

## TERMS AND CONDITIONS FOR THE SALE OF PARTS AND EQUIPMENT

### 1. Definitions and interpretation

#### 1.1. Definitions

**Australian Consumer Law** means the provisions set out in Schedule 2 of the Competition and Consumer Act 2010.

**Business Day** means a day other than a weekend or public holiday in the place where the Goods are to be delivered.

**Exclusive Goods** means any goods which are, at your request, customised or specifically ordered for you.

**Goods** mean the products specified in the invoice or ordered by You and includes any packaging, container or pallet in or on which the Goods are packed.

**Intellectual Property** means all intellectual property rights, including copyright, inventions, patents (including patent applications), trademarks (whether registrable or not), designs (whether registrable or not), eligible circuit layout rights, domain name licences, and includes the right to register any intellectual property rights.

**PPSA** means the Personal Properties Securities Act 2009 (Cth).

**Related Body Corporate** has the meaning given to it in the Corporations Act 2001 (Cth).

**Verification Statement** has the meaning given in the PPSA.

#### 1.2. Interpretation

In these conditions unless the context otherwise requires:

- (a) "You and Your" means the person or entity requesting to purchase parts or equipment.
- (b) "We, Our and Us" means Shemapel 2005 Pty Ltd t/as AMCAP and any business operated by the company and each of their employees and agents.
- (c) a reference to writing includes email and other communication established through Our website (if any);
- (d) the singular includes the plural and vice versa;
- (e) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms and Conditions;
- (f) a reference to a party to these terms and conditions or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (g) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (h) headings are for ease of reference only and do not affect the meaning or interpretation of these terms and conditions; and
- (i) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
  - I. if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
  - II. in all other cases, must be done on the next Business Day.

### 2. Terms

- 2.1 These terms and conditions apply to the sale of parts and equipment by AMCAP.
- 2.2 Any direction by You either verbal or written to procure products from Us will be deemed acceptance by You of these terms and conditions.
- 2.3 We shall not be bound by any conditions attaching to any order, quotation or direction issued by You, unless such conditions are expressly accepted by Us in writing.
- 2.4 Nothing in these terms and conditions excludes, restricts or modifies or has the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

### 3. Other agreements

- 3.1 These terms and conditions do not detract from the terms and conditions of any previously signed agreement between You and Us or any of our Related Bodies Corporate and are in addition to that agreement.
- 3.2 If there is any inconsistency between these terms and conditions and any previously signed agreement between You and Us or any of our Related Bodies Corporate the terms and conditions of the previously signed agreement will prevail to the extent of the inconsistency.



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Shemapel 2005 Pty Ltd trading  
as **AMCAP Distribution Centre**  
ABN 50 112 854 412  
ACN 112 854 412

#### **4. Product information**

- 4.1 We endeavour to ensure that the descriptions and specifications in relation to the products on our website or catalogues are accurate. However, photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a quotation, descriptive literature or a catalogue are based on information provided by manufacturers and suppliers and, as such we do not guarantee that those descriptions and specification are accurate or free from errors or omissions. We reserve the right to make any necessary corrections to the description or specifications without notice.
- 4.2 To the extent permitted by law, any performance data provided by Us, a supplier or a manufacturer is an estimate only and should be construed accordingly.

#### **5. Quotations**

Unless previously withdrawn, a quotation is valid for 30 days or such other period as stated in it. A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until Your order has been accepted by Us.

#### **6. Part deliveries**

We may at Our option deliver the Goods to You in any number of instalments.

#### **7. Orders**

##### **7.1 Placing an order**

- (a) The display of any items on our website or in our catalogue is an advertisement or invitation to treat and not an offer. By placing an order, you are making an offer to buy subject to these terms and conditions.
- (b) If you are an account customer your order is accepted by Us when we provide you with a reference number. If you are a non account customer your order is accepted by Us when we provide you with a reference number and process your payment. Acceptance of Your order by Us results in a binding contract between You and Us.

##### **7.2 Purchase Orders**

- (a) Subject to subclauses (b) and (c), if you issue a purchase order then all Goods you request be supplied by Us to You are as described on the purchase order and save as set out in subclauses (b) and (c) the description on such purchase order prevails over all other previous descriptions of the Goods including any enquiry from You.
- (b) Subclause (a) does not apply to the extent that any price quoted or provided to You by us was based on You ordering a specific quantity and the purchase order does not meet that quantity.
- (c) We are entitled to vary any order for Goods where Goods have been superseded by the manufacturer. Goods may vary slightly where they have been superseded by the manufacturer.

##### **7.3 Inspection and acceptance**

You will inspect all Goods upon delivery and within two (2) Business Days of delivery give notice to us of any matter or thing by which You allege that the Goods are not in accordance with Your order. Failing such notice, subject to any non-excludable condition implied by law, the goods shall be deemed to have been delivered to and accepted by You.

##### **7.4 Delivery instructions**

- (a) We reserve the right to charge a reasonable fee for storage if You do not within 4 Business Days of a request by Us:
- I. provide delivery instructions for the Goods; or
  - II. collect Goods that We notify You are available for collection.
- (b) You agree that we may charge for storage from the first day after the expiry of the 4 Business Days referred to in subclause (a).

### **7.5 Delivery**

- (a) The delivery times made known to You are estimates only and we are not liable for late delivery or non-delivery.
- (b) We will not be liable for any loss, damage or delay occasioned to You or Your customers arising from late or non-delivery of the Goods.
- (c) Delivery of the goods shall be at the address given by You for delivery and if delivery cannot be made at that address during normal trading hours then an additional charge may be payable for any consequential storage and further delivery attempts.

