

TERMS AND CONDITIONS

NOTE: The Australian Consumer Law and other legislation have provisions that may not be contracted out of. Accordingly where those mandatory provisions apply, they override provisions to the contrary in these Terms & Conditions.

1. INTERPRETATION

In these Terms and Conditions unless the context otherwise requires:

- 1.1 a reference to a party includes a reference to the party's successors and permitted assigns and any person claiming under or through the party;
- 1.2 every agreement or obligation expressed or implied in this Deed by which two or more persons agree or are bound shall bind such persons jointly and each of them severally;
- 1.3 a reference to a group of persons includes a reference to all of them collectively, any two or more collectively and each of them individually;
- 1.4 "ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended.
- 1.5 "Applicant" means the party or parties defined as the Applicant in the Credit Application;
- 1.6 "Agreement" means the agreement constituted by the acceptance of this Credit Application (including the Terms and Conditions) by MM;
- 1.7 "MM" means Major Motors Pty Ltd (ACN 008 996 174) as trustee for the Major Motors Unit Trust which includes the following trading names: Major Motors, Major Motors Isuzu Ute, South West Isuzu, Jem Isuzu Ute and Jem Truck Sales.
- 1.8 "Conditions"/"Terms"/"Terms and Conditions" means these Trading Terms and Conditions forming part of the Agreement;
- 1.9 "consumer" is as defined in the ACL and in determining if the Applicant is a consumer, the determination is made if the Applicant is a consumer under the Agreement.
- 1.10 "goods" means goods supplied or ordered under this Agreement;
- 1.11 "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge;
- 1.12 "GST Law" has the meaning given to that term in *A New Tax System (Goods and Services) Act 1999* (Cth) as amended;
- 1.13 "including" and similar expressions means "including, but not limited to";
- 1.14 "Person" includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority;
- 1.15 "Payment" means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than GST) and includes the provision of any non-monetary consideration;
- 1.16 "PPSA" means the *Personal Property Securities Act 2009* (Cth) as amended;
- 1.17 "Purchase Price" means the price for the goods set out in the relevant Quotation or Sales Invoice;
- 1.18 "Quotation" means the form of quotation submitted by MM to the Applicant in which these Terms are deemed to be incorporated;
- 1.19 "Sales Invoice" means the sales invoice issued by MM to the Applicant in which these Terms are or are deemed to be incorporated;
- 1.20 "services" means services supplied by MM to the Applicant;
- 1.21 "Special Goods" means any goods which are, at the Applicant's request, embellished, printed, machined, cutto-size or specifically ordered for the Applicant.

2. AUTHORIZATION & ACCEPTANCE

- 2.1 The Applicant and the Guarantor(s) irrevocably authorize MM, its employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Applicant and the Guarantor(s) from time to time including (but without limiting the generality of the foregoing) the making of enquiries of persons nominated as trade referees, the bankers of the Applicant or any other credit providers (the information sources) and the Applicant hereby authorises the information sources to disclose to MM such information concerning the Applicant which is within their possession and which is requested by MM.
- 2.2 Credit will not be provided unless MM accepts this Application.

3. CREDIT LIMIT

- 3.1 MM may specify on notice to the Applicant the maximum credit limit extended to the Applicant (which may be more or less than the credit limit sought by the Applicant at MM's absolute discretion).
- 3.2 MM may alter the maximum credit limit upon notice to the Applicant and/or extend credit to the Applicant in excess of the Maximum Credit Limit at its absolute discretion.
- 3.3 The credit limit proposed by the Applicant and the credit limit granted by MM do *not* limit the liability of the Applicant and Guarantor(s) to MM.

4. REPRESENTATIONS

- 4.1 The Applicant and the Guarantor(s) represent and warrant to MM that the information contained in the Application and any related information and documentation provided by the Applicant and the Guarantor(s) is true and correct.
- 4.2 The Applicant and the Guarantor(s) acknowledges that MM has entered into this Deed in reliance on the representations and warranties in this clause.

