

TERMS OF TRADE

Interpretation

1. In these terms and conditions:
 - (a) **CCA** means the *Competition and Consumer Act 2010 (C'th)*.
 - (b) **Customer** means the purchaser of the Goods from TMD as specified in any invoice, document or Order, and if there is more than one Customer, is a reference to each Customer jointly and severally.
 - (c) **Delivery** means:
 - (i) in the case of Goods that are products, delivery to the location/s agreed between TMD and the Customer; or
 - (ii) in the case of Goods that are services, the date of completion of those Services; andincludes such other place or date (as the case may be) as the parties may agree or as TMD may at its sole discretion consider reasonable in the circumstances.
 - (d) **Descriptive Matter** means and includes without limitation, Specifications, drawings, diagrams, particulars of weights/dimensions or any other form of measurement submitted with or prior to any offer by TMD or contained in TMD's catalogues, price lists or advertising matter.
 - (e) **Dispatched** means the Goods have been removed from the premises of TMD for the purpose of Delivery to the Customer, or any other party, pursuant to an Order.
 - (f) **Goods** means all products sold or services supplied by TMD to the Customer from time to time.
 - (g) **Non-Excludable Condition** means any condition, warranty or guarantee provided or implied by any state, territory or commonwealth law, including but not limited to the statutory consumer guarantees described in the CCA, and the provisions of any state or territory legislation which cannot be lawfully excluded.
 - (h) **Order** means any request by the Customer for the supply of Goods by TMD, whether that supply is to the Customer or to any other party and whether the request amounts to an offer or an invitation to treat from the Customer.
 - (i) **PPSA** means the *Personal Property Securities Act 2009 (C'th)*.
 - (j) **PPSR** means the Personal Property Securities Register established pursuant to the PPSA.
 - (k) **Price** means the price payable for the Goods as agreed between TMD and the Customer in accordance with clause 5 of these terms and conditions.
 - (l) **Specifications** means any written specification relating to the Goods that details the quantities, processes and or conditions required for the correct use of the Goods.
 - (m) **TMD** means Travel Motors Direct Pty Ltd ACN 111 835 520, which is a manufacturer and/or supplier of final drive motors and machinery.
 - (n) singular includes plural and vice versa and any gender includes every gender.
 - (o) a reference to a person includes corporations, trusts, associations, partnerships, a government authority and other legal entities, and where necessary, include successor bodies.
 - (p) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes.
 - (q) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of these terms and conditions.
 - (r) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.
 - (s) nothing in these conditions may be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the CCA) and which, by law, cannot be excluded, restricted or modified.

Terms of sale

2. The Goods sold or supplied by TMD are sold or supplied strictly on these terms and conditions, which can only be waived or varied in writing by TMD. These terms and conditions will prevail over all conditions expressed or implied in any Order placed by the Customer to the extent of any inconsistency.
3. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an Order for or accepts Delivery of the Goods.
4. The Goods to be sold or supplied by TMD to the Customer are as described on the Order accepted in writing by TMD and the Customer and the description of the Goods on the Order (modified only as may be agreed in writing) will prevail over all other descriptions including any Specification or enquiry by the Customer.

Price and Payment

5. At TMD's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by TMD to the Customer; or
 - (b) TMD's quoted prices (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days, unless earlier withdrawn. TMD reserves the right to refuse any Order based on any quotation within 14 days after the receipt of the Order.
6. TMD reserves the right to change the Price if a variation to TMD's quotation is requested and any permits, licence fees and/or toll charges incurred by TMD shall be charged to the Customer.
7. At TMD's sole discretion a non-refundable deposit may be required.
8. Time for payment for the Goods will be of the essence and the Price must be paid by the Customer on or before Delivery of the Goods or on such other date determined by TMD in its sole discretion.
9. Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (plus the maximum credit card bank fee and administration surcharge permitted by law), or by any other method as agreed to in writing between the Customer and TMD.
10. Unless otherwise stated the Price charged includes GST. The Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
11. The cost of any special packing and packing materials used in relation to the Goods will be charged to the Customer despite that such cost may have been omitted from any quotation.

