

TERMS AND CONDITIONS OF TRADING WITH DRIVELINE SERVICES AUSTRALIA PTY LTD

Pricing

1. Unless otherwise stated, prices are ex-warehouse. Transport charges are to be to the customer's account.
2. Where prices are not expressly agreed at the time of order the prices charged will be prices prevailing for that customer at the time of order.
3. All prices quoted are exclusive of GST unless otherwise expressly stated. GST will be due at the same time as payment for the goods or services is due.

Payments

4. Accounts are due and payable within 30 days of statement date.
5. Driveline may from time to time place limits on, suspend, close or cease supply of the goods under the credit account at its sole discretion. Suspension or cancellation does not affect the customer's obligations in respect of the credit facility or those of any authorised agent.

Evidence of Amount Owning

6. A statement of account sent to the customer at the customer's latest address for notices advised to Driveline and sent in the usual manner for that customer shall be sufficient evidence of the amount due to Driveline by the customer.

Interest on Overdue Payments

7. Overdue payments shall, without prejudice to any other right or remedy:
 - (a) incur interest on monthly balances until paid at a rate of interest of 2 per cent per month calculated in advance on the first day of each month;
 - (b) may be recovered together with all interest as a liquidated debt in any court or tribunal of competent jurisdiction without setoff and irrespective of any claim that the customer may have against Driveline for anything or matter related to the goods or services supplied under this contract.

Further Remedies for Late Payment

8. If the customer fails to make payment on the due date Driveline may, without prejudice to its other rights:
 - (a) suspend or cease deliveries of goods to the customer; and
 - (b) allocate any payment made by the customer firstly toward interest and thereafter to the oldest debt.

Passing of Risk and Title

9. Risk in the goods passes to the customer upon the earlier of:
 - (a) actual or constructive delivery of the goods to the customer; or
 - (b) collection of the goods from Driveline or any bailee or agent of Driveline by the customer's agent, carrier or courier.

Retention of Title

10. Title to the goods does not pass to the customer until payment in full is received by Driveline from the customer and the customer must:
 - (a) store goods which have not been paid for separately and in the original packaging;
 - (b) keep separate records in relation to the proceeds of the sale of any goods which have not been paid for and immediately remit such funds to the credit of Driveline; and
 - (c) not use any goods in a manufacturing process or mix the goods with other materials.

If the customer does not pay for any goods on the due date specified in this agreement Driveline or its appointed agent is irrevocably authorised by the customer to enter the customer's premises (or any premises under the control of the customer or as agent of the customer if the goods are stored at such premises) without notice, and use reasonable force to take possession of the goods without liability to the customer or to any third party, for the tort of trespass, negligence or payment of any compensation to the customer or anyone claiming through the customer whatsoever and the customer shall indemnify Driveline from any actions, claims, costs or damages made by any third party as a result of such exercise.

Application of PPSA

11. This agreement constitutes a security agreement for the purposes of section 20 of the *Personal Property Securities Act 2009* ("PPSA"). If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- (a) A security interest exists in all goods (and their proceeds) supplied to the customer.
 - (b) The customer acknowledges and agrees that Driveline may apply to register a security interest (including a Purchase Money Security Interest) in the goods at any time before or after delivery of the goods and the customer will execute documents and do such further acts as may be required by Driveline to register the security interest granted under this agreement.
 - (c) The customer waives its right under s157 of the PPSA to receive notice of any verification of the registration.
 - (d) The customer acknowledges and agrees that any rights Driveline may hold in addition to the rights pursuant to Part 4 of the PPSA continue to apply.
 - (e) Driveline can apply amounts it receives from the customer towards amounts owing to it in such order as Driveline chooses.
 - (f) If the customer defaults in the performance of any obligation owed to Driveline under these terms and conditions or any other agreement for Driveline to supply goods to the customer, Driveline may enforce its security interest in any goods by exercising all or any of its rights under these Conditions or the PPSA.
 - (g) To the maximum extent permitted by law, until ownership of the goods pass to the customer, the customer waives the following provisions under Part 4 of the PPSA: sections 95, 118, 121(4), 125, 129, 130, 132(3)(d), 132(4), 135, 142 and 143.
 - (h) Until ownership of the goods passes to the customer, the customer must not give to Driveline a written demand or allow any other person to give Driveline a written demand requiring Driveline to register a financing change statement under the PPSA or enter into or allow any person to enter into the register of personal property securities a financing change statement under the PPSA.
 - (i) The customer acknowledges they have received value as at the first date of delivery of the goods and have not agreed to postpone the time for attachment of the security interest granted to Driveline under this agreement.
 - (j) The customer and Driveline agree not to disclose information of the kind mentioned in s275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
 - (k) The customer must promptly do anything required by Driveline to ensure that Driveline's security interest is a perfected security interest and has priority over all other security interests in the goods.
 - (l) Nothing in this clause 11 is limited by any other provision of these Conditions or any other agreement between the parties.

Freight and Insurance

12. If the customer requests the goods be dispatched by freight then Driveline will organise the carriage as agent for the customer. Delivery by Driveline to the freight company will result in the passing of risk to the customer under clause 8 with the effect that Driveline will not be responsible for loss or damage to the goods after possession passes to carrier. Charges for freight are payable by the customer.
13. The customer may organize and pay for any insurance of the goods it wishes but if the customer requests Driveline to arrange insurance then Driveline will do so as agent for the customer and in accordance with the terms then being offered by the freight company carrying the goods. Charges for insurance are payable by the customer.

