

SUMMARY OF KEY TERMS AND CONDITIONS

This disclosure notice is prepared in accordance with section 47A of the *Fair Trading Act 1987 No 68* (NSW). The purpose of this notice is to ensure that you are aware of the substance and effect of the terms and conditions associated with the goods and services that we provide that may substantially prejudice your interests.

Any defined terms in this document have the same meaning as the Terms and Conditions of Trade (**Terms**) unless otherwise stated. For the purposes of this document, hsy is referred to as "we/ us/ our" and the Customer (you) are referred to as "you".

This document is only a summary of some of the key terms and conditions in the Terms. You should read the Terms in full before agreeing to its terms.

Key Terms

1. **Limitation of Liability:** you have certain rights under the Australian Consumer Law that cannot be excluded, but, to the extent we can, we exclude any liability for consequential loss, cap our liability to an amount equal to the Price you paid for Parts or Services and limit our liability in the case of Parts to repair or replacement of the Parts or the cost of repairing or replacement of the Parts and in the case of Services, supplying the services again, or the payment of the cost of having the services supplied again (clauses 2.3 and 2.4).
2. **Price:** we reserve the right to change the Price in the event of a variation to our quotation. Any variation from the plan of scheduled Services or specifications of the Parts (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to us in the cost of materials and labour) will be charged (clause 4.2).
3. **Credit card fees and processing fees:** we use a third party provider to process payments when you make purchases from us, these amounts are non-refundable under the Agreement (clause 4.7).
4. **Delivery:**
 - 4.1 We may in our discretion, charge the cost of delivery in addition to the Price (clause 5.2).
 - 4.2 We will not be liable for any loss or damage whatsoever due to failure by us to deliver the Parts (or any of them) promptly or at all, where due to circumstances beyond our control (clause.5.7).
5. **Indemnity:** You indemnify us and hold us harmless against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Parts however arising and whether or not arising from any negligence, failure or omission of you or any other persons. The indemnity will be reduced proportionately to the extent that such loss was caused by the gross negligence of, or willful and reckless breach of the Terms by us (clause 6.4).
6. **Retention of title:** until we receive payment in full from you, we are entitled to immediate possession of the Parts which may involve entering your premises to take control of them. If we have to enter your premises, you indemnify us for any loss arising from us having to take this action (clause 6.5(e)).
7. **Returns:**
 - 7.1 Subject to any Non-excludable Rights you have regarding the return of Parts we may (in our sole discretion) accept the return of Parts for credit but this may incur a handling fee of up to twenty percent (20%) of the value of the returned Parts plus any freight costs (clause 9.2).
 - 7.2 Subject to any Non-excludable Rights you have, non-stocklist items or Parts made to your specifications, electrical or fitted Parts or Parts imported at your instruction, are not acceptable for credit or return (clause 9.3).
8. **Default and consequences of default:**
 - 8.1 If your payments are dishonoured for any reason, you will be liable for any dishonour fees we incur (clause 10.2).
 - 8.2 If you default in payment of any invoice when due, you will indemnify us from and against all costs and disbursements incurred by us in pursuing the debt including legal costs on a solicitor and own client basis and our collection agency costs (clause 10.3).
9. **Force Majeure:** The supply of Parts or Services may be totally or partially suspended by us during any period in which we may be prevented, hindered or delayed from delivering the Parts or Services to you. We will not incur any liability to you in respect of such suspension (clause 14).
10. **Commission / rebates:** we may receive commissions, sales incentives or rebates in connection with the Terms (clause 15.1).

Acknowledgement

By signing the below you acknowledge that you have read this document and that you are aware of the substance and effect of key terms and conditions contained in the Terms.

Signature: _____ Date: _____

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1. Definitions

1.1 "**Australian Consumer Law**" means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law and Fair Trading Act 2012 (Vic).

1.2 "**Confidential Information**" means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Parts or Services or hsy's business.

1.3 "**Consequential Loss**" means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity.

