

# SUZUKI AUSTRALIA PTY. LIMITED

ACN 001 828 164      ABN 57 001 828 164

## TERMS AND CONDITIONS OF SALE

Your transaction is subject to these legally binding terms and conditions.

*Please read them carefully before proceeding with the transaction. Completion of the transaction is your acceptance of these terms and conditions.*

### Definitions

"Seller" means Suzuki Australia Pty. Limited (ACN 001 828 164), its related and subsidiary companies.

"Buyer" means the person (including its successors, personal representative and permitted assigns) acquiring Goods from the Seller.

**"Goods" means all Spare Parts and Complete Built Units (CBU) and Vehicles supplied by the Seller pursuant to this contract.**

### 1. Incorporation of Terms and Conditions

- 1.1 Any contract of sale, order, or quotation made or accepted by or on behalf of the Seller will be subject to these terms and conditions of sale.
- 1.2 Any quotation made by the Seller will not constitute an offer for sale, but merely an invitation to treat containing these terms and conditions subject to which the Seller will be prepared to consider an offer to purchase from the Buyer.
- 1.3 Any terms or conditions put forward by the Buyer, whether in a purchase order, specification or otherwise, will not be binding on the Seller insofar as they purport to amend, annul or augment any of these terms and conditions unless specifically agreed to by the Seller in writing.

## **2. Prices**

2.1 Prices quoted are for supply of the Goods from the Seller's place of sale, unless further charges to reflect transport to the place designated by the Buyer are included. Prices are subject to alteration without notice.

2.2 Unless stated to the contrary all costs and prices quoted are exclusive of goods and services tax, value added tax or any other like tax ("GST"). The Buyer must pay to the Seller any amount ("GST" Amount) which is payable by the seller on account of GST as a consequence of any supply made or deemed to be made or any other matter or thing under or in connection with this Agreement. The GST Amount must be calculated by multiplying the amount on which the GST is calculated by the prevailing rate of GST".

## **3. Payment**

3.1 Unless otherwise agreed in writing, the Seller shall be entitled to invoice the Buyer for the price of the Goods, on or at any time after the order.

### **3.2 Payment for Spare Parts:**

(a) Payment in full for the Goods must be made within 30 days of the first end of month statement after acceptance of order, or delivery, whichever is the earlier, unless otherwise agreed or as provided in these terms. No discount will be given for early payment.

**(b) If in the Seller's opinion, the creditworthiness of the Buyer has deteriorated prior to delivery of the Goods, the Seller may require full or partial payment of the price prior to delivery or collection (as the case may be) or the provision of security for payment by the Buyer in a form acceptable to the Seller.**

### **3.3 Payment for Units:**

- (a) Payment in full for the Goods must be made at the time of placing the order and prior to dispatch of the goods by the seller, unless otherwise agreed or as provided in these terms.
- 3.4 The Buyer must pay any GST Amount at the same time and in the same manner as making payment of any consideration on which the GST Amount is calculated. If the GST Amount is not calculated on consideration, the Buyer must pay the GST Amount within seven days of receipt of a written demand from the Seller.
- 3.5 The Buyer must pay any amount it is required to pay under these terms and conditions in full and without deduction, notwithstanding any entitlement that it may have to a credit or offset however arising.
- 3.6 Where progress payments are agreed, clause 3.2 will apply to the final payment instalment where delivery shall mean delivery of the final quantity of Goods ordered.
- 3.7 If the Buyer fails to make any payment on the due date, then without prejudice to any other right or remedy available to the Seller, the Seller shall (at its option) be entitled to:
  - (a) treat the contract as repudiated by the Buyer and suspend any further deliveries to the buyer, claim damages from the Buyer and charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the Westpac Indicator Lending Rate until payment in full is made; or
  - (b) affirm the contract, claim damages from the Buyer and charge the Buyer interest (in accordance with Clause 3.7 (a));

#### **4. Packing**

- 4.1 The cost of any special packing and packing materials (as well as any GST payable on such packing or packing materials **in the case of Spare Parts**) used in relation to the Goods shall be at the Buyer's expense notwithstanding that such cost may have been omitted from any quotation

#### **5. Risk**

- 5.1 The risk in the Goods will pass to the Buyer immediately upon the Goods leaving the Seller's premises for delivery to the place designated by the Buyer.
- 5.2 When Goods are stored by the Seller due to the request of or fault of the Buyer after the Goods are ready for dispatch, the Buyer will pay all applicable storage and other charges. Storage will be at the Buyer's risk and will not entitle the Buyer to postpone payment of any sums due to the Seller.

