

Terms and Conditions of Sale

(for Customers in Australia Only)

1. Definition

- 1.1 "Motorkitz Team" means the Motorkitz Team subsidiary company selling products to the Customer as identified in Motorkitz Team's Quotation or Invoice.
- 1.2 "Customer" means the person or legal entity identified in Motorkitz Team's Quotation or Invoice.
- 1.3 "Contract" means a contract for sale by Motorkitz Team's to the Customer of the products and/or services incorporating the Terms and Conditions.

2. Formation of Contract

- 2.1 No Contract shall come into existence until Customer's order has been accepted by Motorkitz Team and such acceptance has been received by customer. The contract shall deem to be concluded at the time and place where acceptance is received by customer.
- 2.2 The products sold and/or services rendered are subject to Terms and conditions to the exclusion of any other terms and conditions stipulated or referred by customers. Customers acknowledge that it is aware of contents of and agrees to be bound by terms and conditions. Motorkitz Team may modify this agreement at any time and such modifications shall be effective immediately upon posting of the modified agreement.

3. Orders, Prices and Payment

- 3.1 Unless credit terms have been expressly agreed by Motorkitz Team, payment for the products or services shall be made in full before physical delivery of products or services.
- 3.2 Unless credit terms have been expressly agree by Motorkitz Team, payment for the products or services should be made in full before physical delivery of products and services. Customer shall pay for all shipping and handling charge unless otherwise specified by Motorkitz Team.
- 3.3 Customer shall bare all country, provincial, government, state and local sales use, goods and services, value added, excise, privilege and similar levies/taxes.
- 3.4 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to three percent (3%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and Motorkitz Team.

4. Delivery

- 4.1 Motorkitz Team shall deliver the products to the place of delivery designated by Customer and agreed to by Motorkitz Team.
- 4.2 Motorkitz Team may, at its discretion, deliver the products by instalments in any sequence. Where the products are so delivered by instalments, each instalment shall be deemed to be the subject of a separate contract and no default or failure by Motorkitz Team in respect of any one or more instalments shall vitiate the Contract in respect of products previously delivered or undelivered products.
- 4.3 Any dates quoted by Motorkitz Team for the delivery of the products are approximate only and shall not form part of the Contract. Motorkitz Team shall not be liable for any delay in delivery of the products and/or services, howsoever caused.

5. Acceptance of products

- 5.1 Unless the customer notifies Motorkitz Team to contrary on the day of delivery and such notification is confirmed in writing within two (2) days, the products shall be deemed to have accepted by customer as being in good condition and in accordance with the contract. The customer shall not be entitled to withhold payment of all or any of the prices of the products whilst any claim is being investigated by Motorkitz Team.

- 5.2 All Motorkitz Team products purchased under these Terms and Conditions directly from Motorkitz Team by end-user customer may be returned by customer up to within fourteen (14) days of receipt for a replacement, refund or credit of purchase price in effect in Australia on the date of receipt of products. The refund or credit will not include any shipping and handling charges forming part of the purchase price. Returned Products must be received by Motorkitz Team in as-new or as-shipped-by- Motorkitz Team condition, including conformance to invoiced specification, and all other items included with a Product must be returned with it.

6. Defects

- 6.1 The Customer shall inspect the Products on delivery and shall within twenty-four (24) hours of delivery (time being of the essence) notify Motorkitz Team of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Motorkitz Team an opportunity to inspect the Products within a reasonable time following delivery if the Customer believes the Products are defective in any way. If the Customer shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which Motorkitz Team has agreed in writing that the Customer is entitled to reject, the Motorkitz Team's liability is limited to either (at the Motorkitz Team's discretion) replacing the Products or repairing the Products.

7. Warranty

- 7.1 Unless specified otherwise and in addition to any rights the Customer may have under statute, Motorkitz Team warrants to the Customer that Products will be free from defects in materials and workmanship affecting normal use for a period of fourteen (14) days of receipt. ("Standard Warranty")
- 7.2 This Standard Warranty does not cover damage, fault or failure or malfunction due to external causes, including accident, abuse, misuse, problems with electrical power, servicing not authorized by Motorkitz Team, usage and/or storage and/or installation not in accordance with Product instructions, failure to perform required preventive maintenance, normal wear and tear, act of God, fire, flood, war, act of violence or any similar occurrence; any attempt by any person other than Motorkitz Team personnel or any person authorised by Motorkitz Team, to adjust, repair or support the Products and problems caused by use of parts and components not supplied by Motorkitz Team.
- 7.3 The Standard Warranty does not cover any items that are in one or more of the following situation: accessories or parts added to the Product after the Product is shipped from Motorkitz Team.
- 7.4 During the fourteen-day period beginning on the invoice date, Motorkitz Team will repair or replace Products returned to Motorkitz Team's facility. Unless specified, Customer must prepay shipping and transportation charges, and insure the shipment or accept the risk of loss or damage during such shipment and transportation. Motorkitz Team will ship the repaired or replacement products to Customer freight prepaid.
- 7.5 While not affecting any non-excludable warranty or guarantee implied by law, Motorkitz Team does not give any warranty that the Products are fit for any particular purpose and this Standard Warranty is given in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, trade usage, course of dealing or otherwise including warranties or conditions of merchantability, fitness for purpose, satisfactory quality and/or compliance with description, all of which are hereby excluded to the fullest extent permitted by law.
- 7.6 The Customer agrees that to the extent permitted by law, in relation to third party products purchased through Motorkitz Team, where such of the Products are covered by a relevant manufacturer's warranty, then the Customer will first make a claim against the manufacturer and shall utilise that warranty for the support of such Products and in any event not look to Motorkitz Team for such warranty support in the first instance.

8. Liability

- 8.1 Motorkitz Team shall not be liable in contract or tort for any loss or damage suffered and consumers rights are limited to those set out in these Terms and Conditions and under statute.

- 8.2 To the extent permitted by law and subject to clause 8.6, Motorkitz Team's total liability herein in respect of each event or series of connected events shall not exceed the total price paid for the purchase of products and/or services under these Terms and Conditions.
- 8.3 The Customers shall indemnify Motorkitz Team and keep Motorkitz Team fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or willful misconduct of customers, its employees, agents, or sub-contractors or by any breach of its contractual obligations arising out of these Terms and Conditions.
- 8.4 To the extent permitted by law, Motorkitz Team and customers agree that Motorkitz Team will not be liable to customers for any incidental, indirect, special or consequential damages arising out of or in connection with purchase, use or performance of products or services, even if Motorkitz Team has been advised of their possibility.
- 8.5 To the extent permitted by law, any typographical, clerical or other error or omission in sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by Motorkitz Team shall be subject to correction without any liability on the part of Motorkitz Team.
- 8.6 Under the Act, where implied conditions and warranties cannot be excluded, Motorkitz Team's liability for breach of such conditions and warranties (other than a condition or warranty implied by section 69 of the Act) shall be limited, at Motorkitz Team's option, to:
 - (a) in the case of products, the replacement of the products or the supply of equivalent products; the repair of such products; the payment of the cost of replacing the products or of acquiring equivalent products; or the payment of the cost of having the products repaired.

9. General

- 9.1 Customers shall not be assign or otherwise transfer any contracts of any of its rights and obligations hereunder whether in whole or in part without the prior written consent of Motorkitz Team. Any such unauthorized assignment shall be deemed null and void.
- 9.2 If any provision of these Terms and Conditions is held by any complete authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provisions in question shall not be affected thereby.