



The Diesel Parts Specialists

TERMS & CONDITIONS OF SALE

Engine Imports Pty Ltd trading as Engine Australia

1. Every contract between the Applicant customer ("the Customer") and Engine Australia is subject only to the terms of Engine Australia's quotation, and no variation of those terms is binding on Engine Australia unless it agrees to it in writing.
2. Our credit terms are that the Customer must pay Engine Australia within 30 days after the end of the month in which the customer placed the order. Time will be of the essence in this regard. Engine Australia may at any time, and without giving any reason, withdraw the Customer's credit account approval status in respect of any future transaction, either permanently or in respect of any individual transaction/s. If that happens, the Customer must pay on such terms as Engine Australia notifies, including payment before collection, delivery and/or installation. The terms and conditions on which a credit account may be granted and operated are subject to change without notice. If the customer does not have an active trading account with the Engine Australia, all goods must be paid for before they are despatched/collected.
3. Payment must be by cash, EFTPOS, credit card (Visa and MasterCard), direct deposit or bank cheque or as Engine Australia otherwise directs. Non-bank cheques will not constitute payment until cleared and paid in full. If paying by Visa or MasterCard, for amounts older than 30 days from EOM, Engine Australia reserves the right to charge the Customer a processing fee a % (as listed on monthly statement) charged by its bank which will be added to the transaction value.
4. Engine Australia shall be entitled to charge the Customer interest at the rate of 15% per annum on any amounts more than 90 days overdue. Interest accrues daily until such amounts are paid in full and is payable without further demand.
5. A Monthly Account Statement summarizes, the invoices/credit notes processed and details of goods supplied, delivered and/or credited. The amount the Customer owes Engine Australia is prima facie evidence of those matters.
6. No warranty is given that the parts supplied are exactly as described in the relevant supplier's catalogue. If any goods and/or services supplied by Engine Australia are defective or unsatisfactory in any way, Engine Australia's total liability to the Customer and any other party claiming through the Customer is limited to the reasonable cost of replacement or repair of the parts. Engine Australia will in no circumstances be liable for any consequential loss or damage the Customer may suffer. The Customer will ensure that any of its terms of trade with any other party likewise limit Engine Australia's liability. (For further information, refer to Engine Australia's Warranty Statement)
7. The Customer will give Engine Australia written notice within 30 days of first becoming aware of any problem with any goods or services supplied which could give rise to a claim of any kind against Engine Australia.

8. Notwithstanding any advised or estimated date for delivery, time will not be of the essence in respect of such delivery date. No warranty is given as to the date for delivery unless Engine Australia has specifically agreed in writing otherwise. Delivery times are estimates only and the company will not be liable for delays in delivery.

9. Title to goods will pass on payment in full of the purchase price and not before (even if they have been delivered and/or installed). (PPSR Refer: 17.0 – 17.4)

10. If Engine Australia becomes entitled to recover any goods, the customer authorises Engine Australia's servants and agents to enter any premises on which they may be stored to recover them.

11. All prices quoted are in AUD, and do not include freight or insurance unless itemized expressly and or referred to. Quotes unless otherwise stated are valid for 30 days from date of issue, and all prices are subject to change. Engine Australia will arrange delivery for the Customer unless other arrangements are made. Goods are deemed delivered to the Customer upon Engine Australia dispatching the goods. If desired the Customer may arrange their own transit insurance.

12. Goods which are damaged or lost in transit (or delivered later than expected) will not be resupplied, replaced or repaired free of charge by Engine Australia, regardless of circumstances.

13. All credit returns must be in original packing condition or a purchasable standard and accompanied by the relevant invoice number, date of purchase and reason for the return. Credit returns should be sent back to Engine Australia via a method that allows the consignment to be traced. Faulty or incorrectly supplied parts, and parts returned within 30 days, will be fully credited. Parts returned after 30 Days from invoice date will attract a 10% handling charge. Parts returned after 60 Days from invoice date will not be credited without prior approval. Freight on all credit returns must be prepaid by the customer, if this does not occur, the cost of the freight will be deducted from the credit processed on the returned items. Special procurement items are not returnable for credit unless defective.

14. It is the responsibility of the Customer to check the suitability of the parts for the desired application. No responsibility whatsoever is accepted for the fitment of incorrect parts. This is totally the responsibility of the fitter/Customer. Parts should not be used for any purpose other than for the purpose for which they were manufactured.

15.0 The Customer must carefully inspect goods supplied by Engine Australia on delivery and must within 7 days of delivery notify Engine Australia in writing of any evident defect/damage, shortfall in quantity, or failure to comply with any description or quote. The Customer must notify Engine Australia of any other alleged defect in the goods in writing as soon as reasonably possible after any such defect becomes evident and allow Engine Australia to inspect the goods.

15.1 Under the applicable State, Territory and Commonwealth Law (including Competition and Consumer Act 2010 ('the CCA')), certain statutory guarantees and warranties apply to any supply regulated by such legislation (the Non-Excluded Guarantees). Engine Australia acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

15.2 Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, Engine Australia gives no warranties (including but not limited to the quality or suitability of the goods). Engine Australia's liability in respect of any warranties or guaranties is limited to the fullest extent permitted by law.

