

INVERTEK DRIVES PTY LTD – TERMS AND CONDITIONS OF SALE

Terms & Conditions of Sale

1 Interpretation

1.1 In these terms and conditions:

- a. ‘CCA’ means the *Competition and Consumer Act 2010 (Commonwealth)*;
- b. ‘GST Act’ means the *A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth)*;
- c. ‘Consumer Guarantee’ means the guarantees provided for in Part 3-2 Division 1 of the Australian Consumer Law;
- d. ‘Customer’ means the purchaser of the Goods;
- e. ‘Goods’ means the products supplied by the Supplier to the Customer;
- f. ‘GST’ means the Goods and Services Tax as defined in the Act;
- g. ‘Major Failure’ has the same meaning as defined in the *Australian Consumer Law*;
- h. ‘PMSI’ means a purchase money security interest pursuant to the PPSA;
- i. ‘PPSA’ means the *Personal Property Security Act 2009 (Commonwealth)*;
- j. ‘Quotation’ means any quotation document given by the Supplier to the Customer;
- k. ‘Supplier’ means INVERTEK DRIVES PTY LTD. ABN 62 010 960 942;
- l. ‘Terms’ means these the Supplier’s Terms and Conditions of Sale.

2 General

- 2.1 The Goods and all other products sold by the Supplier are sold on these Terms.
- 2.2 Unless otherwise agreed in writing by the Supplier, any terms and conditions of the Customer’s order deviating from or inconsistent with these Terms are expressly rejected by the Supplier as too are any variations to these Terms not expressly agreed to in writing by the Supplier.

3 Quotations and Orders

- 3.1 Unless previously withdrawn, any Quotation will remain valid for a period of sixty (60) days from the date on which it was made.
- 3.2 A Quotation is an invitation to treat and shall not constitute an offer to sell Goods to the Customer. No contract for the supply of Goods shall exist between the Supplier and the Customer until a Customer’s order for Goods has been accepted by the Supplier.
- 3.3 Prices in the Quotation:
 - a. Unless otherwise specified are exclusive of GST and any GST payable must be paid by the Customer to the Supplier in the same manner at the same time as the consideration for the supply is required to be paid by the Customer under these Terms;
 - b. are based on rates of labour, cost of materials, services and currency exchange rates current at the date of the Quotation;
 - c. are based on rates of customs duty, freight exchange and sales tax current at the date of the Quotation; and
 - d. the Customer acknowledges and agrees that the prices or estimates in the Quotation may vary after the date of the Quotation and that it will pay for all additional incidental or ancillary charges, rates and disbursements as reasonably required by the Supplier or any third party. The Supplier will promptly notify the Customer of any such variation in writing.

- 3.4 Any Order for customised Goods or Goods which must be specially sourced by the Supplier for the Customer (not regular stock) cannot be cancelled once the production or sourcing of these Goods has commenced.
- 3.5 The Supplier may in its discretion refuse to supply any Order for any reason whatsoever.
- 3.6 The Supplier is under no obligation to supply any Goods until such time as it communicates to the Customer the Supplier’s acceptance of the Customer’s order.

3.7 The Customer acknowledges that once an order has been placed, the Supplier is under no obligation to accept any variation to that Order requested by the Customer. If the Supplier does accept a variation to an order, the Customer acknowledges and agrees that the Supplier may vary the delivery date for the Goods and the price as a result of that variation.

3.8 The Customer will provide to the Supplier its Australian Business Number and any other information required by the Supplier or by law prior to placing any order with the Supplier.

3.9 Each order placed by the Customer shall be a representation to the Supplier that the Customer is solvent and able to pay the Supplier’s accounts as and when they are due.

