

## TERMS AND CONDITIONS OF SALE AND SERVICE ("Terms and Conditions")

These are the entire Terms and Conditions of sale of all goods and merchandise (including goods supplied in connection with the provision of Services) ("Goods") and services ("Services") supplied by **PENSKE POWER SYSTEMS PTY LIMITED (ACN 073 690 990)** and its associated and subsidiary companies all of which are referred to as "PPS" to any person, firm or company placing an order with PPS for the purchase of any Goods or Services ("the Customer"). Except as otherwise expressly agreed upon in writing between a duly authorised officer of PPS and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer.

### GENERAL

1. No quotation by PPS shall constitute an offer.
2. All orders placed with PPS shall only be accepted subject to these Terms and Conditions. PPS may at any time, and from time to time alter these Terms and Conditions and such altered Terms and Conditions shall apply after notification by PPS to the Customer. PPS may notify the alteration of these Terms and Conditions by posting the altered Terms and Conditions on its website.
3. If a Customer cancels or alters any order or part order, whether for special goods or standard goods, with any materials at any time after PPS has received the order then PPS reserves the right to charge to the Customer the costs of any special goods or materials already acquired for the order together with the cost of any labour and tooling expended to the date of such cancellation or alterations.
4. Goods and Services Tax ("GST"), Sales Tax or any other applicable tax or duty payable shall be paid by or reimbursed by the Customer to PPS on demand and the Customer shall indemnify and keep indemnified PPS in respect of all taxes and duties including GST arising out of any sale of Goods, the subsequent use of Goods after the sale to the Customer or the provision of services.

### PRICE

5. PPS shall be entitled to vary the price of any Goods or Services at any time prior to delivery or completion if the cost to PPS of performing its obligations is increased or reduced by any new or amended legislation, regulation, order, directive, by-law, licence or approval or by reason of fluctuations in currency value or by any rise or fall in the amounts payable for labour, changes in the amount charged to PPS by its suppliers or by any cause beyond the direct control of PPS. No such reasonable variation shall entitle the Customer to cancel an order.

### QUOTATIONS FOR SERVICES

6. Where a price quoted by PPS for Services is specified to be an estimate, the Customer shall pay PPS the amount claimed by PPS upon completion of the Services which amount may vary from the estimated amount and which amount shall be based upon the actual work done and materials supplied by or on behalf of PPS. Where the Customer has requested PPS to prepare a quotation for the provision of Services which requires PPS to perform disassembly of any existing property

of the Customer ("Customer's Property") and the Customer does not accept the quotation, the Customer shall be responsible for all labour and associated costs and charges incurred by PPS in preparing the quotation. The Customer's Property will not be reassembled following rejection of a quotation unless the Customer requests PPS to do so and agrees to pay PPS' charges for such reassembly.

### ADDITIONAL WORK

7. Where the Customer has requested PPS to provide Services, the Customer also authorises such additional services and tests as may be necessary in connection with the Services and agrees to pay PPS' charges for the additional Services.

### TERMS OF PAYMENT

8.
  - a) The time specified by PPS for payment is of the essence and, subject to clause 10, is the payment term as specified in the invoice issued by PPS to any Customer or failing specification within 14 days of the date of the invoice. If the Customer fails to make any payment by a due date then PPS shall be entitled to, without prejudice to any other remedy, recover such monies pursuant to these Terms and Conditions.
  - b) Customers shall not be entitled to withhold payment of any account by reason of any account query, dispute or set off. The Customer agrees to pay PPS administration and handling fees incurred in the normal course of business in respect of any copies of documents required or other processing involved in the conduct of the account and such fees will be charged to the Customer's account.
9. If the Customer fails to make payment in accordance with Clause 8, PPS shall be entitled to:-
  - a) Require the payment of cash upon delivery of any further Goods or Services;
  - b) Charge an interest charge at the rate of one percentum (1.00%) per month on a cumulative basis on all overdue amounts (including late payment charges amounting to the sum of any dishonour fees plus other administration related fees, other than the price, as applied by PPS from time to time in accordance with its internal policy) calculated on a day to day basis on any monies due but unpaid, such interest charge to be computed from the due date for payment AND the parties agree that such interest charge is not a penalty but is a true measure of damages incurred by PPS. Payments received from the Customer will be credited first against any interest charge and

