



TRADING TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. The Supplier is MARRIOTT'S MOTORCYCLES & POWER EQUIPMENT (ACN 000 024 171) trading as MARRIOTT'S MPE of 34 Anderson Street, Leongatha VIC 3953.
- 1.2. The Customer is the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.
- 1.3. The Guarantor is the person(s), or entity, who agrees to be liable for the debts of the Customer.
- 1.4. The Order shall be defined as any request for the provision of Goods and/or Services by the Customer with the Supplier which has been accepted by the Supplier.
- 1.5. The Goods include the motorcycles, products and components provided by the Supplier.
- 1.6. The Services include the Supplier's delivery, installation and repairs and any advice or recommendation.
- 1.7. The Price is the amount invoiced for Goods supplied or Services provided.
- 1.8. The Website shall refer to www.marriottsmpe.com.au.
- 1.9. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.10. Major Failure has the meaning prescribed to it in the Competition and Consumer Act (2010) and references Goods or Services that are unsafe and/or substantially unfit for normal use and cannot be made fit within a reasonable period of time.
- 1.11. The following terms have the meanings prescribed to them under the Personal Properties Securities Act (2009) as amended from time to time: "Security Agreement"; "Security Interest"; "personal property"; "Commingled Goods"; "after acquired property"; "Collateral"; "Control"; "Financing Statement"; "Financing Change Statement"; "Future Advance" and "Perfection".

2. GENERAL

- 2.1. The Agreement is constituted by these Terms and Conditions together with the Supplier's written or verbal quotation and Credit Application.
- 2.2. Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions and may not be varied unless expressly agreed to by the Supplier in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these Terms and Conditions will prevail.
- 2.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
- 2.4. The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.5. In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
- 2.6. Where more than one Customer completes this Agreement each shall be liable jointly and severally.
- 2.7. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these Terms and Conditions.
- 2.8. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.
- 2.9. The failure by the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
- 2.10. The Customer acknowledges that the Supplier may display these Terms and Conditions on the Website. In this event, the Terms and Conditions on the Website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such Terms and Conditions and/or amendments.

3. PLACEMENT OF ORDERS

- 3.1. The Customer may place an Order for the provision of Goods and/or Services in person or by telephone, email, facsimile or via the Website.

- 3.2. Any written Quotation given by the Supplier shall expire thirty (30) days after the date of the written quotation. Quotations may also be provided to the Customer in the manners specified in the Clause 3.1.
- 3.3. All prices are based on taxes and statutory charges current at the time of the Quotation. Should these vary during the period from the date of the Quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

4. PRICE

- 4.1. At the Supplier's sole discretion the Price shall be either:
 - 4.1.1. As detailed on invoices provided by the Supplier to the Customer in respect of Goods and or Services provided; or
 - 4.1.2. The Supplier's quoted Price as for the Order (subject to clause 4.2 and 4.3).
- 4.2. The Supplier reserves the right to change the Price in the event of a variation to the Supplier's Order, and notice will be provided in writing by the Supplier within a reasonable time.
- 4.3. The Price shall not include the cost of delivery unless it is specifically referred to in the Plaintiff's written quotation or tax invoice. If the Customer instructs the Supplier to arrange delivery, the costs of the same will be borne by the Customer and the Supplier will be entitled to levy an additional charge.

5. PAYMENT AND CREDIT POLICY

Non-Account Customers

- 5.1. The Customer must make full payment of the Price or any part thereof to the Supplier at the time and in the manner specified in the Supplier's quotation.
- 5.2. In the absence of a quotation, the Customer must make full payment of the Price in accordance with the terms contained in the Supplier's tax invoice.
- 5.3. In the absence of an express term in any quotation or tax invoice, the Customer shall be required to make full payment of the Price or any part thereof at the time and in the manner as communicated to the Customer by the Supplier and at the Supplier's absolute discretion. The terms of payment that the Supplier may require may include:
 - 5.3.1. Payment of the Price or part of it as a deposit prior to the Supplier's provision of any part of the requested Goods and/or Services;
 - 5.3.2. Payment of the Price to be paid by instalments or in stages;
 - 5.3.3. Payment of the Price prior to the collection or delivery of the Goods.
- 5.4. For the avoidance of doubt and in the absence of express payment terms, the Customer must pay the Price prior to the delivery or collection of the Goods and the Supplier shall be entitled to hold the Goods and shall not be compelled to release them until payment of the Price has been made in full and without deduction.