5. TERMS OF PAYMENT

- 5.1 Unless MM has agreed in writing to extend credit to the Applicant, the Applicant must pay the Purchase Price in full on delivery of goods or services.
- 5.2 Where MM has agreed in writing to extend credit to the Applicant, Payment to MM for goods delivered is due within 30 calendar days of the end of the month in which the Applicant is invoiced for the goods unless agreed otherwise in writing by MM.
- 5.3 The Applicant is not entitled to make any deduction from amounts owing to MM in respect of any set off or counterclaim to be held back for retention.

6. PAYMENT DEFAULT

- (a) If the Applicant defaults in payment by the due date of any amount payable to MM then all money which would become payable by the Applicant to MM at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Applicant, and MM may, without prejudice to any of its other accrued or contingent rights:
 - (i) charge the Applicant interest on any sum due at the prevailing rate of 18% per annum for the period from the due date until the date of payment in full;
 - (ii) charge the Applicant for, and the Applicant must indemnify MM from, all costs and expenses (including without limitation indemnity legal costs and debt collection costs & commissions) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
 - (iii) cease or suspend supply of any further goods or services to the Applicant;
 - (iv) by written notice to the Applicant, terminate any uncompleted contract with the Applicant.
- (b) Clauses 6(a) may also be relied upon, at MM's option:
 - (i) where the Applicant is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (ii) where the Applicant is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Applicant.

7. CHARGE

- 7.1 The Applicant and each of the Guarantors, if any, hereby jointly and severally charge all their/its/his/her right, title and interest in any land that they/it/he/she own currently or may acquire in the future solely or jointly or have or become to have a beneficial interest in, in favour of MM, with due and punctual observance of all of the obligations of the Applicant.
- 7.2 The Applicant and each of the Guarantors, if any, hereby acknowledge that MM may at MM's discretion register and lodge an absolute caveat(s) on such property or properties in respect of the interest conferred on it under this clause. Such registration of a caveat by MM over the Applicant's and/or Guarantor(s)' property or properties must not be challenged by the Applicant and/or the Guarantor(s) in any way whatsoever, and the Applicant and the Guarantor(s) agrees not to take any steps in filing a "lapsing notice" via the Land Titles Office to have the caveat removed, until such time that the Applicant has paid all monies owing by it to MM as claimed from time to time.
- 7.3 The Applicant and each of the Guarantors agree to indemnify MM against all expenses and legal costs (on an indemnity basis) for preparing, lodging and removing any caveat.

8. ASSIGNMENT

The Applicant and the Guarantor(s) must not assign or transfer any of their rights or obligations in connection herewith to any other person whatsoever.

9. TRUST

If the Applicant signs the Application as the trustee of any trust (the "Trust"), the Applicant is personally liable for the performance of all covenants contained in the Agreement and agrees that MM's right of recourse pursuant to this Agreement shall not be limited to the Applicant's assets but shall extend the assets of the Trust.

10. CHANGE IN CONTROL

- 10.1 The Applicant must advise MM in writing no later than fourteen (14) days before a change in effective control of the Applicant or of any change or alteration of any particulars contained in this Application (if applicable).
- 10.2 MM (upon receipt of such advice) is entitled to review the Agreement and in its sole discretion, to terminate the Applicant's credit facilities upon seven (7) days written notice (the "Notice Period") to the Applicant.