- c) all such fees shall be payable forthwith;
- c) Claim from the Customer all costs, expenses and charges incurred on any account whatsoever including but not limited to any action taken by PPS to recover monies or Goods due from the Customer including but not limited to any mercantile agents costs and legal costs and disbursements on a solicitor-client basis;
- d) Cease any further deliveries to the Customer of Goods and/or Services and to terminate any agreement in relation to Goods or Services that have not been delivered; and
- e) Preclude Customers having overdue accounts from participating in any special deals, discounts, bonus payments, redemptions, rebates and all other incentive programs until their accounts are no longer overdue.
10. Goods and Services supplied to the applicant upon credit, are subject to the following payment terms:
  - a) Service work – Payment by 30 days net from statement date;
  - b) Spare Parts – Payment by 30 days net from statement date;
  - c) Principal Product Sales: Orders less than AUD\$100,000 (excluding GST) - payment by net 30 days from statement date. Orders from AUD\$100,000 (excluding GST) and greater - a 20% deposit must be paid upon order and balance to be paid 30 days net from statement date.

### SPECIFICATIONS MAY VARY

11. PPS reserves the right to make any changes to the Goods found necessary due to unavailability of Goods or which PPS reasonably considers would improve the Goods. Specifications including (without limitation) performance, dimensions and weight are approximate only and PPS shall not be liable for any error or inaccuracy in the specifications provided. The Customer acknowledges that PPS may subcontract the performance of Services in its absolute discretion.

### DELIVERY

12. The Customer shall be responsible for the cost of any delivery made ex-PPS' premises. If PPS is requested to arrange for delivery of Goods beyond PPS' premises, the Customer shall pay the delivery charges stipulated by PPS from time to time. PPS shall in all cases be entitled to choose the method of transport.
13. Any date or time quoted for delivery of Goods and/or Services is an estimate only and PPS shall endeavour to effect delivery at the time or times required by the Customer but failure to do so, including failure to deliver on time or

non-delivery shall not confer any right of cancellation or refusal of delivery on the Customer or render PPS liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.

14. The Customer shall not be relieved of any obligation to accept or pay for Goods or Services by reason of any delay in delivery or any strike, lockout, unavailability of materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, floods, storm or tempest, transport delays, acts of God, restrictions or intervention imposed by any laws, regulations, governments or agencies thereof and any other cause beyond the control of PPS or any other cause whatsoever.

15. PPS' obligation to deliver shall be discharged on arrival of the Goods at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Customer shall unload the Goods upon delivery, **provided that** if the Customer is unable or unwilling to accept physical delivery of the Goods when the Goods are ready for delivery, PPS shall be entitled to charge a fee for any delay experienced or arrange for the storage of the Goods at the sole risk and cost of the Customer including all transportation, storage and other consequential costs. PPS may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions.

16. The Customer must immediately notify PPS in writing if Goods or Customer's Property is not received within seven (7) days of receipt by the Customer of PPS' delivery advice or invoice. Unless the Customer notifies PPS of any shortage within five (5) days of receipt by the Customer of the Goods or Customer's Property, complete delivery will be deemed to have occurred.

17. If, as a result of any action or inaction of the Customer, Goods or Customer's Property is not collected or dispatched from PPS' premises within seven (7) days after PPS notifies the Customer that the Goods or Customer's Property is ready, PPS shall then be entitled to full payment notwithstanding any other payment terms agreed and PPS shall further be entitled to charge the Customer for additional costs including without limitation storage and/or transport of the Goods or Customer's Property until such time as the Goods or the Customer's Property are delivered to or collected by the Customer.

18. Acceptance by PPS of the Customer's Property for repair or other treatment in New South Wales is subject to PPS' right to dispose of or sell the Customer's Property provided that:

- a) PPS gives written notice of its intention to dispose of or sell the Customer's Property if it is uncollected within 3 months of the written notice (including the address where the Customer's Property can be collected); and
- b) The Customer has been given at least three (3) months from the date when notice was given, within which to collect the Goods.

