

Noordeman Diesel Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "Noordeman" shall mean Noordeman Diesel Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Noordeman Diesel Pty Ltd.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Noordeman to the Customer.
- 1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by Noordeman to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Noordeman to the Customer.
- 1.5 "Services" shall mean all Services supplied by Noordeman to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the Price payable for the Goods as agreed between Noordeman and the Customer in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA") and application of these terms and conditions to consumers

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Clause 8 (Defects), clause 11 (Returns) and clause 12 (Warranty) may **NOT** apply to the Customer where the Customer is purchasing Goods or Services not for resale or hire where the Price of the Goods or Services does not exceed \$40,000, or where the Price of the Goods or Services does exceed \$40,000 and are of a kind ordinarily acquired for personal, domestic or household use or consumption, or where the Customer is in any other way a consumer within the meaning of the TPA or the FTA of the relevant state or territories of Australia.

3. Acceptance

- 3.1 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Noordeman and it has been approved with a credit limit established for the account.
- 3.2 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, Noordeman reserves the right to refuse delivery.
- 3.3 Any instructions received by Noordeman from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by Noordeman shall constitute acceptance of the terms and conditions contained herein.
- 3.4 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.5 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Noordeman.
- 3.6 The Customer shall give Noordeman not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Noordeman as a result of the Customer's failure to comply with this clause.
- 3.7 Goods are supplied by Noordeman only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 3.8 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on Noordeman's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

4. Price and Payment

- 4.1 At Noordeman's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Noordeman to the Customer in respect of Goods supplied; or
- (b) Noordeman's quoted Price (subject to clause 4.2) which shall be binding upon Noordeman provided that the Customer shall accept Noordeman's quotation in writing within thirty (30) days.
- 4.2 Noordeman reserves the right to change the Price in the event of a variation to Noordeman's quotation.
- 4.3 At Noordeman's sole discretion:
- (a) a non-refundable deposit may be required; or
- (b) payment shall be due on delivery of the Goods; or
- (c) payment for approved Customers shall be due thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and Noordeman.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery of Goods

- 5.1 At Noordeman's sole discretion delivery of the Goods shall take place when:
- (a) the Customer takes possession of the Goods at Noordeman's address; or
- (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Noordeman or Noordeman's nominated carrier).
- 5.2 At Noordeman's sole discretion the costs of delivery are:
- (a) in addition to the Price; or
- (b) for the Customer's account.
- 5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Noordeman shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.5 The failure of Noordeman to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 Noordeman shall not be liable for any loss or damage whatsoever due to failure by Noordeman to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Noordeman.

6. Risk

- 6.1 If Noordeman retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 Where the Customer expressly requests Noordeman to leave Goods outside Noordeman'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 and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.
- 6.3 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Noordeman is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Noordeman is sufficient evidence of Noordeman's rights to receive the insurance proceeds without the need for any person dealing with Noordeman to make further enquiries.

7. Title

- 7.1 Noordeman and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Noordeman all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to Noordeman in respect of all contracts between Noordeman and the Customer.

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- 7.2 Receipt by Noordeman 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 Noordeman's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until Noordeman shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Goods shall pass from Noordeman to the Customer Noordeman may give notice in writing to the Customer to return the Goods or any of them to Noordeman. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) Noordeman shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Customer fails to return the Goods to Noordeman then Noordeman or Noordeman's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods; and
 - (e) the Customer is only a bailee of the Goods and until such time as Noordeman has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Noordeman for the Goods, on trust for Noordeman; and
 - (f) the Customer shall not deal with the money of Noordeman in any way which may be adverse to Noordeman; and
 - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Noordeman; and
 - (h) Noordeman can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Noordeman will be the owner of the end products.
8. **Personal Property Securities Act 2009 ("PPSA")**
- 8.1 In this clause:
- (a) financing statement has the meaning given to it by the PPSA;
 - (b) financing change statement has the meaning given to it by the PPSA;
 - (c) security agreement means the security agreement under the PPSA created between the Customer and Noordeman by these terms and conditions; and
 - (d) security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
 - (b) create a security interest in:
 - (i) all Goods previously supplied by Noordeman to the Customer (if any);
 - (ii) all Goods that will be supplied in the future by Noordeman to the Customer.
- 8.3 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 Noordeman 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 8.3(a)(i) or 8.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Noordeman 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 Noordeman;
 - (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 Noordeman; and
 - (e) immediately advise Noordeman 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.
- 8.4 Noordeman and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by Noordeman, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Customer shall unconditionally ratify any actions taken by Noordeman under clauses 8.3 to 8.5.
9. **Security and Charge**
- 9.1 Despite anything to the contrary contained herein or any other rights which Noordeman may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Noordeman or Noordeman's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Noordeman (or Noordeman's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should Noordeman elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Noordeman from and against all Noordeman's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Noordeman or Noordeman's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 9.1.
10. **Defects**
- 10.1 The Customer shall inspect the Goods on delivery and shall within three (3) days of delivery (time being of the essence) notify Noordeman of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Noordeman an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Noordeman has agreed in writing that the Customer is entitled to reject, Noordeman's liability is limited to either (at Noordeman's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 10.2 At the sole discretion of Noordeman, Goods will not be accepted for return other than in accordance with 10.1 above.
11. **Returns**
- 11.1 Noordeman may (at their sole discretion) accept the return of Goods for credit, but this may incur a handling fee of up to twenty percent (20%) of the value of the returned Goods plus any freight costs. Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 10.1; and
 - (b) Noordeman has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (d) Noordeman will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

