

TERMS AND CONDITIONS OF TRADE FOR THE SUPPLY OF GOODS & SERVICES

1. Definitions

- (a) **"Agreement"** means the Terms and Conditions contained in this Sale Agreement as may be amended by the Seller from time to time.
- (b) **"Credit Provider"** if applicable, means the Seller.
- (c) **"Customer"** means the customer referred to in the Invoice and, if applicable, the person, body corporate, trust or other legal entity applying for credit.
- (d) **"Goods"** means all Goods ordered and/or all services supplied by the Seller to, for, or at, the request of the Customer.
- (e) **"Guarantor"** means the guarantor/s named in the Related Agreement.
- (f) **"Related Agreement"** means the terms and conditions of credit and security agreement if applicable.
- (g) **"Seller"** means MTM Workshops Pty Ltd (A.C.N 105 143 986) trading as 'Mick Tighe 4x4 & Outdoor', its successors and assignees.
- (h) References to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and vice versa;
 - (iii) a person includes a body corporate, association or other entity and vice versa;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
 - (v) an Act includes an Act that amends, consolidates or replaces the Act and all regulations, orders-in-council, by laws, ordinances and statutory instruments issued or made under those Acts;
 - (vi) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
 - (vii) anything includes a part of that thing;
 - (viii) an amount of money is in Australian dollars;
 - (ix) dates and times are to Toowoomba, Queensland time;
 - (x) "includes" and similar expressions are not words of limitation;
 - (xi) \$ means Australian Dollar.

2. Acceptance

- (a) By the Customer ordering or accepting Goods from the Seller the Customer agrees to be bound this Agreement and, if applicable, the Related Agreement.
- (b) Except as disclosed in this Agreement this Agreement supersedes any previous agreement, and applies to any orders that the Customer has previously made with the Seller that has not yet been paid for by the Customer.
- (c) The Customer and / or Guarantor have had the benefit of independent legal advice (or waived the right to do so) before entering this Agreement and the Related Agreement.

3. Quotes and Orders

- (a) Any quotation made by the Seller will not be construed as or constitute an offer or obligation to sell.
- (b) The Seller reserves its right to accept or reject in its absolute discretion any order received by it.
- (c) The Customer will not be entitled to cancel or refuse delivery of, or payment for, any order made by it which has been accepted by the Seller.

4. Price

- (a) The price payable to the Seller by the Customer for the Goods will be the price stipulated by the Seller or as otherwise agreed by the Seller, failing which it will be price prevailing at the date the goods are ordered by the Customer.
- (b) Prices are payable in Australian currency and exclusive of delivery costs, taxes, duties and any costs, if chargeable, are payable by the Customer.
- (c) Prices contained in any quotation or listed on the Seller's website may be changed by the Seller without notice unless an order made by the Customer has been accepted by the Seller in respect of those Goods.

5. Payment

- (a) The Customer must pay cash or make credit card payment for the Goods at the time of making an order for the Goods;
- (b) Unless specifically stated in writing, all prices exclude GST;
- (c) The Customer acknowledges and agrees that the Seller is not paid until cleared funds have been received in the Seller's nominated account;
- (d) The Customer agrees to pay a deposit of 10% of the price payable, if requested by the Seller.

6. Quotation of Orders

- (a) Unless otherwise specified by the Seller, all quotes given to the Customer by the Seller are valid for thirty (30) days.

7. Part Payment

- (a) The Seller will not accept payment by personal cheque for amounts exceeding \$500.

8. Overdue Amounts

- (a) If the Customer fails to pay all or part of any amount to the Seller when due, interest will be payable on that amount from its due date until it is paid in full at a rate of 6% per annum.

