



Super (Specialised) Service Pty Ltd
ACN 611 936 433
("Super (Specialised) Service")
Trading Terms and Conditions
For Sale of Goods

These Trading Terms & Conditions ("Terms") apply (unless otherwise previously agreed in writing) to the supply of Goods by Super (Specialised) Service to a Customer from time to time. Any supply of Goods by Super (Specialised) Service to the Customer made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by Super (Specialised) Service ('Agreement') and any such supply does not give rise to a new or separate agreement.

1. Interpretation

In these Terms unless the contrary intention appears:

"**Additional Charges**" includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to Super (Specialised) Service arising out of the sale of the Goods.

"**Customer**" means the person to or for whom the Goods are to be supplied by Super (Specialised) Service.

"**Goods**" means the goods sold to the Customer by Super (Specialised) Service and includes any services provided by Super (Specialised) Service to Customer.

"**Super (Specialised) Service**" means Super (Specialised) Service Pty Ltd ACN 611 936 433.

"**PPSA**" means the *Personal Property Securities Act 2009 (Cth)*

"**Purchase Price**" means the list price for the goods as charged by Super (Specialised) Service at the date of delivery or such other price as may be agreed by Super (Specialised) Service and the Customer prior to delivery of the Goods.

2. Order for Goods

2.1 An order given to Preston SuperService is binding on Preston SuperService and the Customer, if:

2.1.1 a written acceptance is signed for or on behalf of Preston SuperService; or

2.1.2 goods are supplied by Preston SuperService in accordance with the order.

2.2 An acceptance of the order by Preston SuperService is then to be an acceptance of these Terms by Preston SuperService and the Customer and these Terms will override

any conditions contained in the Customer's order.

2.3 Super (Specialised) Service reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer.

2.4 No order is binding on Super (Specialised) Service until accepted by it.

2.5 An order which has been accepted in whole or in part by Super (Specialised) Service cannot be cancelled by the Customer without obtaining the prior written approval of Super (Specialised) Service, which it may refuse in its absolute discretion. In the event of cancellation, if approved by Super (Specialised) Service, the Customer will be liable for loss incurred (whether direct or indirect) by Super (Specialised) Service as a direct result of cancellation.

3. Warranties

3.1 Preston SuperService liability is limited to, the extent permissible by law and at Preston SuperService's option;

3.1.1 in relation to the Goods:

- i. the replacement of the products or the supply of equivalent products
- ii. the repair of the products
- iii. the payment of the cost of replacing the products or of acquiring equivalent products; or
- iv. The payment of the cost of having the products repaired

3.1.2 Where the Goods are services:

- i. the supply of service again; or
- ii. the payment of the cost of having the services supplied again.

3.2 Any warranties implied or granted under these Terms shall not apply to accessories

with used engines such as manifolds, flywheels, carburettors, fuel and water pumps, diesel injectors, injection pumps and turbo chargers, hydraulic pumps, valve banks, drive motors.

3.3 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and Preston SuperService is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:

- 3.3.1 any increased costs or expenses;
- 3.3.2 any loss of profit, revenue, business, contracts or anticipated savings;
- 3.3.3 any loss or expense resulting from a claim by a third party; or
- 3.3.4 any special, indirect or consequential loss or damage of any nature whatsoever caused by Preston SuperService's failure to complete or delay in completing the order to deliver the Goods.

4. Delivery

- 4.1 The times quoted for delivery are estimates only and Preston SuperService accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of Preston SuperService. In the event that Preston SuperService is unable to deliver the Goods solely due to any action or inaction of the Customer then Preston SuperService shall be entitled to charge a reasonable fee for re-delivery of the Goods at a later time and date.
- 4.2. All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.
- 4.3 The Customer must inspect the Goods on completion and must notify Preston SuperService within seven (7) days in writing of any evident defect, shortage in quantity or failure to comply with the description or quote. Upon such notification the Customer must allow Preston SuperService to inspect the Goods.
- 4.4 Return of Goods will not be accepted by Preston SuperService except by prior agreement in writing with Preston SuperService. Any Goods returned will be subject to a restocking charge of 30% of the

Purchase Price of those Goods plus any freight costs.

4.5 Notwithstanding anything contained in this clause if Preston SuperService is required by a law to accept a return then Preston SuperService will only accept a return on the conditions imposed by that law.

4.6 Subject to clauses 4.3 to 4.5, returned Goods will only be accepted provided that:

4.6.1 the Customer has complied with the provisions of clause 4.3;

4.6.2 Preston SuperService has agreed that the Goods are defective; and

4.6.3 the Goods are returned to Preston SuperService's nominated premises (with proof of purchase) within a reasonable time at the Customer's cost (if that cost is not significant); and

4.6.4 the Goods are returned in as close a condition to that in which they were delivered as is possible.