Descriptive Matter, etc

12. The descriptions, illustrations and performances contained in any Descriptive Matter do not form part of the contract of sale or supply of the Goods or of the description applied to the Goods. The Customer acknowledges that it has not relied upon any descriptions, illustrations and performances contained in any Descriptive Matter as an inducement into entering into any contract of sale or supply with TMD.

Performance

13. Any performance standards, figures or representations as to quality given by TMD are estimates only. TMD is under no liability for damages for failure of the Goods to attain such performance standards, figures or quality unless specifically warranted in writing. Any such warranties are subject to recognised tolerances applicable to such performance standards figures or quality.

Delivery

14. TMD will not be liable for any loss, damage or delay occasioned to the Customer, its customers or any other person, arising from:
 - (a) late Delivery or non-Delivery, or late utilisation of the Goods.
 - (b) any actions or Obligations conducted or incurred by the Customer in reliance on any expected Delivery date.
15. The Customer must accept Delivery of the Goods in accordance with any Order or in any other manner determined reasonable in the circumstances by TMD.

16. If the Customer fails to accept Delivery of the Goods, the Customer will be liable for any costs or damages incurred by TMD on account of such failure to accept Delivery.
17. The Customer waives any claim for shortage of any Goods Delivered if a claim in respect of short Delivery has not been lodged with TMD within 48 hours from the date of Delivery.
18. Should the Customer fail to provide sufficient instructions to enabling Delivery of the Goods to the Customer, TMD may arrange for suitable storage and insurance until the Goods are Dispatched. Charges for storage, insurance, transport and other incidental costs may be charged by TMD to the Customer.
19. Delivery of the Goods to a third party nominated by the Customer is deemed to be Delivery to the Customer.
20. TMD may deliver the Goods in separate instalments. Each separate instalment is to be invoiced and paid in accordance with these terms and conditions.
21. In the event TMD is requested by the Customer to complete urgent repairs and maintenance after normal trading hours, a call-out fee and/or travel costs may be charged to the Customer.

Risk

22. The risk in, and all attached liability for damage to, the Goods passes to the Customer at the point of Despatch of the Goods even if TMD Delivers the Goods itself or TMD's premises are the intended Delivery location. The Customer must insure the Goods on or before Delivery.
23. If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, TMD is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by TMD is sufficient evidence of TMD's rights to receive the insurance proceeds without the need for any person dealing with TMD to make further enquiries.

Loss or damage in transit

24. TMD is not responsible to the Customer or any person claiming through the Customer for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not TMD is legally responsible for the person who caused or contributed to that loss or damage).
25. TMD will provide the Customer with such assistance as may be necessary to press claims on carriers so long as the Customer:
 - (a) has notified TMD and the carriers in writing immediately after loss or damage is discovered on receipt of Goods; and
 - (b) lodges a claim for compensation upon the carrier within three (3) days of the date of receipt of the Goods.

