



REAL PEOPLE

## TERMS of TRADE 2023

Complete Parts and Equipment Solutions Pty Ltd ABN 98 152 986 153  
Terms & Conditions for the Sale of Goods

### 1. DEFINITIONS

- 1.1 "CPES" means Complete Parts and Equipment Solutions Pty Ltd., or any person acting on behalf of and with the authority of Complete Parts and Equipment Pty Ltd.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document, or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by CPES to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between CPES and the Customer in accordance with clause 4 below.
- 1.5 "CCA" means the Competition and Consumer Act.

### 2. ACCEPTANCE

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with CPES's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and CPES.

### 3. LIMITS OF OFFER

- 3.1 A quotation provided by CPES to the Customer only covers the Goods listed in the basic specifications of Goods listed. All descriptive material, drawings, particulars of weights and dimensions submitted with CPES's quotations are approximate.

### 4. PRICE AND PAYMENT

- 4.1 At CPES's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by CPES to the Customer; or
  - (b) CPES's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 CPES reserves the right to change the Price if a variation to CPES's quotation is requested. Extra charges may be charged to the Customer by CPES for specialty procured Goods, and any permits, license fees incurred by CPES shall be charged to the Customer.
- 4.3 At CPES's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by CPES, which may be:
  - (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) thirty (30) days following the date of the invoice;
  - (d) thirty (30) days following the end of the month for pre-approved credit account Customers in which a statement is posted to the Customer's address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by CPES.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to four percent (3.5%) of the Price), or by any other method as agreed to between the Customer and CPES.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to CPES an amount equal to any GST. CPES must pay for any supply by CPES under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 5. ACCEPTANCE AND COMPLETION

- 5.1 The delivery of any Goods is deemed to have occurred in accordance with these Terms on the earlier of:



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- (a) The customer or their nominated carrier has taken possession of the goods at CPES's address; or
- (b) CPES or their nominated carrier has delivered the goods to the customers delivery address.
- 5.2 The Customer must notify CPES of any defects in writing within fourteen (14) days of delivery or notice of completion.
- 5.3 If CPES does not receive notice under clause 5.2 within the time required, the Customer is deemed to have:
  - (a) accepted that the Goods are delivered; and
  - (b) certified that the Services are completed in accordance with the terms of the Contract and CPES may claim for payment or invoice the Customer accordingly.
- 5.4 If CPES receives a written notice from the Customer under clause 5.2 within the time required and the Customer rejects the relevant Goods and Services;
  - (a) CPES must promptly rectify the Goods and Services so they comply with the Contract; and
  - (b) notify the Customer when rectified or when re-delivered as applicable; and
  - (c) following notification of rectification or re-delivery, the process under this clause 5 shall apply again.
- 5.5 Any time or date given by CPES to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and CPES will not be liable for any loss or damage incurred by the Customer because of the delivery being late.

### 6. RISK AND TITLE

- 6.1 Risk relating to any Goods sold or supplied to the Customer passes on delivery in accordance with clause 5.1 of these Terms.
- 6.2 Title, property and ownership in any Goods sold or supplied by CPES passes only on payment of the Price in full, cleared funds, free from any set offs or deductions.
- 6.3 Prior to title passing, CPES may register a Security Interest in relation to the Goods and any Proceeds arising in respect of any dealing in the Goods.
- 6.4 After title passing, the Customer may register a Security Interest in relation to the Goods and any Proceeds arising in respect of any dealing in the Goods.
- 6.5 Each party waives its rights to any Verification Statement and any other notices under the PPSA to the extent permitted at law.
- 6.6 Neither party may register, sell or dispose of any Security Interest in the Goods or the Proceeds from any dealing in the Goods other than as permitted by this clause.
- 6.7 If the Customer requests CPES to leave Goods outside CPES's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

### 7. WARRANTIES

- 7.1 The Customer must inspect the Goods on delivery and must within fourteen (14) days of delivery notify CPES in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow CPES to inspect the Goods.
- 7.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 7.3 CPES acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 7.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, CPES makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. CPES's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 7.5 If CPES is required to replace the Goods under this clause or the CCA, but is unable to do so, CPES may refund any money the Customer has paid for the Goods.
- 7.6 Returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 7.1; and
  - (b) CPES has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (unless agreed otherwise); and
  - (d) the Goods are returned in the same condition to that in which they were delivered.



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- 7.7 Notwithstanding clauses 7.1 to 7.6 but subject to the CCA, CPES shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (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 failing to follow any instructions or guidelines provided by CPES;
  - (e) fair wear and tear, any accident, or act of God.
- 7.8 In the case of used or second-hand Goods, the Customer acknowledges that it has had full opportunity to inspect the used or second-hand Goods prior to delivery and accepts they are sold on an “as is where is” basis with all existing or future faults, inadequacies or defects, and that to the extent permitted by law no warranty is given by CPES as to the quality or suitability.
- The Customer acknowledges and agrees that CPES has agreed to provide the Customer with the second-hand Goods and calculated the Price of the used or second-hand Goods in reliance of this clause 7.8.
- 7.9 CPES may in its absolute discretion accept non-defective Goods for return in which case CPES may require the Customer to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
- 7.10 Notwithstanding anything contained in this clause if CPES is required by a law to accept a return then CPES will only accept a return on the conditions imposed by that law.