4 Terms of Payment

- 4.1 All payments will be made by electronic funds transfer, cash, company cheque or bank cheque.
- 4.2 Where permitted by the Supplier payments made otherwise than as provided for in Clause 4.1 such as payments by credit card will attract an administration fee being 2% of the amount being paid with such fee being payable at the same time as the payment.
- 4.3 Where payment is made otherwise than by cash, payment is only taken to have occurred upon receipt of cleared funds by the Supplier.
- 4.4
 - (a) Unless credit facilities have been granted, payment is required prior to dispatch of Goods from the Supplier’s premises; and
 - (b) Where credit facilities have been granted unless otherwise agreed by the Supplier in writing, all invoices are due and payable within 30 days of the date on which the invoice to which the Goods relate is issued.
- 4.5 otherwise agreed by the Supplier in writing, all invoices are due and payable by the last business day of the calendar month following the month in which the invoice to which the Goods relate is issued.
- 4.6 The Customer shall not set off any amounts allegedly owing by the Supplier to the Customer against any amount due by it to the Supplier.
- 4.7 Payments received by the Supplier shall be applied first in payment of interest and legal and other costs arising as a consequence of any default in payment by the Customer and then in reduction of principal.
- 4.8 Payments received without a remittance advice will be applied first to the oldest balance owing by the Customer.
- 4.9 Any agreement by the Supplier to extend the terms of credit or other indulgence granted to the Customer shall not affect the Customer’s liability to account to the Supplier as aforesaid.
- 4.10 If the Customer defaults in making payment in accordance with these Terms, the Supplier may in its absolute discretion and without notice:
 - a. charge the Customer interest at the rate of 16% per annum calculated and payable daily from the due date until the date of payment; and
 - b. require the Customer to reimburse the Supplier for all collection costs including (but not limited to) legal costs incurred by the Supplier, calculated on a full indemnity basis, as a consequence of the Supplier instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Supplier in its absolute discretion decides and any other costs, expenses, losses or damages arising out of the default.

4.11 Any credit facility granted by the Supplier to the Customer shall continue until terminated by the Supplier at its sole discretion. Termination by the Supplier of any credit facility shall be either verbal or in writing.

4.12 Any failure by the Supplier to exercise any of its rights pursuant to these Terms shall not constitute a waiver of any of its rights with respect to any other or subsequent breach by the Customer.

5 Delivery

5.1 The Supplier accepts no responsibility for delivery of the Goods but may, in its sole discretion elect to arrange delivery of the Goods and charge the Customer a delivery fee.

