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HIDRIVEGROUP P/L

ABN: 97 153 134 788



ISO 9001 QUALITY
Certified System

Hidrive Group Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "HIDRIVE" means Hidrive Group Pty Ltd ABN: 97 153 134 788
- 1.2 "Customer" means the person/s buying the Goods or receiving services as specified in any HOA, invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or services supplied by HIDRIVE to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "HOA" means a HIDRIVE Order Acknowledgment document issued by HIDRIVE to Customer to confirm details of Customer Order. HOA may only be amended by HIDRIVE in writing.
- 1.5 "Loan Vehicle" shall mean all Loan Vehicles including any accessories supplied on loan by HIDRIVE to the Customer (and where the context so permits shall include any supply of Services). The Loan Vehicle shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by HIDRIVE to the Customer.
- 1.6 "Price" means the Price payable for the Goods as agreed between HIDRIVE and the Customer in accordance with clause 4 below.
- 1.7 "TOT" means these Terms & Conditions of Trade.

2. Agreement

- 2.1 The Customer confirms Customer's agreement to the TOT when Customer places an order for or accepts delivery of the Goods.
- 2.2 The TOT may only be amended with HIDRIVE's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and HIDRIVE.
- 2.3 The Customer acknowledges that the supply of Goods on credit shall not take effect until HIDRIVE approves Customer's credit application.
- 2.4 The Customer acknowledges and agrees where the Customer does not elect to control their purchases by a Purchase Order or other document accepted by HIDRIVE, then all purchases made by Customer and/or any other third party acting on behalf of the Customer to which are charged to the Customer's credit account, shall remain payable by the Customer.
- 2.5 If the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, HIDRIVE reserves the right to refuse delivery until Customer returns to compliance with HIDRIVE's credit terms.
- 2.6 The Customer accepts and acknowledges HIDRIVE's right to refuse in whole or in part any countermands or alterations to specifications requested by the Customer after acceptance of the offer.
- 2.7 None of HIDRIVE's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by a Director of HIDRIVE in writing nor is HIDRIVE bound by any such unauthorised statements.
- 2.8 The Customer accepts and acknowledges that all descriptions of Goods in any document issued by HIDRIVE are approximate only and shall not form part of any sale by description.
- 2.9 The Customer accepts and agrees, if the Customer wishes to retain sole rights to their design patterns, then HIDRIVE's will require their Specific Pattern Contract to be completed prior to placing order with HIDRIVE. If there are any inconsistencies between any Specific Pattern Contract and these TOT, then the TOT shall prevail.

3. Change in Control

- 3.1 The Customer shall give HIDRIVE not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone, email or fax number/s, or business practice). The Customer shall be liable for any loss incurred by HIDRIVE as a result of the Customer's failure to comply with this clause.

4. Price and Payment

- 4.1 At HIDRIVE's sole discretion the Price shall be either:
 - (a) as indicated on any invoice or HOA provided by HIDRIVE to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to HIDRIVE's then current price list; or
 - (c) HIDRIVE's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or for a period of thirty (30) days whichever is longer.
- 4.2 HIDRIVE reserves the right to change the Price:
 - (a) if the Customer requests a variation to HIDRIVE's quotation; or
 - (b) where due to additional works being required due to hidden or unidentifiable difficulties which are only discovered once the works have commenced (including but not limited to the discovery of, body filler and/or any variation made in writing or verbally at the request of the Customer);
 - (c) where due to increases to HIDRIVE in the cost of materials, and where such materials are imported specifically for the Customer this shall include additional freights costs, customs charges and foreign exchange fluctuations; or
 - (d) where a minimum period of 6 months has elapsed from the date of the Customer's written acceptance of the Price and a vehicle delivery date being confirmed by way of a valid OEM stock number being provided to HIDRIVE, HIDRIVE at its sole discretion can update the Price according to Hidrive's current price list.
- 4.3 Customer agrees that HIDRIVE may require in its sole discretion Customer to provide a non-refundable deposit to assure payment of Customer obligations to HIDRIVE.
- 4.4 Time for payment for the Goods will be on delivery of the Goods unless otherwise agreed in writing by HIDRIVE.
- 4.5 Payment may be made by cash, cheque, electronic/on-line banking, credit card (plus a surcharge as allowed by law or three percent (3%) whichever is lesser) of the Price), or by any other method as agreed to between the Customer and HIDRIVE.
- 4.6 Unless otherwise stated the Price does not include GST.
- 4.7 Customer must also pay to HIDRIVE an amount equal to any GST HIDRIVE must pay for any supply by HIDRIVE under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price.
- 4.8 Customer must also pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