5. Price and Payment

- 5.1 The Customer must pay the Purchase Price and the Additional Charges to Preston SuperService. Preston SuperService reserves the right to require the Customer to pay a deposit as a condition of acceptance of the Customer's order.
- 5.2 If the Customer is in default, Preston SuperService may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.
- 5.3 If the Customer has been approved for a credit account with Preston SuperService, then unless otherwise agreed in writing by Preston SuperService, all payments are due within 30 days of the date of invoice. Interest is charged at the rate of 2.5% per month or part of a month from the expiry of that period until the date payment is received by Preston SuperService. Where a Customer does not have an approved credit account with Preston SuperService, payment terms shall be strictly cash on delivery with payment required in full before Goods are released by Preston SuperService
- 5.4 All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.

- 5.5 Preston SuperService reserves the right to vary the Purchase Price:
- 5.5.1 if a variation of the Goods which are to be provided is requested: or
- 5.5.2 where additional Goods are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to, further faults which are found on disassembly and/or further inspection) which are only discovered upon commencement of the Services;
- 5.5.3 in the event of an increase to Preston SuperService in the cost of labour or parts which are beyond Preston SuperService's control.
- 5.6 Where Preston SuperService is requested to store the Customer's Goods or vehicle/plant, or where the Goods or vehicle/plant are not collected within twenty-four (24) hours of advice to the Customer that they are ready for collection, then Preston SuperService (at its sole discretion) may charge a fee (per day) for storage.
- 5.7 For roadside assistance, a minimum call-out fee shall be applicable, which shall be increased for any after-hours call-outs.
- 5.8 All tow and/or salvage fees will be charged to the Customer as part of the Additional Charges.
- 5.9 If Preston SuperService has been requested by the Customer to diagnose a fault that requires disassembly and/or testing, all associated costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
- 5.10 Where Preston SuperService is to provide Services at the Customer's nominated address, then the Customer shall be liable for all costs incurred by Preston SuperService from the time they depart from, and until they return to, Preston SuperService's premises (including but not limited to, mileage and time calculated at Preston SuperService's rates and any Goods purchased as part of the Services).
- 6. Retention of Title**
- 6.1 Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with Preston SuperService until payment in full for the Goods and all sums due and owing by the Customer to Preston SuperService on any account has been made. Until the date of payment:
- 6.1.1 the Customer has the right to sell the Goods in the ordinary course of business;
- 6.1.2 the Goods are always at the risk of the Customer.
- 6.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
- 6.2.1 if any payment to Preston SuperService is not made promptly before the due date for payment;
- 6.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Preston SuperService is dishonoured;
- 6.3 In the event of a default by the Customer, then without prejudice to any other rights which Preston SuperService may have at law or under this Agreement:
- 6.3.1 Preston SuperService or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
- 6.3.2 Preston SuperService may recover and resell the Goods;
- 6.3.3 if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Preston SuperService may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Preston SuperService and the Customer may be ascertained. Preston SuperService must promptly return to the Customer any goods the property of the Customer and Preston SuperService is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
- 6.3.4 In the event that the Customer uses the Goods in some manufacturing or construction process of its own

or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Preston SuperService. Such part will be an amount equal in dollar terms to the amount owing by the Customer to Preston SuperService at the time of the receipt of such proceeds. The Customer will pay Preston SuperService such funds held in trust upon the demand of Preston SuperService.

6.4 Separately, Customer hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral (as defined in the PPSA) as original collateral, or any of it, in favour of Preston SuperService.

7. PPSA

7.1 Defined terms in this clause have the same meaning as given to them in the PPSA.

7.2 Preston SuperService and the Customer acknowledge that these Terms constitute a Security Agreement and entitle Preston SuperService to claim:

- (a) a Purchase Money Security Interest ("PMSI") in favour of Preston SuperService over the Collateral supplied or to be supplied to the Customer as Grantor pursuant to these Terms; and
- (b) a security interest over the proceeds of sale of the Collateral referred to in (a) as original collateral.

7.3 The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms.

7.4 The Proceeds of sale of the Collateral referred to in clause 8.2(a) falls within the PPSA classification of "Account".

7.5 Preston SuperService and the Customer acknowledge that Preston SuperService, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to Customer pursuant to these Terms and in the relevant Proceeds.

7.6 To the extent permissible at law, the Customer:

7.6.1. waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer to Preston SuperService.

