

Viking Truck Parts Pty Ltd

STANDARD TERMS AND CONDITIONS OF TRADE

In these standard trading conditions (**conditions**):

Goods means all goods and services, including spare parts for commercial vehicles, truck, trailer and bus parts, and any other goods or services supplied by us to you;

you, your and similar expressions, refer to you, our customer or proposed customer; and

we, us, vtp and similar expressions, refer to Viking Truck Parts Pty Ltd (ACN 604 604 202), Unit 33, 6 Abbott Road, Seven Hills, NSW, 2147. Ph. 02 9674 1038

These conditions govern all supplies of Goods by us to you, unless otherwise clearly agreed in writing signed by us and you.

Quotations

1. Any quotation is merely an invitation to you to place an order with us. We issue quotations based on information supplied by you to us. If the information you supply is not correct, you may order Goods which conform to our specifications but are not suitable for your purpose (see also clause 48).
2. If you offer to purchase Goods based on a quotation from us, then your offer is subject to these conditions.
3. We reserve the right to correct any obvious errors in any quotation, tender or price list, whether technical or otherwise.

Not obliged to accept orders

4. We are not obliged to accept any order from you. If you place an order with us then it becomes binding from the moment that we accept it even if we do not tell you that it has been accepted. We may accept an order by written confirmation or by delivery, and in the case of delivery, only as to the portion of the order actually delivered.
5. If an order is accepted, we will carry out the order and you must pay for the Goods in accordance with these conditions.

Our conditions overrule any order form

6. These conditions apply and prevail even if they are inconsistent with anything said or implied in any earlier or later order form or similar document.

Non-cancellation of orders and non-return of Goods

7. No returns or cancellations will be accepted without prior written agreement from us, which we may provide or withhold in our discretion (including imposing conditions); and
 - (a) once you give us an order and we accept it, you may cancel the order or return the Goods by way of cancellation only upon payment of our re-stocking charge, which varies from time to time, plus freight and insurance costs for the return of the Goods;
 - (b) as at the date this clause 7 was printed, our re-stocking charge varies as follows: (i) if you ask to cancel an order, and you return the Goods to us in accordance with these conditions less than 14 days after delivery of the Goods by us, the charge is nil; (ii) where the Goods are returned in accordance with these conditions between 14 and 28 days after delivery, the charge is 10% of the sale price of the Goods ordered; and (iii) we do not accept any returns more than 28 days after delivery; and
 - (c) you acknowledge that: (i) our re-stocking charge under this clause 7 is reasonable; (ii) the charge specified represents a reasonable and genuine pre-estimate of our expenses and loss resulting from your cancelled order; (iii) we may vary our re-stocking charges without any notice to you; and (iv) you may be advised of our current re-stocking charges by contacting us from time to time.
8. We cannot consider any request to cancel an order unless you return the Goods to us in original packaging with our original invoice number. If we initially agree to accept delivery of any returned Goods, you acknowledge that is to allow us to inspect the Goods to see if they are in good order and condition and to ensure it is commercially realistic for us to re-sell the Goods, and this does not mean we are bound to agree with the requested cancellation.
9. Goods supplied to special order are not returnable.
10. We do not accept cancellation of any order for, or return of any used parts.
11. Core deposits paid to us are refundable only if the returned goods are complete and in our reasonable opinion able to be reconditioned in a commercially realistic and safe fashion.

Consignment Stock Arrangements (CSTK)

12. In addition to, or instead of, supplying Goods to you under our usual ordering system, we may agree to supply a certain type and quantity of Goods to you that you store on your premises for use by you on a self-service basis as and when required (**CSTK Arrangement**).
13. Without limiting the application of the balance of these conditions, clauses 12 to 21 (inclusive) apply if we supply Goods to you under a CSTK Arrangement.
14. Goods supplied under a CSTK Arrangement will be supplied in accordance with a schedule of part numbers and quantities agreed between us (**Schedule**). The Schedule may only be amended with the written consent of each of us.
15. Goods supplied under a CSTK Arrangement must be stored by you in a secure area (**Store**). You are responsible for the security of all Goods in the Store. You must keep us continually informed of the location of the Store.