### 8. CORE RETURNS

- 8.1 If the customer purchases a reconditioned exchange component, they are required to return their used core. The core must:
- (a) Be the same configuration as the supplied component by CPES
  - (b) Be returned to CPES within 30 days from the delivery date of the new exchange component supplied by CPES
  - (c) Be in a clean state fixed into the component stand or box that the new reconditioned component was supplied in from CPES.
- 8.2 CPES will rebuild the core using all new genuine Caterpillar parts and components with reclamation as per the Caterpillar reusability guidelines, to a standard that allows the component to be returned to CPES Reconditioned Exchange Inventory.
- 8.3 All items deemed failed iron as per CPES standards to return the core to the reconditioned exchange standard will be borne by the customer returning the core.
- 8.4 Cores that are not returned with in the 30 days from delivery period are subject to a late return penalty of 5% per month of the purchase price per for three months. If the customer fails to return to the core 3 months after the 30 day delivery date the customer will be charged a ‘nil core fee’ which will be equivalent to the purchase price of a new replacement component.

### 9. INTELLECTUAL PROPERTY

- 9.1 Where CPES has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of CPES.
- 9.2 The Customer warrants that all designs, specifications or instructions given to CPES will not cause CPES to infringe any patent, registered design or trademark in the execution of the Customer’s order and the Customer agrees to indemnify CPES against any action taken by a third party against CPES in respect of any such infringement.
- 9.3 The Customer agrees that CPES may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which CPES has created for the Customer.

### 10. DEFAULT AND CONSEQUENCES

- 10.1 Interest on overdue invoices shall accrue from the date when payment becomes due, until the date of payment, at a rate of 12.5% above the Reserve Bank of Australia target cash rate per annum in simple interest calculated daily.
- 10.2 If the Customer owes CPES any money the Customer shall indemnify CPES from and against all costs and disbursements incurred by CPES in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CPES’s collection agency costs, and bank dishonor fees).



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- 10.3 Without prejudice to any other remedies CPES may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions CPES may suspend or terminate the supply of Goods to the Customer. CPES will not be liable to the Customer for any loss or damage the Customer suffers because CPES has exercised its rights under this clause.
- 10.4 Without prejudice to CPES's other remedies at law CPES shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to CPES shall, whether or not due for payment, become immediately payable if:
- any money payable to CPES becomes overdue, or in CPES's opinion the Customer will be unable to make a payment when it falls due;
  - 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.

### 11. TERMINATION

- 11.1 CPES may terminate any contract, or any part of it, immediately by giving written notice to the customer any time before the Goods are delivered. On giving such notice CPES shall repay to the Customer any money paid by the Customer for the Goods. CPES shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.2 If the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by CPES as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 11.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stock items, will definitely not be accepted once production has commenced, or an order has been placed.

### 12. GOODS CREDIT RETURN POLICY

- 12.1 Subject to this clause 12, credit will be given to the customer if goods are returned with in 30 days of delivery provided.
- Goods are in the same condition as supplied by CPES
  - A copy of the CPES tax invoice is supplied with the goods
- 12.2 Goods will not be accepted or credited if;
- Goods have a value of less than AUD \$50.00
  - Goods specially purchased that are not normally stocked by CPES
- 12.3 The value credited for the return of goods as per clause 12.1, if any, will be at the discretion of CPES, and in any case limited to the original purchase price of the goods less the following;
- A 5% handling and restocking fee
  - Any procurement and or freight costs incurred by CPES through the original purchase and the return process of the goods

### 13. CONFIDENTIALITY AND PRIVACY

- 13.1 The Customer agrees for CPES to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by CPES.
- 13.2 The Customer agrees that CPES may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by the Customer; and/or
  - to notify other credit providers of a default by the Customer; and/or
  - 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
  - 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 CPES being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).



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- 13.4 The Customer agrees that personal credit information provided may be used and retained by CPES for the following purposes (and for other purposes as shall be agreed between the Customer and CPES or required by law from time to time):
- (a) the provision of Goods; and/or
  - (b) the marketing of Goods by CPES; and/or
  - (c) analyzing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (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 Goods.
- 13.5 CPES 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:
- (a) personal particulars (the Customer's name, sex, address, previous 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 CPES 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, or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of CPES, 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 for one hundred dollars (\$100) or more, have been dishonored more than once;
  - (h) that credit provided to the Customer by CPES has been paid or otherwise discharged.

### 14. SUBCONTRACT AND ASSIGNMENT

- 14.1 CPES may, but the customer may not, assign, novate or transfer the contract either in full or in part to any of its related entities or sub-contractors without the consent of the customer.

### 15. LAW AND JURISDICTION

- 15.1 The contract is governed by and will be construed in accordance with the laws of NSW.

### 16. GENERAL

- 16.1 The failure by CPES to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect CPES's right to subsequently enforce that provision. If 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.
- 16.2 Subject to clause 7 CPES 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 CPES of these terms and conditions (alternatively CPES's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 16.3 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 CPES nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.4 The Customer agrees that CPES may amend these terms and conditions at any time. If CPES makes a change to these terms and conditions, then that change will take effect from the date on which CPES notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for CPES to provide Goods to the Customer.
- 16.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.6 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.