1.4 "**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 hsy to the Customer.

1.5 "**Default Rate**" means on any day the aggregate of 2% per annum above the rate set down from time to time under section 2 of the Penalty Interest Rates Act 1983 (Vic).

1.6 "**Guarantor**" means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.

1.7 "**hsy**" shall mean hsy autoparts Pty Ltd (ACN 005 668 502), its successors and assigns or any person acting on behalf of and with the authority of hsy autoparts Pty Ltd.

1.8 "**Key Personnel**" means a board member, committee member or anyone that holds a position of power attached to which is the ability to make decisions that affect the direction and operation of the entity.

1.9 "**Ipsos Facto Stay**" means a stay that applies by virtue of the Treasury Laws Amendment (2017 Enterprise Incentives No.2) Act 2017 (Cth).

1.10 "**Minimum Monthly Spend**" is the minimum amount which approved Customers must spend on Parts and/or Services under clause 4.4(c) in order to be entitled to continue purchasing Parts and Services from hsy on credit terms. The Minimum Monthly Spend is determined by hsy at its sole discretion and can be varied from time to time upon the giving of reasonable notice by hsy.

1.11 "**Parts**" shall mean all parts and accessories supplied by hsy 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, order form or any other forms as provided by hsy to the Customer.

1.12 "**PPS Act**" means the Personal Property Securities Act 2009 (Cth).

1.13 "**Price**" shall mean the price payable for the Parts and/or Services as agreed between hsy and the Customer in accordance with clause 4 of these terms & conditions of trade (**Terms**).

1.14 "**Services**" shall mean all services supplied by hsy to the Customer in connection with the Parts and includes any advice or recommendations (and where the context so permits shall include any supply of Parts as defined above).

2. Australian Consumer Law and hsy's liability

2.1 Subject to clause 2.2 and 2.3 below, hsy makes no guarantee, condition or warranty as to materials, workmanship or performance of the Parts and Services.

2.2 For Parts not manufactured by hsy, the warranty shall be the current warranty provided by the manufacturer of the Parts. Hsy 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 Parts.

2.3 The Customer may have rights under the Australian Consumer Law or other rights in relation to the supply of the Parts and Services that cannot lawfully be excluded by hsy (**Non-excludable Rights**). With the exception of Non-excludable Rights, and notwithstanding any other provision of these Terms, the liability of hsy to a Customer, whether arising under or in connection with these Terms or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort for negligence or otherwise, or on any other basis in law or equity is hereby limited and excluded as follows:

- a) hsy shall have no liability whatsoever to the Customer for the loss of use, production, profit, revenue, business, data, contract or anticipated saving, or for any financing costs or increase in operating costs or any economic loss or for any special, indirect or Consequential Loss or damage; and
- b) the total aggregate liability of hsy is at all times limited to the amount equal to the Price of the Parts or Services.

2.4 To the maximum extent permitted by law, hsy's liability pursuant to any warranty, term or condition implied in these Terms and any Non-excludable Right (including, for the avoidance of doubt, section

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274 of the Australian Consumer Law (Indemnification of Suppliers by Manufacturers) or any similar or successor provision), is limited, at hsy's option, to:

- a) in the case of Parts, repair or replacement of the Parts or the cost of repairing or replacing the Parts; and
- b) in the case of Services, the supplying of the services again, or the payment of the cost of having the services supplied again.

2.5 To the extent permissible by law, no employee, agent or contractor of hsy has any authority to give any warranties or make any representations about the performance, specifications or fitness for the purpose of the Parts other than those specified in hsy's authorised written material. All such unauthorised warranties and representations are expressly excluded. The Customer acknowledges that it has not relied upon or been induced by any representation by hsy other than those specified in hsy's authorised written material.

3. Acceptance

3.1 These Terms commence upon the first receipt of instructions by hsy from the Customer for the supply of Parts or Services. The giving of such instructions by the Customer shall constitute the Customer's acceptance of these Terms. These Terms as amended from time to time shall remain in force and govern all subsequent supplies of Parts or Services from hsy to the Customer.

