including your client data (such as data or information that you input, upload or otherwise submit into the third party website, application, software or software interfaces), quote information, supplier information and purchase

orders but not including any data relating to price paid or vendor name. This Third Party Client Data is not required to be maintained as confidential information by us (subject to our privacy policy) and any intellectual property in the data is hereby assigned by you to us to use for any purpose.

26 Website – You may request to become a registered user of our website. Should this request be granted you must comply with our website user policies and procedures which are available from time to time on our website. We may terminate your registered user access at our discretion without notice to you. You will be granted a confidential user identification and password (collectively referred to as your password).

All transactions using your password will be deemed to be transactions authorised by you and contracts for the sale of goods formed from the use of your password will be governed by these terms and conditions.

We have no obligation to verify the validity of any instruction given using your password.

You must notify us in writing immediately should you become aware or suspect any unauthorised use of your password. Upon receipt of the notice we will as soon as reasonably possible disable the password and issue a replacement password. You agree that we are not liable for any loss you may incur as a result of unauthorised use of your password and that you bare all risk and liability for unauthorised use of your password. You hereby indemnify us from all loss, costs and expenses arising from unauthorised use of your password.

We hereby exclude any warranties and give no representations as to the availability, accuracy, speed or performance of our website. We do not warrant that our website or the content accessed from it will be free of viruses or any other harmful components or as to the security of our website and the transactions made using it. You must notify us in writing immediately if you suspect a virus has been transported by use of our website or of any suspected security breach. You must not do anything that would effect or disrupt the security, performance or availability of our systems such as inappropriate processes (e.g. repeated pinging, port scans, probes or activities that may resemble hacking).

27 Website links - You may also request that your website be linked to our website such that your customers view our on-line catalogue. Should this request be granted you must pay us our standard yearly website link fee. You must keep details of the web link-fee confidential.

28 Website advertisements – You may request to advertise on our website. Should this request be granted you must pay us our standard website advertising fees. All registered users will be listed on our website (contact details for retailer/wholesalers) and if you are a registered user you agree to this listing and to pay our standard yearly listing fee.

29 Privacy Policy - We collect personal information about you for the purposes set out in our Privacy Policy. This policy may be located at www.autopartsgroup.com.au. A hardcopy of this policy can also be provided to you free of charge, upon request. Our Privacy Policy sets out the personal information we collect; how we collect and use this information; how you may access or correct it; and how you may make a complaint in respect of our management of the information. By you providing instructions to us for the supply of goods, you are consenting to us collecting, handling, using, disclosing and otherwise dealing with your personal information (including credit relation personal information) in accordance with the terms of our Privacy Policy, and in accordance with Australian privacy laws.

30 Set off- You agree not to use any set off or counter claim against us as a reason for not paying us at first instance any monies owed to us from time to time.

31 Signing Authority Warranty – you warrant that the people who have signed the Account Application Form forming this Agreement are authorised by you to do so.

32 Trust/Partnership indemnity warranty – you and each person signing this Agreement on your behalf, in circumstances whereby you are a trust or partnership, warrant that you/they have the right to be indemnified out of the trust or partnership assets in relation to any liability arising from this Agreement.

33 Guarantee - In consideration of us agreeing to supply the Customer with goods on credit the Guarantor agrees to guarantee and be responsible to us for the due payment by the Customer for all the goods and/or services that we may from time to time supply to the Customer and for all debts whatsoever and howsoever arising by the Customer to us in respect of goods and/or services supplied. This guarantee is a continuing guarantee, is a principal obligation and is not to be affected by any claim or right to set off or cross action by which the Customer may have or claim to have against us. We may without notice to the Guarantor at any time grant indulgences to the Customer or waive compliance with these Trading Terms or amend these Trading Terms. We are not required to provide the Guarantor with any notice of default by the Customer. In addition:

- (a) If more than one guarantor is listed in the Credit Application Form, each Guarantor is jointly and severally liable to us for the guarantee and indemnity given in accordance with this clause.
- (b) The Guarantor unconditionally and irrevocably guarantees to us:
 - (i) Your payment of any money you are required to pay;
 - (ii) Your performance and observance of your obligations; and

