

1 DICTIONARY

In these Conditions, the following terms have the following meanings:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Conditions means these General Terms & Conditions of Trade;

Consumer has the meaning given in the Australian Consumer Law;

Consumer Contract has the meaning given in section 23 of the Australian Consumer Law;

Contract means a contract (whether or not in writing) between or involving the Purchaser and the Supplier (and possibly one or more others) for the supply of Products by the Supplier to the Purchaser, to which these Conditions apply under clause 2.1 (including any quotation or invoice given by the Supplier to the Purchaser, or any Purchase Order to the extent it is accepted by the Supplier);

Custom Products means any goods manufactured by the Supplier for the Purchaser in accordance with specifications or requirements provided by the Purchaser to the Supplier;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Imported Products means any goods that are imported by the Supplier and supplied to the Purchaser;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Prescribed Rate means the rate that is 2% per annum above the rate specified from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic);

Prices has the meaning given in clause 5.1;

Products means any goods manufactured and/or supplied (or to be manufactured and/or supplied) by the Supplier to the Purchaser (including those products specified in any Contract, any Custom Products and any Imported Products);

Purchase Order means any purchase order, instruction, specification or requisition issued by the Purchaser to the Supplier relating to Products;

Purchaser means the person specified in or contemplated by a Contract as being the purchaser of the Products;

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth); and

Supplier means the company specified in or contemplated by a Contract as being the supplier of the relevant Products, being Sprockets Australia Pty Ltd ABN 88 006 125 337 or a Related Body Corporate of that company.

2 APPLICATION OF THESE CONDITIONS

- 2.1. Unless otherwise agreed in writing, these Conditions apply to all Products provided or supplied, or to be provided or supplied, by the Supplier to the Purchaser, and are taken to be incorporated in and form part of each Contract.
- 2.2. Each Contract constitutes the whole agreement and understanding between the Supplier and the Purchaser in relation to the relevant Products.
- 2.3. If there is any inconsistency between the terms set out in a Purchase Order or other document issued by or on behalf of the Purchaser to the Supplier (on the one hand) and the terms of these Conditions (on the other hand), then the terms of these Conditions prevail to the extent of the inconsistency.
- 2.4. The Supplier may from time to time vary these Conditions (other than in relation to Prices, which may be varied in accordance with clause 5) by giving at least 30 days' notice in writing to the Purchaser. If a Contract is a Consumer Contract (and the variation does not relate to the Prices), then the Purchaser may refuse to accept such a

variation by giving written notice to the Supplier within that 30 day notice period, in which case the variation will not apply to that Contract unless otherwise agreed in writing by the Supplier and the Purchaser. If the Purchaser does not make such an election within the relevant 30 day notice period or a Contract is not a Consumer Contract, then the Purchaser agrees that all Products ordered after notification of the variation will be subject to the variation and the placing of such orders will be taken to be an acceptance of the variation by the Purchaser.

3 ACCEPTANCE AND CANCELLATIONS

- 3.1. The Purchaser is deemed to have acknowledged and accepted these Conditions by ordering Products from the Supplier, requesting the manufacture of Custom Products by the Supplier, making and/or facilitating payment to the Supplier in respect of ordered Products or requests for the manufacture of Custom Products, or by agreeing to any other document provided by the Supplier that incorporates these Conditions by reference.
- 3.2. The Supplier reserves the right to refuse acceptance of part or all of any Purchase Order at its sole discretion. No Purchase Order issued by the Purchaser will be taken to have been accepted by the Supplier unless acceptance of that Purchase Order has been communicated by the Supplier to the Purchaser in writing.
- 3.3. Once a Purchase Order has been issued by the Purchaser to the Supplier, it may only be cancelled by the Purchaser with the written consent of the Supplier. If such consent is given, then the Purchaser must reimburse the Supplier on demand for all losses, damages and expenses directly or indirectly incurred by the Supplier in the preparation and procurement of the relevant Products to fulfil the relevant Purchase Order.

4 QUOTATIONS AND TENDERS

Any quotations and/or tenders sent by the Supplier to the Purchaser, prior to receipt by the Supplier of written acceptance by the Purchaser, are subject to change or withdrawal at any time by the Supplier in writing, and (unless the Supplier states otherwise in the relevant quotation or tender) will be taken to have been rejected by the Purchaser if not accepted by the Purchaser in writing before the date that is 30 days after the date of the relevant quotation or tender (as applicable).