7.6.2 agrees to indemnify Preston SuperService on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;

7.6.2.1 registration or amendment or discharge of any Financing Statement registered by or on behalf of Preston SuperService; and

7.6.2.2 enforcement or attempted enforcement of any Security Interest granted to Preston SuperService by the Customer;

7.6.3 agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;

7.6.4 agrees to waive its right to do any of the following under the PPSA:

7.6.4.1 receive notice of removal of an Accession under section 95;

7.6.4.2 receive notice of an intention to seize Collateral under section 123;

7.6.4.3 object to the purchase of the Collateral by the Secured Party under section 129;

7.6.4.4 receive notice of disposal of Collateral under section 130;

7.6.4.5 receive a Statement of Account if there is no disposal under section 132(4);

7.6.4.6 receive a Statement of Account under section 132(3) (d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests

- held by other Secured Parties have been discharged.
- 7.6.4.7 receive notice of retention of Collateral under section 135;
- 7.6.4.8 redeem the Collateral under section 142; and
- 7.6.4.9 reinstate the Security Agreement under section 143.
- 7.6.5 All payments received from the Customer must be applied in accordance with section 14(6) (c) of the PPSA.
- 8. Risk**
- 8.1 If Preston SuperService retains ownership of the Goods under clause 6 then, where Preston SuperService is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that the Customer or the Customer's nominated carrier takes possession of the Goods at Preston SuperService's premises. If the Customer requests Preston SuperService to leave the Goods outside Preston SuperService's premises for collection then such Goods shall be left at the Customer's sole risk.

- 8.2 The Customer acknowledges that Preston SuperService is only responsible for Goods that have been supplied by Preston SuperService and that in the event that any other component in the repaired vehicle/plant subsequently fails, Preston SuperService shall not be liable for any loss or damage to the vehicle/plant or to the Goods supplied that has been caused by the failed component.
- 8.3 Preston SuperService shall not be liable for the loss of or damage to the vehicle/plant, its accessories or contents while being serviced or being driven/operated in connection with the Services (including in the event of a call-out: it shall be the Customer's responsibility to remain with the vehicle/plant/equipment to ensure security of the same), unless caused by the wilful negligence of Preston SuperService or its employees.
- 8.4 It is the Client's responsibility to ensure that the vehicle/plant/equipment is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) at all times whilst stored at Preston SuperService's premises for the purposes of Preston SuperService carrying out the Services. The vehicle/plant/equipment is at all times stored and repaired at the Customer's sole risk.

9. On-Sale

The Customer agrees that upon the on-sale of any Goods to third parties, it will:

- 9.1.1 inform any third party involved of these Terms;
- 9.1.2 inform any third party of Preston Superservice's product warranties if any; and
- 9.1.3 not make any misrepresentations to third parties about the Goods.

10. Cancellation

Preston SuperService may cancel any order to which these Terms apply prior to providing the Goods and/or Services to the Customer. Preston SuperService shall not be liable for any loss or damage whatsoever arising from such cancellation.

11. Unpaid Seller's Rights

11.1 Where the Customer has left any item/s (including any vehicle/plant/equipment) with Preston SuperService for repair, modification, exchange or for Preston SuperService to perform any other service in relation to the item/s and Preston SuperService has not received the whole of any moneys owing to it by the Customer, Preston SuperService shall have until all moneys owing to Preston SuperService are paid:

11.1.1 a lien on the item/s; and

11.1.2 the right to retain or sell the item/s, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

11.2 The lien of Preston SuperService shall continue despite the commencement of proceedings, or judgement for any moneys owing to Preston SuperService having been obtained against the Customer.

12. Trustee Capacity

If Customer is the trustee of a trust (whether disclosed to Preston SuperService or not), Customer warrants to Preston SuperService that:

12.1 Customer enters into this Agreement in both its capacity as trustee and in its personal capacity;

12.2 Customer has the right to be indemnified out of trust assets;

12.3 Customer has the power under the trust deed to enter into this Agreement; and

12.4 Customer will not retire as trustee of the trust or appoint any new or additional trustee without first advising Preston SuperService.

13. Indemnity

To the full extent permitted by law, Customer will indemnify Preston SuperService and keep Preston SuperService indemnified from and against any liability and any loss or damage Preston SuperService may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Customer or its representatives.

14. General

14.1 These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of

the Courts of New South Wales, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.

14.2 These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

14.3 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.

14.4 No waiver of any of these Terms or failure to exercise a right or remedy by Preston SuperService will be considered to imply or constitute a further waiver by Preston SuperService of the same or any other term, condition, right or remedy.

14.5 Preston SuperService may at its discretion licence or sub-contract all or any part of its right and obligations under the Terms without being required to obtain the Client's consent.

14.6 The Customer acknowledges and agrees that Preston Superservice shall be entitled to:

11.6.1 retain any components replaced during the provision of the Services; and

11.6.2 the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.