3.2 Where more than one Customer has entered into the Terms, the Customers shall be jointly and severally liable under the Terms, including for all payments of the Price.

3.3 Upon acceptance of these Terms by the Customer, the Terms shall become binding and can only be amended in writing with the written consent of hsy.

3.4 The Customer shall give hsy not less than 14 days prior written notice of any proposed change of ownership of the Customer, change in the Customer's name, change in the Customer's Key Personnel 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 or damage directly or indirectly incurred by hsy as a result of the Customer's failure to comply with this clause.

3.5 Unless accepted in writing by hsy, these Terms, as amended from time to time, apply to the exclusion of all prior discussions, representations, understandings and arrangements and all terms, conditions and warranties (written or oral, express or implied) and other representations (contractual or otherwise), whether or not endorsed or delivered with or referred to in any order or other documents delivered by the Customer to hsy.

3.6 By ordering further Parts or paying the next invoice after notification of any variation to these Terms, the Customer accepts and is bound by the varied Terms from that date. If the Customer does not accept any variation, it must immediately notify hsy to terminate these Terms. Any order outstanding at the time of termination of these Terms will be completed in accordance with the unvaried Terms.

4. Price and Payment

4.1 Depending on the Customer's method of ordering the Parts and/or the nature of the order and as determined in hsy's sole discretion, the Price shall be either:

- a) as indicated on invoices provided by hsy to the Customer in respect of Parts supplied; or
- b) hsy's current Price at the date of delivery of the Parts according to hsy's current price list; or
- c) hsy's quoted Price (subject to clause 4.2) which shall be binding upon hsy provided that the Customer shall accept hsy's quotation in writing within thirty (30) days.

4.2 Hsy reserves the right to change the Price in the event of a variation to hsy's quotation. Any variation from the plan of scheduled Services or specifications of the Parts (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to hsy in the cost of materials and labour) will be charged for on the basis of hsy's quotation and will be shown as variations on the invoice.

4.3 If circumstances arise in which hsy determines in its sole discretion that a deposit is required, the Customer must pay such deposit to hsy at the time of ordering the Parts.

4.4 Depending on the Customer's method of ordering the Parts and/or the nature of the order and as determined in hsy's sole discretion:

- a) payment shall be due on delivery of the Parts or completion of the Services; or
- b) payment for approved Customers (approval must be in writing) shall be made by instalments in accordance with hsy's payment schedule; or
- c) payment for approved Customers (approval must be in writing) shall be due thirty (30) days following the end of the month in which the invoice is dated. Approved Customers will only be

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entitled to continue trading with hsy on credit terms under this clause if they maintain the Minimum Monthly Spend.

4.5 Payment for the Parts and/or Services must be in accordance with the procedures and time frames stated on the invoice.

4.6 Payment must be made by credit card – Diners excluded, or by direct credit, or by any other method as agreed to between the Customer and hsy in writing. If the Customer elects to make payment by Amex, Visa or Mastercard the Customer acknowledges it will be charged up to a 2% surcharge.

4.7 Hsy uses Westpac PayWay to process payments for purchases made by its Customers. The processing of the Customer's payment via Westpac PayWay is subject to the relevant providers payment terms and conditions at https://www.payway.com.au/downloads/WBC/PayWay_Terms_and_Conditions.pdf. The Customer acknowledges that all credit card fees and other applicable payment processing fees have been disclosed to the Customer before making a purchase under these terms and that these amounts are non-refundable.

4.8 The Customer must also pay any sales tax, goods and services tax, stamp duty and all other excises and duties that are payable relating to the supply of the Parts and/or Services by hsy.

4.9 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 hsy nor to withhold payment of any invoice because part of that invoice is in dispute.