19. The Customer's address for service of notices is as specified on the face of this document or in any attached or associated documents.

20. If the Customer's Property is left with PPS in other States or Territories, the Customer grants a lien over such Customer's Property to PPS for the value of all Goods and Services provided by PPS. If the Customer fails or refuses to pay the amount due to PPS, the Customer authorises PPS to sell the Customer's Property by public auction after an interval of not less than two (2) months (or such other interval as may be prescribed by the laws of the relevant States or Territories) from the date the Customer's Property is ready for re-delivery or collection. The Customer authorises PPS to satisfy all amounts due to PPS by the Customer and the costs of storage, transport, auction and sale from the proceeds of sale.

#### INSPECTION

21. The Customer shall examine the Goods immediately after delivery and PPS shall not be liable for any claim for liability for any misdelivery, shortage, defect or damage unless PPS receives details in writing within seven (7) days of the date of delivery of the Goods.

#### LIEN

22. Pursuant to its rights under Section 3B of the Registration of Interest in Goods Amendment Act 1999 ("Act"), PPS claims a repairer's lien on any goods or vehicles of the Customers that it holds in its possession, in the event of non-payment pursuant to the terms of Clause 8 of these Terms and Conditions, and the Customer acknowledges that PPS is a repairer pursuant to the terms of that Act.

23. In addition to the above, all Goods or Customer's Property shall, immediately after they come into possession of PPS be subject to a particular and general lien and right of detention for all moneys due to PPS by the Customer, whether in respect of such Goods, services provided or otherwise.

24. The Customer acknowledges that PPS acquires a Priority Interest under section 73(1) of the PPSA without actual knowledge that the acquisition constitutes a breach of any security agreement that provides for any security interest in the Good or vehicles of the Customer and that by virtue of that section, the repairer's lien held by PPS takes precedence and priority over any security interest in the Goods or vehicles of the Customer.

#### PROPERTY AND RISK

25. Notwithstanding delivery of the Goods or their installation, property in any given Goods shall remain with PPS until the Customer has paid and discharged any and all other indebtedness to PPS on any account whatsoever, including all applicable GST and other taxes, levies and duties. Any payment made by or on behalf of a Customer which is later avoided by the application of any statutory provision shall be deemed not to discharge the Customer's indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.

26. The risk in the Goods shall pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer notwithstanding that PPS retains ownership until full payment. The Customer must effect and maintain insurance against all insurable risks to the Goods until such time as property passes to the Customer.

27. Receipt by PPS 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 and until then PPS' ownership of rights in respect of the Goods shall continue.

28. The Customer acknowledges that it is in possession of the Goods solely as a bailee for PPS until payment has been made in full to PPS in accordance with these Terms and Conditions and until such payment:

- a) The Customer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery; and
- b) The Customer shall store the Goods separately from its own goods and those of any other party and in a manner which clearly identifies the Goods, whether as separate chattels or as components, as the property of PPS.
- c) The Customer shall maintain records of Goods owned by PPS identifying them as PPS' property, of the persons to whom the Goods are sold or disposed to and of the payments made by such persons for such Goods. The Customer shall allow PPS to inspect these records and the Goods themselves on request.

29. The Customer hereby irrevocably grants to PPS, its agents and servants, an unrestricted right and licence, without notice to enter premises occupied by the Customer to identify and remove any of the Goods the property of PPS in accordance with the Terms and Conditions without in any way being liable to the Customer or any person claiming through the customer. PPS shall have the right to sell or dispose of any such Goods removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.

30. PPS licenses the Customer to install the Goods. If the Goods are affixed to other materials, the totality thereof shall be the sole and exclusive property of PPS until payment in accordance with these Terms and Conditions has been made in full to PPS unless the other materials or part thereof are or is the property of a party or parties other than the Customer in which case the totality thereof shall be deemed to be owned as tenants in common with such other party or parties in shares corresponding to the respective amounts paid or payable by the Customer in respect of such other party or parties.