16. You must undertake a count of the Goods in the Store at least once each month, or more frequently if we require (**Customer Count**).
17. In addition to a Customer Count, we may visit the Store at any time, on reasonable prior notice to you, to count the number of Goods in the Store (**VTP Count**). You are entitled to have one of your representatives present during a VTP Count.
18. Immediately following either (a) a Customer Count; or (b) us notifying you of the outcome of a VTP Count, you must calculate and notify us of the difference between the quantity of Goods defined in the Schedule, and the number of Goods counted (**Goods Usage**). Any Goods that are damaged will be deemed used and must be included in the Goods Usage calculation.
19. As soon as practicable following each Customer Count and VTP Count, we will restock the Store so that the number of Goods in the Store reflects the quantities in the Schedule.
20. At the end of each month we will issue you an invoice for the Goods Usage for that month. You must pay us within 30 days from the date of invoice.
21. Either you or us may terminate the CSTK Arrangement at any time on notice in writing to the other. On termination, representatives of each of us will conduct a final count of the Goods in the Store, and calculate the Goods Usage. We will then issue any necessary invoice for Goods Usage, and remove the balance of the Goods from the Store. You must co-operate and provide reasonable assistance with the above termination process.

Prices and Invoices

22. All prices are in Australian dollars. Irrespective of where you are located, goods are sold ex-warehouse and invoiced at the price we charge on the date of dispatch from our premises.
23. You must pay all freight, packing, delivery and insurance costs, if we agree to deliver Goods to you;
24. If we give you credit, you must pay each of our invoices within 30 days from the date of the invoice. You must also pay any sales tax, goods and services tax, stamp duty and all other taxes, excises and duties that are payable relating to the supply of Goods by us.

Payments

25. Unless we agree to give you credit or we supply Goods to you under a CSTK Arrangement, you must pay for all orders on delivery.

Credit

26. We may decide to give you credit, but we are not obliged to do so merely because we have previously given you credit.
27. If we decide to give you credit, then you are bound by these conditions and any additional conditions that we set for giving you credit.
28. We may decline to give you further credit at any time. If we do so, these conditions and any credit conditions continue to apply to any amounts which you then owe to us.

Overdue payments

29. If any amount you owe us is not paid by the due date then:
 - (a) all money that you owe us on any account becomes immediately payable despite any previously agreed credit conditions;
 - (b) we may suspend supply or cancel any outstanding orders we have accepted from you;
 - (c) we may charge you interest on any amount from the due date until payment, calculated daily, at the rate prescribed from time to time as payable on judgments for monetary sums awarded by the Supreme Court of New South Wales, and interest may be capitalised each month so that cumulative interest may be payable;
 - (d) in our discretion, and as an alternative to paragraph (c), we may charge interest at the rate of 2% per month on the balance overdue (including interest) at the end of each month;
 - (e) if we charge interest under this clause, we will credit any part payment first against the interest; and
 - (f) you agree you are liable for all our costs, losses and expenses relating to recovering overdue payments from you, including mercantile agents' and lawyers' fees and expenses that we incur.

Risk and title

30. We remain the owner of all Goods supplied to you until you have paid us all amounts owing in respect of all Goods supplied.
31. Until you become the owner of Goods in accordance with clause 30:
 - (a) you hold them as agent and bailee for us and you owe a fiduciary duty to us in respect of them;
 - (b) you must if required by us store them on your premises separately from your own goods or goods of any other person and in a manner which makes them readily identifiable as our Goods, and in the case of Goods supplied to you under a CSTK Arrangement, you must store them in the Store;
 - (c) we may terminate your right to resell or use them forthwith on written notice of termination being delivered to your place of business;
 - (d) we may retake possession, if (i) you default in paying any part of the price or associated charges for them; or (ii) you become or resolve to become subject to any form of insolvency administration.
32. We may for the purpose of recovery of our Goods enter by our employees or agents on any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess them. This permission is irrevocable and you agree that our employees or agents so entering are not trespassing.

