

Shantex Pty Ltd
ABN 66 099 901 498
Terms & Conditions
Credit / Sale

These Terms and Conditions apply to all of the businesses owned and operated by Shantex Pty Ltd, including but not limited to, Lunds Four Wheel Drive, Lunds, North Queensland Auto Parts, Goodyear Auto Care Centre Cairns and Pacific Heli.

In these Terms & Conditions:-

'*Credit Application*' means Shantex Pty Ltd's pro-forma application for commercial credit to which these Terms & Conditions are attached;

'*Credit Limit*' means the amount of credit extended to the customer;

'*Customer*' means the applicant stated on the Credit Application attached to these Terms & Conditions;

'*Shantex*' means any of business owned and operated by Shantex Pty Ltd, (ABN 66 099 901 498);

'*Goods*' means the goods supplied to the customer by Shantex from time to time;

'*GST*' means the goods and services tax as provided for by the GST law and includes any value added tax, consumption tax or other tax that may replace the GST in the future;

'*Terms & Conditions*' means the terms and conditions of credit and terms and conditions of sale.

Terms & Conditions of Credit

1. EXTENSION OF CREDIT

1.1 The information provided in the *Credit Application* is for the purpose of establishing a commercial credit account with *Shantex*.

1.2 Credit will not be extended to the *Customer* until such time as the *Customer* receives notification from *Shantex*:-

- (a) That *Shantex* has accepted the *Credit Application*;
- (b) Of the amount of the *Credit Limit* approval; and
- (c) Of any other terms and conditions upon which *Shantex's* acceptance of this application is made.

1.3 *Shantex* reserves the right at any time and from time to time to increase or decrease or cancel the *Credit Limit*, in which event, such increase, decrease or cancellation will take effect immediately.

1.4 Credit may be withdrawn without notice should the *Credit Limit* be exceeded.

1.5 *Shantex* may refuse to extend credit to the *Customer* at any time in its sole discretion, with or without notice.

2. PAYMENT

2.1 Unless the *Customer* is buying the *Goods* from *Shantex* on *Credit*, the *Customer* must pay for the *Goods* prior to taking delivery of them.

2.2 In relation to *Goods* supplied to the *Customer* on credit:-

- (a) The *Customer* must pay all accounts issued by *Shantex* by the due date and acknowledges that if the account becomes overdue, credit may be suspended until such accounts are paid;
- (b) *Shantex* may at its own option charge interest on overdue account balances at the rate of 2% per annum above the overdraft rate applied from time to time by its bankers. Such interest will be calculated from the due date of payment until the date that payment is made in full.

2.3 *Shantex's* Trading terms are strictly payment in full within 30 days of statement date unless otherwise agreed in writing.

3. DEFAULT OF PAYMENT

3.1 Notwithstanding any agreement between *Shantex* and the *Customer* in relation to the terms of payment for the *Goods*, all amounts owing by the *Customer* to *Shantex* (including amounts owing but not due) will become immediately due and payable upon any of the following events:-

- (a) A breach by the *Customer* of the *Terms & Conditions*;
- (b) The appointment of an administrator, a receiver, a receiver and manager, liquidator trustee in bankruptcy to the *Customer* or any of its assets; or
- (c) Any event which in the reasonable opinion of *Shantex* would adversely affect the ability of the *Customer* to make payment when due of any amount owing to *Shantex*.

3.2 Upon default by the *Customer*, without prejudice to any other rights in *Shantex* deriving thereunder or from the general law to recover damages or terminate for breach, *Shantex* shall thereafter be entitled to cancel the *Credit Limit* without notice and/or to retake possession of the *Goods*.

3.3 *Shantex* shall not be liable for any costs, losses, damages or expenses suffered by the *Customer* by reason of the retaking of possession of the *Goods* by *Shantex*.

3.4 The *Customer* will pay and indemnify *Shantex* for all legal professional costs and outlays incurred by *Shantex* on a solicitor and own client basis, incurred by *Shantex* as a result of the *Customer's* breach of these *Terms & Conditions*, including those incurred in the event that it becomes necessary to commence proceedings to recover any amount due and owing pursuant to these *Terms & Conditions*.

4. PRIVACY ACT

4.1 The *Customer* acknowledges that if *Shantex* considers it relevant when assessing the *Customer's Credit Application*, *Shantex* will obtain from a credit reporting agency a credit report containing personal credit information about the *Customer* in relation to commercial credit provided by *Shantex*.