11. GUARANTEE & INDEMNITY

- 11.1 If the Applicant is a company, all directors and the directors' spouses are required to sign a personal guarantee or guarantees collateral to this Application. The Applicant agrees to pay the stamp duty in respect of such guarantee to guarantors. However, the failure of one or more directors/spouses to sign a guarantee does not affect the liability of those who have signed a guarantee.
- 11.2 In consideration of MM agreeing to sell and supply goods and/or services on credit to the Applicant each person who has signed the Agreement as guarantor hereby unconditionally and irrevocably guarantees to MM the due and punctual payment of all debts and monetary liabilities including without limitation sums of money, interest, indemnity legal costs, damages, charges and expenses which are, or which may become payable by the Applicant to MM on any account and in any capacity ("Guaranteed Moneys") and, as a separate and independent obligation, agrees to indemnify and keep MM indemnified from and against any claim, action, loss, damage, cost, expense, outgoing or payment suffered, paid or incurred by MM in relation to the non-payment or non-recovery of the Guaranteed Moneys.
- 11.3 Each guarantor hereby expressly acknowledges that this Guarantee and Indemnity ("the Guarantee") is given upon and subject to the following conditions:-
 - (a) In the event of the Applicant failing to pay MM any Guaranteed Moneys the Guarantor will immediately pay such monies to MM.
 - (b) In the event of the Applicant failing to carry out or perform any of its obligations the Guarantor will immediately carry out and perform the same.
 - (c) The Guarantor shall be deemed to be jointly and severally liable with the Applicant (in lieu of being merely a surety for it) for the payment of the Guaranteed Moneys and it shall not be necessary for MM to make any claim

or demand on or to take any action or proceedings against the Applicant or make any demand against the Guarantor before commencing proceedings against the Guarantor to pay the Guaranteed Moneys or to carry out and perform the obligations herein contained.

(d) No time or other indulgence whatsoever that may be granted by MM to the Applicant shall in any manner whatsoever affect a liability of the Guarantor hereunder and the liability of the Guarantor shall continue to remain in full force and effect until all monies owing to MM have been paid and all obligations have been performed.

12. GOVERNING TERMS AND CONDITIONS

These are the only Terms which are binding upon MM with the exception of those otherwise agreed in writing by MM or which are imposed by a statute and which cannot be excluded. Any direction by the Applicant either verbal or written to procure goods or services from MM will be deemed as acceptance by the Applicant of these Terms, despite any provisions to the contrary in the direction or any purchase order issued by the Applicant.

13. INSPECTION AND ACCEPTANCE

(a) The Applicant must inspect all goods upon delivery and within 48 hours of delivery give notice with full details and description to MM named in the relevant Sales Invoice if the Applicant alleges that the goods are not in accordance with the Applicant's order. To the extent permitted under law, failing such notice, the goods shall be deemed to have been delivered to and accepted by the Applicant.

(b) When any non-compliance with the Applicant's order is accepted by MM or proven at law, then to the extent permitted under law MM's liability is limited to, at its option, replace the goods, or refund the price of the goods.

14. RETURNS

(a) Unless otherwise agreed, returns (other than required pursuant to the ACL) must be approved by MM named in the relevant Sales Invoice. These authorised returns must be freight prepaid and will only be accepted if they are in a saleable condition. MM reserves the right to charge a handling fee [equal to 10% of the price of the goods] for goods returned under this provision.

(b) Unless required by the ACL, Special Goods are not returnable.

(c) The various trading divisions of MM may have separate returns policies, to which the Applicant should refer.

15. QUOTATIONS

(a) Unless previously withdrawn, a Quotation is valid for 30 days or such other period as stated in it whichever period is the lesser. A Quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Applicant's order has been accepted in writing by MM.

(b) MM is not bound by any conditions attaching to the Applicant's order or acceptance of a Quotation and, unless such conditions are expressly accepted by MM in writing, the Applicant acknowledges that the Applicant's conditions are expressly negated.

(c) Every Quotation is subject to and conditional upon obtaining any necessary import, export or other licence.

16. PRICING

The parties agree that the Purchase Price does not include GST unless otherwise specified.

17. PASSING OF PROPERTY AND RISK

(a) Goods supplied by MM to the Applicant shall be at the Applicant's risk immediately upon delivery to the Applicant, into the Applicant's custody or at the Applicant's direction (whichever happens first). The Applicant shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate, shall note the interest of MM on the insurance policy and shall produce a certificate to this effect upon request.

(b) Property in the goods supplied by MM to the Applicant under these Terms shall not pass to the Applicant until those goods and other goods have been paid for in full.

(c) Until MM receives full payment in cleared funds for all goods and services supplied by it to the Applicant, as well as all other amounts owing to MM by the Applicant:

(i) the Applicant shall store the goods in a manner which shows clearly that they are the property of MM; and

(ii) the Applicant may sell the goods in the course of its business and shall account to MM for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account with a bank to whom the Applicant has not given security however failure to do so will not affect the Applicant's obligations as trustee.