Account Customers

- 5.5. Subject to Clauses 5.6 to 5.8, Account Customers must make full payment of the Price to the Supplier:
 - 5.5.1. Within the time period specified in the Credit Application Form;
 - 5.5.2. In any other case, within thirty (30) days from the date of invoice without deduction of set-off.

Credit

- 5.6. The Supplier may grant credit at its sole discretion upon the submission of a completed Credit Application Form.
- 5.7. Any credit facility that is provided may be revised by the Supplier at any time and at its discretion. Unless the Customer is in default pursuant to Clause 9.1, the Supplier will provide reasonable notice to the Customer before materially altering the credit terms.
- 5.8. The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these Terms of Conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

6. GOODS AND SERVICES TAX

- 6.1. GST refers to Goods and Services tax under the *Goods and Services Act 1999* ("GST Act") and terms used herein have the meanings contained within the *GST Act*.
- 6.2. It is agreed between the Customer and the Supplier that the consideration for the Supplier expressed in this Agreement is exclusive of the Supplier's liability of GST.
 - 6.2.1. On sale:
 - 6.2.1.1. The Customer will pay to the Supplier, in addition to the total purchase Price, the amount payable by the Supplier of GST on the taxable supply made by the Supplier under this Agreement;

6.2.1.2. The Supplier shall deliver to the Customer a Tax Invoice for the supply in a form which complies with the GST Act and Regulations.

7. SUPPLY AND DELIVERY OF GOODS AND SERVICES

- 7.1. The Supplier reserves their right to:
 - 7.1.1. Decline a request for the provision of Goods requested by the Customer.
 - 7.1.2. Cancel or postpone the delivery of Goods at its discretion exercised reasonably.
- 7.2. The Supplier shall not be obligated to provide Goods if the Customer is in default of the Agreement as defined in Clause 9.1.
- 7.3. Delivery of the Goods shall be deemed to be complete when the Goods are collected by the Customer or are delivered to the Customer or to the carrier as nominated by the Supplier and/or Customer.
- 7.4. If the Customer fails to make all arrangements necessary to take delivery of the Goods the Customer shall, at the discretion of the Supplier or the Supplier's carrier, be liable for a non-delivery fee which shall not exceed \$30.00. The Supplier shall be entitled in its discretion to charge a reasonable fee for redelivery and storage.
- 7.5. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods and Services at specific times requested by the Customer during the term of this Agreement.
- 7.6. Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Goods and Services and of satisfying the Customer's expectations of those Goods and Services.
- 7.7. In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Customer as to the nature and scope of the Goods and Services to be provided.
- 7.8. Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.
- 7.9. The Supplier may agree to provide, on request from the Customer, additional Goods and Services not included or specifically excluded in the Quotation/Order. In this event, the Supplier shall be entitled to make an additional charge.

8. DISHONOUR OF CHEQUE

- 8.1. If any cheque issued by the Customer or by any third party in payment of the Price is dishonoured:
 - 8.1.1. The Supplier may refuse to supply any further Goods until satisfactory payment is received in full, including bank fees and charges;
 - 8.1.2. The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Customer.
 - 8.1.3. The Customer may be liable for a dishonoured cheque fee of \$40.00.

9. DEFAULT

- 9.1. The Customer shall be considered in default of the Agreement if:
 - 9.1.1. The Customer fails to pay the Price in accordance with Clause 4 and 5;
 - 9.1.2. The Customer fails to perform any of its obligations under the Agreement;
 - 9.1.3. The Supplier reasonably believes that there is a significant risk that the Customer is or will be unable to pay its debts as and when they fall due;
 - 9.1.4. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
 - 9.1.5. The Customer dies, becomes incapacitated or indicates (expressly or by conduct) that it is about to cease to carry on business;
 - 9.1.6. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 9.2. Upon the happening of any of the events in Clause 9.1, all amounts owing by the Client to the Supplier, whether or not due for payment, shall become immediately due and payable.

