

# **TERMS AND CONDITIONS OF SUPPLY**

The following conditions shall apply to and form part of any contract for the supply of goods or services by **LOCASIA PTY. LTD.** (**ABN 44 060 809 903**) trading as or in the style of "***ChipTorque***" (herein after referred to as "the Company" to the Customer) including any contract arising from any orders received from the Customer for goods or services of the same or similar type to those goods or services to which this contract applies.

## **1. OFFER AND ACCEPTANCE**

No quotation for the supply of goods or services given by the Company will constitute an offer capable of acceptance by the Customer. Any order placed by a Customer pursuant to any quotation given by the Company is not binding on the Company unless and until accepted in writing by the Company.

## **2. PRICE OF GOODS AND SERVICES**

The price charged for the supply of goods and services shall be the price effective on the date of delivery, unless specifically quoted in writing by the Company as a fixed price for a specific period or otherwise agreed in writing, notwithstanding that delivery may be delayed by agreement or otherwise. Unless otherwise stated in writing by the Company the price shall be exclusive of sales tax, handling charges and delivery charges. The Company reserves the right to charge the Customer for any additional costs which the Company may incur on behalf of or at the request of the Customer. The Company reserves the right to charge a storage fee for any goods which the Customer fails to collect.

## **3. VARIATIONS TO GOODS**

The Company reserves the right to improve or vary the goods and thereby change the specifications of the goods without notice to the Customer and without incurring any liability to the Customer.

## **4. DELIVERY**

- a) Delivery to the Customer shall be deemed to be effective when the goods are delivered to the Customer or fixed to the Customer's vehicle at the Company's place of business.
- b) All goods shall be at the Customer's risk immediately upon delivery to the Customer or into the Customer's custody (whichever is the sooner). The Customer shall insure the goods against loss or damage at its own expense.
- c) The Company shall not be liable for any loss or damage (including consequential loss or damage) arising from delay in delivery of goods ordered or failure to deliver or supply any goods as a result of any cause or contingency whatsoever and the Customer shall accept and pay for the goods notwithstanding the delay or late delivery.
- d) The Company will not accept responsibility for any short delivery or discrepancy in the quantity of goods delivered unless notification of same is received from the Customer (confirmed in writing) within seven (7) working days after the date of delivery and be supported by sworn affidavit or statutory declaration.
- e) The liability of the Company with respect to proven short deliveries is limited to the replacement of the missing goods only and always subject to clause 4(c) hereof.
- f) Deliveries to third parties may be arranged at the request of the Customer but always subject to acceptance by the Company. Goods delivered to third parties pursuant to this sub-clause shall be deemed to be delivered to the Customer and always subject to these terms and conditions of supply.

## **5. RETENTION OF TITLE**

- a) Property in the goods shall not pass to the Customer until payment by the Customer of all monies owing by the Customer to the Company in relation to supply of the goods. Until such time as the goods are paid the Customer shall hold the goods as the bailee of the Company only.
- b) Where property in the goods has not passed to the Customer, the Company has the right to enter the premises of the Customer and retake possession of the goods and to resell the goods notwithstanding the occurrence of any of the following events:- (1) a receiver or a receiver manager, an official manager of the Customer is appointed; winding up proceedings are commenced against the Customer; the Customer becomes bankrupt.
- c) Until the goods are sold by the Customer, the Customer shall store the goods separately from its own and in such manner as to demonstrate clearly that they are and remain the property of the Company.
- d) Where property in the goods has not passed to the Customer, the Customer shall account to the Company in respect of goods which are on sold by the Customer as soon as the proceeds of sale are received by the Customer.

## **6. WARRANTIES**

- a) Goods sold by the Company are covered by the manufacturer's warranty (if applicable); in the event of there being no manufacturer's warranty the Company warrants to the Customer that it will repair or replace at its sole and absolute discretion goods sold by the Company free of charge where those goods have been returned to the Company by the Customer, and which goods are acknowledged by the Company to be defective in material or workmanship.
- b) The said warranty does not apply upon the occurrence of any of the following events: six months has lapsed from the date of delivery; the goods have been previously repaired or altered by any person other than the Company; the goods have been treated to abuse or neglect; the Customer is in breach of these Conditions of Supply.
- c) The warranties contained herein are given in lieu of all other conditions warranties and undertakings express or implied which might otherwise be binding on the Company all of which are to the extent permitted by law expressly excluded and no further responsibility for any consequential damage or any other expense incurred by the Customer will be accepted by the Company.

## **7. LIMITATION OF LIABILITY**

The Company's liability for breach of conditions of warranty implied by the Trade Practices Act 1974 shall be limited to one or more of the following, the choice being at the Company's sole and absolute discretion; the replacement or the supply of equivalent goods OR repair of the goods OR payment of the cost of repairing the goods OR of acquiring equivalent goods OR payment of the cost of having the goods repaired, to the supply of services again OR payment of having the services supplied again.

## **8. PAYMENT**

- a) Unless otherwise agreed in writing all goods will be supplied on a Cash On Delivery basis.
- b) The Company may in its sole discretion offer and withdraw credit (with or without reason). Where credit is extended to a Customer the Customer shall pay the outstanding amount to the Company without deduction within fourteen (14) days from the date which the goods were delivered. Where credit is withdrawn, all monies owing become payable forthwith.
- c) The Company reserves the right to charge interest on any overdue account (monies not paid within thirty (30) days of the date of delivery of the goods or any monies which become payable as a result of a dishonoured cheque) at the rate of 3% per calendar month or \$10.00 whichever is the greater.
- d) The Company reserves the right to obtain a guarantee and indemnity from any party to whom it offers credit.
- e) The Customer agrees and consents to the Company using the services of a credit agency from time to time to obtain information concerning the customer (and where applicable its directors and guarantors) in order to assess the Customer's credit worthiness.
- f) The Customer will be liable for all reasonable costs incurred in the recovery of any overdue account, including but not limited to solicitors fees as paid, process servers fees, collection agency fees and the like.
- g) Where the Customer fails to make payment on the due date for any goods or services supplied by the Company or being a natural person becomes bankrupt or being a corporation by any act or omission enables the appointment of a scheme manager or trustee official manager, receiver, or receiver and manager, or liquidator, the Company may without prejudice to any other rights it may have retain a lien on any goods or vehicles of the Customer held by the Company.

## **9. GOODS RETURNED FOR CREDIT**

No goods will be accepted by the Company for credit unless prior arrangements have been made. No goods will be accepted by the Company for credit if the said goods were made to special order and no credit will be given or allowed.

## **10. CUSTOMERS WARRANTY & RELEASE**

If the Company is to install or modify or otherwise interfere with goods and the Customer's vehicle or vehicles then the Customer warrants that the vehicle and/or vehicles are mechanically sound and are suitable for chassis dynamometer testing and the customer irrevocably requests the Company to stringently test its goods whilst fitted in the customer(s) vehicle(s) and hereby releases and forever discharges the Company, its servants, agents and delegates from all actions, claims, suits and demands whatsoever which may arise either directly or indirectly from such testing.

## **11. INSURANCE**

The Customer will insure at its own expense all vehicles delivered to the Company for whatever the purpose and forever releases and discharges the Company, its directors, servants and agents against all actions, suits, claims and demands howsoever arisen in relation to the vehicles storage and/or parking at the Company's premises.

## **12. APPLICABLE LAW**

These conditions of supply shall be governed by and construed in accordance with the law of Queensland and the parties agree to submit to the jurisdiction of the Courts of Queensland at Brisbane.