5 PRICES

- 5.1. Subject to the other provisions of this clause 5, all prices payable by the Purchaser to the Supplier for Products supplied or to be supplied by the Supplier to the Purchaser (**Prices**) are as set out in the relevant Contract, or if not specified in that Contract, as notified to the Purchaser by the Supplier from time to time.
- 5.2. Subject to clause 5.4, all Prices are subject to change by the Supplier from time to time on the Supplier giving the Purchaser at least 30 days' prior written notice of any such change.
- 5.3. Prices for Imported Products are based on the rates of exchange, freight and insurance, and customs and duties, prevailing at the date of quotation. Any increase or decrease in costs resulting from changes in these rates affecting the Products as delivered, will be to the Purchaser's account if that change is notified to the Purchaser before the relevant Products have been provided or supplied to the Purchaser.
- 5.4. If a Contract is a Consumer Contract, then the Purchaser may refuse to accept any Price change referred to in clause 5.2 for the relevant Products by giving written notice to the Supplier within the

30 day notice period referred to in clause 5.2 (or in respect of a Price change under clause 5.3, before the Products have been provided or supplied to the Purchaser), in which case the Price change will not apply in respect of any such Products ordered (and not delivered) before notification of the Price change. If the Purchaser does not make such an election within the relevant 30 day notice period (or in respect of a Price change under clause 5.3, before the Products have been provided or supplied to the Purchaser) or a Contract is not a Consumer Contract, then the Purchaser agrees that all Products ordered, provided or supplied after notification of the Price change will be subject to the Price change, and the placing of such orders or acceptance of the Products provided or supplied will be taken to be an acceptance of the Price change by the Purchaser.

- 5.5. Unless otherwise stated in a Contract, the Prices do not include any of the following in relation to the relevant Products:
 - (a) any applicable GST (as that term is defined in the GST Act);
 - (b) any other taxes (other than income tax), duties, levies and other government fees and charges (**Other Taxes**); or
 - (c) any delivery, packaging, freight, insurance, installation and/or commissioning costs, expenses or surcharges (**Delivery Charges**).

- 5.6. Unless otherwise stated in a Contract, the amount of any applicable GST, Other Taxes and Delivery Charges will be added to, and must be paid by the Purchaser to the Supplier, in the same way and at the same time as the Price for the relevant Products is payable under or in connection with the relevant Contract.

6 TERMS OF PAYMENT

- 6.1. Payment of the Price and any other amounts payable in respect of the relevant Products must be made in full by the Purchaser to the Supplier within 30 days after the end of the month in which the relevant invoice was issued by the Supplier for those Products, notwithstanding the fact that the relevant Products may not have been delivered, supplied, installed or commissioned by that date.
- 6.2. Invoices may be issued progressively as Products are delivered or supplied to the Purchaser and as any required work in relation to the Products is carried out by the Supplier.
- 6.3. Each payment must be made by the Customer by cash, bank cheque, electronic funds transfer, credit card or by any other method as may be agreed by the Supplier and the Purchaser. The Purchaser must bear the cost of any merchant fees or other similar amounts incurred by the Supplier on any credit card payments.

7 DELIVERY

- 7.1. The Products will be delivered or taken to be delivered, when they are delivered to the delivery place specified in the relevant Contract. If no such address is specified in that Contract or the Purchaser nominates an unmanned location for delivery, then delivery will be taken to occur at the time when the Products are ready for collection at the Supplier's premises or at the time the Products are left at the unmanned location, respectively.
- 7.2. Delivery may be by separate instalments. Each separate instalment must be accepted and fully paid for by the Purchaser, notwithstanding any late delivery or any non-delivery of any other instalment.