31. The Customer shall be at liberty to agree to sell the Goods (independently or affixed to other materials) subject to the condition that until payment has been made in accordance with clause 8 of the Terms and Conditions, the Customer shall sell as an agent and bailee for PPS and that the entire proceeds from the

sale thereof shall be held in a separate account on trust for PPS. If the Customer is not paid by the third party, the Customer agrees, at PPS' option, to assign the Customer's claim against the third party to PPS upon written request by PPS. For the purpose of giving effect to this clause, the Customer irrevocably appoints PPS as its attorney.

32. The right to on-sell, deal or otherwise dispose of the Goods in the normal course of trade may be revoked at any time by PPS and shall automatically cease if a Receiver is appointed over any of the assets or the undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or administration or calls a meeting of, or makes any arrangement or composition with, creditors or commits any act of bankruptcy or where the Customer is in default of any of its obligations to PPS.

#### CHARGE AND SECURITY INTEREST

33. The Customer hereby charges with payment of any indebtedness to PPS all legal and beneficial interest (freehold or leasehold) in land and property, other than personal property to which the Personal Property Securities Act 2009 (Cth) applies, held now or in the future by the Customer.
34. The Customer agrees that if a demand is made by PPS, the Customer receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required.
35. The Customer hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by PPS to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto PPS may lodge a caveat noting the interest given by this charge on the title of any property of the Customer whenever it so wishes.
36. The Customer grants a Security Interest to PPS in all of its present and after acquired property and in all of its present and future rights in relation to any personal Property as defined in the Personal Property Securities Act 2009 (Cth).

#### PERSONAL PROPERTY SECURITIES ACT 2009 (Cth) ("PPSA")

37. In these Terms & Conditions the terms "Security Agreement", "Security Interest", "Registration", "Registration Commencement Time", "Personal Property Securities Register" (or "PPSR"), "Priority Interest", "Purchase Money Security Interest", "Financing Statement", "Financing Change Statement" and "Verification Statement" have the meanings given in the PPSA.
38. The Customer acknowledges and agrees that these Terms and Conditions constitute a Security Agreement which creates a Security Interest in all Goods and the proceeds of the sale of the Goods supplied to the Customer by PPS to secure any payment from time to time

that becomes due and payable by the Customer to PPS.

39. The Customer acknowledges that by agreeing to these Terms and Conditions, the Customer grants a Security Interest (by virtue of the retention of title and bailment clauses in these Terms and Conditions) to PPS and in all Goods supplied by PPS to the Customer (or for the Customer's account) and these Terms and Conditions shall apply notwithstanding anything express or implied to the contrary contained in the Customer's purchase order. The Customer additionally agrees that PPS can without notice to the Customer seek Registration of its Security Interest as a Purchase Money Security Interest on the PPSR and under the PPSA.
40. The Customer acknowledges, agrees and undertakes:
- a) To sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which PPS may reasonably require to enable perfection of its Security Interest or Registration of a Financing Statement or Financing Change Statement on the PPSR or anything also required by PPS to ensure that PPS' Purchase Money Security Interest is a perfected security interest.
- b) To not register a Financing Change Statement as defined in section 10 of the PPSA or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of PPS;
- c) To give PPS not less than 14 days written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, email address, trading name or business practice);
- d) To pay all costs incurred by PPS in the Registration and maintenance of its Financing Statement to enable Registration of its Security Interest (including registering a Financing Change Statement) on the PPSR; and such costs –
- i. shall not exceed the regulated cost for registering or maintaining (updating) a Security Interest, as amended from time to time and/or enforcing or attempting to enforce the Security Interest created by this Security Agreement including but not limited to, executing subordination agreements; and
- ii. may be debited by PPS against the Customer's account.
- e) Pursuant to section 157 of the PPSA, unless otherwise agreed in writing by PPS, to waive the right to receive the Verification Statement in respect of any Financing Statement relating to the Security Interest;
- f) To immediately on request by PPS, procure from any persons considered by PPS to be relevant to its security position, such agreement and waivers as PPS may at any time require;
- g) To release and hold harmless PPS from any liability whatsoever in the event of any dispute between PPS and the Customer as to whether any interest registered on the PPSR constitutes a valid Security Interest;
- h) To indemnify PPS from any cost reasonably incurred by the Customer in amending or withdrawing any Security Interest registered by PPS over the Goods, even if the

registration has occurred through error or mistake on behalf of PPS.