4.2 The *Customer* acknowledges that under Section 18E(8) of the Privacy Act 1988 (Commonwealth) ('the Act') *Shantex* is entitled to give to a credit reporting agency personal information concerning and relating to this *Credit Application*. In particular, the information which may be given is set out in Section 18(1) of the Act and includes:

- (a) Information as to the identity of the *Customer* such as:-
 - (i) Full name and address
 - (ii) Drivers Licence number;
- (b) The fact that the *Customer* has applied for credit and the amount of credit for which the *Customer* has applied;
- (c) The fact that *Shantex* has provided credit to the *Customer*;
- (d) Details of any payment for which the *Customer* is more than 60 days behind and in respect of which *Shantex* has commenced collection action;
- (e) Information in respect of cheques drawn by the *Customer* which have been dishonoured;
- (f) That in *Shantex's* opinion, based on specified circumstances, the *Customer* has committed a serious credit infringement; and
- (g) That the credit provided to the *Customer* by *Shantex* has been paid or otherwise discharged.

4.3 If *Shantex* considers it relevant to collecting overdue payments in respect of commercial credit provided to the *Customer*, the *Customer* agrees to *Shantex* receiving from a credit reporting agency a credit report containing personal information about the *Customer* in relation to collecting overdue payments.

4.4 The *Customer* agrees that any trade insurer with whom *Shantex* may have or contemplates having arrangements in relation to the insurance of its trade debtors may obtain the *Customer's* credit report from a credit reporting agency to assess the provision of insurance to *Shantex* in relation to the *Customer's* application for commercial credit with *Shantex*.

4.5 The *Customer* agrees that *Shantex* may give to and seek from any credit providers or trade referees named in the *Credit Application* and any credit providers that may be named in a credit report issued by a credit reporting agency information about the *Customer's* credit arrangements. The *Customer* understands that the information can include any information about the *Customer's* credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or to receive from each other under the Act.

5. EQUITABLE MORTGAGE

5.1 To better secure the payment of all monies and as an essential condition of the provision of credit the *Customer* hereby charges all of its interest in real and personal property (whether acquired presently or in the future) with the amount of indebtedness. The *Customer* will immediately sign all documents which *Shantex* may reasonably require to secure the amount of indebtedness including Bills of Mortgage, Bills of Sale and Mortgage Debentures. The *Customer* irrevocably appoints each Director of *Shantex* to be the duly constituted attorneys to consent to the registration of such caveats as *Shantex* may wish to lodge against any of the *Customer's* real property.

Terms and Conditions of Sale

6. ORDERS

6.1 Any purchase of or any order placed for *Goods* by the *Customer* is deemed to incorporate these *Terms & Conditions* without variation, unless any such variation is consented to by *Shantex* in writing.

6.2 No order shall be binding upon *Shantex* until accepted by *Shantex*

6.3 All sales made to the *Customer* on credit shall be subject to the *Customer's Credit Application* being accepted by *Shantex*.

6.4 *Shantex* reserves the right to supply, in full or in part only, any order for *Goods*.

7. PRICE

7.1 Subject to any valid quote given by *Shantex* and to any price shown on an invoice, prices are subject to alteration without prior notice to the *Customer*.

7.2 The price of all *Goods* will be current at the time of purchase.

8. TITLE

8.1 It is the intention of *Shantex* and agreed by the *Customer* that the property in the *Goods* shall not pass until:-

- (a) The *Customer* has paid all amounts owing for the particular *Goods*; and
- (b) The *Customer* has met all other obligations due by the *Customer* to *Shantex* in respect of all contracts between *Shantex* and the *Customer* and that

the Goods shall be kept separate until Shantex has received payment and all other of the obligations of the Customer are met.

8.2 It is further agreed that:-

- (a) Until such time as ownership of the Goods shall pass from Shantex to the Customer Shantex may give notice in writing to the Customer to return the Goods or any of them to Shantex. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;
- (b) If the Customer fails to return the Goods to Shantex then Shantex or Shantex's agent may enter upon land and premises owned, occupied or used by the Customer, or any other premises as the invitee of the Customer, where Goods are situated and take possession of the Goods without being responsible for any damage thereby caused;
- (c) The Customer is only a bailee of the Goods and until such time as Shantex has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for Shantex;
- (d) The Customer shall not deal with the money of Shantex in any way which may be adverse to Shantex;
- (e) Receipt by Shantex 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 Shantex's ownership of rights in respect of the Goods shall continue;
- (f) The Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the goods while they remain the property of Shantex;
- (g) Shantex may require payment of the amount owing or the balance of the amount owing due together with any other amounts due from the Customer to Shantex arising out of these Terms & Conditions and Shantex may take any lawful steps necessary to recover all monies owed by the Customer.