Late Payments

- 9.3. Without prejudice to any other rights of the Supplier, the Customer may be charged a monthly account keeping fee of \$25.00 on any payment in arrears.
- 9.4. The Customer agrees that the account keeping fee is a genuine pre-estimate of the actual loss and damage suffered by the Supplier as a result of the Customer's late payment and shall be regarded as liquidated damages.

- 9.5. Without prejudice to any other rights of the Supplier, the Customer may be charged interest on any payment that not paid by due date as stipulated on the tax invoice(s) at the cash rate target as set from time to time by the Reserve Bank of Australia plus 2%. The Supplier shall not charge Interest on the monthly account keeping fee.

Customer's liability on default

- 9.6. If the Supplier does not receive the outstanding balance of the Price by the due date as determined in accordance with Clause 4 and 5 herein or the Price or any part thereof becomes payable as a result of the operation of Clause 9.2 ("**Default Date**"), the Supplier may, without prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt collection agency for further action. The Customer acknowledges and agrees that:
- 9.6.1. After the Default Date, the Outstanding Balance shall include, but not limited to, all applicable fees and charges under this Agreement;
- 9.6.2. In the event of the Customer being in default of the obligation to pay and the overdue account is then referred to a debt collection agency, or law firm for collection the commission payable and legal costs incurred on an indemnity basis shall be added to the amount outstanding and form part of the debt and in the event where the collection agency charges commission on a contingency basis the commission which would be charged if it achieved one hundred percent (100%) recovery shall be added to the debt and the total shall be treated as a liquidated sum
- 9.7. The Customer is also responsible for all expenses in relation to the collection of the outstanding balance including, but not limited to, all charges and fees, legal costs on an indemnity basis, and disbursements.

10. RISK AND LIABILITY

The Supplier

- 10.1. The Customer is responsible for ensuring that the Supplier is made aware of any special requirements pertaining to the Order and the Supplier relies upon the integrity of the information supplied to it.
- 10.2. The Supplier will use its best endeavours to ensure that the Goods are delivered in the manner and at the time stipulated in any quotation or tax invoice however the Supplier will not be liable for and the Customer will hold the Supplier harmless from any loss or damage sustained as a result of a reasonable delay in the delivery of the Goods.
- 10.3. The Supplier takes no responsibility and will not be liable for any damages or costs resulting in the Goods being not fit for purpose as a consequence of insufficient or incorrect information provided by the Customer.
- 10.4. The Supplier takes no responsibility for representations made in relation to the Goods or any delay in the delivery of the Goods made by a third party.
- 10.5. The Supplier does not represent that it will provide and/or deliver any Goods unless they are included in the quotation.
- 10.6. The Customer accepts the risk in relation to the Goods when the Customer is in possession and/or control of the Goods.
- 10.7. The Supplier shall not be liable for, and the Customer releases the Supplier from, any physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out the matters referred to in Clause 10.

Force majeure

- 10.8. If the Supplier's ability to perform its obligations is adversely affected by any cause beyond the Supplier's control, the Supplier may terminate the agreement by giving the Customer verbal or written notice.

11. WARRANTY

- 11.1. The Supplier warrants that the Customer's rights and remedies in this Agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the goods and services to which the warranty relates.
- 11.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Competition and Consumer Act 2010 (Cth) or any related or complementary legislation or regulations as in force and amended from time to time.

Warranty for Services

- 11.3. The Customer warrants that it will report any defect in any Service provided within fourteen (14) from the date that the defect became apparent (time being of the essence).
- 11.4. To the extent permitted by law as read in conjunction with Clause 11.2, the Supplier's liability in respect of defective services will be limited to:
- 11.4.1. the re-supply of the Service; or
- 11.4.2. the payment of the cost of having the Services supplied again; or
- 11.4.3. the refund of the Price paid by the Customer in respect of the Service.
- 11.5. In respect of all claims the Supplier shall not be liable to compensate the Customer for any reasonable delay in remedying the defective Services or in assessing the Customer's claim. The Customer warrants that it will use its best endeavors to assist the Supplier with identifying the nature of the defective Service claim.