- i) Not to permit anything to be done that may result in the Purchase Money Security Interest granted to PPS ranking in priority behind any other Security Interest.
- j) That nothing in sections 125, 132(3)(d), 132(4), 135, 142 or 143 of the PPSA will apply to any agreement between PPS and the Customer, or the security under this agreement.
- k) To waive its rights to do any of the following or to receive any of the following notices or for PPS to carry out the following obligations under the following provisions of the PPSA:
- i. Receive notice of removal of an accession under section 95;
- ii. Receive notice of a decision, under paragraph 117(2)(b), to enforce the security interest in the personal property in the same way as the interest in the land may be enforced under land law under section 118.
- iii. Received notice of any action to be taken in accordance with subsection 120(2) under section 121(4);
- iv. Receive notice of intention to seize collateral under section 123;
- v. Receive notice of disposal of collateral under section 130;
- vi. Receive a statement of account if there is disposal of collateral under section 132(3)(d);
- vii. Receive every six months statements of account until there is disposal of collateral under section 132(4);
- viii. Receive notice of retention of collateral under section 135;
- ix. The Customer and PPS also contract out of each other provision of Part 4.3 of the PPSA, under sections 115(7) and 116(2), but only to the extent that the provision imposes obligations on PPS.
- x. The Customer and PPS agree that neither the Customer nor PPS will disclose information of the kind mentioned in section 275(1) to any persons other than to PPS' related parties, shareholders, advisers, financiers or bankers.

#### TRUSTS

41. This chapter on Trust applies if the Customer is a trustee and whether or not PPS has notice of the trust;
42. Where the Customer comprises two or more persons and any of those persons is a trustee this chapter applies to such trustee.
43. The Customer agrees that even though the Customer hereby enters into an agreement with PPS as trustee of the trust, the Customer shall also be liable personally for the performance and observance of every covenant to be observed and performed by the Customer expressed or implied in these Terms and Conditions.
44. The Customer warrants its complete, valid and unfettered power to enter into this agreement with PPS.
45. The Customer covenants that the rights of indemnity which it may have against the property of the trust have not been, and in the future will not be, excluded, modified, released, lost or diminished (whether by agreement, breach of trust or otherwise).

46. The Customer shall not, without PPS' prior written consent:
- a) Resign or be removed as trustee of the trust or appoint or allow the appointment of a new or additional trustee of the trust;
  - b) Amend or revoke any of the terms of the trust;
  - c) Vest or distribute the property of the trust or advance or distribute any capital of the trust to a beneficiary or resettle any of the property of the trust;
  - d) Permit a beneficiary to have the use, occupation, employment or possession of the property of the trust;
  - e) Do or permit to do an act or thing in breach of the trust which would permit the trustee to be removed as trustee of the trust;
  - f) Exercise or permit to be exercised a power to change the vesting date of the trust or provide for an early determination of the trust;
  - g) Lend any money, give any guarantee or incur any debt other than in the ordinary course of business of the trust; or
  - h) Pay any of the income of the trust to any beneficiary of the trust if such payment will prejudice or affect the Customer's ability to pay all monies due to PPS
- a) the Customer providing PPS with written notice of any claim pursuant to the warranty within the warranty period;
  - b) delivery at the Customer's expense of the components to PPS at an address nominated by PPS; and
  - c) PPS being satisfied that the Services supplied by PPS were defective.
 

If you are a "consumer" (as that term is defined in the Competition & Consumer Act 2010 (Cth)) then:

    - i. The benefits conferred by the warranty set out in this clause 50 are in addition to other rights and remedies of the consumer under a law in relation to the services to which the warranty relates; and
    - ii. Our services come with guarantees that cannot be excluded under the Australia Consumer Law.

