



Transmissions and Transmission Parts

## Terms of Trade



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## APPLICABLE TERMS AND ACCEPTANCE OF ORDER

These terms of trade between **TRANSMAX LIMITED** (the "Company") and the Buyer (the "Buyer") shall apply to all orders for automatic transmission parts and motor vehicle accessories ("Goods") or repair services or installation services ("Services") accepted by the Company from the Buyer and that these terms and conditions shall prevail and take precedence over any document or oral message from the Buyer. Where the Company fails to enforce any terms or conditions under this contract the Company will not be deemed to have waived these rights with respect to any term or condition or right.

The Buyer and the Company shall acknowledge that these Terms of Trade constitute a Security Agreement as defined by the Personal Property Securities Act 1999 ("PPSA"). For the purposes of PPSA, Collateral shall include all Goods and Services supplied by the Company and the proceeds from the sale of all Goods and Services. The Buyer shall also agree not to allow any person to file a finance statement over any of the Collateral secured by this Security Agreement without the prior written consent of the Company.

### • Quotation and Price

The Company shall confirm the price of Goods or Services in its price list or as a quotation and the Buyer shall confirm acceptance of the price or quotation by signing the quotation or providing an order.

No quotation shall constitute an offer unless signed by the Company and the Company may withdraw any quotation before the Buyer's signed acceptance. The quotation price will be exclusive of GST and shall be valid for a period of thirty (30) days. Freight, insurance, and other handling charges shall be the responsibility of the Buyer.

### No Cancellation for Non Stock Goods

Upon approval of a Company quotation or receipt of the Buyer's order by the Company the Buyer shall agree that the Goods that are especially procured for the Buyer (non stock goods) cannot be cancelled without the Buyer paying the full cost of the Goods procured to the time of cancellation.

### • Payment

Payment shall be made upon the delivery of the goods except where the Company has agreed to provide credit to the Buyer in which case payment shall be made by the 20th of the month following date of invoice, which terms shall be declared in the Company quotation or confirmation of order. The Buyer shall make payment of all amounts due to the Company without any delay or deduction whether by way of set-off or counterclaim even under dispute of the invoice.

The Buyer shall agree that the Company has sole discretion to apply payments from the Buyer to any transaction or Company invoice notwithstanding that the Buyer may have applied the payment to a particular transaction or invoice.

### • Interest for Late Payment

The Company may charge the Buyer interest on any monies outstanding under the contract on a daily basis at a rate equal to 5% above the Company's bank indicator lending rate. Interest is payable from the date payment was due until the date the Company receives payment. The Company's right to charge interest is without prejudice to the Company's other rights or remedies for the Buyer's default in failing to pay on the due date.

### Suspension of contract for Non Payment

If at any time the Company reasonably deems the credit of the Buyer to be unsatisfactory, it will require the Buyer to provide at the Buyer's cost, security for payment and/or the Company may suspend performance of its obligations including suspension of the supply of Goods or Services under this Contract and secure any or all Goods under the Retention of Title clause previously supplied by the Company and in possession of the Buyer to the value of the

outstanding amount owed until payment in full OR until security is provided to the Company's satisfaction and the Company may require the Buyer to pay all costs incurred as a result of suspension and recommencement of supply including debt collection and legal costs.

### • Delivery

The Buyer shall agree that risk in the Goods shall pass to the Buyer once the Goods are delivered. Delivery by the Company to a carrier normally used by the Company shall constitute delivery and the Buyer shall accept risk in the Goods once the Goods are in the care of the carrier and the Buyer agrees that the Company shall not be liable for damage caused by the carrier.

Delivery by the Company to the premises of the Buyer shall also constitute delivery and the Buyer shall agree that risk in the Goods shall pass to the Buyer once the Goods are delivered. The Buyer agrees that the Company shall not be responsible for the validity of the person accepting the goods on behalf of the Buyer at the time of delivery.

Goods that are finished items but only part of an order may be delivered in installments at the Company's discretion and in such case each delivery will be regarded as a separate contract and any Goods delivered shall be paid by the Buyer in accordance with the Terms of Payment.

The company will make every effort to ensure delivery of Goods on time but will not be liable for any loss or damage or consequent loss to the Buyer arising from delays in delivery.

### • Risk, Ownership and Title

Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Buyer from the time of delivery of the Goods into the Buyer's care and control and The Buyer shall properly insure the Goods from theft, fire or loss damage. Where the Buyer fails to insure the Goods upon delivery and suffers loss or damage to the Goods, and where the Goods remain unpaid, the Buyer shall agree to pay the Company for the full cost of the Goods.

The Buyer agrees that the Company has legal and equitable right to title in all and any Goods supplied which remain unpaid and ownership shall only pass to the Buyer when the contract price is paid. For as long as ownership in the Goods is retained by the Company, the Buyer will store or use the Goods separately and in such a way that they are identifiable as the property of the Company.

Where the Goods remain unpaid the Buyer hereby irrevocably gives the Company, its agents or servants, the free and uninterrupted right to enter its premises during normal business hours in accordance with the Credit (repossession) Act, to search for, inspect and remove any of the Goods supplied in which the Company has retained ownership and the Buyer will not hold the Company responsible for any economic or consequential loss that the Buyer may suffer as a result of the Goods being removed or dismantled from the property of the Buyer.