33. Goods you hold which meet the description of goods on an invoice for which payment has not been made is in the absence of evidence to the contrary treated as goods to which we have retained title. We may exercise our remedies under these provisions against those goods.
34. The debt you owe to us at the date of repossession of goods is, as between the parties, taken to include any payment we have previously received which might be claimed to be void under any law relating to bankruptcy, liquidation or the protection of creditors. This is so whether or not a claim has been made.
35. You accept the risk of damage or loss of Goods we supply to you, from the time the Goods are dispatched from our premises.
36. You may re-supply the Goods to any other person or entity before you have paid all amounts which are owing to us provided that:
 - (a) the re-supply is in the ordinary course of your business;
 - (b) all money received by you for the Goods will be held by you on trust for us; and
 - (c) you must either:
 - (i) pay the money immediately when it is received by you; or
 - (ii) deposit the money into a bank account and hold it as trustee for us.
37. We will not be liable, in contract or in tort or otherwise, for any costs, damages, expenses or losses incurred by you or any third party as a result of any action taken under clauses 30 to 36 (inclusive).

PPS Law

38. Clauses 38 to 47 (inclusive) apply to the extent that these conditions provide for or contain a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (**PPS Law**) (or part of it).
39. You agree, in addition, to the extent possible under PPS Law, that all collateral which is at any time subject to our security interest secures as a 'purchase money security interest' (**PMSI**) the purchase price of all collateral supplied to you. Clauses 38 to 47 do not limit what other amounts are secured under these conditions.
40. You agree that payments will be applied in the following order:
 - (a) to obligations that are not secured, in the order in which those obligations were incurred;
 - (b) to obligations that are secured, but not by PMSIs, in the order in which those obligations were incurred;
 - (c) to obligations that are secured by PMSIs, in the order in which those obligations were incurred.
41. We may register our security interest as a PMSI. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of:
 - (a) ensuring that our security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) enabling us to gain first priority (or any other priority agreed to by us in writing) for our security interest; and
 - (c) enabling us to exercise rights in connection with the security interest,
 and to assure performance of your obligations, you hereby give us an irrevocable power of attorney to do anything we consider you should do under these conditions.
42. Our rights under these conditions are in addition to and not in substitution for our rights under other law (including the PPS Law) and we may choose whether to exercise rights under these conditions, and/or under such other law, as we see fit.
43. In respect of Goods that are not used predominantly for personal, domestic or household purposes, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of these conditions:
 - (a) sections 95 (notice of removal of accession to the extent it requires us to give a notice to you), 96 (retention of accession), 125 (obligations to dispose of or retain collateral);
 - (b) section 130 (notice of disposal to the extent it requires us to give a notice to you);
 - (c) section 132(3)(d) (contents of statement of account after disposal);
 - (d) section 132(4) (statement of account if no disposal);
 - (e) section 135 (notice of retention);
 - (f) section 142 (redemption of collateral); and
 - (g) section 143 (re-instatement of security agreement).
44. The following provisions of the PPS Law confer rights on us:
 - (a) section 123 (seizing collateral);
 - (b) section 126 (apparent possession);
 - (c) section 128 (secured party may dispose of collateral);
 - (d) section 129 (disposal by purchase); and
 - (e) section 134(1) (retention of collateral).
 You agree that in addition to those rights, we shall, if there is default by you, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Goods, not only under those sections but also, as additional and independent rights, under these conditions and you agree that we may do so in any manner we see fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
45. You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

46. You and we agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this clause 46 is made solely for the purpose of allowing us the benefit of section 275(6)(a) and we shall not be liable to pay damages or any other compensation or be subject to injunction if we breach this clause 46.
47. You must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the collateral other than with our express written consent.

Sale by specification

48. You must ensure that the Goods we supply are suitable for your purposes before using the Goods for those purposes. Except to the extent expressly specified by us in writing, we sell Goods by specification and you decide for what purpose to use or re-supply the Goods. To the extent that we expressly specify in writing a purpose for which our Goods are suitable, we sell our Goods for use only as specified for that purpose. We are not liable for any loss or damage caused by persons seeking to fit unsuitable Goods.

Variations in specifications

49. We reserve the right to vary the specifications or performance criteria of any Good from time to time and to obtain Goods from different sources, at our absolute discretion. We may do that without telling you provided we have reasonable grounds for believing that the alternate Good offered is substantially similar to that previously offered or represents an improvement.