Refund and Returns Policy

14. Please choose carefully. We do not give refunds if you change your mind or purchase the wrong goods.
15. If we do accept a return of goods where you change your mind or purchase the wrong goods then we will charge a restocking fee of 20% of the GST exclusive price of the goods. Acceptance of returns under this clause is at our discretion.
16. Where the goods contain faults, have been incorrectly described, are different from a sample shown to you or do not do what they are supposed to do you can choose between a refund, exchange or credit. You must present your receipt as proof of purchase to obtain a refund, exchange or credit.
17. No refund, exchange or credit will be considered unless the goods are in the original packaging and are undamaged, unused and returned to Driveline within 14 days of invoice.

18. Goods manufactured or adapted to special order are not subject to refund, exchange or credit.
19. All returns must be forwarded with freight prepaid to Driveline's premises.

Warranty

20. Driveline makes and sells a wide variety of products. Driveline's warranty on each product or class of product is published on its website at www.driveline.com.au/termsandconditions
The terms of warranty published at the date of order shall apply to the goods from the date of delivery and are subject to the conditions of warranty in clause 19.
Apart from any consumer guarantees under the Australian Consumer Law all other warranties express or implied and whether arising by virtue of statute or otherwise are hereby excluded.
21. Conditions of Warranty
 - (a) The product must be returned to Driveline with proof of purchase;
 - (b) The product must not have been tampered with in any way;
 - (c) Failure of the product must not be due to misuse, improper installation, or other abuse.
 - (d) Driveline will not be responsible for damage or loss caused during transportation.
 - (e) Examination and repair of any product not covered by warranty will be charged to the customer at Driveline's current hourly rate.

Qualified Exclusion

22. Driveline acknowledges the consumer guarantees contained in the Australian Consumer Law ("ACL"). The ACL implies terms, conditions, warranties or guarantees ("prescribed terms") into contracts for the supply of goods and services and prohibits the exclusion, restriction or modification of certain terms, conditions, warranties or guarantees. Nothing in these terms and conditions is intended to exclude or restrict any non-excludable guarantee or warranty. Some prescribed terms permit a supplier to limit its liability for a breach of the prescribed terms. To the extent permitted by the prescribed terms:
 - (a) the liability of Driveline in respect of a breach of a prescribed term relating to the products or any part of the products is limited at the option of Driveline to the replacement or repair of the products or any part thereof or payment of the cost of repairing or replacing the products or any part of the products. The choice of remedy will be at the sole discretion of Driveline and the customer acknowledges that this absolute limitation of liability is fair and reasonable;
 - (b) in these conditions, to the extent permissible by law, the customer does not have under any circumstances any cause of action against or right to claim or recover from Driveline for, or in respect of, any loss or damage of any kind whatsoever, caused directly or indirectly by:
 - i. any defect in material or workmanship or any other defect whatsoever or unsuitability for, any purpose of the products or any part of the products; or
 - ii. by default or negligence on the part of Driveline or of any employee, contractor or agent of Driveline or of any person for whom Driveline has legal responsibility relating to the supply of, or otherwise concerning the products or any part of the products.

Force Majeure

23. If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Driveline or the customer either is unable to perform in whole or in part any obligation under this agreement that party is relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and is not be liable to the other party to this agreement in respect of such inability.

Jurisdiction and Applicable Law

24. The parties agree that disputes between Driveline and the customer must be commenced in the courts and tribunals of Queensland or of the Commonwealth in its Brisbane registry and be determined in accordance with the laws applicable in the State of Queensland.

No Waiver

25. The failure of any party to enforce the provisions of this agreement or to exercise any rights expressed in this agreement is not to be taken as a waiver of such provisions or rights and does not affect the enforcement of this agreement. No waiver of a right is effective unless made in writing.
26. The exercise by any party of any of its rights expressed in this agreement does not preclude or prejudice such party from exercising the same or any other rights it may have irrespective of any previous action taken by that party.

Notices

27. Any notice or demand to be given under or in relation to these Terms will be deemed to be duly given or made if it is in writing and in the case of the customer left or sent by prepaid post addressed to the customer at the customer's place of abode or business last known to Driveline or at the registered office of the customer being a company and in the case of Driveline if it is in writing and left at or sent by prepaid post to Driveline at its address set out in these Terms or at the registered office of Driveline. Any notice or demand sent by post will be deemed to have been received by the party to whom it is addressed on the day which in the normal course of post it would have been delivered. Where email has been the usual method of communication between the parties then notices may be sent by email.

Severability

28. All provisions of this agreement are reasonable in the circumstances and each provision is severable and independent. If all or any part of any provision is judged by a court invalid or unenforceable, it or the part as necessary shall be deemed deleted and shall not affect the validity or enforceability of the remaining provisions

Amendment of Terms of Trade

These terms of trade may be varied by Driveline from time to time and notice of the terms as varied will be published on Driveline's web site. Driveline must give notice of any variation to the customer not later than one calendar month before the variation takes effect and direct the customer's attention to the location on Driveline's web site where the varied terms may be viewed. Current terms and conditions may be viewed at:

<http://www.driveline.com.au/termsandconditions>