- 7.3. Any times quoted for delivery are estimates only. The Supplier will not be liable to the Purchaser for any failure to deliver or for delay in the delivery of the Products. Any failure to deliver or delay in delivery does not entitle the Purchaser to terminate any Contract.
- 8 RISK**
Risk in each Product will pass to the Purchaser at the time delivery to the Purchaser occurs (or is taken to have occurred) in accordance with clause 7.1.
- 9 TITLE**
- 9.1. Capitalised terms used in this clause 9 that are not otherwise defined in these Conditions have the meaning given in the PPSA.
- 9.2. The Purchaser acknowledges and agrees that each Contract constitutes a Security Agreement under the PPSA and secures the Supplier's right to receive the Price of all Products sold under the relevant Contract and all other amounts from time to time owing by the Purchaser to the Supplier under that Contract or any other Contract.
- 9.3. The Purchaser agrees that legal title and property in the Products is retained by the Supplier (and that the Supplier retains a Security Interest in all Proceeds relating to those Products) until payment is received in cleared funds from the Purchaser of all sums owing to the Supplier in relation to the Products.
- 9.4. The Purchaser must promptly do anything required by the Supplier to ensure that the relevant Security Interest is a perfected Security Interest and has priority over all other Security Interests in the Products and any Proceeds relating to those Products.
- 9.5. Until legal title and property in any Product has passed to the Purchaser, the Purchaser must keep that Product separate from other products and must store the Products so that they are readily identifiable as being supplied by the Supplier.
- 9.6. If the Purchaser fails to pay any amount to the Supplier in relation to any Products by the due date required under the relevant Contract for that payment, then the Supplier may (without limiting any of its other rights and remedies) recover and resell any of the Products in which property has not passed to the Purchaser and any Proceeds relating to those Products. In addition to any rights the Supplier may have under Chapter 4 of the PPSA, the Supplier may, without notice, enter any premises where it suspects the Products and/or any Proceeds relating to the Products may be located and remove them without committing a trespass, and the Purchaser authorises the Supplier to enter on to the premises where the Products and/or those Proceeds are located to take possession of the Products and/or those Proceeds for that purpose at any time.
- 9.7. The Purchaser agrees to waive any right to receive any notice or statement from the Supplier under the PPSA, except to the extent that the giving of that notice or statement is required by the PPSA and cannot be excluded by agreement.
- 9.8. To the maximum extent permitted by law:
- (a) for the purpose of sections 115(1) and 115(7) of the PPSA:
- (i) the Supplier need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
- (ii) sections 142 and 143 are excluded;
- (b) for the purpose of section 115(7) of the PPSA, the Purchaser need not comply with sections 132 and 137(3); and
- (c) if the PPSA is amended after the date of the relevant Contract to permit the Supplier and the Purchaser to agree to not comply with or to exclude other provisions of the PPSA, then the Supplier may notify the Purchaser that any of those provisions are excluded, or that the Supplier need not comply with any of those provisions, as notified to the Purchaser by the Supplier, and that notice will be binding on the Purchaser.
- 9.9. If the Supplier exercises a right, power or remedy in connection with any Contract, then that exercise is taken not to be an exercise of a right, power or remedy under the PPSA, unless the Supplier states otherwise at the time of exercise. However, this clause 9.9 does not apply to a right, power or remedy that can only be exercised under the PPSA.
- 9.10. The Security Interests arising under this clause 9 attach to the relevant Products when the Purchaser obtains possession of those Products and the parties confirm that they have not agreed that any Security Interest arising under this clause 9 attaches at any later time.
- 10 DEFAULT**
- 10.1. If the Purchaser fails to pay to the Supplier any amount when due under a Contract, then the Supplier may (at its sole discretion and without limiting its other rights and remedies):
- (a) suspend performance of its obligations under or in connection with that Contract until the amount outstanding is paid in full; and
- (b) charge interest on the amount outstanding at the Prescribed Rate, calculated from and including the date on which the relevant payment became due until but excluding the date on which the relevant payment is made, which interest is payable by the Purchaser to the Supplier on demand.
- 10.2. Without limiting any other right or remedy the Supplier may have, whether under these Conditions, statute or otherwise, the Supplier may terminate a Contract with immediate effect by providing written notice to the Purchaser if the Purchaser:
- (a) breaches any obligation of the Purchaser under that Contract (including the obligation of the Purchaser to pay any amounts when due under that Contract) and if the breach is capable of remedy, the Purchaser does not remedy the breach within 7 days after being notified in writing by the Supplier; or
- (b) has a receiver, receiver and manager, liquidator, provisional liquidator, trustee, mortgagee in possession, administrator, controller or inspector appointed under any law (or any similar official is appointed in respect of the Purchaser or any of its assets) or the Purchaser is unable to pay its debts when due or otherwise is, becomes or is deemed to be insolvent or bankrupt.
- 10.3. On termination under clause 10.2, the Supplier may at its option exercise any one or more of the following rights (in addition to any other rights it may have under the relevant Contract or at law):
- (a) suspend deliveries of further Products to the Purchaser;
- (b) terminate any other Contract in relation to Products that have not been delivered or supplied to the Purchaser;
- (c) withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owed to the Supplier by the Purchaser from time to time (and the Purchaser must comply with that requirement);
- (d) issue an invoice for, and demand immediate payment of, Products ordered by the Purchaser but not delivered (and the Purchaser must comply with that demand);
- (e) in respect of Products already delivered or otherwise supplied to the Purchaser, enter onto the Purchaser's premises to recover and resell those Products (and the Purchaser must ensure that the Supplier is able to exercise that right of entry); and
- (f) exercise any rights that the Supplier has under the PPSA or any other applicable law.
- 10.4. On termination of the relevant Contract for any reason and without limiting the Supplier's other rights and remedies, the Purchaser will be responsible for any storage, repossession and recovery fees, including administrative and legal costs of recovery, in relation to the Products and all other reasonable costs and charges incurred by the Supplier in connection with the termination, which fees, costs and charges will be payable by the Purchaser to the Supplier on demand.
- 11 WARRANTY**
- 11.1. In this clause 11, terms that are in italics have the meaning given to them in the Australian Consumer Law. Clause 11.2 only applies where the Purchaser is a Consumer in connection with the supply of the Products.
- 11.2. The Products come with guarantees that cannot be excluded under the Australian Consumer Law. The Purchaser is entitled to a replacement or refund for a *major failure* and compensation for any other reasonably foreseeable loss or damage. The Purchaser is also entitled to have the Products repaired or replaced if the Products fail to be of *acceptable quality* and the failure does not amount to a *major failure*. These benefits are in addition to any other rights and remedies available to the Purchaser at law in relation to the Products, subject to clause 13.
- 11.3. Any guarantees provided by the Supplier in clause 11.2 in relation to a Product only apply for a period of 12 months from the date of delivery or supply of that Product by the Supplier to the Purchaser (each a **Warranty Period**).
- 11.4. If the Purchaser considers that it is entitled to make a claim under this clause 11 or otherwise in relation to a Product (**Warranty Claim**), then the Purchaser must (at its cost):
- (a) notify the Supplier by email or post (using the contact details set out on the first page of these Conditions or as otherwise notified by the Supplier) before the end of the relevant Warranty Period;
- (b) as part of that notification, provide the Supplier with:
- (i) details of the alleged defect that relates to the Product;
- (ii) the Purchaser's full name, address and telephone number;
- (iii) a copy of the Contract relating to the Product; and
- (iv) any other information required by the Supplier; and
- (c) cause the allegedly defective Product to be returned to the Supplier for inspection at the address set out on the first page of these Conditions.
- 11.5. If the Supplier is satisfied that the Purchaser has the right to make a Warranty Claim and that the relevant Product is defective, then the Supplier will (at the Supplier's option and as the Purchaser's sole remedy) take any action contemplated by clause 13.5 (as if that Product were not of a kind ordinarily acquired for personal, domestic or household use or consumption).
- 11.6. To the maximum extent permitted by law, the warranties and other requirements contained in this clause 11 (if applicable) do not cover defects in material or workmanship which the Supplier determines to have been caused by:
- (a) improper use;

