



A division of Exego Pty Ltd
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TERMS AND CONDITIONS OF SALE

1. Interpretation

Unless inconsistent with the context:

“**Agreement**” shall mean and include the terms and conditions contained herein and on the following pages

“**Company**” shall mean and include Exego Pty Ltd trading as Motospecs

“**Core**” represents the initial deposit paid by a Customer associated with the purchase of a remanufactured item and the subsequent return of the old unit to the Company. Under GST Act, the old unit is regarded as a separate supply when returned by the Customer.

“**Customer**” means and includes any natural person, company, partnership or other entity which enters into this Agreement with the Company

“**Goods**” means the goods and/or services supplied by the Company pursuant to this Agreement.

“**GST**” means goods and/or services tax.

“**RCTT**” means a Recipient Created Tax Invoice which is issued by the Company for Core returned by a Customer.

2. Exclusion of inconsistent terms

Any terms and conditions of the Customer’s order deviating from or inconsistent with these terms and conditions (including any statement by the Customer that the Customer’s terms and conditions shall prevail) are expressly excluded. Subject to Clause 14, this Agreement constitutes the entire agreement between the parties.

3. Formation of Contract

A contract shall only be or be deemed to have been entered into between the Company and the Customer for the sale of Goods when, upon an order having been placed with the Company for Goods, that order has been accepted by the Company either in writing or by conduct.

4. Prices.

4.1 “**Price**” means, unless the contrary intention appears, the Price for which a good (or goods) is sold pursuant to the Terms and Conditions and is the amount payable by the customer, inclusive of any GST payable by the company in respect of the sale.

4.2 The Customer shall pay the cost of delivery or freight.

4.3 Prices are subject to change without notice. List and retail prices are recommended only.

5. Payment

5.1 Unless otherwise agreed by the Company in writing, payment for all goods shall be made on or before the last working day of the month following the month in which the goods are invoiced (“the due date for payment”). Punctual payment is agreed to be the essence of this agreement.

5.2 Breach by the Customer of Clause 5.1 shall entitle the Company to:-

- (a) require immediate payment of all invoices rendered by the Company to the Customer;
- (b) terminate this Agreement (without notice) without prejudice to any antecedent rights accruing to the Company;
- (c) Recover liquidated damages on any amount outstanding of an amount equal to two per cent (2%) of that amount for each month or part of a month from the due date until the date of payment in full;
- (d) add to the Customer’s account and require payment of all expenses incurred as a consequence of the actions taken by the Company to recover outstanding monies from the Customer;

5.3 In respect of any proceedings in any Court of competent jurisdiction, a Certificate signed by the Credit Manager of the applicable business name of the Company stating the quantum of the debt owed by the Customer to the Company shall be deemed to be conclusive proof of the quantum of the debt owed by the Customer to the Company.

6. Supply and Delivery

6.1 The company reserves the right to:-

- (a) withhold supply to the Customer where:-
 - 1) the company has insufficient goods to fulfil the order;
 - 2) the goods ordered have been discontinued;
 - 3) the Company has determined in its absolute discretion that credit should no longer be extended to the Customer;
- (b) deliver by instalments and such right shall not entitle the Customer to:-
 - 1) terminate or cancel this agreement;
 - 2) claim any loss or damage howsoever arising.

6.2 The goods shall be at the Customer’s risk from the time of delivery to the Customer or its agent.

6.3 Claims for shortages in delivery or damage to goods may only be made within two business days from the date of delivery.

7. Proper Law

The contract between the Company and the Customer shall be governed and construed according to the Laws of Victoria and the Customer agrees to submit to the jurisdiction of the courts located in the Capital City of Victoria.

8. Indemnity

The Customer shall indemnify and keep indemnified the Company from and against all losses, claims, proceedings, damages, costs and expenses in respect of or arising directly or indirectly from.

- (a) the goods or their use;
- (b) from any advice given to the Customer by the Company save and except as provided for in paragraph 14;
- (c) any breach by the Customer of the terms of this agreement.

9. Severance

If for any reason any part of these terms and conditions would render the Agreement ineffective, void, voidable, illegal or unenforceable, that part shall, without in any way affecting the validity of the remainder of the Agreement, be severable herefrom and the Agreement shall be read and construed and take effect for all purposes as if that part were not contained herein.

10. Ownership of Goods

10.1 All Goods supplied by the Company to the Customer shall remain the property of the Company until all monies have been paid in full (including all charges made in accordance with clause 5) and all cheques and all other negotiable instruments have been cleared. Pending legal and beneficial ownership of the goods passing to the Customer, the Customer must not encumber the Goods in any way.

10.2 Until the payments referred to in Clause 10.1 above are received by the Company, the Customer shall hold the Goods as fiduciary bailee and agent of the Company, and as an incident of the said fiduciary, bailment and agency relationship, but without limiting the generality of the foregoing, the Company’s representatives shall be entitled to enter upon premises owned or occupied by the Customer to inspect the Goods.

10.3 If the Customer -

- (a) makes default in any payment due under this Agreement under which payment is due to the Company in respect of the supply of goods;

- (b) (in the opinion of the Company's Credit Manager or equivalent officer) is, or is likely to become, bankrupt or insolvent;
 - (c) has a receiver, administrator, trustee or similar officer appointed over its property;
 - (d) disposes of, or threatens to dispose of, its assets other than in the ordinary course of business
- the Company's representatives may (without prejudice to any other rights of the Company), with or without notice, and forcibly if necessary, enter upon any premises owned or occupied by the Customer where the Company's Credit Manager or equivalent officer reasonably believes the Goods may be stored and recover, and do all things necessary to recover the Goods.

