

Boost on Tap Pty Ltd Terms and Conditions of Sale

BACKGROUND

- (A) The Supplier carries on the business of selling the Products.
- (B) The Customer wishes to buy and the Supplier wishes to supply the Products on the terms and conditions set out below (**Terms and Conditions**). By purchasing goods from the Supplier the Customer agrees to be bound by these Terms and Conditions.

OPERATIVE PROVISIONS

1. Customer obligations in relation to the Products

1.1 **The Customer acknowledges and agrees that the Products must be installed by a qualified and experienced mechanic or technician using the installation guidelines as provided by the Supplier. Following installation of the Product, the Customer is responsible for engaging a technician to tune the fuelling of the engine to match the airflow the engine receives. The Customer acknowledges and agrees that the tuning of the engine is critical to the operation of the Product once installed. Failure to tune can result in poor engine performance and catastrophic engine failure. To the extent permitted by law, the Supplier is not liable for any mechanical, electrical or other engine failure arising from the installation of the Products.**

1.2 The Customer acknowledges and agrees that the Products are intended for use in motor vehicles only.

2. Orders

2.1 The Supplier is free to accept or decline part or all of an Order at its absolute discretion.

2.2 The Customer acknowledges that there may be times when the Supplier is unable to fill an order to due stock availability and in which case the Supplier will notify the Customer as soon as possible. The Supplier

is not liable for any loss, damage or delay suffered by the Customer arising from late delivery

3. Product warranties and product quality

3.1 The Products come with guarantees that cannot be excluded under the ACL. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

3.2 Subject to clause 3.1, the Supplier excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Products to the maximum extent permitted by law.

4. Delivery

4.1 The Customer acknowledges that the Supplier uses third party providers such as Australia Post or courier companies to deliver the Products. The Supplier reserves the right to use the delivery service it deems appropriate for the delivery of the Products.

4.2 Any Delivery times advised to the Customer by the Supplier are estimates only, and to the extent permitted by law the Supplier is not responsible or liable for late delivery or failure to deliver.

4.3 The Supplier will use its reasonable endeavours to ensure that the Products are properly packed and secured in a manner to enable them to reach their destination in good condition.

4.4 The Supplier may in its sole discretion deliver the Products to you in any number of instalments.

5. Warranty against defects

5.1 The Supplier warrants that the Products will be free from defects in material or workmanship for a period of twelve months from the date of shipping (**Warranty Period**).

5.2 During the Warranty Period, the sole remedy available to the Customer is for the Supplier to repair or replace the Products in its sole discretion.

5.3 The Supplier is not liable for a Product's failure to comply with the warranty set out in 5.1 in any of the following events:

- (a) the Customer makes any further use of those Products after giving notice to the Supplier of the defect;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions for the installation, use, tuning or maintenance of the Products or best industry practice;
- (c) the Customer alters or repairs those Products without the written consent of the Supplier;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (e) the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Once the Supplier has complied with 5.2, the Supplier is not liable to the Customer, and the Customer has no further remedy arising out of or in connection with the rejected Products' failure to comply with 5.1.

5.5 The terms of this agreement apply to any repaired or replacement Products supplied by the Supplier.

6. Delivery and Title to the Products

6.1 Title to any Products delivered to the Customer will not pass to the Customer until the Customer has paid all amounts that it owes to the Supplier in full (including the purchase price for the Products).

6.2 Risk in the Products will pass to the Customer from the time the Products are dispatched to the Customer

or at the time of collection where the Products are collected from the Supplier directly.

7. Pricing, Payment & GST

7.1 All prices are in Australia dollars.

7.2 The Supplier will provide the Customer with the price including, but not limited to, the delivery costs, in writing prior to the Order being placed. By proceeding with the order the Customer agrees to pay such amount to the Supplier. Unless and until payment is received in full for the goods, the Supplier will not ship the Products.

7.3 The Customer is responsible for paying all freight, packing, delivery and insurance costs.

7.4 Unless expressly stated otherwise, the consideration for any supply under or in connection with this agreement is exclusive of GST. The recipient must pay the Additional Amount at the same time as the consideration to which it is referable, and on the issue of an invoice relating to the supply.

8. Limitation of liability

8.1 The Supplier excludes all liability to the Customer for any loss or damage or injury arising out of or in connection with this agreement, including any breach by the Supplier of this agreement however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis.

8.2 Each party excludes any liability to the other, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this agreement, including any:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of production;
- (d) loss of agreements or contracts;
- (e) loss of business opportunity;

- (f) loss of anticipated savings;
- (g) loss of or damage to goodwill;
- (h) loss of reputation; or
- (i) loss of use or corruption of software, data or information.

8.3 Nothing in this agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Supplier in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services (**Consumer Guarantee**).

8.4 Nothing in this agreement limits or excludes the Supplier's liability where liability cannot be limited or excluded by applicable law.

9. Cancellation

9.1 The Customer must not cancel an Order without the prior written consent of the Supplier.

9.2 The Supplier is entitled to charge a reasonable cancellation fee being 10% of the Product Price for any cancellation, if the Supplier has already taken steps to fulfil the order.

10. Intellectual Property Rights

10.1 The Customer acknowledges and agrees that all Intellectual Property rights related to the Products remain the property of the Supplier and nothing in this agreement has the effect of transferring any rights.

10.2 The Customer hereby put on notice that the Supplier is the owner of a patent application in respect of its Products.

11. Variation

An amendment or variation of any term of this agreement must be in writing and signed by each party.

12. No waiver

12.1 No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this agreement unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

13. Relationship of the parties

13.1 Nothing in this agreement gives a party authority to bind any other party in any way. Nothing in this agreement imposes any fiduciary duties on a party in relation to any other party.

14. Entire agreement

This agreement states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

15. No reliance

No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in this agreement.

16. Governing law and jurisdiction

16.1 This agreement is governed by the law in force in the State of Victoria, Australia.

16.2 Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in the State of Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.

16.3 Each party irrevocably waives any right it has to object to the venue of any legal process in the courts described in clause 16.2 on the basis that:

- (a) any proceeding arising out of or in connection with this agreement has been brought in an inconvenient forum; or
- (b) the courts described in clause 16.2 do not have jurisdiction.

17.2 In this agreement the following rules of interpretation apply, unless the contrary intention appears or the context otherwise requires:

- (a) headings and subheadings are for convenience only and do not affect the interpretation of this agreement;
- (b) no provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this agreement;
- (c) specifying anything in this agreement after the terms "include", "including", "includes", "for example", "such as" or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary.

17. Definitions and interpretation

17.1 Capitalised terms or expressions used in this agreement have the meanings set out in this clause 17.1:

ACL: the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth)).

Intellectual Property Rights: all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration.

Order: an order for Products submitted by the Customer in writing.

Products: the products ordered by and supplied to the Customer by the Supplier.

Product Prices: the prices of the Products as determined in accordance with clause 7 and **Product Price** means the price of an individual Product as determined in accordance with that clause.