

# **BRAKE & TRANSMISSION N.Z. LIMITED**

## **General Conditions of Sale (Effective 1st December 2006)**

These conditions shall apply to all goods sold by Brake and Transmission N.Z. Limited ("the seller") to the Purchaser of such goods ("The Buyer")

1. THE Price shown on the face hereof includes the cost of effecting delivery by the normal road, rail, sea and air transportation used by the Seller. The additional cost of special delivery requested by the Buyer may be added to the price.

2. 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. No payment may be withheld except for the particular goods or payment amount in respect of which claim has been made in accordance with Clause 6 of these conditions

3. 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 from the due date until the date of actual payment. The buyer agrees to pay all costs and expenses incurred by the Seller, including costs on a solicitor-client basis and debt collector's costs incurred in the recovery or attempted recovery of outstanding monies and the enforcement or attempted enforcement of these conditions. In the event of an overdue account the Seller may without prejudice to any other rights of the Seller under these conditions or otherwise at law or in equity:

a) postpone further deliveries without notice until payment is made;

b) reduce discounts (if any) on goods purchased by the buyer

c) take all legal action necessary to recover payment and/or the return of the goods (without being under any obligation to accept goods returned)

4. If the Seller shall at any time form the opinion that the Buyer may not make payment of any moneys 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 moneys or provision of security for payment acceptable to the Seller before commencing or continuing manufacture or making delivery of any goods to the Buyer.

5. THE risk in the goods supplied by the Seller to the purchaser shall pass to the Purchaser upon delivery but ownership in them shall not pass to the Purchaser until the Purchaser has paid for those goods. Until payment has been made the Purchaser acknowledges and agrees that:

a) the Purchaser 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 Purchaser will be deemed to be acting as a principal);

b) the Purchaser 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;

c) the Seller, its agents and servants, may without notice enter into any premises occupied by the Purchaser 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 without being liable to the Purchaser or any other person for any damage, however caused;

d) 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 Purchaser to the Seller;

e) nothing in this clause permits the Purchaser to return any of the goods because they are surplus to requirements or for non-payment of for any other reason whatsoever.

6. 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:

a) the same goods are returned at the Buyers expense, unused and the same condition in which they were despatched.

b) The goods are returned within seven days of the date of despatch together with the correct reference in the delivery note number and the date of despatch.

7. 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 the 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:

- a) claims must be received by the Seller within 48 hours after delivery of goods;
- b) claims in respect of defective goods must specifically identify the defect;
- c) goods in respect of which a defect is claimed must be returned to the Seller in accordance with the provisions of Clause 6 of these conditions.

8.1 FOR all goods, the Seller warrants that they are manufactured in accordance with the usual practices of the industry and are free from defects in materials and workmanship. Subject only to this warranty and except for such guarantees as cannot be excluded by virtue of the Consumer Guarantees Act 1993 it is expressly agreed and declared by the Seller and Buyer that;

a) 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.

b) The Consumer Guarantees Act 1993 will NOT apply if the Buyer acquired, or held himself or herself out as acquiring, the goods for the purpose of a business.

c) In any event, the total liability of the Seller whether in tort (including negligence), contract or otherwise any loss, damage or injury arising directly from any defect 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.

8.2 FOR the purposes of section 43(2)(a) of the Consumer Guarantees Act 1993, these terms and conditions shall be deemed to form an agreement in writing between the Seller and the Buyer upon acceptance of the goods by the Buyer

9. 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.

10. 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.