

## TERMS OF TRADE

Mercury Mufflers is pleased to be doing trade with you. Our Terms of Trade are set out below. They govern our business relationship with you and should be read carefully.

### 1. DEFINITIONS.

1.1 The following words have the following meanings in these Terms and Conditions unless the contrary intention appears: Purchaser means the purchaser of the goods specified on the face of the invoice.

Goods means the goods specified on the face of the invoice.

### 2. GENERAL.

2.1 Except as expressly provided in these Terms and Conditions, these Terms and Conditions constitute an exclusive statement of the agreement

between Mercury and the Purchaser with respect to the sale of the goods, despite any provisions to a contrary effect in any of the Purchaser's

order forms or other documents. These Terms and Conditions supersede all prior arrangements written or oral.

2.2 Mercury may change these Terms and Conditions anytime in writing.

2.3 The Purchaser's acceptance of these Terms and Conditions in relation to any contract for sale of the Goods is signified by the making of an order

or the Goods where the Purchaser has previously received a copy of these Terms and Conditions, whether such copy was contained in an

invoice in relation to any previous contract for sale of Goods or otherwise.

2.4 A contract for sale of the Goods is to be governed and construed in accordance with the law in effect in Queensland, New South Wales and

Western Australia and the parties accept the non-exclusive jurisdiction of the courts of Queensland, New South Wales and Western Australia, in

relation to any dispute between them.

### 3. DELIVERY.

3.1 The Purchaser will bear the costs of delivery of the Goods from Mercury's warehouse to the Purchaser's premises.

3.2 Delivery shall be deemed to have been made on loading of Goods by the carrier at Mercury's warehouse.

3.3 Mercury shall not be liable for any loss or damage, including consequential loss, suffered by the Purchaser arising from or related to any late

delivery or failure to make delivery or an order whether in whole or part.

3.4 Mercury will upon request, act as the Purchaser's Agent to arrange freight and insurance for goods between Mercury's warehouse and the point

of delivery nominated by the Purchaser and such charges incurred upon Purchaser's request will be separately itemised upon the invoice.

### 4. RISK AND TITLE.

4.1 The risk of loss or damage to the Goods shall pass to the Purchaser from the time of delivery.

4.2 Until title passes to the Purchaser, the Purchaser is in a fiduciary relationship with Mercury and is a Bailee only of the Goods and the Purchaser

must:

(a) store the goods separately and separately identified from other goods on the Purchaser's premises; and

(b) keep separate records in relation to the proceeds of sale of any Goods which have not been paid for, bank the proceeds of such sale into a

separate account and immediately remit such funds to the credit of Mercury.

4.3 Until all accounts owed by the Purchaser to Mercury are paid, Mercury reserves the following right in relation to the Goods:

(a) legal ownership of the Goods;

(b) to enter the Purchaser's premises (or the premises of any associated company where the Goods are located) without liability for trespass or

any resulting damage and retake possession of the Goods; and

(c) to keep or resell any Goods repossessed pursuant to paragraph (b).

Notwithstanding the provisions of this clause, Mercury shall be entitled to maintain an action against the Purchaser for the purchase price.

### 5. WARRANTIES AND CONDITIONS.

5.1 All implied warranties and conditions are excluded to the maximum extent permitted by law.

5.2 To the maximum extent permitted by law, Mercury is not liable for:

(a) any loss or damage to the Goods resulting from any act or omission on the part of the Purchaser, or employees, contractors or agents of the Purchaser;

(b) any special, consequential, direct or indirect loss or damage incurred by the Purchaser.



**MERCURY MUFFLERS (AUST) PTY. LTD.**

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## **6. RESCISSION.**

Mercury may, in addition to any other course of action available to it, elect to terminate or rescind any contract of sale by notice in writing to the

Purchaser in the event that the Purchaser:

(a) is served with any proceedings under the Bankruptcy Act or the winding-up provisions of the Corporations Law or similar legislation; or

(b) commits a breach of these terms and fails to remedy such breach after being given (7) days written notice by Mercury to do so.

On termination or recession all invoices rendered by Mercury are payable immediately and Mercury may exercise its rights under sub-clauses 4.3(b)

and (c).

## **PURCHASER'S WARRANTIES**

6.1 The Purchaser warrants that:

(a) the Purchaser is a party to a contract for sales of the Goods as a principal in its own right. If the Purchaser acts as agents or trustee of a trust

the Purchaser agrees to inform Mercury in writing of the details of this relationship; and

(b) the Purchaser will not make any representations or claims about the Goods to persons to whom it sells the Goods which are false and misleading.

## **7. SEVERANCE.**

7.1 Should any part of these Terms and Conditions be held to be void or unlawful, these Terms and Conditions are to be read and enforced as if the

void or unlawful provisions had been deleted.