9. Retention of Title

- (a) Property in all the Goods supplied shall remain vested in the Seller and shall not pass to the Customer until all monies owing to the Seller by the Customer are paid in full;
- (b) Where the Customer has possession of the Goods supplied and the Seller has not been paid in full for the Goods then the Customer is deemed to be trustee for the Seller in respect of the Goods and liable to the Seller to account for all monies received in respect of the Goods and

pay such monies to the Seller in respect of the Goods. The trust expires upon the Customer paying the Seller for the Goods in full (including any interest or other costs incurred by, or accruing to the Seller);

- (c) Until the Goods are paid for in full by the Customer, the Customer shall keep them separate from other products so they can be easily identified and recovered;
- (d) In the event that the Goods have been processed or mixed with other Goods such that the Goods are no longer separately identifiable, then the Customer agrees that the Seller will be the owner of the end product;
- (e) The Seller may require the Customer to return any Goods not paid for to the Seller on demand and the Customer expressly and irrevocably agrees that the Seller is entitled to enter any premises of the Customer where the Goods are kept to repossess, remove and sell such Goods and the Customer will keep the Seller indemnified in respect of any claims, actions and costs that may arise against the Seller in relation to the removal, repossession and sale of any Goods pursuant to this Agreement;
- (f) To avoid any doubt, if the Seller sells the Goods pursuant to this clause, such sale shall be on such terms as the Seller in its absolute discretion deems fit and any shortfall between the monies due and owing by the Customer to the Seller and the proceeds of the sale pursuant to this paragraph shall be recoverable against the Customer.

10. Risk

- (a) Irrespective of the Retention of Title clause in this Agreement, the risk in the Goods purchased shall pass to the Customer upon delivery to the Customer or the Customer agent or a carrier nominated by the Customer;
- (b) The Customer must inspect all Goods upon delivery and within 7 days of delivery notify the Seller of any alleged damage, defect, shortage in quantity, or failure to comply with the description or quote. By failing to give notice within 7 days the Customer agrees that it will be deemed that the Goods will have been delivered to and accepted by the Customer thereby nullifying any rights to the Customer to return the Goods;
- (c) If any of the Goods are damaged or destroyed prior to the title passing to the Customer, the Seller is entitled, without affecting any other rights or remedies under any agreement, to any insurance proceeds payable for the Goods;
- (d) To avoid any doubt the price of warehouse, freight, insurance and transport is extra and shall never be deemed to be part of the purchase price of the Goods.

11. Cancellation and Limitation of Liability

- (a) The Seller may cancel delivery of the Goods at any time before delivery by giving notice to the Customer by any means. The Seller shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation;
- (b) The liability of the Seller for any reason related to the performance of the Goods under this Agreement shall be limited to the replacement of the Goods or the amount paid or payable by the Customer in respect of the Goods;

- (c) The Seller is in no way whatsoever liable to the Customer nor any third party for any indirect and/or consequential loss and/or expense (including but not limited to a loss of profit or goodwill) suffered by the Customer or any third party arising out of any breach by the Seller of this Agreement, or arising out of a malfunction or failure of the Goods.

12. Delivery

- (a) Delivery of the Goods shall be deemed to have taken place upon delivery of the Goods to the address nominated by the Customer, or upon collection of the Goods from the Seller's premises by the Customer or a carrier nominated by the Customer;
- (b) The Customer must pay to the Seller on demand for any delivery costs incurred by the Seller if:
 - (i) Delivery costs were not included in the quoted price; or
 - (ii) The Customer requests another method of delivery than that of the Seller's usual delivery methods; or
 - (iii) The Customer elects to use an independent courier to deliver the Goods and enters into a separate contract with the independent courier to deliver the Goods;
- (c) The Seller may deliver the Goods in separate installments. Each separate installment shall be invoiced and paid in accordance with this Agreement. A part delivery of an order shall not invalidate the entire order;
- (d) The Seller will make all reasonable efforts to deliver the Goods on the dates agreed, to the place designated by the Customer;
- (e) The Seller has the right to make delivery in instalments and to deliver those Goods available for delivery;
- (f) The Customer has no right to terminate this Agreement because of a delay in delivery.