#### **6. Retention of Title**

- 6.1 The Seller will retain title to (but not risk in) Goods delivered to the Buyer until the Seller has received payment in full for them and all other sums owing to it by the Buyer.
- 6.2 Until such payment, the Buyer holds the Goods as bailee for the Seller and may not sell or otherwise dispose of the Goods unless authorised by the Seller. If the Goods are sold, the proceeds of sale will be placed in a separate trust account pending payment to the Seller. The Buyer will store the Goods in such a way as to enable them to be separately identified and will keep them insured at its own expense with the Seller's interest noted on any such insurance cover.
- 6.3 The Seller's right to retain title does not affect its rights as an unpaid Seller.

6.4 If the Buyer fails to make any payment when due or becomes bankrupt or commits an act of bankruptcy, or becomes insolvent, or has judgment entered against it in any Court or enters into or seeks to enter into any scheme of arrangement, composition, assignment for the benefit of, or other arrangement with its creditors or any class of creditors, or an application is made for an order, a meeting is convened to consider a resolution, a resolution is passed or an order is made that the Buyer be wound up or otherwise dissolved and/or that a liquidator or a provisional liquidator be appointed, or if a receiver or receiver and manager or administrator of the Company is appointed in respect of all or part of its assets, the Seller is entitled, and the Buyer grants the Seller a licence, to enter any of the Buyer's premises where the Goods are situated with or without notice and to re-take possession of and remove, at the Buyer's cost and expenses, the Goods in respect of which title has not passed to the Buyer at that date. The Seller shall be entitled to use the Buyer's name and to act on the Buyer's behalf in exercising these rights and the Seller is not liable for any costs, losses, damages or other expenses suffered by the Buyer or any third party in respect of the Seller's retaking possession and removing the Goods.

## **7. Non-Delivery and Shortage**

7.1 If the Seller is to deliver the Goods, the delivery times provided to the Buyer are estimates only and the Seller shall not be liable for late delivery or non-delivery and under no circumstances shall the Seller be liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the Goods.

7.2 The Seller will make every reasonable effort to meet quoted dispatch dates but the Seller will not be liable to the Buyer for any loss or damage whatsoever (including consequential loss) caused by a delay in or prevention of dispatch of Goods.

7.3 The Buyer will be deemed to have accepted delivery of Goods referred to in any invoice or advice note unless the Buyer makes a claim in writing to the Seller within 7 days from the date of the delivery note, except when part of the Goods referred to therein is received by the Buyer, in which case any claim with respect to the Goods not received in accordance with the delivery note must be made within 7 days of any later delivery.

7.4 Where the Goods are to be delivered in instalments, each delivery constitutes a separate contract and defective delivery by the Seller of any one or more of the instalments does not entitle the Buyer to treat the contract as a whole as repudiated.

## **8. Warranty**

- 8.1 The Seller warrants that the Goods have the benefit of the Seller's standard warranty in accordance with the warranty information delivered with the Goods.
- 8.2 These terms and conditions do not affect the rights, entitlements and remedies compulsorily conferred on the Buyer under the Trade Practices Act 1974 and other statutes, rules or regulations for the time being in force, and nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.
- 8.3 Subject to clauses 8.1 and 8.2, to the full extent permitted by law, all conditions, warranties and representations express or implied by statute, common law or otherwise in relation to the Goods are hereby excluded and to the full extent permitted by law, the Seller will be under no liability to the Buyer for any damages (including but not limited to incidental, special, consequential or general damages) in connection with or arising out of the supply or use of the Goods howsoever arising, even if due to the Seller's negligence, or the negligence of the Seller's servants, agents, sub-contractors or suppliers.