If you are a consumer (as that term is defined in the Competition & Consumer Act 2010 (Cth)) then further to the requirements set out above, any claim under the terms of the warranty set out in this clause 50 must be made by the Customer at its own cost by contacting PPS or an PPS branch. A list of all PPS branches and their address details may be found at [www.penskeps.com](http://www.penskeps.com).
  - d) the payment of the reasonable cost of having the Goods repaired.
54. Services to Non-Consumers:  
PPS' liability in connection with the supply of Services to a person who is not a "consumer" (as that term is defined in the Act) shall be limited to:
- a) the supply of the Services again; or
  - b) the payment of the cost of having the Services supplied again; at PPS' sole discretion.
55. Services to Consumers:  
In the case of Services supplied by PPS to a Customer who is a "consumer" (as that term is defined in the Act), to the extent that the Services supplied are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of PPS to the Customer for breach of any consumer guarantee given in respect of the Services under the Act shall in all cases be limited, at the option of PPS, to any one or more of the following:
- a) the supplying of the Services again; or
  - b) the payment of the cost of having the Services supplied again.

#### WARRANTY

47. Goods supplied by PPS are subject only to the then applicable manufacturer's written warranty (if any) and, except to the extent prohibited by law, all other warranties with respect to Goods are hereby excluded.

**No performance warranty:** To the maximum extent permitted by law, whilst PPS may provide a warranty in respect of the horsepower (hp) of the Goods as contained in the specifications or manufacturer's warranty, PPS does not have control over, and provides no warranty that the Goods will have the equivalent speed when installed in, or affixed to a vehicle, nor does PPS warrant that the vehicle (with the Goods) will perform to the Customer's expectations.

48. In the case of Services which comprise the supply of labour and Goods:

- a) The Goods component is subject only to the then applicable manufacturer's written warranty (if any) and, except to the extent prohibited by law, all other warranties are hereby excluded; and
- b) The labour component is warranted by PPS to be free from defects for the same duration and subject to the same terms and conditions as the then applicable manufacturer's written warranty applying to the Goods (if any).

49. In the case of Services performed on PPS' behalf by a subcontractor, those Services are subject only to the then applicable subcontractor's warranty (if any) and, except to the extent prohibited by law, all other warranties with respect to those Services are hereby excluded.

50. In the case of Services which comprise the supply of labour only, the Services are warranted to be free from defects for a period of 6 months from the date of completion of the Services and except to the extent prohibited by law, all other warranties with respect to Services are hereby excluded. This warranty is conditional upon the following:

#### LIMITATION OF LIABILITY

51. These Terms and Conditions do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which by law cannot be excluded, restricted or modified.

52. Sale to Non-Consumers:

In the case of Goods supplied by PPS to a Customer who is not a "consumer" (as defined in the Competition and Consumer Act 2010 (Cth) as amended from time to time ("the Act")), if the Goods do not correspond with the description of them on the invoice or are defective, then provided that the Goods are preserved intact and made available for inspection by a representative of PPS and are returned to PPS in the same order and condition as that in which they were delivered, PPS' liability shall be limited at PPS' option to replace those Goods or reimburse the Customer for the amount of the purchase price paid for them, but any claim in this respect must be made in writing within seven (7) days of the date of delivery of those Goods.

53. Sales to Consumers:

In the case of Goods supplied by PPS to a Customer who is a "consumer" (as that term is defined in the Act), to the extent that the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of PPS to the Customer for breach of any consumer guarantee given in respect of the Goods under the Act (other than a guarantee under sections 51, 52 or 53 of the Australian Consumer Law) shall in all cases be limited, at the option of PPS, to any one or more of the following:

- a) the replacement of the Goods or the supply of equivalent goods;
- b) the repair of the Goods;
- c) the payment for the reasonable cost of replacing the Goods or of acquiring equivalent goods; or

- iii. In respect of damage to property, PPS' liability shall be limited to 100% of the value of the relevant Goods and/or Services;
- iv. In respect of special, indirect or consequential loss, clause 56(e) applies;
- v. In respect of any other damages that are not indirect, special or consequential, PPS' liability shall be limited to a maximum of 10% of the value of the relevant Goods and/or Services;
- e) PPS is not liable for indirect, special or consequential loss or damage (including but not limited to loss of goodwill, loss of profit, loss of revenue, loss of expected savings, opportunity costs, loss of business, loss of reputation and business interruption) whether arising in contract, tort (including negligence), under any statute or otherwise arising from or related in any way to these Terms and Conditions or their subject matter. To the extent any claim or demand brought against

