

Monash Electric Motors Pty Ltd T/A BCB Sales & Service (Vic) – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "Company" shall mean Monash Electric Motors Pty Ltd T/A BCB Sales & Service and its successors and assigns.
 - 1.2 "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
 - 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
 - 1.4 "Goods" shall mean Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
 - 1.5 "Services" shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
 - 1.6 "Price" shall mean the cost of the Goods as agreed between the Company and the Customer subject to clause 4 of this contract.
2. **Acceptance**
 - 2.1 Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
 - 2.2 Where more than one Customer has entered into this agreement, the Customer's shall be jointly and severally liable for all payments of the Price.
 - 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Company.
 - 2.4 None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements.
 - 2.5 The Customer undertakes to give the Company not less than fourteen (14) days prior written notice of any proposed 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).
3. **Goods**
 - 3.1 The Goods are as described on the invoices and quotation as provided by the Company to the Customer.
4. **Price And Payment**
 - 4.1 At the Company's sole discretion:
 - (a) The Price shall be as indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or
 - (b) The Price shall be the Company's current Price, at the date of delivery of the Goods, according to the Company's current Price list; or
 - (c) The Price of the Goods shall (subject to clause 4.2) be the Company's quoted Price which shall be binding upon the Company provided that the Customer shall accept in writing the Company's quotation within fourteen (14) days.
 - 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as extras on the invoice. Payment for all extras must be made in full at their time of completion.
 - 4.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
 - 4.4 At the Seller's sole discretion, for certain approved Buyers payment will be due thirty (30) 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, or by direct credit, or by any other method as agreed to between the Customer and the Company.
 - 4.6 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Company.
5. **Delivery Of Goods / Services**
 - 5.1 Delivery of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at the Company's address.
 - 5.2 Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Company for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
 - 5.3 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
 - 5.4 The Seller may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
 - 5.5 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
 - 5.6 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
 - (a) such discrepancy in quantity shall not exceed 5%, and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
 - 5.7 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
 - 5.8 The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.
6. **Risk**
 - 6.1 If the Company retains property in the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
 - 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, the Company is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
7. **Customer's Disclaimer**
 - 7.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Company and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Company shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.
8. **Defect/Returns**
 - 8.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company 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 conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
 - 8.2 For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods provided that the Customer has complied with the provisions of clause 8.1.
9. **Warranty**
 - 9.1 Subject to the conditions of warranty set out in Clause 9.2 the Seller warrants that if any defect in any workmanship manufactured by the Seller becomes apparent and is reported to the Seller within twelve (12) months of the date of delivery (time being of the essence) then the Seller will (at the Seller's sole discretion) repair the defect or replace the workmanship. The conditions applicable to the warranty given by Clause 9.1 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 Buyer to properly maintain any Goods; or
 - ii) Failure of the part of the Buyer to follow any instructions or guidelines provided by the Seller; 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) warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
 - (c) respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Buyers claim.
 - 9.3 Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturers warranty.
10. **The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
 - 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
11. **Australia**
 - 11.1 The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
12. **Default & Consequences Of Default**
 - 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
 - 12.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all the Company's costs and disbursements including on a solicitor and own client basis and in addition all of the Company's nominees costs of collection.
 - 12.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.
 - 12.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
 - 12.5 In the event that:
 - (a) any money payable to the Company becomes overdue, or in the Company'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; then without prejudice to the Company's other remedies at law
 - (i) the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Company shall, whether or not due for payment, immediately become payable.
13. **Title**
 - 13.1 It is the intention of the Company and agreed by the Customer that property in the Goods shall not pass until:
 - (a) The Customer has paid all amounts owing for the particular Goods, and
 - (b) The Customer has met all other obligations due to the Customer to the Company in respect of all contracts between the Company and the Customer, and that the Goods shall be kept separate until the Company shall have received payment and all other obligations of the Customer are met.
 - 13.2 It is further agreed that:
 - (a) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.
 - (b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
 - (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - (d) Receipt by the Seller 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 the Seller's ownership of rights in respect of the Goods shall continue.
 - (e) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
 - (f) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
 - (g) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
 - (h) Until such time the Buyer has the Seller's authority to convert the Goods into other products and if the Goods are so converted, the parties agree that the Seller will be the owner of the end products.
 - (i) Until such time the Buyer has the Seller's authority to convert the goods into other products and if the goods are so converted, the parties agree that the Seller will be the owner of the end products.
14. **Security And Charge**
 - 14.1 Notwithstanding anything to the contrary contained herein or any other rights which the Company may have however:
 - (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 the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Company and/or the Company's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Company and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Company and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Company's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
 15. **Lien**
 - 15.1 Where the Company has not received or been tendered the whole of the price, or the payment has been dishonoured, the Company shall have:
 - (a) a lien on the goods;
 - (b) the right to retain them for the price while the Company is in possession of them;
 - (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale,
 - (e) the foregoing right of disposal, provided that the lien of the Company shall continue despite the commencement of proceedings or judgement for the price having been obtained.
 16. **Privacy Act 1988**
 - 16.1 The Customer and/or the Guarantor/s agree for the Company to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Company.
 - 16.2 The Customer and/or the Guarantor/s agree that the Company may exchange information about Customer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
 - (a) To assess an application by Customer;
 - (b) To notify other credit providers of a default by the Customer;
 - (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
 - (d) To assess the credit worthiness of Customer and/or Guarantor/s.
 - 16.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
 - 16.4 The Customer agrees that Personal Data provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Customer and Company or required by law from time to time:
 - (a) provision of Services & Goods;
 - (b) marketing of Services and or Goods by the Company, its agents or distributors in relation to the Services and Goods;
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services/Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
 - (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 Services and Goods.
 - 16.5 The Company 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; and or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
 17. **Unpaid Company's Rights To Dispose Of Goods**
 - 17.1 In the event that:
 - (a) the Company retains possession or control of the Goods; and
 - (b) payment of the Price is due to the Company; and
 - (c) the Company has made demand in writing of the Customer for payment of the Price in terms of this contract; and
 - (d) the Company has not received the Price of the Goods, then, whether the property in the Goods has passed to the Customer or has remained with the Company, the Company may dispose of the Goods and may claim from the Customer the loss to the Company on such disposal.
 18. **General**
 - 18.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 18.2 All Goods supplied by the Company are subject to the laws of Victoria and the Company takes no responsibility for changes in the law which affect the Goods supplied.
 - 18.3 The Company shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.
 - 18.4 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Services.
 - 18.5 The Customer shall not set off against the Price amounts due from the Company.
 - 18.6 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
 - 18.7 The Company reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Company notifies the Customer of such change.
 - 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.