### Title Upon Sale to a Third Party

Notwithstanding that property in the Goods is retained by the Company, the Buyer is hereby authorised to sell the Goods in the ordinary course of business and to deal with such proceeds as fiduciary agent and bailee of the Company until the Buyer pays the Company in full without deduction or set off: provided that such authority may be revoked by written notice at any time if the Company deems the credit of the Buyer to be unsatisfactory or if the Buyer is in default of its obligations under the Contract or any other contract between the Company and the Buyer.

Where any Goods in respect of which title has not passed to the Buyer are sold by the Buyer pursuant to the authority granted, any book debt created upon sale of such Goods and the proceeds of sale of such Goods when received by the Buyer, shall be held upon trust by the Buyer for the Company. Any proceeds of sale so received by the buyer shall be placed in a separate bank account and shall first be applied towards the satisfaction of all indebtedness of the Buyer to the Company.



If any of the Goods, the subject of this contract, have become the constituent of mixed with or attached to any other goods or property of the Buyer, meaning Goods that are sold by the Company, and those goods or property are sold by the Buyer prior to the Company receiving payment, then a portion of the proceeds of that sale, attributable to the Company's Goods, shall be the property of the Company, and the Buyer shall ensure that such proceeds are at all times held in a separate fund in trust for the Company.

## Personal Property Securities Act

The Buyer shall inform its creditors of the terms upon which it buys Goods from the Company and that the Company may create and register a Purchase Money Security Interest under the PPSA for any and all Goods and Services and that the Buyer agrees to waive the right to receive a verification statement for purposes of s.148 of the Act. The Buyer shall inform any Trustee in Bankruptcy or Liquidator of the Buyer or any Receiver of the Buyer's business or assets of the rights of the Company and title to the proceeds of sale.

The Security Agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until a release has been signed by the Company. The security interest granted in the Collateral has the same priority in relation to any and all of the Goods and Services supplied to the Buyer at any time.

## • Company Warranty & Liability.

The Company's Liability in respect of any claim shall relate only to specific defects in the Goods arising from faulty manufacture or from damage proven to occur before delivery by the Company.

**The Buyer agrees to be responsible for the fitness of the Goods for the purposes required by the Buyer and the Company shall not be responsible and the warranty will not apply to Goods where the Buyer fails to ascertain the correctness of the Goods for purposes intended by the Buyer.**

**The Buyer also agrees that no warranty will apply where the Goods are installed in motor vehicles used in high performance speed racing, drag racing or any other reason where the motor vehicle is used other than for the purposes of normal passenger or goods transportation unless the Company specifies in writing for the use of the Goods.**

The warranty of the Goods shall be the warranty of the original manufacturer or where this is not available the warranty on Goods shall be twelve (12) months and the warranty on Services shall be three (3) months from the date of delivery to the Buyer.

Where the Company undertakes repair Services of any Goods that do not comply with the warranty conditions of the Company or where the Buyer requires the Company to repair Goods outside of the warranty period the Buyer shall accept the full cost of the services charged by the Company.

Where the Company accepts liability for damage or defect under its warranty and elects to repair or replace Goods or Services it shall repair or replace the Goods to their original condition and replace Services but where this cannot be done the Company will refund the purchase price in full.

The Company shall not be liable for any breach or failure to perform any of its obligations under this Contract where such breach or failure is caused by war, civil commotion, hostilities, strike or lock out, act of God, fire, governmental regulations or directions, or any other cause force majeure beyond the Company's reasonable control. The occurrence of such an event shall not give the Buyer a right of cancellation of the contract.

## • Claims for Damaged or Defective Goods or Services

The Company may, at its discretion, repair or replace any damaged or defective Goods or Services or make a reasonable allowance on the purchase of goods or other services to replace the Goods provided that the Buyer advises the Company of the claim within seven (7) days of the defect occurring together with a

claim specifically identifying the damage or defect(s); and provided that the Buyer does not continue to use the Goods once the defect is known.

## When Claims will Not be Considered

The Company's liability in respect of any claim shall relate only to specific manufacturing defects in the Goods or in the Service workmanship of the Company. The Buyer agrees that the Company will not consider claims from the Buyer in respect of Goods which:

- (i) are not intact and in original condition subject to normal wear and tear.
- (ii) have been improperly stored and suffered damage.
- (iii) have been sold to the Buyer on a non-refundable basis
- (iv) have been used for other than normal motor vehicle transportation of passengers or goods purposes.
- (v) have been altered from the condition in which they were supplied or repaired by persons other than the Company.
- (vi) have not been maintained according to any Instruction of Care issued by the Company in its warranty

If the Buyer does not comply with the above requirements for warranty and claims, the Buyer will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods

## • Consumer Guarantees Act 1993

Nothing in these terms is intended to have the affect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by the Act where the Buyer acquires the Goods in a business situation for the business purposes of a business and all provisions of these terms shall be read as modified to the extent necessary to give effect to that intention. Where the Goods or Services are purchases from the Company by consumer users for household or domestic purposes the conditions of the Act shall apply.

## • Guarantor

Where the Buyer is a Company, the person(s) referred to as guarantor(s) in this Agreement shall personally guarantee the obligations of the Buyer.