15.3 If the Customer is a consumer within the meaning of the CCA, Engine Australia's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA. If the Customer is not a consumer with the meaning of the CCA, Engine Australia's liability for any defect or damage in the goods is:

(a) limited to the value of any express warranty provided to the Customer by Engine Australia in Engine Australia's sole discretion;

(b) limited to any warranty to which Engine Australia is entitled, if Engine Australia did not manufacture the goods;

(c) otherwise negated absolutely.

15.4 If Engine Australia is liable for a breach of any guarantee, condition or warranty implied by the CCA in respect of goods or services, Engine Australia's liability is limited to, at the election of Engine Australia:

(a) in respect of any Services, either the resupply of the services or the payment of the cost of having the services resupplied; and

(b) in respect of goods, either the replacement or repair of the goods in respect of which the breach occurred, or

(c) the refund of any money the Customer has paid for the goods or services (less any retention of costs incurred by Engine Australia).

15.5 Subject to the above, Engine Australia's liability for any loss or damage suffered by the Customer in connection with the supply of any goods and services by Engine Australia (including liability for any negligent act or omission), shall be limited to the price paid for the goods, and Engine Australia shall under no circumstance be liable for consequential or indirect damages arising out of or in connection with these Terms, (including without limitation, loss of profits or damage suffered as a result of claims by any third person).

15.6 Subject to this clause, returns will only be accepted if:

(a) the Customer has complied with the provisions of sub-clause 1; and

(b) Engine Australia agrees that the goods are defective; and

(c) the goods are returned within a reasonable time at the Customer's cost, in as close a condition to that in which they were delivered as is possible.

15.7 Notwithstanding any sub-clause of this provision but subject to the CCA, Engine Australia shall not be liable for any defect, damage or liability which may be caused or partly caused by or arise as a result of:

(a) the Customer failing to properly install, use, operate, maintain, store or transport any goods;

(b) the Customer using the goods for any purpose other than that for which they were designed, or making any unauthorized modification;

(c) the Customer continuing the use of any goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

(d) the Customer, its employees or contractors failing to strictly follow any instructions, guidelines or manuals provided by Engine Australia or any work place health and safety legislation or guidelines, or provide proper training to its employees or contractors;

(e) fair wear and tear, any accident, or act of God;

15.8 Notwithstanding anything contained in this clause, if Engine Australia is required by a law to accept a return then Engine Australia will only accept a return on the conditions imposed by that law.

16. This Agreement will be governed by the laws of Queensland and Australia and the relevant courts will have exclusive jurisdiction incidental hereto. All contracts between the parties are deemed entered in Dalby, Queensland.

17.0 In this clause the terms 'financial statement', 'financing change statement', 'security agreement', and 'security interest' have the meanings given by the PPSA.

17.1 On accepting these Terms the Customer acknowledges and agrees that:

(a) these terms and conditions constitute a security agreement for the purpose of the PPSA and creates a security interest in any goods previously and that will be supplied in the future by Engine Australia to the Customer.

(b) Engine Australia is the holder of a purchase money security interest ('PMSI') by virtue of this agreement and/or the PPSA.

17.2 The Customer undertakes to:

(a) promptly undertake such acts and sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Engine Australia may reasonably require to; (i) Register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register ('Register'); (ii) register any other document registerable under the PPSA; or (iii) correct a defect in a statement referred to in this sub-clause;

(b) indemnify and upon demand reimburse Engine Australia for all expenses incurred in registering a financing statement or financing change statement on the Register established by the PPSA, or releasing any goods and/or equipment charged thereby;

(c) not register any financing change statement in respect of a security interest which will or could compete with or affect any security interest created by any agreement between Engine Australia and the Customer without the prior written consent of Engine Australia.

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the goods and/or equipment in favour of a third party without the prior written consent of Engine Australia.

17.3 Engine Australia and the Customer agree that Sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms.

17.4 The Customer waives its rights:

(a) to receive notices under Sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA, and

(b) to receive a verification statement in accordance with Section 157 of the PPSA

18. Privacy Act Matters: By signing our Trading Account Application or through operation of a credit account, the customer agrees that:

(a) Under Section 18E of the Privacy Act, Engine Australia is permitted to give a credit reporting agency personal information about any credit application received. The information which may be given to an agency is covered by Section 18E(1) of the Act, and is listed on our Company Credit Account Application.

(b) Under Section 18K (1)(b) of the Privacy Act we may seek consumer credit information to assist in assessing the Applicant's Application for commercial credit.

(c) Under Section 18K (1)(h) of the Privacy act we may seek a report from a credit reporting agency to assist us in the collection of any overdue payments

(d) Under Section 18N(1)(b) of the Privacy Act we may seek from or provide to other credit providers details about the applicants credit worthiness

19 . The customer must not use any intellectual property rights (including but not limited to any copyright, patent, trademark, specification sheets or extracts of specification sheets, technical bulletins or extracts of technical bulletins, designs or other rights) that are owned by Engine Australia. For any purpose without the prior written consent of Engine Australia.