- (b) improper installation;
- (c) fire, water, lightning, frost or accidental damage;
- (d) any alteration, repair or other technical manipulation (without the Supplier's consent) by the Purchaser or any other person not acting under the direction or control of the Supplier;
- (e) any act or omission of the Purchaser or any other person not acting under the direction or control of the Supplier;
- (f) the fitting or use of parts or accessories not approved by the Supplier;
- (g) normal wear and tear; or
- (h) in the case of Custom Products, any incorrect specifications or requirements provided by the Purchaser to the Supplier.

11.7. To the maximum extent permitted by law, the following additional terms and conditions will apply in respect of any Warranty Claim:

- (a) To the extent that this clause 11 (or any applicable law) places a repair or replacement obligation on the Supplier, the relevant Products or any other consumables or other materials used in relation to that repair or replacement, may (where possible) instead be replaced by second hand or refurbished products, consumables or other materials (as the case may be) of the same or similar type.
- (b) Without limiting the other provisions contained in these Conditions, the Supplier will not be liable under any Warranty Claim relating to any Products if:
 - (i) any moneys are owing by the Purchaser to the Supplier in relation to any of the Products; or
 - (ii) the Purchaser is in breach of any terms of the relevant Contract (including these Conditions).

11.8. Any Products supplied to a Purchaser by the Supplier acting as agent, re-seller or re-supplier of the manufacturer of the relevant Product, may come with limited warranties from the manufacturers of those Products and, to the maximum extent permitted by law, those warranties are the only warranties given to the Purchaser in respect of those Products (it being acknowledged and agreed that those warranties are given by the manufacturer, not the Supplier). The Supplier (in its capacity as agent, re-seller or re-supplier) has no authority to make any representations or warranties in relation to any such Products, and it can only pass on information in relation to the Products which is published in materials or other data provided by the manufacturer of the Products and which is in the public domain.