## **9. Cancellation**

- 9.1 No orders for Goods may be cancelled without the Seller's specific written consent.

## **10. Return of Goods**

10.1 Any Goods which have been supplied in accordance with a Buyer's order but which are subsequently returned will only be credited provided that the Seller's prior written agreement to the return of the Goods and the price at which the Goods will be credited has been obtained.

### **10.2 Return of Spare Parts:**

**(a) Subject to the warranty referred to in clause 8, electrical goods are non returnable.**

**(b) Subject to clause 12.1, no credit will be issued after 14 days. Credit will not be issued unless details of the invoice number and the date accompany the returned Goods.**

**(c) Goods accepted for return for credit are subject to the following handling charges:**

**Up to 7 days - NIL  
up to 14 days - 12.5%**

10.3 If any adjustment event (as defined in A New Tax System (Goods and Services Tax Act 1999) ("The GST Act")) has occurred in respect of a supply made to or in connection with this contract, the party that becomes aware of the adjustment event agrees to notify the other party in becoming aware of the adjustment event, and the parties agree to take whatever steps are necessary and to make whatever adjustments are required to ensure that any GST or additional GST on that supply or any refund of any GST (or part thereof) is paid as soon as is practicable but not later than 14 days after the Seller has satisfied itself that the adjustment event has occurred. If required by law, the Seller will issue to the Buyer an adjustment note (as defined in the GST Act) in respect of a supply that is subject to an adjustment event covered by this clause. Such adjustment note will be issued no later than 21 days after the date that the Seller receives payment for the GST or the additional GST in respect of that supply or refunds any GST (or part thereof) in respect of that supply.

10.5 The Buyer is liable for all transportation costs of Goods (including any GST amount) that are returned for credit.

## **11. Force Majeure**

11.1 If the Seller is prevented or delayed (directly or indirectly) from delivering the Goods or any part thereof on the agreed date of delivery or from otherwise performing any contract between the Seller and the Buyer or any part thereof by reason of act(s) of God, war embargo, riot(s), strike(s), lock-out(s), trade dispute(s), fire(s), break-down, inclement weather, interruption of transport, Government action, delay in delivery to the Seller of any of the Goods or materials, or by any cause whatsoever (whether or not of like nature to those specified above), outside the Seller's control, the Seller shall be under no liability whatsoever to the Buyer and shall be entitled at its option (to be notified in writing to the Buyer) either to cancel the contract or without any liability to extend the time or times for delivery, performance of the contract, or any part thereof by a period equivalent to that during which such delivery or performance has been prevented by any of the restrictions referred to in this clause.

## **12. Intellectual Property**

12.1 The sale to and purchase by the Buyer of Goods does not confer on the Buyer any licence or right under copyright, patent, design or trade mark or any other intellectual property right which is the property of the Seller.

**13. General**

- 13.1 The Seller's failure to enforce or exercise, at any time or for any period of time, any term of any contract incorporating these terms and conditions will not constitute, and will not be construed as, a waiver of such term and will in no way affect the Seller's right later to enforce or exercise it.
- 13.2 The invalidity or unenforceability of any of these terms and conditions will not affect the validity or enforceability of the remainder of these terms and conditions.
- 13.3 These terms and conditions will in all respects be construed and have effect according to the laws of the State of Victoria and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State.
- 13.4 The rights conferred on the Seller by these terms and conditions are in addition to and not in substitution for and do not derogate from the rights conferred on the Seller pursuant to any other agreement in force between the Buyer and the Seller, including but not limited to any Franchise Agreement **or Addendum to such**, Deed of Licence, Deed of Guarantee and Indemnity, **Suzuki On Line Terms and Conditions, Privacy Policy** and any company policy stipulated in a Dealer Bulletin (all such documents and policies being called "the Agreements").