- 5.2 The Supplier will make all reasonable efforts to deliver the Goods by the agreed delivery date but will not be liable in any way should delivery not be made on this date.
- 5.3 A certificate or delivery docket signed by an authorised Supplier representative confirming delivery of Goods shall be conclusive evidence of delivery.
- 6 Cancellation**
- 6.1 Subject to Clause 3.4, an order or Quotation shall only be cancelled or varied with the written agreement of both parties.
- 6.2 Any agreement to cancel or vary a Quotation or an order pursuant to Clause 6.1 shall be subject to the Supplier being compensated for any costs incurred with respect to the order prior to the cancellation or variation.
- 7 Withholding Supply**
- The Supplier reserves the right, irrespective of whether or not any Quotation has been accepted, to withhold supply of Goods to the Customer where the Supplier has determined, in its absolute discretion, that credit should no longer be extended to the Customer and the Supplier will not be liable for any loss or damage resulting directly or indirectly from such action.
- 8 Customer Default**
- If the Customer:
- a. fails to make any payment due pursuant to these Terms or commits any other breach of any of the Customer's obligations under these Terms; or
 - b. suffers any execution;
 - c. commits an act of bankruptcy;
 - d. makes any composition or arrangement with creditors;
 - e. stops payment or ceases or threatens to cease to carry on its business or pay its debts as and when they fall due; or
 - f. being a company, passes a resolution for winding up except for the purposes of a solvent reconstruction or have a receiver appointed over any of its property, or an administrator appointed, or have a winding up petition presented against it; then
- all moneys payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding the due date for payment shall not have expired.
- 9 Return Policy for Goods**
- Subject to the Customer's statutory rights under the CCA:
- a. The Customer must not return Goods to the Supplier without the Supplier's prior written consent.
 - b. Any Goods supplied in accordance with the Customer's custom requirements or specially sourced by the Supplier for the Customer will not be acceptable for return and/or credit.
 - c. Where the Customer makes a claim for a credit or refund with respect to Goods, the Goods must be in their original undamaged packaging, other than where the Customer is making a claim with respect to the Goods under the CCA;
 - d. No Goods will be accepted for return and credit after one (1) month from the date of invoice unless the return or a claim is made under the CCA, in which case the Goods must be returned within a reasonable time;
 - e. If the Supplier in its sole discretion agrees to accept the return of any Goods, they must be in an 'as new' and saleable condition free of any damage;
 - f. Upon the receipt of the returned Goods, the Supplier will credit to the Customer the Purchase Price for the Goods, less a restocking fee of 25% of the Goods' invoiced value; and
 - g. The Customer will be responsible for the cost of and for effecting the delivery to the Supplier of any Goods returned under this Clause.
- 9.2 Nothing in Clause 9 affects any statutory obligations of the Supplier in relation to the Goods (or corresponding rights of the Customer), that may not lawfully be excluded.
- 10 Reservation of Title**
- Title to the property in the Goods will not pass from the Supplier to the Customer until the Supplier receives payment in full for all Goods and for all money owing by the Customer to the Supplier on any account whatsoever.
- 10.2 Until title to the property in the Goods passes to the Customer in accordance with clause 10.1, the Customer:
- a. holds the Goods as bailee, agent and fiduciary of the Supplier and must insure the Goods and store them safely and in a manner that clearly shows the ownership of the Supplier; and
 - b. will keep and maintain all Goods free of any charge, lien on security interest except as created under these Terms and not otherwise to deal with the Goods in a way that will or may prejudice the rights of the Supplier.
- 10.3 The Customer grants the Supplier (together with its employees, agents and contractors) an irrevocable licence to enter the Customer's premises (or any other premises either under the control of the Customer or where the Goods are stored on behalf of the Customer) at any time without notice to inspect the Goods and, if the Customer defaults in paying for those Goods, to use reasonable force to take possession of the Goods without liability for trespass, negligence or payment of any compensation to the Customer or anyone claiming through the Customer.
- 10.4 Notwithstanding Clauses 10.1 and 10.2, the Customer may subject to Clause 10.5 in the ordinary course of its business resell the Goods to a third party provided that if the Customer:
- a. Is paid for that sale, the Customer holds all the proceeds of sale on trust for the Supplier and must promptly pay those proceeds to the Supplier (keeping them separate and identifiable from the Customer's other funds until it has done so);
 - b. intermingles those proceeds of sale with the Customer's other funds, the Customer acknowledges that the Supplier has a beneficial interest in those intermingled funds to the extent of the moneys owing by the Customer to the Supplier at any time; and
 - c. is not paid for that sale, the Customer must assign to the Supplier, if the Supplier so elects by notice in writing, its claim against the person who bought the Goods from the Customer. For this purpose the Customer irrevocably appoints the Supplier as the Customer's attorney.
- 10.5 The Customer's rights to re-sell the Goods pursuant to Clause 10.4 cease if the Supplier exercises its right to recover the Goods. The Customer acknowledges that any purported re-sale of the Goods once the Supplier elects to exercise its rights for recovery of the Goods (either by notice in writing to the Customer or by physical recovery of the Goods) would be outside the ordinary course of the Customer's business.
- 10.6 To the extent that any of the Goods are mixed with, or form a component of any other goods ('Mixed Goods'), the Customer will hold on trust for the Supplier the portion of any proceeds which it receives from the sale of any of those Mixed Goods that relate to the respective Goods and will keep those amounts in a separate bank account and immediately apply same in payment to the Supplier.
- 11 Risk**
- Notwithstanding Clause 10.1, risk in the Goods shall pass to the Customer as soon as they are dispatched from the Supplier's premises whether by collection by the Customer (its employees, agents and contractors) or placement on any vehicle for transportation to another destination.
- 12 Personal Properties Securities Act**
- 12.1 The Customer agrees that the Supplier has a security interest (for the purposes of the PPSA created under these Terms in each item of Goods supplied to the Customer and agrees to treat that security as a continuing and subsisting interest in the relevant Goods with priority over any registered or unregistered general (or other) security and any unsecured creditor, and that security interest secures all monies owing to the Supplier.
- 12.2 The Customer grants to the Supplier a PMSI and agrees that the PMSI granted hereby will continue to apply to any Goods coming into existence or proceeds of sale of Goods coming into existence.
- 12.3 The Customer agrees that the PMSI has attached to all Goods now or in the future supplied by the Supplier to the Customer.

