

BRAKE & TRANSMISSION NZ LTD

GENERAL CONDITIONS OF SALE (EFFECTIVE 01 MAY 2014)

1. General

1.1 Definitions

'Buyer' means the person, individual, firm, company or entity (whether legal or otherwise) named as applicant on the Application for Credit Account or otherwise placing an order for goods and/or services from the Seller.

'Goods' means all goods which are supplied by the Seller under any contract for sale, purchase, or other arrangement to the Buyer, and includes any services supplied by the Seller incidental to such goods.

'Seller' means Brake & Transmission NZ Limited and any successor or assignee.

'Terms' means these General Conditions of Sale.

1.2 These Terms apply to all offers, quotations, and agreements entered into between the Seller and the Buyer for the supply of Goods. The placement of an order shall be deemed to be acceptance of these Terms by the Buyer.

1.3 Unless otherwise agreed to in writing by the Seller, in the case of any conflict arising between these Terms and any other terms between the Buyer and the Seller, these Terms shall prevail.

2. Goods and Price

2.1 The price shown on the face hereof (or where an order is made electronically, the price shown on the Seller's website) excludes the cost of effecting delivery by the normal road, rail, sea and air transportation used by the Seller.

2.2 The additional cost of special delivery requested by the Buyer may be added to the price.

2.3 All prices are exclusive of goods and services tax, unless otherwise stated, and the amount of goods and services tax shall be added to the price payable by the Buyer.

2.4 Upon receipt of a purchase order the Seller will endeavor to supply the Buyer with the goods or services ordered, but the Seller will not be liable to the Buyer or any person if it declines to fulfill, or is unable to fulfill an order.

3. Payment

3.1 Payment is due on the 20th of the month following the date of despatch of the Goods by the Seller to the Buyer unless otherwise specified and shall be made without deduction or set-off. No payment may be withheld except for the particular Goods or payment amount in respect of which a claim has been made in accordance with Clause 4.3 of these Terms.

3.2 Payment not made by the due date shall be considered an overdue account and shall bear interest at a rate equal to 2% per month, calculated on a daily basis, from the due date until the date of actual payment. The Buyer agrees to pay to the Seller on a full indemnity basis all costs and expenses incurred by the Seller, including costs on a solicitor-client basis and debt collector's costs, enforcing or attempting to enforce any of the Seller's rights under these Terms. In the event of an overdue account the Seller may without prejudice to any other rights of the Seller under these Terms or otherwise at law or in equity:

- postpone further deliveries without notice until payment is made;
- reduce discounts (if any) on Goods purchased by the Buyer;
- take all legal action necessary to recover payment and / or the return of the Goods (without being under any obligation to accept Goods returned).

3.3 If the Seller shall at any time form the opinion that the Buyer may not make payment of any monies owing or to become owing to the Seller when due for any reason the Seller may require payment in full of all or any such monies or provision of security for payment acceptable to the Seller before commencing or continuing manufacture or making delivery of Goods to the Buyer. Delivery shall occur when the Seller (or a third party on instruction by the Seller) hands possession or control of the Goods to the Buyer (or a third party on instruction by the Buyer) at which point the Goods shall be at the sole risk of the Buyer.

4. Risk and delivery

4.1 The risk in the Goods shall pass to the Buyer upon delivery but ownership in them shall not pass to the Buyer until the Buyer has paid for the Goods. The Seller shall not be liable for any damage to the Goods once risk has passed. Until payment has been made the Buyer acknowledges and agrees that:

- the Buyer will hold the Goods as bailee pending resale and will resell them as agent for the Seller (provided that vis a vis any third party the Buyer will be deemed to be acting as a principal);
- title to the Goods is retained by the Seller until the Buyer has paid the Seller in full for all Goods in accordance with these Terms. Part payment of any amount for the Goods does not convey any part right, title and interest in the Goods;
- the Buyer will keep the Goods in a new condition and will ensure that all serial numbers, identification marks, stickers and packaging are kept intact until the Goods are resold;
- the Seller, its agents and servants, may without notice enter into any premises occupied by the Buyer, or where the Goods are stored, to search for and remove any of the Goods and, if any of the Goods are wholly or partly attached to other items, to detach the Goods. The Buyer irrevocably indemnifies the Seller and its agents for the purposes of this clause;
- any costs incurred by the Seller in exercise of its powers of repossession, storage or resale of the Goods (including legal costs as between solicitors and own client) will be immediately on demand due and payable by the Buyer to the Seller (without deduction or set-off);
- nothing in this clause permits the Buyer to return any of the Goods because they are surplus to requirements or for non-payment or for any other reason whatsoever.

4.2 Time of delivery shall not be treated as a condition of sale. The Seller shall not be liable in any way to the Buyer or any other party for loss resulting from delay. The Seller reserves the right to deliver the Goods by instalments and each instalment shall be deemed to be a separate contract governed by these Terms;

4.3 In the case of non-faulty Goods, credit may be given by the Seller at its sole discretion and then only if the following conditions are met:

- the same Goods are returned at the Buyer's expense, unused, and the same condition in which they were despatched;
- the Goods are returned within seven days of the date of despatch together with the correct reference to the delivery note number and the date of despatch.