4.10 All prices are in Australian dollars

5. Delivery of Parts

5.1 Depending on the Customer's method of ordering the Parts and/or the nature of the order and as determined in hsy's sole discretion, delivery of the Parts shall take place when:

- a) the Customer or the Customer's nominated carrier takes possession of the Parts at hsy's address; or
- b) the Customer takes possession of the Parts at the Customer's nominated address (in the event that the Parts are delivered by hsy or hsy's nominated carrier).

5.2 At hsy's sole discretion the costs of delivery are in addition to the Price and, where applicable, charged to the Customer's account. The standard costs of delivery from time to time, will be made available to the Customer.

5.3 The Customer shall make all arrangements necessary to take delivery of the Parts whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Parts as arranged then hsy shall be entitled to charge a reasonable additional fee for redelivery and storage of the Parts if applicable. Generally, the fee for redelivery will be the same amount as the fee for initial delivery, however hsy reserves the right to charge a higher fee for redelivery depending on the circumstances of the redelivery.

5.4 Delivery of the Parts to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms.

5.5 Hsy may deliver the Parts by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms.

5.6 Delivery times are estimates only.

5.7 Hsy shall not be liable for any loss or damage whatsoever due to failure by hsy to deliver the Parts (or any of them) promptly or at all, where due to circumstances beyond the control of hsy.

6. Title and Risk

6.1 The risk in the Parts passes to the Customer when delivery of the Parts is deemed to have taken place in accordance with clause 5.1 of these Terms.

6.2 Hsy's rights under this clause 6 secure hsy's right to receive all amounts owing to it under these Terms or any other agreement between the parties.

6.3 All payments received from the Customer may be applied by hsy in the manner hsy, in its discretion, acting reasonably, determines.

6.4 To the extent permissible by law, the Customer must indemnify hsy and hold it harmless against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Parts however arising and whether or not arising from any negligence, failure or omission of the Customer or any other persons, however such indemnity will be reduced proportionately to the extent that such loss was caused by the gross negligence of , or willful and reckless breach of these Terms, by hsy.

6.5 Until full payment in cleared funds is received by hsy for all Parts supplied by it to the Customer, as well as all other amounts owing to hsy by the Customer under this or any other agreement:

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- a) legal title and property in all Parts supplied under these Terms passes to the Customer upon full payment of the Price;
- b) the Customer must store the Parts separately and in such a manner and maintain any labelling and packaging of hsy, so that the Parts are clearly and readily identifiable as the property of hsy;
- c) the Customer must not sell the Parts except in the ordinary course of the Customer's business;
- d) the Customer holds and agrees to hold the proceeds of any sale, lease or other dealing with the Parts for hsy in a separate bank account with a bank which does not (and will not in the future) provide finance to the Customer;
- e) in addition to any rights hsy may have under Chapter 4 of the PPS Act, hsy may, at any time, demand the return of the Parts and shall be entitled without notice to the Customer and without liability to the Customer, to enter any premises where it suspects the Parts may be located in order to search for and remove the Parts without committing a trespass, even though they may be attached or annexed to other goods or land not the property of hsy, and for this purpose the Customer irrevocably licenses hsy to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies hsy from and against all loss suffered or incurred by hsy as a result of exercising its rights under this clause 6.5(e). If there is any inconsistency between the hsy's rights under this clause 6.5(e) and its rights under Chapter 4 of the PPS Act, this clause 6.5(e) prevails.
- f) the Customer acknowledges and warrants that hsy has a security interest (for the purposes of the PPS Act) in the Parts and any proceeds described in clause 6.5(f) and the Customer must do anything reasonably required by hsy to ensure that such security interest is enforceable, perfected and otherwise effective and has the priority required by hsy which, unless hsy agrees in writing otherwise, is first priority; and
- g) the security interest arising under this clause 6.5(g) attaches to the Parts when the Customer obtains possession of the Parts and the parties confirm that they have not agreed that such security interest attaches at any later time.

