

1. Definitions

"Seller" shall mean Manta Performance Exhausts its successors and assigns or any person acting on behalf of and with the authority of Manta Performance Exhausts.
"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 the Seller to the Customer.
"Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
"Goods" shall mean Goods supplied by the Seller to the Customer (and where the context as permits shall include any supply of services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Customer.
"Services" shall mean all Services supplied by the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above.
"Price" shall mean the price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 4 of this contract.

2. Acceptance

Any instructions received by the Seller from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
Upon acceptance of these terms and conditions by the Customer, the terms and conditions are binding and can only be amended with written consent of the Seller.
The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.
Goods are supplied by the Seller only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3. Claims/Warranty

Any claim for non-delivery, shortage in supply or damage occurring during the course of delivery or any claims for rejects by a Customer must be in writing and given to the Claims/Warranty department of the supplier within Seven (7) days of delivery.

4. Price and Payment

- 4.1 At the Sellers sole discretion the Price shall be either: as indicated on invoices provided by the seller, or the Seller's current price at the date of delivery of the Goods according to the Sellers current price list or, the Sellers quoted price (subject to clause 4.2) which shall be binding, provided that the Customer shall accept the quotation within thirty (30) days.
- 4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's Quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of increases to the Seller in the cost of materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice.
- 4.3 Time for payment for the Goods shall be to the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.4 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery of Goods

- 5.1 At the Sellers sole discretion the costs of delivery are; in addition to the Price; or for the Customers account.
- 5.2 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.3 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

6. Risk

- 6.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 Where the Customer expressly requests the Seller to leave Goods outside the Seller's premises for collection or to deliver Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.

7. Title

- 7.1 The Seller and the Customer agree that ownership of the Goods shall not pass until the Customer has paid the Seller all amounts owing for the particular Goods.
- 7.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the seller's ownership or rights in respect of the goods shall continue.
- 7.3 The Seller shall have the right of stopping the Goods in transit whether or not delivery had been made and if the Customer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into the land and premises owned, occupied or used by the customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods.
- 7.4 The Customer is only bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Seller.
- 7.5 Until such time that the ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

8. Returns

- 8.1 Returns will be only accepted provided that:
 - a. the Customer has complied with the provisions of clause 3, and
 - b. you have notified Manta Performance Exhausts returns department and received a Credit Return number for the Goods you are returning, and
 - c. freight will be deducted (metro) both ways from your account, and
 - d. a ten (10) % restocking fee will apply to all Goods returned, unless otherwise agreed.
 - e. the customer WILL NOT return goods on the Sellers account without prior permission. Any charge incurred will be collected from the Customers account.
 - f. the seller will not be liable for Goods which have not been stored or used in a proper manner.
 - g. the Goods are returned in the condition in which they were delivered and with all packaging material and instruction material in as new condition as is reasonably possible in the circumstances. DO NOT WRITE ON THE PARTS at any time. Please use labels.



9. Default & Consequences of Default

- 9.1** In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Seller
- 9.2** If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all cost and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 9.3** Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 9.4** Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment. Become immediately payable in the event that:
- any money payable to the Seller becomes overdue, or
 - in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
 - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

10. Cancellation

- 10.1** The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the price. The seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

11. Privacy Act 1988

- 11.1** Acknowledgement that credit information may be given to a credit reporting agency, the Customer understands that section 18E (8) (C) of the Act allows the Supplier to give a credit reporting agency certain personal information about the Customer. The information which may be given to an agency as covered by section 18E (1) of the Act and includes: Particulars to identify the Customer, The fact that the Customer has applied for credit and the amount, the fact that the Supplier is a credit provider to the Customer. Payments which become overdue more than 60 days, Advice that payments are no longer overdue, Cheques of \$100 or more drawn by the Customer which a Bank has dishonoured more than once, In specified circumstances, that in the opinion of the Supplier the Customer has committed a serious credit infringement, That the credit provided to the Customer by the Supplier has been discharged.
- 11.2** Authority for the Supplier to obtain certain credit information. To enable the Supplier to assess the Customer application for commercial or personal credit, the customer authorises the Supplier as follows: if asked to provide commercial credit, to obtain from a reporting agency a credit report containing personal credit information about the Customer. This is in accordance with section 18K (1) (b) of the Act. If asked to provide personal credit, to use a credit report containing information about the customer's commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person. This is in accordance with section 18L (4) of the Act.

12. General

- 12.1** If in any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 12.2** These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
- The Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.
- 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 the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, storm or other event beyond the reasonable control of either party.

13. Website

- The Manta Performance Exhausts web site, is subject to change at any time without prior warning.