Defects, Warranties and Returns

26. The Customer must inspect the Goods on delivery and must within 48 hours of delivery notify TMD in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify in writing any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow TMD to inspect the Goods.
27. Under applicable State, Territory and Commonwealth law (including, without limitation the CCA), certain Non-Excludable Conditions may be implied into these terms and conditions.
28. Nothing in these terms and conditions purports to modify or exclude the Non-Excludable Conditions.
29. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Conditions, TMD makes no warranties or other representations under these terms and conditions including, without limitation, as to the quality or suitability of the Goods. TMD's liability in respect of these warranties is limited to the fullest extent permitted by law.
30. If the Customer is a consumer within the meaning of the CCA, TMD's liability is limited to the extent permitted by section 64A of Schedule 2 or to similar remedies under any applicable state or territory fair trading legislation.
31. If TMD is required to replace the Goods under these terms and conditions or the CCA, but is unable to do so, TMD may instead refund any money the Customer has paid for the Goods.
32. If the Customer is not a consumer within the meaning of the CCA, TMD's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty provided to the Customer by TMD, at TMD's sole discretion;
 - (b) limited to any warranty to which TMD is entitled, if TMD did not manufacture the Goods;
 - (c) otherwise negated absolutely.
33. Subject to these terms and conditions, returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 26; and
 - (b) TMD has agreed that the Goods are defective;
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were Delivered as is possible.
34. Despite clauses 26 to 33 but subject to the CCA, TMD will not be liable for any defect or damage which may be caused or partly caused by or may arise as a result of:
 - (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by TMD or a manufacturer; or
 - (e) fair wear and tear, any accident, or act of God.
35. In the case of second hand Goods, unless the Customer is a consumer under the CCA the Customer acknowledges that:
 - (a) it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults;
 - (b) to the extent permitted by law no warranty is given by TMD as to the quality or suitability of the Goods for any purpose and any implied warranty, statutory or otherwise, is expressly excluded;
 - (c) TMD has agreed to provide the Customer with the second hand Goods, and has calculated the Price of the second hand Goods, in reliance on this clause 35.
36. TMD may in its absolute discretion accept non-defective Goods for return in which case TMD may require the Customer to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods, plus any freight costs.
37. Despite anything contained in these terms and conditions, if TMD is required by a law to accept a return then TMD will only accept a return on and to the extent of the conditions imposed by that law.
38. TMD is not liable for and the Customer releases TMD from any claims in respect of faulty or defective design or manufacture of any Goods unless such design or manufacture has been wholly performed by TMD and the responsibility for any claim has been specifically accepted by TMD in writing. In any event TMD's liability under this clause 38 is limited as otherwise provided in these terms and conditions.
39. Except as provided in these terms and conditions and to the maximum extent permitted by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, application of the Goods, materials or workmanship or otherwise are expressly excluded.
40. TMD is not liable for any loss of income, loss of profits, loss of markets, loss of reputation, loss of customers, loss of use, loss of opportunity, loss of business, loss of reputation or goodwill, loss of value or use of intellectual property or other proprietary rights even if TMD had knowledge that such loss or damage might arise or for any other indirect, incidental, special or consequential loss or damage howsoever arising out of the manufacture, sale or supply of the Goods including, without limitation, TMD's breach of contract, negligence, wilful act or omission or other default.

Rights in relation to Goods

41. While the Goods remain the property of TMD:

- (a) the Customer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation TMD owes to the Customer;
 - (b) the Customer cannot claim any lien over the Goods;
 - (c) the Customer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by TMD.
42. Where the Customer is in actual or constructive possession of the Goods:
- (a) the Customer will not deliver them or any document of title to the Goods to any person except as directed by TMD; and
 - (b) it is in possession of the Goods as a bailee of those Goods and owes TMD the duties and liabilities of a bailee.
43. TMD states to the Customer that:
- (a) TMD has the right to supply the Goods to the Customer;
 - (b) the activities of the Customer in receiving supply of the Goods do not infringe the rights of the owner of the Goods (where TMD is not the owner of the Goods);
 - (c) if the Goods are not owned by TMD, that TMD is authorised to supply the Goods to the Customer.
44. TMD and the Customer agree that:
- (a) the property of TMD in the Goods remains with TMD until TMD has been paid in full for the Goods under all individual contracts for the sale or supply of the Goods between TMD and the Customer;
 - (b) the Customer is a bailee of the Goods until such time as property in them passes to the Customer and that this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full;
 - (c) pending payment in full for the Goods, the Customer:
 - (i) must not supply any of the Goods to any person outside its ordinary or usual course of business;
 - (ii) must not allow any person to have or acquire any security interest in the Goods.
45. Despite clause 44(c), if the Customer supplies any of the Goods to any person before all moneys payable by the Customer have been paid to TMD, the Customer agrees that:
- (a) it holds the proceeds of re-supply of the Goods on trust for and as agent for TMD immediately when they are receivable or are received;
 - (b) it must either pay the amount of the proceeds of re-supply to TMD immediately when they are received or pay those proceeds into an account with a bank, financial institution or deposit-taking institution as trustee for TMD;
 - (c) if the Customer fails to pay for the Goods within the period of credit (if any) extended by TMD to the Customer, TMD may at any time and with reasonable force enter any site owned, possessed or controlled by the Customer and recover possession of the Goods and the Customer agrees that TMD has an irrevocable licence to do so.
46. TMD may recover possession of any Goods in transit whether or not delivery has occurred.
47. TMD may commence proceedings to recover the Price of Goods sold notwithstanding that ownership of those Goods has not passed to the Customer.
48. Where the Customer has left any item with TMD for repair, modification, exchange or for TMD to perform any other service in relation to the item and TMD has not received due payment for the whole of any moneys owing to it by the Customer, TMD will have, until all moneys owing to TMD are paid:
- (a) a lien on the item;
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods;
- and the lien of TMD shall continue despite the commencement of proceedings, or judgment for any moneys owing to TMD having been obtained, against the Customer.