- (iii) Your payment of any damages payable by you for your failure or delay to fulfil any of your obligations, in connection with this Agreement.
- (c) If you default in:
 - (i) The payment of any amount due in connection with this Agreement, the Guarantor must pay that amount on demand to us; or
 - (ii) The performance and observance of any of your other obligations in connection with this Agreement, the Guarantor must pay to us on demand all losses, damages, expenses and costs (including legal costs on an indemnity basis) which we are entitled to recover because of that default, whether or not we have exercised or exhausted our remedies for their recovery from you.
- (d) As a separate and additional guarantee and indemnity, the Guarantor indemnifies us in respect of:
 - (i) All risks and liabilities (including legal costs on an indemnity basis) incurred by us arising directly or indirectly in connection with any default, delay act or omission by you in the performance and observance of your obligations in connection with this Agreement; and
 - (ii) Any money payable in connection with this Agreement (including money which would have been payable if it were recoverable) which is not recoverable from you for any reason and whether or not:
 - (A) Any transaction relating to any money payable in connection with this Agreement was void or illegal or has been avoided; or
 - (B) Anything relating to that transaction was or ought to have been known to us.
 - (iii) Any amount claimed by or paid to a liquidator under Part 5.7B of the Corporations Act 2001 (Cth) including legal costs we incur in respect any such claim made by a liquidator.
- (e) You and any Guarantor agree to an equitable mortgage and/or charge in our favour all joint and several interests in any land or realty in which you now own or which you may later acquire any such interest in, to secure all amounts and other monetary obligations payable under this Agreement.
- (f) You and any Guarantor acknowledges and agrees that we are entitled to lodge a caveat or any other document necessary to secure:
 - (i) Payment of any money you are required to pay; and
 - (ii) Your payment of any damages payable by you for your failure or delay to fulfil any of your obligations, in connection with this Agreement.
- (g) This clause 27 contains a continuing guarantee and indemnity despite any settlement of account, intervening payment or anything else until all money payable in connection with this Agreement has been paid in full, and all your other obligations in connection with this Agreement have been performed and observed.

34 Trust Company – If you enter into this agreement as a trustee then you agree that you are as trustee subject to these terms and liable to pay all monies outstanding at any time and warrant that the assets of the trust are available to meet these liabilities.

35 Credit Enquiries - You and the Guarantor consent to us making any enquiries of whoever is deemed necessary (including credit reference agencies and trade referees) for the purpose of assessing the credit application or for the collection of overdue payments and permit these people to give information to us without restriction.
You and the Guarantor consent to us providing personal and commercial credit information (including details of credit worthiness or any default) to a trade insurer or other credit providers who are using the information to assess a credit application.

36 Governing Law - These Trading Terms are to be construed in accordance with the laws of Queensland. The parties submit unconditionally to the exclusive jurisdiction of the Courts and appellants Courts of Queensland located in Brisbane.

37 Sale of Business - You must notify us in writing of any change of address or ownership of your business within 7 days of the commencement of such change.

38 Enforceability – Should any part of this agreement be unenforceable at law or cannot be given full effect whether by statutory invalidity, uncertainty or otherwise, then that specific section shall only be unenforceable and the remainder of the agreement will retain full effect and enforceability.

39 Waiver – We shall not be deemed to have waived any terms or conditions of this agreement or to any variation of this agreement unless we have done so expressly in writing.

40 Assignment - You cannot assign these terms and conditions of trade without our prior written consent. We can assign these terms and conditions of trade to a third party without your consent.

41 Force Majeure – Where any event which is outside our reasonable control prevents or delays us from performing our obligations under this agreement, that obligation is suspended. If the delay continues for a period of 3 months either of us may terminate the relevant contract for the sale of goods by written notice to the other.

42 Electronic Signatures - Pursuant to section 14 of the *Electronic Transactions (Queensland) Act 2001*, the parties to this Agreement consent to the use of an electronic signature as a means of executing this Agreement and as defined in that Act. Sending Material Electronically: Pursuant to sections 11 and 12 of the *Electronic Transactions (Queensland) Act 2001*, the parties to this Agreement consent to both give and receive information by electronic communication as defined in that Act. We are able to send and receive

documents electronically. However, as such transmission is not secure it may be copied, recorded, red or interfered with by third parties while in transit. If you ask us to transmit any document electronically (or you accept any document electronically), you release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document, for any delay or non-delivery of any document and for any damage cause to your system or any files.

43 Product Information and Promotions – You agree that we may use any email addresses provided by you to us for sending commercial electronic messages.

BODY & LIGHTING

COOLING

ELECTRICAL

MECHANICAL

REAL ADVANTAGE™

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REGIONAL HUB CONTACT DETAILS

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