13. Returns of Goods

- (a) Goods will not be considered for credit unless the original invoice number accompanies the Goods;
- (b) For undamaged Goods, Goods must be returned within fourteen (14) days of the date of invoice;
- (c) Unless otherwise agreed all returns must be approved in writing by the Seller;
- (d) All Goods returned must be in the original package and in an undamaged 'as sold' condition;
- (e) A Goods return authority must be received from the Seller otherwise the Goods will not be accepted for return by the Seller;
- (f) For undamaged Goods returned to the Seller within fourteen (14) days of the date of invoice, a 15% handling fee will be charged by the Seller to the Customer;
- (g) Goods returned after fourteen (14) days from the date of the invoice will not be considered for credit;
- (h) A credit will not be allowed on electrical Goods, non-stock items or re-worked items, or goods ordered at the Customer's request;
- (i) The Seller is not responsible for, or liable as a consequence of, loss or damage caused to the Goods during transit from the Customer to the Seller;

- (j) No credit will be allowed if a Customer simply changes their mind about the Goods;
- (k) Goods for less than the price of \$50.00 cannot be returned;
- (l) Goods approved for return must be returned to the Seller at the Customer's cost;
- (m) Returned Goods may only be accepted when returned in original condition including all packaging material, manuals and instructions;
- (n) No credit will be given for ordered or specialty made items, parts or services.

14. General Warranties

- (a) The Seller warrants to the original Customer, only when purchased new from the date of sale;
- (b) The Seller warrants that all Goods sold are free from defects and inferior workmanship to the extent provided by the manufacturer to the Seller;
- (c) The Seller will, at its sole option, repair or replace any Goods supplied which are found to be defective in either materials or workmanship provided that the Seller is actually notified in writing from the Customer of the alleged defect within ninety (90) days from the date of invoice;
- (d) Any claim not made within this period shall conclusively be deemed waived by the Customer;
- (e) Repair or replacement is preconditioned on the examination of the Goods by the Seller, and if requested, the Customer must return the Goods to the Seller for inspection;
- (f) The Seller shall not be liable for any expense incurred by the Customer in order to remedy any defect in its Goods;
- (g) The Seller shall not be liable for any consequential, special, indirect or contingent damage, or expense arising directly or indirectly from any defect in its Goods or from use of any Goods;
- (h) To the maximum extent permitted by Law, it is expressly agreed that:
 - (i) There is no warranty of merchantability or fitness for a particular and/or intended purpose, nor other warranty expressed, implied or statutory or any affirmation of fact or promises by the Seller with reference to the Goods which extends beyond the specifications agreed upon by the Seller and the Customer;
 - (ii) The Customer initially acknowledges that it is purchasing the Goods solely on the basis of the commitments of the Seller as expressed set forth in this Agreement;
 - (iii) No person is authorized to change or add to any of the Seller's obligations under the Warranties;
 - (iv) The Seller provides the following warranties for the following items:
 - a. One (1) Year Warranty – Accessories/Mining Accessories/Underbody Protection;
 - b. Two (2) Year Warranty – Premium Underbody Protection;
 - c. Three (3) Year Components Warranty – Ice Cube Fridge/Freezers;
 - d. Three (3) Year 60,000 km Warranty – Suspension;
 - e. Five (5) Year Warranty – Monster Winches;
 - f. Five (5) Year Compressor Warranty – Ice Cube Fridge/Freezers;
 - (v) Goods are warranted against defects and material or workmanship that caused the Goods to perform below the specific limits set by the manufacturer, to the extent of the Seller will repair or replace any parts which are found to be defective;
 - (vi) All warranty claims must be submitted by the Customer;

- (vii) Proof of the original purchase must be presented upon request;
- (viii) Goods may be required to be returned to the Seller for assessment or repair and the costs of the return of the Goods is the responsibility of the Customer;
- (ix) The warranties do not apply where the following may apply:
 - a. acts of neglect or misuse are evident;
 - b. the Goods have been modified;
 - c. the vehicles in which the Goods are installed are modified or not recommended for vehicular use;
 - d. the Goods are used in racing or competition conditions;
 - e. the Goods are used beyond the expectations of the original vehicle or Goods' manufacturer;
- (x) Return of used or soiled Goods, outside the warranty period and without fault, will result in the refusal of the Customer's claim and the Goods will be returned at the Customer's expense;
- (xi) The choice of repairing or replacing defective Goods under a Warranty is at the absolute discretion of the Seller;
- (xii) The Warranty is limited to the repair or replacement of defective Goods or workmanship and does not include any applicable labour costs.