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5. Delivery of Goods

- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that the Goods depart from HIDRIVE's premises.
- 5.2 At HIDRIVE's sole discretion the cost of delivery is in addition to the Price.
- 5.3 The Customer accepts and acknowledges that unless specified in writing by HIDRIVE any freight required is in addition to the Price. The Customer further accepts that if HIDRIVE is required to physically deliver the Goods then it will be done at the best rate HIDRIVE can arrange and will be charged as an additional cost together with an administration fee.
- 5.4 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. If the Customer is unable to take delivery of the Goods as arranged, then HIDRIVE shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.5 HIDRIVE may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in the TOT.
- 5.6 Any time or date given by HIDRIVE to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and HIDRIVE will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. On Time Guarantee' "OTG"

- 6.1 If HIDRIVE offers an On-Time Guarantee in relation to any specific Goods order, HIDRIVE will deliver Goods specified in the HIDRIVE Order Acknowledgment (HOA) on or before the specific date set out in the HOA if Customer:
 - (a) follows these TOT;
 - (b) delivers its new vehicle subject to these TOT to the specified HIDRIVE installation location by the date specified by HIDRIVE.
 - (c) All third-party vehicle specifications are available to HIDRIVE.
- 6.2 The terms of this OTG will not apply in event that:
 - (a) Customer amends its order after its receipt by HIDRIVE Any changes requested by the client to its order after the date of the HOA will reset the OTG date;
 - (b) Customer does not comply with any reasonable requests for information or instruction from HIDRIVE;
 - (c) the terms of sections 4.2, 4.3 9.2, 9.10 or 20 of these TOT apply;
 - (d) OTG will not apply to Goods being installed on used vehicles or bodies;
 - (e) any third-party suppliers are late or incomplete in their obligations related to the Goods.
- 6.3 The OTG is deemed to be 'on time' when Customer's vehicle is ready to collect from the HIDRIVE installation location at 17.00hrs or the next working day if delivery date is a designated public holiday or other scheduled shut down period or weekend.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, HIDRIVE is entitled to receive all insurance proceeds payable for the Goods. The production of the TOT by HIDRIVE is enough evidence of HIDRIVE's rights to receive the insurance proceeds without the need for any person dealing with HIDRIVE to make further enquiries.
- 7.3 If the Customer requests HIDRIVE to leave Goods outside HIDRIVE's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 7.4 In the event that the Customer believes that HIDRIVE has damaged Customer's vehicle during the installation process of the Goods, the Customer shall within twenty-four (24) hours of delivery (time being of the essence) notify HIDRIVE of any alleged defect or damage in accordance with 14.1. If the Customer fails to comply with clause 14.1, the vehicle shall be presumed to be free from any defect or damage.
- 7.5 The Customer agrees that Roll Over Protection Structure (ROPS) is intended to protect the operator from some injuries caused by overturns or rollovers only and should not be regarded as a life saving device.

8. Customer's Responsibility & Acknowledgment

- 8.1 The Customer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish of up to five percent (5%) of match to cab and may fade or change colour over time. HIDRIVE will match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 8.2 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, HIDRIVE reserves the right to vary the Price with alternative Goods as per clause 4.2. HIDRIVE also reserves the right to halt all Goods until such time as HIDRIVE and the Customer agree to such changes.
- 8.3 The Customers acknowledges that HIDRIVE can only provide its Goods on a vehicle in its current state as supplied to HIDRIVE therefore, HIDRIVE shall not accept any responsibility for the workmanship of any third party that has worked on a Customers vehicle prior to supply of Goods/services being undertaken by HIDRIVE (including, but not limited to, poor paintwork or repairs) or any subsequent work by third parties.
- 8.4 HIDRIVE, its employees, agents or contractors may test drive or carry out tests of the vehicle at HIDRIVE's discretion and may, if requested by the Customer, collect or re-deliver the vehicle where nominated by the Customer and HIDRIVE will not be liable to the Customer for any damage which occurs to or is caused by the vehicle during such driving, testing, collection or delivery unless it arises from the reckless or wilful conduct of HIDRIVE, its employees, agents, or contractors.
- 8.5 Where the Customer has supplied materials for HIDRIVE to complete the Goods/services, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. HIDRIVE shall not be responsible for any defects in the Goods/services, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 8.6 Where the Customer has left a vehicle with HIDRIVE for repair, restoration, or modification or for HIDRIVE to perform any other Service in relation to the item, it shall be at the sole risk of the Customer. HIDRIVE shall not be liable for any loss or damage to any vehicle whilst in the care of HIDRIVE, it shall be the responsibility of the Customer to ensure the vehicle is adequately insured, or at all (including but not limited to, the perils of accident, fire, theft and burglary, severe weather and all other usual risks) whilst stored on HIDRIVE's premises.
- 8.7 The Customers acknowledges that it is the Customers' responsibility to remove all personal/valuable items from the vehicle prior to HIDRIVE carrying out their Services. HIDRIVE shall not liable in the event of any apparent loss or damage to personal/valuable items left in the vehicle.
- 8.8 Whilst HIDRIVE shall endeavour to modify the vehicle to the exact specifications or instructions of the Customer, HIDRIVE can offer no guarantee that any technique used will provide the exact effect desired by the Customer.
- 8.9 If in the opinion of HIDRIVE the Customers' requests for modifications are in deemed to be unsuitable and unsafe to proceed with, then HIDRIVE reserves the right to halt the Services until such time as the Customer authorises HIDRIVE in writing to proceed with the modifications and accepts that HIDRIVE shall not be responsible for any defects in the Services, any loss or damage to the vehicle (or any part thereof), howsoever arising from the modifications instructions supplied by the Customer.
HIDRIVE shall not be responsible for any damage to the vehicle, not detected by HIDRIVE, where the full strip down bodywork and/or HIDRIVE inspection has not been conducted by HIDRIVE.