8.3 This clause is not a charge for the purpose of the Corporations Law.

9. DELIVERY

9.1 The Customer is deemed responsible for the Goods at the time of physical taking of the product by the Customer or by a carrier, whether engaged by Shantex or by the Customer.

9.2 The Customer shall accept delivery of the Goods at their nominated delivery address.

9.3 The date for delivery is an estimate only and may be subject to change. Shantex will not be liable for any loss or damage incurred by or occasioned to the Customer as a result of delayed delivery.

9.4 Shantex will on request act as the Customer's agent to arrange freight and insurance on the Goods between Shantex's warehouse and the Customer's nominated delivery address. Any charges therein will be itemized separately on the invoice.

9.5 Shantex is not liable for non-delivery of the Goods, Goods lost in transit or Goods damaged in transit.

10 REPRESENTATIONS

10.1 Shantex gives no express warranty in relation to the supply of Goods and the Customer acknowledges that it has not relied on any representation or warranty made by, on behalf of, Shantex in relation to the Goods or their supply.

10.2 No condition or warranty for the benefit of the Customer is to be implied into this contract for the sale and purchase of Goods to the extent that such conditions or warranties may be lawfully excluded under Commonwealth and State legislation. Nothing in this clause shall derogate from the Customer's rights under any manufacturer's warranty given in relation to the Goods.

11 WARRANTIES

11.1 The Customer acknowledges that Shantex does not manufacture the Goods.

11.2 The Customer agrees that it does not rely on the skill or judgment of Shantex in relation to the suitability of or any of the Goods for a particular purpose unless that purpose has been indicated to Shantex and Shantex has in writing acknowledged that the Goods will be fit for that particular purpose.

11.3 No warranty claims will be considered for Goods that have been modified or fitted to modified or non standard vehicles.

11.4 Shantex makes no express or implied warranty beyond those stated in these Terms and Conditions or otherwise published in specific warranty documents from time to time.

11.5 All conditions and warranties implied by statute or common law are to the extent permitted by law expressly excluded.

12 RETURN OF GOODS

12.1 Notification of any faulty or defective Goods must be made in writing to Shantex within thirty (30) days of sale or delivery. The original invoice number and date must be quoted and goods returned freight prepaid.

12.2 Any claims by the Customer for short delivery, or delivery of incorrect Goods must be notified to Shantex within seven (7) days of the Goods being delivered to the Customer.

12.3 No claims for return of Goods will be considered for Goods that are especially procured for a Customer and are not a Shantex stock item.

12.4 No claims for return of Goods will be considered for Goods that have been altered or modified.

12.5 From time to time Shantex may agree to accept Goods returned for credit for reasons other than they are faulty or incorrectly supplied. In this event the Goods must be in the original packaging and be fit for sale. A restocking fee of 15% will apply at the discretion of Shantex.

13 GOODS & SERVICES TAX

13.1 Shantex will charge to the Customer any GST payable on the Goods.

13.2 The Customer will pay the GST inclusive price to Shantex.

13.3 Shantex will provide a Tax Invoice, or any other document that may be required by law, for the Goods, to the Customer.

14 GENERAL

14.1 These Terms and Conditions shall be governed by the laws of Queensland and the Commonwealth of Australia which are in force in Queensland.

14.2 All parties subject to these Terms and Conditions submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.

14. Shantex may from time to time amend these Terms and Conditions. Notification of such amendments published on Shantex's various websites shall be deemed to be sufficient to bind the Customer to such amended Terms and Conditions for all orders received by Shantex after such notification.

15 FORCE MAJEURE

15.1 Shantex is not liable for failure to perform this contract so long as its performance is prevented or delayed because of circumstances outside Shantex's control.

SCHEDULE

Company Name: _____

ABN: _____

Signed sealed and delivered by:

Director: _____

Name in full: _____

Witness: _____

Director: _____

Name in full: _____

Witness: _____

Firm, Partnership,
Sole Trader Name: _____

ABN: _____

Signature: _____

Name in full: _____

Witness: _____

Signature: _____

Name in Full: _____

Witness: _____