15. Workshop Warranties

- (a) The Customer warrants:
 - (i) To service the vehicle at recommended intervals;
 - (ii) To advise the Seller forthwith of any faults that may have occurred from either the seller's workshop service or any spare part item that has been sold;
 - (iii) That failure to advise the seller in a timely manner (as soon as noticed) could void any warranty claim;
 - (iv) That failure to advise the seller in a timely manner (as soon as noticed) could result in any further damage caused not being covered;
- (b) The Seller Warrants that all repairs and services recommended and carried out by the Seller are warranted for a period of 12 months or 20,000km whichever comes first, subject to but not limited to the following conditions:
 - (i) Repairs are to be carried out to a high standard as to warrant Seller's warranty policy;
 - (ii) Second-hand parts carry no warranty;
 - (iii) Parts supplied by the Customer will carry no warranty;
 - (iv) Warranty claims must quote original invoice number and be approved by the Seller before any re-work can be carried out;
 - (v) All re-work must be carried out at the Seller's workshop. Work carried out at any other site will not be considered and will void warranty;
 - (vi) The Seller's warranty applies to standard vehicles driven within their compliance capacity;
 - (vii) Supplier warranty applies only to new parts sold and invoiced by the Seller;

- (viii) Oil seals and gaskets carry only 3 month warranty on vehicles being driven on road only;
- (ix) Limited warranty applies to off road or competition vehicles;
- (x) Warranty applies to the items listed on original invoice only;
- (xi) Subsequent damage from a warranty failure will not be covered by the Seller's policy;
- (xii) The Seller's warranty policy covers service & parts supplied to motor vehicles used as intended by the manufacturer.

16. MTM Driveline Warranty (diff / gearbox repairs)

- (a) The Customer warrants:
 - (i) To service the vehicle at recommended intervals;
 - (ii) To advise the Seller forthwith of any faults that may have occurred from either the seller's workshop service or any spare part item that has been sold;
 - (iii) That failure to advise the seller in a timely manner (as soon as noticed) could void any warranty claim;
 - (iv) That failure to advise the seller in a timely manner (as soon as noticed) could result in any further damage caused not being covered;

- (b) The Seller Warrants that 12 months or 20,000km whichever comes first is the warranty period for passenger vehicles and cars subject to but not limited to the following conditions:
 - (i) All warranty registrations must be completed and returned within 14 days or warranty on exchange unit will be void;
 - (ii) Broken components may not be covered by the warranty;
 - (iii) Gears (including crown wheels and pinions) generate noise. Quietness is not guaranteed;
 - (iv) Worn or damaged parts will not be covered;

- (c) The Seller Warrants that 6 months/10,000km whichever comes first is the warranty period for commercial vehicles subject to but not limited to the following conditions:
 - (i) All warranty registrations must be completed and returned within 14 days or warranty on exchange unit will be void;
 - (ii) Broken components may not be covered by the warranty;
 - (iii) Gears (including crown wheels and pinions) generate noise. Quietness is not guaranteed;
 - (iv) Worn or damaged parts will not be covered.