9. Insurance Claims

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- 9.1 If the Customer has insurance or other contractual arrangements for the payment of charges due under this contract, this will not affect the Customer's obligation to pay all charges due under this contract, except that the Customer's liability will be reduced to the extent that payments are made to HIDRIVE from other such sources. The Customer also agrees that they shall be liable and make payment when due for any insurance excess where necessary.
- 9.2 Any work undertaken which is part of an insurance claim is undertaken with the understanding that should the claim be declined, or payment of the claim delayed, the Customer is liable for payment of the full Price.

10. Access

- 10.1 If HIDRIVE agrees to perform services at Customer site, the Customer shall ensure that HIDRIVE has always clear and free access to the work site to enable them to undertake the Services. HIDRIVE shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of HIDRIVE.

11. Title

- 11.1 HIDRIVE and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid HIDRIVE all amounts owing to HIDRIVE; and
 - (b) the Customer has met all its other obligations to HIDRIVE.
- 11.2 Receipt by HIDRIVE of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to HIDRIVE on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for HIDRIVE and must pay to HIDRIVE the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for HIDRIVE and must pay or deliver the proceeds to HIDRIVE on demand.
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of HIDRIVE and must sell, dispose of or return the resulting product to HIDRIVE as it so directs.
 - (e) the Customer irrevocably authorises HIDRIVE to enter any premises where HIDRIVE believes the Goods are kept and recover possession of the Goods.
 - (f) HIDRIVE may recover possession of any Goods in transit whether delivery has occurred.
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of HIDRIVE.
 - (h) HIDRIVE may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

12. Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to the TOT in writing the Customer acknowledges and agrees that the TOT constitute a security agreement 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 HIDRIVE to the Customer.
- 12.3 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 HIDRIVE may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, HIDRIVE for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA 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 HIDRIVE;
 - (d) not register, or 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 HIDRIVE;
 - (e) immediately advise HIDRIVE of any material change in its business practices of selling the Goods which would result in a change proceeds derived from such sales.
- 12.4 HIDRIVE and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by the TOT.
- 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by HIDRIVE, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by HIDRIVE under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary nothing in the TOT is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of HIDRIVE 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 capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under the TOT (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies HIDRIVE from and against all HIDRIVE's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising HIDRIVE's rights under this clause.
- 13.3 The Customer irrevocably appoints HIDRIVE and each director of HIDRIVE as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