PPSA

49. In these terms and conditions, **financing statement, financing change statement, security agreement and security interest** each have the meaning given by the PPSA.
50. The Customer acknowledges and agrees that these terms and conditions constitute a security agreement in writing for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by TMD to the Customer.
51. The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which TMD may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement or document referred to in clause 51(a)(i) or 51(a)(ii);
 - (b) indemnify, and upon demand reimburse, TMD for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of TMD;
 - (d) not register, nor permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of TMD;
 - (e) immediately advise TMD of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
52. TMD and the Customer agree that sections 96 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
53. The Customer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
54. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
55. Unless otherwise agreed to in writing by TMD, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
56. The Customer must unconditionally ratify any actions taken by TMD under clauses 51 to 53.
57. Subject to any express and permitted provisions to the contrary, nothing in these terms and conditions is intended to have the effect of contracting out of any other provisions of the PPSA.

Security and Charge

58. In consideration of TMD agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets owned by the Customer either now or in the future and capable of being charged, to secure the performance by the Customer of its obligations under these terms and conditions (including, without limitation, the payment of any money).
59. The Customer indemnifies TMD from and against all TMD's costs and disbursements, including legal costs on a solicitor and own client basis, incurred in exercising TMD's rights under clause 58.
60. The Customer irrevocably appoints TMD and each director of TMD as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of clause 58 including, without limitation, signing any document on the Customer's behalf.

Cancellation

61. TMD may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are Delivered by giving written notice to the Customer. On giving such notice TMD will repay to the Customer any money paid by the Customer for the Goods. TMD will not be liable for any loss or damage whatsoever arising from such cancellation.

62. In the event that the Customer cancels Delivery of Goods the Customer will be liable for any and all loss incurred (whether direct or indirect) by TMD as a direct result of the cancellation (including, without limitation, any loss of profits).
63. Cancellation of Orders for Goods made to the Customer's Specifications, or for non-stocklist items, will not be accepted once production has commenced.
64. The failure by TMD to enforce any provision of these terms and conditions will not be treated as a waiver of that provision, nor will it affect TMD's right to subsequently enforce that provision. If any provision of these terms and conditions is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
65. These terms and conditions and any contract to which they apply will be governed by the laws of the state of Queensland, Australia, and are subject to the exclusive jurisdiction of the courts in that state.
66. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by TMD nor to withhold payment of any invoice because part of that invoice is in dispute.
67. TMD may assign, license or sub-contract all or any part of its rights and obligations without the Customer's consent.
68. TMD may alter these terms and conditions at any time. If TMD makes a change to these terms and conditions, then that change will take effect from the date on which TMD notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for TMD to provide Goods to the Customer.
69. Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of that party.
70. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
71. Neither these terms and conditions nor any contract arising from them will be interpreted, construed or applied adversely to TMD by reason of their having been drafted by or on behalf of TMD.