Warranty for Goods

- 11.6. The Customer warrants that it will report any defect in any Goods supplied within fourteen (14) from the date that the defect became apparent (time being of the essence).
- 11.7. The Supplier warrants:
- Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods are not of acceptable quality and the failure does not amount to a major failure.*
- 11.8. The Customer acknowledges that additional costs incurred, such as labour and/or freight, will be borne by the Customer.
- 11.9. If the Goods and Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for a consumer guarantee under the Australian Consumer Law in relation to those Goods and Services is limited to, at the discretion of the Supplier:
- 11.9.1. The resupply of the Goods and Services;
- 11.9.2. The payment of the cost of providing the Goods and Services again.

Claims made under Warranty

- 11.10. Subject to Clause 11 of this Agreement claims for warranty should be made in one of the following ways:
- 14.5.1 The Customer must send the claim in writing together with proof of purchase to the Supplier's nominated postal address being 34 Anderson Street, Leongatha VIC 3953.
- 14.5.2 The Customer must email or communicate the claim together with the proof or purchase to the Supplier via the Website or by email to sales@marriottsmpe.com.au.
- 14.5.3 The Customer should contact the Supplier on the Supplier's business number (03) 5662 2028.
- 11.11. Where a claim is made, the Goods that are to be returned should remain in the state and condition in which they were delivered until such time as the Supplier or its nominated agent has inspected the Goods. Such inspection is to be carried out within a reasonable time after the Supplier receives notification.

12. RETENTION OF TITLE

- 12.1. While the risk in Goods shall pass on delivery and/or supply (including all risks associated with unloading), legal and equitable title in the Goods shall remain with the Supplier until full payment of all Goods supplied by the Supplier to the Customer is made. Prior to the Supplier receiving payment the Customer:
- 12.1.1. Shall hold the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested.
- 12.1.2. Agrees to hold the Goods at the Customer's own risk and is liable to compensate the Supplier for all loss or damage sustained to the Goods whilst they are in the Customer's possession.
- 12.2. The Supplier is authorised to enter the premises where the Customer stores the Goods without liability for trespass or any resulting damage in retaking possession of the Goods until the accounts owed to the Supplier by the Customer are fully paid.

13. PERSONAL PROPERTIES SECURITIES ACT 2009 (CTH)

- 13.1. In accordance with the PPSA and complementary or interrelated legislation and or regulations as amended from time to time, the Customer hereby acknowledges and agrees that this Agreement constitutes a Security Agreement which creates a Security Interest in favour of the Supplier to secure payment of the Price or any other amount owing under this agreement from time to time, extending to personal property previously supplied by the Supplier to the Customer, future advances and after-acquired property.
- 13.2. The Security Interest arising from any retention of title, as provided for in these Terms and Conditions, is a purchase money security interest (PMSI) under Section 14 of the PPSA and by entering into this Agreement, the Customer agrees to grant a PMSI to the Supplier.
- 13.3. Pursuant to the Clause 12, the Supplier has a PMSI in all Goods which are provided to the Customer by the Supplier on credit including any Commingled Goods.
- 13.4. The Supplier shall be entitled without notice to the Customer to register a Security Interest on the Personal Properties Securities Register (PPSR) as constituted and maintained in connection with the PPSA by an appointed regulatory authority.
- 13.5. The Customer agrees that the Supplier will not disclose information pertaining to the Security Interest to an interested party unless it is required to do so under Section 275(6) of the PPSA or otherwise under the general law. The Supplier will not be liable for any loss sustained as a result of disclosure to a third party.
- 13.6. The Customer:
- 13.6.1. Undertakes to sign and/or complete any documentation or provide any information which the Supplier may reasonably require to obtain perfection of the Security Interest and/or registration of a Financing Statement or Financing Change Statement on the PPSR. The Customer warrants that information supplied to the Supplier will be

complete, accurate and up to date and indemnifies the Supplier against any loss incurred if the information is not complete, accurate or up to date;