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- 14.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify HIDRIVE in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify 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 HIDRIVE to inspect the Goods.
- 14.2 Under applicable law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into the TOT (**Non-Excluded Guarantees**).
- 14.3 HIDRIVE acknowledges that nothing in the TOT purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in the TOT or in respect of the Non-Excluded Guarantees, HIDRIVE makes no warranties or other representations under the TOT including but not limited to the quality or suitability of the Goods. HIDRIVE's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Customer is a consumer within the meaning of the CCA, HIDRIVE's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If HIDRIVE is required to replace the Goods under this clause or the CCA, but is unable to do so, HIDRIVE may refund any money the Customer has paid for the Goods.
- 14.7 If the Customer is not a consumer within the meaning of the CCA, HIDRIVE's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by HIDRIVE at HIDRIVE's sole discretion which shall detail:
 - (i) the warranty shall cease and HIDRIVE shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without HIDRIVE's consent; and
 - (ii) in respect of all claims HIDRIVE shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim; or
 - (b) limited to any warranty to which HIDRIVE is entitled, if HIDRIVE did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 14.8 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 14.1; and
 - (b) HIDRIVE has agreed that the Goods are defective; and
 - (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.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, HIDRIVE shall not be liable for any defect or damage which may be caused or partly caused by or 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 reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by HIDRIVE;
 - (e) fair wear and tear, any accident, or act of God.
- 14.10 HIDRIVE may in its absolute discretion accept non-defective Goods for return in which case HIDRIVE 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.
- 14.11 Notwithstanding anything contained in this clause if HIDRIVE is required by a law to accept a return then HIDRIVE will only accept a return on the conditions imposed by that law.
- 15. Intellectual Property**
- 15.1 Where HIDRIVE has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of HIDRIVE. All tooling, materials, industrial property or the like (including that provided by the Customer), used in the manufacture or manufacturing process of the Goods will be and remain the property of HIDRIVE.
- 15.2 The Customer warrants that all designs, specifications or instructions given to HIDRIVE will not cause HIDRIVE to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify HIDRIVE against any action taken by a third party against HIDRIVE in respect of any such infringement.
- 15.3 The Customer agrees that HIDRIVE may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which HIDRIVE has created for the Customer.
- 16. Default and Consequences of Default**
- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at HIDRIVE's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Customer owes HIDRIVE any money the Customer shall indemnify HIDRIVE from and against all costs and disbursements incurred by HIDRIVE in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, HIDRIVE's contract default fees, and bank dishonour fees).
- 16.3 Without prejudice to any other remedies HIDRIVE may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions HIDRIVE may suspend or terminate the supply of Goods to the Customer. HIDRIVE will not be liable to the Customer for any loss or damage the Customer suffers because HIDRIVE has exercised its rights under this clause.
- 16.4 Without prejudice to HIDRIVE's other remedies at law HIDRIVE shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to HIDRIVE shall, whether due for payment, become immediately payable if:
- (a) any money payable to HIDRIVE becomes overdue, or in HIDRIVE's opinion the Customer will be unable to make a payment when it falls due;
 - (b) 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; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 17. Compliance with Laws**
- 17.1 The Customer and HIDRIVE shall comply with the provisions of all laws and regulations that apply to the Goods,
- 17.2 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

18. Dispute Resolution

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- 18.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. If the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 19. Cancellation**
- 19.1 HIDRIVE 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 HIDRIVE shall repay to the Customer any money paid by the Customer for the Goods. HIDRIVE shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 If the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by HIDRIVE as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stock list items, will not be accepted once production has commenced, or an order has been placed.
- 20. Privacy and Security**
- 20.1 The Customer agrees for HIDRIVE to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by HIDRIVE.
- 20.2 The Customer agrees that HIDRIVE may exchange information about the Customer 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 for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers can exchange under the Privacy Act 1988.
- 20.3 The Customer consents to HIDRIVE being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 20.4 The Customer agrees that personal credit information provided may be used and retained by HIDRIVE for the following purposes (and for other purposes as shall be agreed between the Customer and HIDRIVE or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by HIDRIVE, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 20.5 HIDRIVE may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 20.6 The information given to the credit reporting agency may include:
- (a) personal (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that HIDRIVE is a current credit provider to the Customer;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of HIDRIVE, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Customer by HIDRIVE has been paid or otherwise discharged.
- 21. Unpaid Seller's Rights**
- 21.1 Where the Customer has left any item with HIDRIVE for repair, modification, exchange or for HIDRIVE to perform any other service in relation to the item and HIDRIVE has not received or been tendered the whole of any moneys owing to it by the Customer, HIDRIVE shall have, until all moneys owing to HIDRIVE are paid:
- (a) a lien on the item; and
 - (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.
- 21.2 The lien of HIDRIVE shall continue despite the commencement of proceedings, or judgment for any moneys owing to HIDRIVE having been obtained against the Customer.
- 22. General**
- 22.1 The failure by HIDRIVE to enforce any provision of the TOT shall not be treated as a waiver of that provision, nor shall it affect HIDRIVE's right to subsequently enforce that provision. If any provision of the TOT shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 the TOT and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the Court in that state.
- 22.3 Subject to clause 14 HIDRIVE shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by HIDRIVE of the TOT (alternatively HIDRIVE's liability shall be limited to damages which under no circumstances shall exceed the price of the Goods).
- 22.4 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 HIDRIVE nor to withhold payment of any invoice because part of that invoice is in dispute.

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- 22.5 HIDRIVE may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 22.6 The Customer agrees that HIDRIVE may amend the TOT at any time. If HIDRIVE makes a change to the TOT, then that change will take effect from the date on which HIDRIVE publishes the new TOT and/or notifies the Customer of such change. Neither party shall 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 either party.
- 22.7 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.