6.6 The Customer may not pledge hsy's credit for repairs to the Parts or create a lien over the Parts in respect of any repairs.

6.7 The Customer warrants that it does not intend to use the Parts predominantly for personal, domestic or household purposes.

6.8 The Customer must, at its own cost, insure and keep insured the Parts against such risks as a prudent owner of the Parts would insure at their full cost price, with a reputable insurance company and note the Customer as a person to whom the benefit of such insurance policies extend for its respective rights and interests and include an acknowledgement from the insurer that it will notify hsy not less than 30 days before cancelling any such insurance policies.

7. PPS Act

7.1 Unless a contrary intention appears, words or expressions used in this clause 7 that are defined in the PPS Act have the same meaning as given to them in the PPS Act.

7.2 If at any time hsy determines that these Terms (or any of the transactions contemplated by or under them) creates a security interest in its favour over any personal property, hsy may apply for any registration, or give any notification, in connection with that security interest and the Customer must promptly, upon hsy's request, do any thing (including, without limitation, completing, signing and producing documents, obtaining consents and supplying information) to:

- a) protect any right, title and/or interest of hsy in the relevant personal property;
- b) provide more effective security over the relevant personal property;
- c) ensure that any such security interest in favour of hsy:
 - (i) is at all times registered, enforceable, perfected (including, where applicable, by control as well as by registration), maintained and otherwise fully effective; and
 - (ii) ranks as a first priority security interest;
- d) enable hsy to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
- e) enable hsy to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPS Act.

7.3 All costs and expenses arising as a result of actions taken by either party pursuant to this clause 7 will be for the account of the Customer. Within 14 days of a written request, the Customer must pay to hsy any costs or expenses incurred or to be incurred in connection with this clause 7.

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7.4 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of the security interest created under these Terms, the Customer agrees that the following provisions of the PPS Act will not apply:

- a) section 95 (notice of removal of accession), to the extent that it requires hsy to give a notice to the Customer.
- b) section 121(4) (enforcement of security interests in and seizure of liquid assets – notice to grantor);
- c) section 125 (obligation to dispose of or retain collateral);
- d) section 130 (notice of disposal), to the extent that it requires hsy to give a notice to the Customer;
- e) section 132(3)(d) (contents of statement of account after disposal);
- f) section 132(4) (statement of account if no disposal);
- g) section 135 (notice of hsy's proposal to retain the Parts or their proceeds);
- h) section 142 (redemption of collateral); and
- i) Section 143 (reinstatement of security agreement).

7.5 Pursuant to section 125(3) of the PPS Act, hsy may delay disposing of, or taking action to retain, the whole or part of the collateral that it seizes under section 123 of the PPS Act, for as long as it sees fit in its absolute discretion.

7.6 Hsy does not need to give the Customer any notice required under the PPS Act (including, without limitation, a notice of a verification statement under section 157 of the PPS Act) unless the requirement for the notice cannot be excluded.

7.7 In addition to and without derogating from the confidentiality obligations of the parties set out in these Terms, neither party will disclose to a person or entity that is not a party to these Terms information of the kind mentioned in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies or that information is publicly available.

8. Defects

The Customer shall inspect the Parts on delivery and shall within seven (7) days of delivery (time being of the essence) notify hsy of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford hsy an opportunity to inspect the Parts within a reasonable time following delivery if the Customer believes the Parts are defective in any way. If the Customer fails to notify hsy of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote in accordance with this clause, the Parts shall be presumed to be free from any defect or damage. For defective Parts, which hsy has agreed in writing that the Customer is entitled to reject, hsy's liability is limited in the way set out in clause 2 of these Terms.

9. Returns

9.1 Subject to any Non-excludable Rights the Customer has regarding the return of Parts, Returns will only be accepted provided that:

- a) the Customer has strictly followed any installation instructions and only used materials provided by the manufacturer; and
- b) the Customer has complied with the provisions of clause 8; and
- c) hsy has agreed in writing to accept the return of the Parts; and
- d) the Parts are returned at the Customer's cost within 14 days of the delivery date; and
- e) hsy will not be liable for Parts which have not been stored or used in a proper manner; and
- f) the Parts 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.