- 13.6.2. Agrees not to register a Financing Statement under Section 10 of the PPSA or make a demand to alter the Financing Statement under Section 178 of the PPSA without the prior written consent of the Supplier;
- 13.6.3. Undertakes to give the Supplier fourteen (14) days written notice of any change or proposed change to the Customer's business name or structure, postal address (residential or business), contact details (including telephone numbers and email addresses);
- 13.6.4. Agrees to indemnify the Supplier against any and all costs reasonably incurred by the Supplier in perfecting and maintaining the Security Interest in the Goods or other applicable personal property under the PPSA and in respect of any and all costs incurred in the course of enforcing any of its rights or remedies under the PPSA;
- 13.6.5. Agrees to waive the right to receive the Verification Statement in respect of any Financial Statement or Financing Interest Statement relating to the Security Interest under Section 157 of the PPSA;
- 13.6.6. Agrees and undertakes to procure from any persons considered by the Supplier to be relevant to its security position such agreement or waivers that the Supplier may at any time require;
- 13.6.7. Agrees to waive any rights of enforcement under Section 115 in respect of collateral not used predominantly for personal, domestic or household purposes;

13.7. The following provisions confer rights and remedies to the Supplier which may be invoked in order to seize, take possession or apparent possession, retain, purchase, sell, dispose or otherwise deal with Goods. The customer acknowledges that the Supplier may exercise these rights in any manner which it deems fit, in its absolute discretion: Sections 123 (Seizing Collateral); 126 (Apparent Possession); 128 (Secured Party may Dispose of Collateral); 129 (Disposal by Purchase); 134(1) (Retention of collateral).

14. TERMINATION AND CANCELLATION

Cancellation by Supplier

- 14.1. The Supplier may cancel any Order to which these Terms and Conditions apply or cancel delivery of Goods at any time before the Goods are delivered provided by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.
- 14.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that the Customer is in default as a result of the operation of Clause 9.2.

Cancellation by Customer

- 14.3. Any Order cannot be cancelled by the Customer unless expressly agreed to by the Supplier in writing.
- 14.4. In the event of cancellation (by words or conduct), the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14.5. If the Customer places an Order with the Supplier and the Supplier places an Order with a third party Supplier to meet the Customer's request, the Customer shall be liable for the Price of the Goods ordered if the Customer cancels the Order and the Goods have already been dispatched by that third party.

15. SET-OFF

- 15.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.
- 15.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

16. INSURANCE

- 16.1. The Supplier is not liable to provide any insurance cover in relation to the provision of the Goods and Services. The Customer is responsible to effect whatever insurance cover he requires at his own expense.

17. AGREED USE

- 19.1 The Customer acknowledges that the Customer may forfeit any rights if any, he may have against the Supplier if:
 - 19.1.1 The Goods are applied for any other use to which the Goods are not reasonably intended for and/or not in accordance with any applicable manual;
 - 19.1.2 Any alteration to the Goods is carried out other than in accordance with intended alterations and/or the Goods are not repaired by an authorised repairer.
- 19.2 The Customer further acknowledges sole responsibility for any damage or injury to property or person caused by using the Goods in any way and shall indemnify in full the Supplier, its servants and/or agents in relation to all such claims.

18. JURISDICTION

18.1. This Agreement is deemed to be made in the State and/or Territory where the Supplier accepted the Customer's Order and all disputes hereunder shall be determined by an appropriate Court in that State and/or Territory.

19. PRIVACY ACT 1988

19.1. The Customer and/or the Guarantor/s agrees;

21.1.1 For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.

21.1.2 That the Supplier may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.

21.1.3 The Customer consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

20. ENTIRE AGREEMENT

20.1. These Terms and Conditions as defined in Clause 2.1 constitute the whole Agreement made between the Customer and the Supplier.

20.2. This Agreement can only be amended in writing signed by each of the parties.

20.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.

20.4. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.

I/We understand and agree to be bound by the Terms and Conditions set out herein.

NAME:

POSITION HELD:.....

SIGNATURE:

DATE:/...../20...

NAME:

POSITION HELD:.....

SIGNATURE:

DATE:/...../20...

WITNESS NAME:

ADDRESS:.....

.....

SIGNATURE:

DATE:/...../20...