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- 11.2 Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 12. Warranty**
- 12.1 Subject to the conditions of warranty set out in clause 12.2 Noordeman warrants that if any defect in any workmanship of Noordeman becomes apparent and is reported to Noordeman within the required period for the Goods supplied as stated in Noordeman's schedule of warranty time frames for specific products supplied at the time of delivery (time being of the essence) then Noordeman will either (at Noordeman's sole discretion) replace or remedy the workmanship.
- 12.2 The conditions applicable to the warranty given by clause 12.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Noordeman; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and Noordeman shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Noordeman's consent. In the event that it is agreed between Noordeman and the Customer that a third party shall be engaged to rectify any issue under this warranty then:
 - (i) the cost of such rectification shall be limited to a specified amount as agreed between both parties in writing; and
 - (ii) Noordeman's only obligation in regards to payment of such an amount shall be to credit the Client's account with the amount agreed.
 - (c) in respect of all claims Noordeman shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 12.3 For Goods not manufactured by Noordeman, the warranty shall be the current warranty provided by the manufacturer of the Goods. Noordeman shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 12.4 The conditions applicable to the warranty of service and/or an extended warranty given in respect of the Service of the Goods shall be contained in the warranty documentation that shall be supplied by Noordeman to the Customer at the time of delivery/installation.
- 13. Default and Consequences of Default**
- 13.1 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 Noordeman's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Noordeman.
- 13.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Noordeman from and against all costs and disbursements incurred by Noordeman in pursuing the debt including legal costs on a solicitor and own client basis and Noordeman's collection agency costs.
- 13.4 Without prejudice to any other remedies Noordeman may have, if at any time the Customer is in breach of any obligation (including those relating to payment) Noordeman may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. Noordeman will not be liable to the Customer for any loss or damage the Customer suffers because Noordeman has exercised its rights under this clause.
- 13.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.6 Without prejudice to Noordeman's other remedies at law Noordeman shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Noordeman shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Noordeman becomes overdue, or in Noordeman's opinion the Customer will be unable to meet its payments as they fall due; or
 - (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.
- 14. Cancellation**
- 14.1 Noordeman 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 Noordeman shall repay to the Customer any sums paid in respect of the Price. Noordeman shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by Noordeman (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14.3 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.
- 15. Privacy Act 1988**
- 15.1 The Customer and/or the Guarantor/s (herein referred to as the Customer) agree for Noordeman to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Noordeman.
- 15.2 The Customer agrees that Noordeman 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 are allowed to exchange under the Privacy Act 1988.
- 15.3 The Customer consents to Noordeman being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Customer agrees that personal credit information provided may be used and retained by Noordeman for the following purposes (and for other purposes as shall be agreed between the Customer and Noordeman or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by Noordeman, 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.
- 15.5 Noordeman 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.
- 15.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;

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- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that Noordeman 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 Noordeman, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customers 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 Noordeman has been paid or otherwise discharged.

16. Unpaid Noordeman's Rights

16.1 Where the Customer has left any item with Noordeman for repair, modification, exchange or for Noordeman to perform any other Service in relation to the item and Noordeman has not received or been tendered the whole of the Price, or the payment has been dishonoured, Noordeman shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while Noordeman is in possession of the item;
- (c) a right to sell the item.

16.2 The lien of Noordeman shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

17. General

17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

17.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.

17.4 Noordeman shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including business disruption or loss of profit) suffered by the Customer (whether in negligence or otherwise) arising out of a breach by Noordeman of these terms and conditions.

17.5 In the event of any breach of this contract by Noordeman the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

17.6 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 Noordeman nor to withhold payment of any invoice because part of that invoice is in dispute.

17.7 Noordeman may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

17.8 The Customer agrees that Noordeman may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Noordeman notifies the Customer of such change. Except where Noordeman supplies further Goods to the Customer and the Customer accepts such Goods, the Customer shall be under no obligation to accept such changes.

17.9 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.

17.10 The failure by Noordeman to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Noordeman's right to subsequently enforce that provision.