10.4 **The Customer -**

- (a) hereby irrevocably authorises the exercise of the Company's powers under Clause 10.3 above and agrees that the Company shall not be liable for any loss, damage, expense or cost whatsoever suffered or incurred by the Customer as a result of the Company or its agents exercising the powers conferred on the Company under Clause 10;
- (b) agrees that it shall not subject the Company or the Company's agents to any claim or action whatsoever, whether tortious or otherwise, in instances where the Company takes possession of goods owned by the Customer in the reasonable belief that such goods are the Goods. Upon receipt of evidence from the Customer which satisfies it that the relevant goods are not the Goods, the Company shall make the goods available for collection by the Customer.

10.5 Where the Goods are part of a product line that is also comprised of goods that are owned by the Customer (for example, because other suppliers also supply the Customer with that product line) the Customer confirms that it will not deal with the Goods in any way that is inconsistent with the Company's ownership of the Goods and acknowledges the applicability of the following legal principles if, at the time when the Company seeks to recover the Goods, the Goods have nevertheless been commingled with other goods in the same product line -

- (a) if there is sufficient stock of the product line to satisfy in full the interests of both the Company and the Customer, the principle that the Company and the Customer become tenants in common of the stock in that product line in portion to their respective contributions;
- (b) if the residual stock of the product line is insufficient to satisfy in full the interests of both the Company and the Customer, the legal principle that, as an incident of the Customer's obligations as fiduciary bailee and agent in respect of the Goods, the Customer will be presumed to have disposed of that part of the product line that is comprised of its own goods prior to disposing of the Goods;

This Clause 10.5 does not purport to confer on the Company any contractual rights but serves as confirmation of the Company's rights at law and in equity.

10.6 It is not intended by the Company or the Customer by supplying or accepting Goods on the conditions of this Clause 10 to create a charge, mortgage or other mere security interest over any Goods supplied.

11. **Waiver**

The waiver by the Company of any breach by the Customer of any term of this Agreement shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any other or subsequent breach.

12. **Returns**

- 12.1 The Company reserves the right in its complete discretion to refuse to accept any returns whatsoever.
- 12.2 If the Company for any reason elects to take back any of the Goods, such return shall be on such terms as the Company is willing to accept and a re-stocking fee of not less than 5% of invoice value (inclusive of GST) shall apply.
- 12.3 Goods returned shall be at the Customer's expense.
- 12.4 Goods returned must have been purchased from the Company, be in original packages and saleable condition and the relevant invoice number supplied.
- 12.5 No credit will be issued for goods returned after 14 days from receipt or for goods supplied specially to the Customer's requirements.
- 12.6 The Customer shall be deemed to have been given notice under Clause 16 of any change to the Company's returns policy.

13. **Samples**

Any sample, catalogue or brochure shown to the Customer is solely for the purpose of enabling the Customer to judge the normal commercial quality and finish of the Company's products and not so as to constitute a sale by sample or a sale by description nor does the Company warrant or agree that the bulk of the Goods sold conform with any such sample or description.

14. **Implied terms**

14.1 Except as required by statute (including the Trade Practices Act 1974), all implied conditions and warranties are hereby excluded. Subject to the extent that such conditions and warranties cannot be excluded under statute (including the Trade Practices Act), the Customer's sole and exclusive remedy for any breach of a condition, warranty or undertaking hereunder (whether direct, indirect, special or consequential) shall be limited at the sole discretion of the Company to any one of the following:-

- (a) in the case of goods:-
 - 1) the replacement of goods or supply of equivalent goods;
 - 2) the repair of the goods;
 - 3) the payment of the cost of replacing or of acquiring equivalent goods; or
 - 4) the payment of the cost of having the goods repaired; and
- (b) in the case of service:-
 - 1) the supply of the services again; or
 - 2) the payment of the cost of having services supplied again.

14.2 Except as required by statute (including the Trade Practices Act 1974) the Company does not accept any liability for any direct, indirect or consequential loss or damage caused to the Customer or any other person which arises out of the negligence or carelessness of the Company or any of its employees, servants or agents. For the purpose of the foregoing "consequential loss" shall include, but not be limited to, loss of profit or goodwill (or similar financial loss), any payment made or due to any third party and any loss or damage caused by delay in the supply of goods or services.

14.3 Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to this Agreement of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended), Section 6 of the Manufacturer's Warranties Act 1974 of the State of South Australia or Section 7 of the Law Reform (Manufacturer, Warranties) Ordinance of the Australian Capital Territory or any other relevant Act which by Law cannot be excluded restricted or modified.

15. **Changes to the particulars of the proprietors or the business.**

The Customer hereby undertake to advise the Company within 7 days by certified mail of any actual or proposed change in:-

- (a) the address of the business and the address at which the Goods will be located (if it differs to the business address);
- (b) the trading name of the business;
- (c) the person(s), the Directors, the Trustee or the partnership conducting the business;
- (d) the proprietorship of the business in that the business is converted into a trust or company or is sold to a trust or company.

The Customer further accept and agree that where such a change occurs the Company will require that a new application for credit facilities will be sought and considered and the Customer will sign all documents and do all acts and things appropriate to such new application for credit facilities.

16. **Notices**

All notices between the Company and the Customer shall be considered to have been sufficiently delivered if mailed in the ordinary course of post or facsimile to the last known address of the Company or the Customer, whichever may apply. Notices shall be deemed to have been delivered two (2) days after mailing; and in the case of facsimile upon completion of the transmission. The customer hereby charges all of his/her or its property both real and personal with the amount of any indebtedness to the Company and such charge is separate and distinct from the reservation of title to the Goods referred to above.