5. Liability

5.1 Subject to any further rights the Buyer may have under the Consumer Guarantees Act 1993, the Seller shall, at its option, replace or give credit for Goods established to be defective and shall, at its option, arrange for delivery of or give credit for shortages in the quantity of Goods despatched but only if the following conditions are met:

- claims must be received by the Seller within 48 hours after delivery of the Goods;
- claims in respect of defective Goods must specifically identify the defect;
- Goods in respect of which a defect is claimed must be returned to the Seller in accordance with the provisions of Clause 4.3 of these Terms.

5.2 Subject to any liability that cannot be excluded by law, it is expressly agreed and declared by the Seller and the Buyer that:

- all warranties, descriptions, representations or conditions (whether implied by law, trade custom or otherwise) are, and all other liability of the Seller, whether in tort (including negligence), contract or otherwise are expressly excluded to the fullest extent permitted by law.
- to the maximum extent permitted by law, the Consumer Guarantees Act 1993 will NOT apply if the Buyer acquired, or held itself out as acquiring, the Goods for the purpose of a business.
- in any event, the total liability of the Seller whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly from any defect in Goods supplied by the Seller or any other breach of the Seller's obligations shall in any case be limited at the Seller's option, except where statute expressly requires otherwise, to the lesser of the purchase price of the Goods complained of, the cost of repairing or replacing the defective Goods or workmanship or the actual loss or damage suffered by the Buyer. The Seller shall not be liable for any consequential, indirect or special damage, loss or injury of any kind suffered by the Buyer or any other person (including, but not limited to loss of income, loss of revenue, business disruption, and damage to vehicles).

5.3 For the purposes of section 43(2)(a) of the Consumer Guarantees Act 1993, these Terms shall be deemed to form an agreement in writing between the Seller and the Buyer upon acceptance of the Goods by the Buyer.

6. Miscellaneous

6.1 No order once accepted by the Seller may be cancelled or varied by the Buyer except by the written agreement of the Seller and no returns will be accepted except pursuant to any such agreement.

6.2 The Seller shall not accept responsibility for any loss or damage to Goods, the property of others, held at or stored within the Seller's premises for any purpose whatsoever. The said property shall be accepted into the Seller's custody at "owner's risk" and it shall be the responsibility of the owner of the Goods to arrange insurance protection of these Goods.

6.3 The Buyer acknowledges the following shall be deemed to be in default under these Terms:

- if any amount payable by the Buyer is overdue; or
- if the Buyer fails to meet any obligation under, or breaches any provision of these Terms, of if there is a breach of any obligation under any other contract or deed between the Buyer and the Seller; or
- if the Buyer becomes or is likely to become insolvent or an arrangement is made with its creditors; or
- if a receiver is appointed in respect of any assets of the Buyer; or
- if the Buyer no longer carries on business or threatens to cease carrying on business.

Following any default under these Terms, the Seller shall be entitled to do any or all of the following (with or without notice):

- refuse to supply any Goods; and/or
- call up all amounts owing by the Buyer to the Seller which such amounts shall immediately be due and payable; and/or
- cancel or demand payment of all or any part of any contract or contracts (including these Terms) with the Buyer.

6.4 The enforcement, partial enforcement, waiver of rights, invalidity, or grant of time, of any of the Seller's rights under these Terms shall not be deemed to be a waiver or invalidity of any other of the Seller's rights under these Terms.

6.5 These Terms shall be governed by and construed in accordance with the laws of New Zealand and each of the parties submits to the non-exclusive jurisdiction of the courts of New Zealand.

7. Privacy Statement

7.1 The Seller is collecting information about the Buyer and each of the individuals identified in an Application for Credit Account or other registration with BNT (each an 'Individual') to determine whether to open a credit account in the name of the Buyer, to accept an Individual as a guarantor of the Buyer's obligations and thereafter from time to time to determine whether or not to continue offering credit to the Buyer. The Buyer may not be able to open a credit account and/or purchase on credit from the Seller, if all the requested information is not provided. Information collected and held about the Buyer and each Individual may be used from time to time for credit assessment and control and debt recovery purposes, to register any security interest granted to the Seller, for marketing and promotional purposes and generally to do business with the Seller. Information (including default information) may from time to time be disclosed to, and collected from, the Buyer's trade references, credit reporting agencies, debt collection agencies and other companies in the Seller's group of companies (the 'Group') for credit assessment and control and debt recovery. Information disclosed to credit reporting agencies (including default information) will be held by each agency on its system accessed by the customers of the credit reporting database and used to provide its credit reporting services (including the maintenance of credit information files and supplying the information to other customers of the relevant credit reporting agency). Under the Privacy Act 1993, individuals have rights of access to, and correction of, their personal information.

7.2 The Buyer, and each Individual, consent to the Seller sending them commercial electronic messages from the Seller and Group for any of the purposes set out in this privacy statement or otherwise agreed.