### **8. Consumer Guarantees**

- 8.1 Except as expressly provided in the terms and conditions, any terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the subject matter of the Goods are excluded to the maximum extent allowed by the law.
- 8.2 Where We are not permitted to exclude liability for any loss or damage in connection with Our breach of a Consumer Guarantee (as defined under the Australian Consumer Law), but are permitted to limit our liability for such a breach, then, unless You are able to establish that it is not fair and reasonable for Us to do so, our liability to You is limited to:
- (a) replacement of the Goods or the supply of equivalent goods;
  - (b) repair of the goods;
  - (c) payment of the cost of replacing the goods or acquiring equivalent goods.
- 8.3 The limitations of liability in this clause 8 do not apply to a breach of any Consumer Guarantee relating to goods of a kind ordinarily acquired for personal, domestic or household use or consumption.

### **9. Cancelling an order**

Unless otherwise agreed;

- (a) You shall have no right to cancel an order which has been accepted by Us;
- (b) Orders for Exclusive Goods may not be cancelled; and
- (c) Orders cannot be cancelled once the Goods have been dispatched.

### **10. Returns**

Other than where We are required to accept a return of Goods under the Australian Consumer Law:

- (d) Any return of Goods must be authorised by Us;
- (e) Authorised returns must be freight pre paid and will only be accepted if they are in saleable condition and (unless otherwise agreed) the Goods are returned within 30 days of supply;
- (f) Returns will not be considered after 30 days of invoice date;
- (g) Goods will only be considered for credit if they are returned in good condition, have not been fitted or installed, are in the original undamaged packaging (where applicable) and the original invoice number and date of supply are quoted;
- (h) Depending on the manufacturer a restocking fee may also apply to returned goods; and
- (i) Where electronic equipment has previously been installed We reserve the right to refer that equipment to the manufacturer for inspection prior to consideration for any return.

### **11. Pricing**

- 11.1 You acknowledge that despite our reasonable precautions, Goods may be listed at an incorrect price, or with incorrect availability and other information, due to typographical errors or oversight. In such circumstances, we reserve the right to cancel Your order, even if Your order has been paid for and previously accepted by Us. We will contact You as soon as possible and immediately issue a refund for any payment You have made for the cancelled order. We reserve this right up until we deliver the Goods. Refunds will be issued as soon as practicable using, at our absolute discretion, the same method as Your original payment.
- 11.2 We reserve the right to pass on to You any manufacturer price increases that occur prior to delivery.

## **12. Payment**

- 12.1 Unless credit facilities have previously been agreed in writing between You and Us we will not consider any order accepted and will not dispatch any Goods without receiving payment in full in cleared funds.
- 12,1 If Your payment is dishonoured or reversed for any reason You must immediately make that payment again. We reserve the right to delay processing Your order or delivery until we receive payment in full in cleared funds.

## **13. Intellectual Property Rights**

The material on our website, in our catalogues and advertising material is protected under Australian and international copyright and other laws governing the protection of Intellectual Property rights. Intellectual Property rights in images and trademarks and other content are owned by their respective owners. You must not deal with any material on the website, in our catalogues or advertising material in any way which infringes on the owners Intellectual Property rights without separate written permission from the content owner.

## **14. Risk and title**

- 14.1 Risk in the Goods passes to You upon delivery to You or Your nominated carrier.
- 14.2 Title to the goods does not transfer to You until We have received payment in full.
- 14.3 You agree that any invoice for Goods constitutes a Security Agreement as defined in the PPS Act. You further acknowledge and agree that We are a subsidiary of Automotive Holdings Group Limited as defined in the Corporations Act 2001 and that Automotive Holdings Group Limited may register a security interest in any Goods not paid for in full and You waive the right to receive a Verification Statement.

## **15. Delivery**

- 15.1 If you instruct that a particular method of delivery be used, we will try to use that method but at our discretion may use another method if reasonable or necessary.
- 15.2 You will be liable to pay all freight charges as notified unless otherwise agreed by Us in writing.

## **16. Force majeure**

If the performance or observance of any or Our obligations is prevented, restricted or affected by reason of a force majeure event including: act of God; the outbreak of hostilities (whether or not accompanied by any formal declaration of war), riot, civil disturbance or acts of terrorism; strike, lock out, industrial dispute (whether affecting Us or our service providers personally or the industry or sector of which we are a part); fire, explosion, flood, inclement weather or natural disaster; the default of any suppliers under any material contracts to which We are a party; raw material shortage; derailment; breakdown of plant, transport or equipment; or any other cause beyond Our reasonable control; We may, in Our absolute discretion give prompt notice of that cause to You. On delivery of that notice We are excused from such performance or observance to the extent of the relevant prevention, restriction or effect.

## **17. Privacy**

- 17.1 We collect and use your personal information so that we can administer this agreement and exercise our rights should that become necessary. If you do not provide this information we may not be able to provide you with the goods or services you require.
- 17.2 We may share your information with companies related to Us and third party service providers (which may be overseas). Our Privacy Policy is available on our website. It contains information about how we handle your personal information, how you can access or correct it, how to make a complaint if you feel that we have not handled your personal information correctly and how we deal with complaints.

## **18. Governing terms and conditions**

Copies of these terms and conditions are available on our website. We reserve the right to change these terms and conditions at any time. Updated terms and conditions will be posted on Our website.

## **19. Place of contract**

This Agreement is governed by the laws of Western Australia.

These terms and conditions are effective as of 31 July 2017.