9.2 Subject to any Non-excludable Rights the Customer has regarding the return of Parts Hsy may (at their sole discretion) accept the return of Parts for credit but this may incur a handling fee of up to twenty percent (20%) of the value of the returned Parts plus any freight costs.

9.3 Non-stocklist items or Parts made to the Customer's specifications, electrical or fitted Parts (it shall be the responsibility of the Customer (or the repairer) to ensure the correctness of the Parts prior to fitting), or Parts imported at the Customer's instruction, are under no circumstances acceptable for credit or return, unless the Customer has Non-excludable Rights to return the Parts.

10. Default and Consequences of Default

10.1 Interest on any overdue amounts owing to hsy under these Terms shall be payable on demand and will accrue daily and be capitalised monthly from the date when payment becomes due, until the date of payment at the Default Rate.

10.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by hsy.

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10.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify hsy from and against all costs and disbursements incurred by hsy in pursuing the debt including legal costs on a solicitor and own client basis and hsy's collection agency costs.

10.4 Without prejudice to any other remedies hsy may have, if at any time the Customer is in breach of any obligation (including those relating to payment) , hsy may suspend or terminate the supply of Parts to the Customer and any of its other obligations under these Terms or withdraw or cancel any discount, markdown, reduction or special price, previously offered by hsy to the Customer, and the Customer must, from the moment of withdrawal or cancellation, pay hsy's standard Price as at the date of the original order. Hsy will not be liable to the Customer for any loss or damage the Customer suffers because hsy has exercised its rights under this clause.

11. Security, Charge and General Lien

11.1 Despite anything to the contrary contained herein or any other rights which hsy 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 hsy or hsy's nominee to secure all amounts and other monetary obligations payable under these Terms. The Customer and/or the Guarantor acknowledge and agree that hsy (or hsy'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) hsy shall be entitled to exercise a general lien over all items in its possession belonging to the Customer until the Customer has paid in full for all of the Parts supplied by hsy to the Customer. Hsy may in its sole discretion sell any item that is subject to a lien, provided that hsy shall pay to the Customer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to hsy in respect of unpaid Parts and all reasonable costs of sale incurred by hsy;
- c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint hsy or hsy'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 11.1.

11.2 The Customer acknowledges that hsy may, at the Customer's cost and in accordance with clause 7, register any security interest created under clause 11.1 on the Personal Property Securities Register established under PPS Act.

11.3 Should hsy elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify hsy and hold it harmless from and against all hsy's costs and disbursements including legal costs on a solicitor and own client basis.

12. Cancellation

12.1 Without prejudice to hsy's other remedies at law, hsy shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and any contract to which these Terms apply, and all amounts owing to hsy shall, whether or not due for payment, shall become immediately payable in the event that:

- a) the Customer breaches these Terms in a material respect and, in the reasonable opinion of hsy, the breach:
 - (i) cannot be remedied; or
 - (ii) can be remedied, but is not remedied by the Customer within 5 business days after hsy gives the Customer notice of the breach;
- b) any money payable to hsy becomes overdue, or in hsy's opinion the Customer will be unable to meet its payments as they fall due;
- c) except to the extent that an Ipso Facto Stay applies, 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;
- d) the Part which is the subject of the order cannot be lawfully or safely provided to the Customer; or
- e) except to the extent that an Ipso Facto Stay applies, a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

12.2 Hsy shall have no liability whatsoever to the Customer in respect of any cancellations made in accordance with clause 12.1.

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12.3 Cancellation by the Customer of orders for Parts made to the Customer's specifications, imported at the Customer's instruction, or non-stocklist items will not be accepted, once the order has been placed.