- 12.4 The Customer acknowledges that the Supplier has the right to register a financing statement with respect to the relevant Goods and agrees to sign any further documents and provide any further information, such information to be complete, accurate and current in all respects, that the Supplier reasonably requires to register a financing statement and its security interests, with all priority the Supplier requires and to maintain those registrations.
- 12.5 The Parties agree that neither will disclose to 'interested persons' (as defined in section 275(9) *PPSA* or any other person, any information of the kind described in section 275(1) of the *PPSA*.
- 12.6 The Customer waives its right to receive any notice under the *PPSA* (including a notice of a verification statement) unless the notice is required by the *PPSA* and that requirement cannot be excluded.
- 13 Force Majeure**
The Supplier will not be liable in damages or otherwise for any failure to provide the Goods which is caused, whether wholly or partially, by an event beyond its reasonable control including (but not limited to) Act of God, war, fire, explosion, acts of terrorism, rioting, burglary, theft, civil disturbances, restrictions by governments (local, municipal, State or Federal) or other competent authority, general economic trends, strikes, industrial action or lockouts (whether at the Supplier's premises or not), accidents either at the Supplier's premises or when in transit to or from those premises, failure by subcontractors and the late arrival of inventory or other material.
- 14 Exclusions and Limitations**
- 14.1 The Supplier excludes all statutory or implied conditions and warranties to the maximum extent permitted by law.
- 14.2 If any law, implied in these Terms any term, condition, warranty or Consumer Guarantee and that law avoids or prohibits provisions in an agreement excluding or modifying the application of or exercise of, or liability under, that term, condition or warranty, that term, condition, warranty or Consumer Guarantee shall be deemed to be included in these Terms provided that the liability of the Supplier for a breach of the applicable terms, condition or warranty (other than where such limitation is excluded by law) is limited to, at the option of the Supplier to any 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; or
 - d. the payment of the cost of having the Goods repaired unless there is a Major Failure with respect to the Goods, in which case the Customer will be entitled to a remedy under the CCA.
- 14.3 The Customer acknowledges that the Customer does not rely, and that it is unreasonable for the Customer to rely, on the skill and judgment of the Supplier as to whether the Goods supplied are reasonably fit for any purpose for which they are being acquired, and that the sale is not a sale of goods by description or sample.
- 14.4 To the maximum extent permitted by law, the Supplier excludes its liability (including, but not limited to, liability in tort, contract and for breach of statute) to the Customer or any other person for:
- a. any loss or damage consequential or otherwise (whether contractual, tortious, statutory or otherwise) for any special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts or revenue arising out of or in connection with the provision of the Goods and whether as a result of any breach, default, negligence or otherwise by the Supplier suffered or incurred by the Customer or any other person in relation to the Goods, and
 - b. in particular, but without limiting Clause 14.4a, any loss or damage consequential or otherwise suffered or incurred by the Customer or any other person caused by or resulting directly from any failure, defect or deficiency of any kind of or in the Goods.

15 Claims
Any claims by the Customer in relation to the Goods other than for returns, which must be made in accordance with Clause 9 or warranty claims which must be made in accordance with the Supplier's warranty policy, must be made within seven (7) days of delivery of the Goods.

- 15.1 Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within fourteen (14) days of the invoice date.
- 15.3 Nothing in Clause 15 affects any statutory obligations of the Supplier (and corresponding rights of the Customer), which may not lawfully be excluded.

16 Certification

A statement in writing signed by the Supplier's credit manager or other authorised officer ("the certificate") stating any of the following matters:

- a. The amount due at any time for all Goods provided by the Supplier to the Customer;
- b. The amount due at any time with interest on the moneys due; or
- c. The amount due at any time for legal costs actually incurred by the Supplier including the costs of and incidental to any litigation and other expenses payable pursuant to these terms;

shall be conclusive evidence of such matters, facts or things stated in the certificate.

17 Variation

Any variation to this Agreement must be in writing and signed by both parties.

18 Jurisdiction

- 18.1 These Terms shall be governed by and construed in accordance with the laws of Queensland and the parties shall submit to the jurisdiction of the Courts of Queensland for all proceedings arising from these Terms.
- 18.2 The parties agree to proceedings being commenced out of the Courts at Brisbane and consent to those courts having jurisdiction.

19 Severance

If any provision or part of any provision of these Terms is unenforceable, then it will be severed from the rest and such unenforceability does not affect any other part of such provision or any other provision of these Terms.

20 Web Access

A copy of these Terms and Conditions can be viewed at www.invertek.com.au.