(d) In addition to MM's rights under the PPSA, the Applicant irrevocably authorises MM at any time to enter onto any premises upon which:

(i) MM's goods are stored to enable MM to inspect the goods and/or if the Applicant has breached these Terms, reclaim the goods;

(ii) the Applicant's records pertaining to the goods are held to inspect and copy such records.

(e) The Applicant and MM agree that the provisions of this clause apply notwithstanding any arrangement under which MM grants credit to the Applicant.

18. PERSONAL PROPERTY SECURITIES ACT

(a) Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

(b) For the purposes of the PPSA:

(i) terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA;

(ii) these Terms are a security agreement and MM has a Purchase Money Security Interest in all present and future goods supplied by MM to the Applicant and the proceeds of the goods;

(iii) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Applicant at any particular time; and

(iv) the Applicant must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by MM on the Personal Property

Securities Register.

(c) The security interest arising under this clause 10 attaches to the goods when the goods are collected or dispatched from MM's premises and not at any later time.

(d) Where permitted by the PPSA, the Applicant waives any rights to receive the notifications, verifications, disclosures or other documentation specified under

sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

(e) MM and the Applicant agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

(f) To the extent permitted by the PPSA, the Applicant agrees that:

(i) the provisions of Chapter 4 of the PPSA which are for the benefit of the Applicant or which place obligations on MM will apply only to the extent that they are mandatory or MM agrees to their application in writing; and

(ii) where MM has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

(g) The Applicant must immediately upon MM's request:

(i) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and

(ii) procure from any person considered by MM to be relevant to its security position such agreements and waivers (including as equivalent to those above) as MM may at any time require.

(h) MM may allocate amounts received from the Applicant in any manner MM determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by MM.

19. SUPPLY

MM reserves the right to suspend or discontinue the supply of goods to the Applicant without being obliged to give any reason for its action.

20. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS

If the Buyer is a consumer, nothing in this clause limits any remedy available pursuant to the ACL save where lawfully permitted. To the greatest extent permitted by law:

(a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, descriptive literature or a catalogue approximate the goods offered but may be subject to alteration without notice.

(b) Any performance data provided by MM or a manufacturer is an estimate only and should be construed accordingly.

(c) Unless agreed to the contrary in writing, MM reserves the right to supply an alternative brand or substitute product when necessary.

21. SHIPMENT AND DELIVERY

(a) The means of delivery is at MM's sole discretion.

(b) MM may deliver the goods to the Applicant's premises in accordance with MM's usual practices.

(c) If MM directs the Applicant to collect the goods:

(i) the Applicant must collect the goods within 7 days of being advised they are ready;

(ii) if the Applicant does not collect the goods within this time, the Applicant is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.

(d) The Applicant must pay to MM on demand any delivery costs incurred by MM if

(i) the Applicant requests another method of delivery from that outlined in (a) above; or

(ii) the Applicant elects to use an independent courier to deliver the goods and enters into a separate contract with that independent courier to deliver the goods.

22. MANUFACTURERS' CHANGES

Where MM is acting as agent for a manufacturer or MM, MM shall not be liable for any alteration or variation in the goods made by the manufacturer or MM.

23. CURRENCY

Where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Applicant's order and the date of payment by MM will be to the Applicant's account.

24. CONTINGENCIES

Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon MM in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Applicant's account.

25. CHARGES BEYOND POINT OF DELIVERY QUOTED

Unless otherwise agreed in writing, if MM prepays freight, insurance, custom and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Applicant's account.

26. FORCE MAJEURE

If MM's performance or observance of any obligations is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond MM's reasonable control, MM may, in its absolute discretion give prompt notice of that cause to the Applicant. On delivery of that notice and to the greatest extent permitted under law, MM is excused from such performance or observance to the extent of the relevant prevention, restriction or effect.