12.4 The Customer must, within 5 business days after the date of expiry or cancellation:

- a) pay hsy all amounts it owes hsy, whether due at that time or not; and
- b) return all Confidential Information to hsy.

13. Privacy Act 1988

13.1 The Customer and/or the Guarantor/s (herein referred to as the Customer) agree for hsy to obtain from a Credit Reporting Body a credit report containing personal credit information about the Customer in relation to its credit history.

13.2 The Customer agrees that hsy may exchange information about the Customer with other credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a Credit Reporting Body for the following purposes:

- a) to assess an application by the 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/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.

13.3 The Customer consents to hsy being given a consumer credit report to collect overdue payment on commercial credit (Section 20F(1)(a) Privacy Act 1988).

13.4 The Customer agrees that personal credit information provided may be used and retained by hsy for the following purposes (and for other purposes as shall be agreed between the Customer and hsy or required by law from time to time):

- a) the provision of Parts;
- b) the marketing of Parts by hsy, its agents or distributors;
- c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Parts;
- 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 Parts.

13.5 hsy 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.

13.6 The information given to the credit reporting agency may include, but is not limited to:

- a) identity particulars (the Customer's name, sex, address, previous two addresses, date of birth, name of employer and driver's licence number);
- b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- c) advice that hsy 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 hsy, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- g) advice that cheques drawn by the Customer have been dishonoured more than once;
- h) that credit provided to the Customer by hsy has been paid or otherwise discharged.

13.7 Hsy collects, uses, stores and discloses personal information (as defined in the Privacy Act 1988) in accordance with its Privacy Policy, which the Customer acknowledges it has read and understood and can be accessed from <http://hsy.com.au/privacy-policy>. The Customer will only provide hsy with personal information where it has consent from the relevant individual to do so for the purposes mentioned in hsy's Privacy Policy.

hsy autoparts Pty Ltd – Terms & Conditions of Trade

14. Force Majeure

14.1 The supply of Parts or Services by hsy under these Terms may be totally or partially suspended by hsy during any period in which hsy may be prevented, hindered or delayed from delivering the Parts by hsy's normal means of supply or delivering by normal route through any circumstances outside its reasonable control including but not limited to an epidemic, pandemic or serious viral outbreak, war, acts of terror, strikes, lockouts, raw material shortages, accidents or breakdowns of plant or machinery or failure of delivery by hsy's suppliers.

14.2 Hsy shall not incur any liability to the Customer in respect of such suspension. Hsy may terminate these Terms or any contract subject to these Terms between the parties if in hsy's reasonable opinion, it believes a force majeure event will prevent it from supplying the Parts indefinitely.

14.3 To the extent not excluded by law, hsy's failure to deliver the Parts due to the occurrence of a force majeure event will not entitle either party to treat these Terms, or any contract to which these Terms apply, as repudiated.

15. General

15.1 We may receive commissions, rebates and / or sales incentives in connection with these Terms.

15.2 If a provision in these Terms is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be read down and interpreted so that it is no longer void, illegal or unenforceable or treated as deleted from these Terms for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of the Terms. This clause does not apply and has no effect if such severance of the provision of the Terms materially affects or alters the nature or effect of the parties' obligations under the Terms.

15.3 These Terms and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.

15.4 Hsy may assign, license or sub-contract all or any part of its rights and obligations without the Customer's consent.

15.5 The Customer agrees that hsy may review these Terms at any time. If, following any such review, there is to be any change to these Terms, then that change will take effect from the date on which hsy notifies the Customer of such change and will apply to any subsequent order the Customer places.

15.6 The failure by hsy to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect hsy's right to subsequently enforce that provision.

15.7 Subject to section 275(7) of the PPS Act, neither party will disclose information of the kind mentioned in section 275(1) of the PPS Act.

I/We acknowledge and agree to these Terms as amended by hsy from time to time. I/We am/are duly authorized to agree to these Terms and Conditions on behalf of the Customer.

Signed: _____

Name: _____

Date: _____