Warranties against defects

50. If we are the manufacturer (or importer into Australia) of a Good we may provide a warranty against defects document with the Good, in which case, the terms of that document apply to the exclusion of clauses 50 to 59 (inclusive) of these conditions.
51. However, if a Good is not accompanied with its own warranty against defects document, then the warranty against defects terms contained in clauses 50 to 59 (inclusive) of these conditions apply.
52. Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
53. We warrant new Goods to be free from defects in material or workmanship for 12 months from date of supply to you (**Warranty Period**).
54. During the Warranty Period and as our sole liability to you under this warranty against defects, we agree, at our option, to either repair or replace Goods which we are satisfied are defective.
55. Our warranty against defects does not cover any damage to the Goods caused by:
 - (a) the use of any parts or consumables other than the same manufacturer's parts and consumables; and/or
 - (b) the installation or service/maintenance by a third party other than suppliers of those services approved by that manufacturer or its authorised representatives or other qualified personnel; and/or
 - (c) normal wear and tear.
56. 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.
57. Subject to your rights under the Australian Consumer Law, we do not warrant that used or reconditioned parts or products are free from any defects in material or workmanship.
58. To make a warranty claim you must, at your cost, return the Goods freight prepaid to the branch where you bought the Goods, or our premises located at Unit 33, 6 Abbott Road, Seven Hills, NSW, 2147, for our inspection and, if approved, processing under warranty.
59. These warranties are for your benefit only, and may not be transferred.
60. If you acquire Goods from us for the purpose of re-supply, and you choose to give one of your customers a warranty against defects, that warranty must comply with the requirements prescribed by the Competition and Consumer Act 2010 (Cth) (**CCA**) or other legislation.

Software licences

61. Any firmware or software that comes with Goods we supply to you, is supplied under licence only. You agree to abide by the terms of all such licences. You may return your purchase within 7 days of delivery if you do not accept any applicable licence in part or whole. Typically, licenses limit us of firmware and software to the one machine.

Statutory warranties

62. Terms, conditions, warranties and guarantees implied by law, including the Australian Consumer Law, that cannot be excluded, restricted or modified apply to these conditions to the extent required by that law.
63. We exclude all other terms, conditions, warranties and guarantees which would otherwise be implied concerning the activities covered by these conditions.
64. Where we are permitted to limit our liability, our sole liability to you for negligence, tort, or breach of contract, breach of statutory duty, or breach of a condition, warranty or guarantee, is limited at our option to:
 - (a) replacement of the Goods or the supply of equivalent goods; or
 - (b) repair of the Goods; or
 - (c) payment of the cost of replacing the Goods or of acquiring equivalent goods; or payment of the cost of having the Goods repaired.

Other damages claims excluded

65. We are not liable for any damage for breach of contract, negligence, or otherwise except as stated. In these conditions "damage" includes direct and indirect or consequential costs, losses, expenses, lost profits, lost savings and claims made by any third party.

Unexpected delay

66. We are not responsible for delay caused by something outside our reasonable control which makes performance in the usual way impractical. Without limiting those general words, that applies where we have problems due to accidents, strikes, transport difficulties or stock shortages.

Estimated delivery times

67. Delivery times are estimates only and we are not liable for delays in delivery.

Certificate of debt

68. Statements of account we send in the ordinary course of business by ordinary post to your last known address are prima facie evidence of the amounts you owe us. You are bound by any certificate signed by any of our directors or solicitors which shows any amount or calculation relevant to what you owe us, except where there is an error obvious on the face of the certificates.

Variation of these conditions

69. These conditions may be changed by us from time to time by us giving you notice of the change. Notice is deemed given (whether or not actually received) when we do any of the following: (a) send notice of the change to you at any address (including an email address) supplied by you; (b) or publish the amended conditions on our web site at www.vikingtruckparts.com.au (**Web site**).

Applicable law

70. Any agreement containing these conditions is deemed to be an agreement made in and governed by the law of Australia and New South Wales, and the parties submit their disputes to the non-exclusive jurisdiction of the courts of New South Wales.

Privacy and personal information

71. We collect, use, store and disclose personal information in accordance with our Privacy Policy, which you acknowledge you have had an opportunity to read and understand. You can access the current policy from time to time from our Website, or contact our nearest office to receive a copy.

72. You will only provide us with personal information where you have consent from the individual to do so for the purposes mentioned in the Privacy Policy.

Statutory successor

73. In these conditions a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

Not a consumer contract

74. You agree that your acquisition of the Goods is not for personal, domestic or household use or consumption, and any binding commitment incorporating these conditions is not a 'consumer contract' for the purposes of the CCA