27. SELLER'S CANCELLATION

If MM is unable to deliver the goods, then it may cancel the Applicant's order (even if it has been accepted) by written notice to the Applicant and limits its liability to the greatest extent permitted under law.

28. APPLICANT'S CANCELLATION

(a) To the greatest extent permitted under law, the Applicant shall have no right to cancel an order which has been accepted by MM unless otherwise agreed in writing. If a right of cancellation is granted to the Applicant, such right of cancellation must be exercised in accordance with the relevant terms of cancellation and by notice in writing from the Applicant to MM with which the order has been placed not later than 7 days prior to the estimated date of shipment by the manufacturer or MM as the case may be.

(b) Unless otherwise agreed between the Applicant and MM, upon cancellation prior to shipment any deposit paid by the Applicant shall be forfeited to the manufacturer or MM (as the case may be).

(c) Despite the cancellation of any order for any reason, the Applicant must still purchase from MM any goods ordered by the Applicant which constitute Special Goods (whether in store, in transit or being manufactured) which were procured or ordered by MM before such cancellation, unless otherwise agreed in writing by MM.

29. WARRANTY AND LIABILITY OF SELLER

(a) MM makes no express warranties under these Terms.

(b) Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

(c) If the Applicant is a consumer nothing in these Terms restricts, limits or modifies the Applicant's rights or remedies against MM for failure of a statutory guarantee under the ACL save to the extent lawfully permitted.

(d) If the Applicant on-supplies the goods to a person who is a consumer, or uses up or transforms the goods in the course of trade then:

(i) If the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of MM's liability to the Applicant;

(ii) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of MM's liability to the Applicant; howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Applicant or any third party.

(e) If sub clauses 29(b) and 29(c) do not apply, then other than as stated in the Terms and Conditions or any written warranty statement MM is not liable to the Applicant in any way under or in connection with the sale, installation, use of, storage or any other dealing with the goods or services by the Applicant or any third party.

(f) To the greatest extent permitted under law, MM is not liable for any indirect or consequential losses or expenses suffered by the Applicant or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

(g) The Applicant expressly acknowledges and agrees that:

(i) it has not relied upon, any service involving skill and judgement, or on any advice, recommendation, information or assistance given by MM, its agents or employees in relation to the goods or services or their use or purpose.

(ii) it has not made known, wither expressly or by implication, to MM any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services as suitable for the use of the Applicant.

(h) Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any nonexcludable State or Federal legislation applicable to the sale of goods or supply of services save as permitted under that legislation.

30. ALTERATION TO CONDITIONS

MM may, at any time and from time to time, alter these Terms and Conditions by providing notice to the Applicant.

31. GOVERNING LAW

These Terms and Conditions shall be governed by the laws of Western Australia. The parties agree to submit to the exclusive jurisdiction of the Courts of Western Australia.

32. WAIVER

MM's failure to enforce any of these Terms and Conditions shall not be construed as a waiver of any of MM's rights.

33. NO ADVERSE CONSTRUCTION

These Terms and Conditions are not to be constructed to the disadvantage of MM because MM was responsible for their preparation.

34. SEVERANCE

34.1 If any provision of these Terms and Conditions

(a) is or becomes void, voidable, illegal or unenforceable in its terms; (b) would not be void, voidable, illegal or unenforceable if it were read down; and (c) is capable of being read down, then that provision will be read down accordingly.

34.2 If, notwithstanding clause 34.1, a provision of these Terms and Conditions is still void, voidable, illegal or unenforceable, then:

(a) if the provision would not be void, voidable, illegal or unenforceable if some words were omitted, those words are severed; and

(b) otherwise, the whole provision is severed,

(c) and the rest of these Terms and Conditions will be of full force and effect.

35. PRIVACY

35.1 The Applicant and Guarantor(s) agree to MM's Privacy Policy, a copy of which is available from MM upon request.

35.2 MM recognises the importance of protecting the privacy of the Applicant and the Guarantor(s). MM is bound by the Privacy Act and the principles thereunder when handling personal information. Further details concerning privacy rights can be found at "The Office of the Australian Information Commissioner" website at <http://www.oaic.gov.au/>.