12 RETURN OF PRODUCTS

To the maximum extent permitted by law, and subject to clauses 11 and 13, the Supplier may, but will not be required to, accept a return of any Product and no return will be accepted by the Supplier unless it is authorised in writing by an officer or authorised representative of the Supplier. Any Product accepted for return may be subject to a restocking fee as specified by the Supplier, which fee the Purchaser must pay to the Supplier on demand.

13 LIABILITY

13.1. Subject to the provisions of this clause 13, and to the maximum extent permitted by law, the Supplier is not liable to the Purchaser or to any other person for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, or loss or damage resulting from wasted management time, irrespective of whether the loss or damage is caused by or

relates to breach of contract, statute, tort (including negligence) or otherwise, or the Supplier or any other person was previously notified of the possibility of that loss or damage.

- 13.2. Any warranty, guarantee, condition, representation, undertaking or other right that would be implied in or otherwise required in connection with the relevant Contract by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.
- 13.3. Notwithstanding the other provisions in this clause 13 and anything else in these Conditions, the Supplier does not exclude, restrict or modify any warranty, guarantee, condition, representation, undertaking or other right under any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene that statute or cause any part of these Conditions to be void (**Non-excludable Condition**).
- 13.4. Subject to this clause 13, the maximum aggregate liability of the Supplier for all proven losses, damages and claims arising out of any Contract, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Purchaser to the Supplier under the relevant Contract to which the relevant breach, negligence, tort or common law or statutory action relates.
- 13.5. To the maximum extent permitted by law, the liability of the Supplier for a breach of any Non-excludable Condition in respect of any goods or services supplied under a Contract that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited, at the Supplier's option to:
 - (a) in the case of goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
 - (b) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

14 INTELLECTUAL PROPERTY

Any technical information, knowledge or installation methods at any time given or transmitted either orally or in writing by the Supplier to the Purchaser (or otherwise obtained by the Purchaser directly or indirectly from the Supplier) will remain the property of the Supplier and must be treated by the Purchaser as confidential information of the Supplier. Except to the extent expressly permitted by a Contract, the Purchaser must not use any such information, knowledge or methods for any purpose nor sell, transfer or divulge any of it in any manner to anyone without the prior written consent of the Supplier.

15 FORCE MAJEURE

- 15.1. Where any failure or delay by the Supplier in the performance of its obligations under a Contract is caused, directly or indirectly, by an event or occurrence that is beyond the reasonable control of the Supplier (**Force Majeure Event**), the Supplier is not liable for that failure or delay and the Supplier's obligations under that Contract are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.
- 15.2. A Force Majeure Event includes the failure or inability of any suppliers of the Supplier to supply

or provide any goods or services required by the Supplier to provide or supply the Products to the Purchaser.

16 INDEMNITY

- 16.1. The Purchaser must indemnify the Supplier and each of its Related Bodies Corporate (**Indemnified Parties**) on demand in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against any of the Indemnified Parties or which any of the Indemnified Parties may pay, sustain or incur as a direct or indirect result of any breach or non-performance of any Contract by the Purchaser, or as a result of any wrongful or negligent act or omission of the Purchaser or any employees, directors or agents of the Purchaser.
- 16.2. To the extent that the indemnity in this clause 16 is expressed to be for the benefit of a Related Body Corporate of the Supplier, the Supplier enters into the relevant Contract in its own capacity and in its capacity as trustee and agent for that Related Body Corporate, and the Supplier is entitled to enforce the indemnity for the benefit of itself and that Related Body Corporate.

17 GENERAL

- 17.1. Headings are used for convenience only and do not affect the interpretation of any Contract.
- 17.2. Any notice to be given by the Supplier to the Purchaser under these Conditions may be given personally, by post, by fax or by email.
- 17.3. Words importing natural persons include partnerships, bodies corporate, associations, governments, and governmental and local authorities and agencies.
- 17.4. A reference to either the Supplier or the Purchaser includes its respective executors, administrators, successors and permitted assigns.
- 17.5. Wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".
- 17.6. If any provision of a Contract is or becomes invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected.
- 17.7. A failure or delay by the Supplier in exercising any right conferred on the Supplier under any Contract does not operate as a waiver of the right.
- 17.8. The Purchaser must not transfer, assign, create an interest in or deal in any other way with any of its rights under any Contract without the prior written consent of the Supplier.
- 17.9. The Purchaser must not set off against or deduct from any Price or other amounts owing to the Supplier, any amounts owed or claimed to be owed to the Purchaser by the Supplier, nor withhold payment of any amount due to the Supplier because that amount or any part of it is in dispute.
- 17.10. Each Contract is governed by and must be construed in accordance with the laws in force in Victoria. The Purchaser submits to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to that Contract.