17. Vehicle Modifications

- (a) The Customer acknowledges and agrees that if the Goods to be provided by the Seller include vehicle modifications, then, in addition to any other clauses in these Terms:
 - (i) the Customer must pay to the Seller a deposit of 50% of the price payable before the Seller will commence the provision of modifications or Goods;
 - (ii) the deposit amount will be held on trust but will be utilised by the Seller to pay for Goods supplied by the Seller to the Customer from time to time in respect of the quoted Goods or any other Goods supplied by the Seller to the Customer;

- (iii) the Customer acknowledges and agrees that the Customer must pay to the Seller:
 - (A) the price quoted or otherwise agreed in writing by the Seller for all Goods provided by the Seller from time to time; and
 - (B) in addition, for all Goods provided by the Seller to reinstate the vehicle if for any reason the Customer does not wish to proceed with the modification;
- (iv) if the Customer for any reason decides not to proceed with the modification to the vehicle, the Customer acknowledges and agrees that any reinstatement works may void any vehicle warranty, and there is no guarantee or promise by or on behalf of the Seller that the reinstatement works will be of such a nature to reinstate the vehicle to its original condition, or that the vehicle will once reinstatement works are completed perform or conform to a particular standard, fulfil a particular purpose, have a particular resale value or will not otherwise lose its resale value.

18. Voiding of any Warranties

- (a) Any warranty is void where:
 - (C) Defect or damage to the Goods are caused or partly caused by or arise through incorrect installation, failure to follow installation instructions, failure to properly maintain the Goods, use of any Goods other than for the application specified, fair wear and tear, or continued use of the Goods after a defect becomes apparent, or if Goods are repaired, altered or overhauled without the Seller's prior consent;
 - (D) Goods are not installed in accordance with Local and State Government Statutes and Regulations;
 - (E) Defect or damage to the Goods are caused by racing, stunts or other high-risk activities;
- (b) Except as the terms specifically state or as contained in any express warranty provided in relation to the Goods this Agreement does not include or implicate any other term condition or warranty in respect of the quality, merchantability and acceptability fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or any contractual remedy for their failure;
- (c) The Customer expressly acknowledges and agrees that:
 - (i) The Customer has not relied upon any service involving skill and judgment or any advice recommendation information or assistance given by the Seller, the Seller's agents or employees in relation to the Goods or services or their use or purpose; and
 - (ii) The Customer has not made known whether expressly or by implication to the Seller the purpose for which the Customer requires the Goods or services and the Customer has the sole responsibility of satisfying the Customer that the Goods or services are suitable for the use the Customer requires;
 - (iii) Nothing in the terms is to be interpreted as excluding restricting or modifying the application of any non-excludable State or Federal legislation applicable to sale of the Goods or supplied services.

19. Estimates of time

- (a) The Customer acknowledges and agrees that any estimate of time or timeframes for the provision of Goods is an estimate only, is not binding on the Seller and may change;
- (b) The Seller is not responsible for and will not be liable for damages or compensation for any delay in the delivery of the Goods and the Customer has no right to terminate this Agreement or claim damages or compensation or loss of opportunity, bargaining position, loss of profits or any other consequential damages because of delay in delivery of the Goods.

20. Force Majeure

If the Seller's performance or observance of any obligations is prevented restricted or effected by reason of a Force Majeure event including any act of God, strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment, flood, pandemic or any other cause beyond the Seller's reasonable control the Seller may in its absolute discretion give prompt notice of that cause to the Customer. On delivery of that notice the Seller is excused from such performance or observance to the extent of the relevant prevention restriction or effect.

21. Breach by Customer

If the Customer breaches this Agreement or a related Agreement, or the Seller is not satisfied with the Customer's ability to pay or otherwise comply with this Agreement or a related Agreement, the Seller may by notice to the Customer, but without compensation, terminate every Agreement, suspend or cease deliveries under all Agreements, set off all deposits against amounts due and make all amounts then outstanding by the Customer to the Seller immediately due and payable.

22. Waiver

The Seller's rights under this Agreement are cumulative and in addition to any other rights. No delay or failure by the Seller to enforce a due right is a waiver of that right. Any waiver by the Seller of any term or breach of this Agreement or a Related Agreement is not to be taken as a contended waiver or a waiver of any subsequent breach.

23. Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

24. Governing Law

This Agreement is governed by the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts and tribunals of Queensland and the Federal Court of Australia.

Signed by the Customer:

Dated this _____ day of _____ 20____

If a Company:

<p>EXECUTED by 127 of the Corporations Act 2001:</p>	<p>in accordance with section</p>
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