PPS by any third party exceeds the liability set forth in these Terms and Conditions the Customer shall indemnify, defend and hold harmless PPS from and against such claim and demand. The Customer shall be obliged to advise PPS in writing and without delay of any damage or loss to be borne by PPS, or to have such damage or loss assessed by PPS. The exclusion of liability under this clause shall be to the maximum extent permitted by law; and

- f) Any dealer or third party that performs a repair job for a PPS account customer that is a "Non-Warranty Repair" including breakdowns must secure a direct method of payment from the customer for the repair.

#### SERVICE REPAIR

57. The Customer acknowledges that any property is presented by the Customer having taken all necessary steps to ensure that no loose items are able to damage that property, e.g. windscreens or any other part of the Customer's equipment when raising and lowering a vehicle cabin.

58. The Customer accepts responsibility for any damages that may occur in this way.

#### FORCE MAJEURE

59. PPS shall not be liable for any failure or delay in supply or delivery of the Goods or Services where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of PPS including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

#### TERMINATION

60. If the Customer fails to comply with any of these Terms and Conditions or being a natural person or persons commits any act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors or if a receiver or manager or administrator or controller is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator or administrator is appointed, PPS may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately recover possession of any Goods not paid for in accordance with these Terms and Conditions.

#### RETURNS

61. Other than as set out in these Terms and Conditions, PPS shall not be liable to accept any returned Goods but may in its absolute discretion accept the return of Goods, provided that such Goods shall only be accepted for return with the prior written approval of a duly authorised representative of PPS. Goods returned for credit pursuant to this clause will be subject to a handling and administration charge equivalent to 20% of the

invoiced value of the returned Goods. For all Goods submitted for return, all freight and other related expenses are the responsibility of the Customer. Goods which are specially sourced within Australia and/or overseas are non-returnable. All goods submitted for return must be accompanied by relevant invoice numbers. The returns of core deposits are excluded from this policy if returned within three months of original component purchase date.

#### GOVERNING LAW

62. The Customer agrees that these Terms and Conditions shall be construed according to the laws of the State or Territory as PPS may in its sole discretion determine. Proceedings by either PPS or the Customer may be instituted and/or continued in such State or Territory as PPS may in its sole discretion determine. Failing such determination the Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the State of New South Wales.

#### SERVICE OF DOCUMENTS

63. The Customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Customer.

#### STATEMENT OF DEBT

64. A certificate signed by a Director, Secretary, Financial Controller or Credit Manager of PPS shall be prima facie evidence of the amount of indebtedness of the Customer to PPS.

#### PRIVACY

65. By entering into this contract, and unless the Customer advises PPS otherwise the Customer authorises PPS to hold and use the information the Customer provides to it, in any document including without limitation the Customer's application for credit with PPS and during the term of the contract, to:

- a) manage the Customer's account with PPS, including to send the Customer statements and invoices and collection purposes;
- b) obtain credit information about the Customer from credit referees and credit reference agencies; disclose credit information to credit reference agencies or other persons seeking credit references. The credit information is collected to assist PPS to ascertain the Customer's credit status. Failure to provide the requested information may result in credit being refused;
- c) provide the Customer with information about PPS products and any special offers PPS believe may be of interest to the Customer;
- d) transfer Customer information to related or associated companies and other entities that assist PPS to provide Customers with Goods and Services including sub-contractors;
- e) conduct customer and market research to improve the quality of PPS' products and services; and
- f) Details of the PPS Privacy Policy, including the Customer's right to opt-out at any time, are available at <http://www.penskeps.com> or by contacting the Privacy Officer at Penske Power Systems Pty Limited, 78-82 Riverside Road, Chipping Norton NSW 2170 Australia.

#### 66. "AUSTRALIAN CONSUMER LAW REPAIR NOTICE:

**Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods."**