

PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions:

- (a) **Agreement** means an agreement between Penske and Supplier for an order for Goods and/or Services made by reference to the Purchase Order, these Conditions and any agreed variation;
- (b) **Authorised Dealer** means an approved dealer holding a dealer agreement with Penske for the sale and servicing of vehicles and associated spare parts; servicing of vehicles and sale of associated spare parts; or the sale of spare parts;
- (c) **Chain of Responsibility Law** is a reference to the National Heavy Vehicle Law as enacted by each State and Territory under the following legislation as may be amended or replaced from time to time and other relevant legislation and regulations: *Heavy Vehicle National Law Act 2013 (ACT)*; *Heavy Vehicle (Adoption of National Law) Act 2013 (NSW)*; *Heavy Vehicle National Law Act 2012 (Qld)*; *Heavy Vehicle National Law (South Australia) Act 2013 (SA)*; *Heavy Vehicle National Law (Tasmania) Act 2013 (Tas)*; *Heavy Vehicle National Law Application Act 2013 (Vic)* and includes *Road Traffic (Vehicles) Act 2012 (WA)*; *Road Traffic (Administration) Act 2012 (WA)* and the *Motor Vehicles Act 1949 (NT)*;
- (d) **Conditions** mean these terms and conditions of purchase;
- (e) **Date for Delivery** means the date for delivery of the Goods and/or performance of the Services as set out in the Purchase Order under the description "Delivery By";
- (f) **Defective** shall mean any of the following in respect of the Part:
 - I. Does not conform to the Agreement;
 - II. has failed;
 - III. does not perform in a manner in which the Part has been promoted or sold by the Supplier; or
 - IV. does not perform in a manner in which goods of the same or similar kind are ordinarily expected to perform;
- (g) **Delivery Point** is described under the section headed "Deliver to" in the Purchase Order and means in relation to Goods, the delivery address for the Goods and in relation to the Services, the place for performance of the Services;
- (h) **Goods** means the goods described in the Purchase Order and includes a Part;
- (i) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended (GST Act) or any replacement or any other relevant legislation and regulations;
- (j) **Intellectual Property Rights** means any intellectual or industrial property right, whether protected by statute, at common law or in equity and whether registrable or not, including any patent, registered design, invention, trade secret, circuit layout design, or right in relation to circuit layouts, right to confidential information, technical information, trademark or name, copyright or other protected right;
- (k) **Laws** includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether Commonwealth, state, territorial or local;
- (l) **Loss** means any loss, liability, costs (including legal costs as the higher of an indemnity or solicitor-client basis) or expense incurred by Penske relating to this Agreement;
- (m) **Part** means spare parts, accessories and product merchandise;
- (n) **Penske** means **PENSKE AUSTRALIA PTY LTD (ACN 073 690 990)** or any related body corporate (within the meaning of section 50 of the *Corporations Act 2001 (Cth)*) as is specified in the Purchase Order;
- (o) **Perfect** has the meaning given to that term in the PPSA;

- (p) **Personal Information** has the meaning given to that term in the *Privacy Act 1988 (Cth)*;
- (q) **PPSA** means the *Personal Property Securities Act 2009 (Cth)*;
- (r) **Price** means the price payable by Penske to the Supplier as shown on the Purchase Order;
- (s) **Purchase Order** means the form accompanying these Conditions and setting out particulars of the Goods and/or Services;
- (t) **Representative** of a party means that party's director, or authorised officer, employee, agent, contractor or sub-contractor;
- (u) **Retail Customer** means the end user of the Part and may either be Penske, an Authorised Dealer or a customer of an Authorised Dealer;
- (v) **Services** means the services described in the Purchase Order;
- (w) **Security Interest** has the meaning given to that term in the PPSA;
- (x) **Specifications** means any technical or other specification relating to the Goods and/or Services referred to in the Purchase Order and details of which have been supplied by Penske or its Representative to the Supplier;
- (y) **Supplier** means the person who sells the Goods or provides the Services to Penske;
- (z) **User Error** means a Retail Customer using or installing the Part in a manner which is inconsistent with the:
 - I. instruction or operator's manual for the Part;
 - II. safety or warning signs or guidelines accompanying the Part; or
 - III. way in which goods of the same or similar kind are ordinarily used or installed.

1.2 Interpretation

In the interpretation of these Conditions, unless the context or subject matter otherwise requires:

- (a) the singular includes plural and vice versa;
- (b) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (c) if a party consists of more than 1 person, the Agreement binds each of them separately and any 2 or more of them jointly;
- (d) an obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly; and
- (e) time is of the essence in respect of all of the Supplier's obligations to Penske.

2. AGREEMENT

2.1 Consideration

The Supplier agrees to supply the Goods and/or Services to Penske in accordance with the Agreement, and in consideration for this Penske agrees to pay the Price to the Supplier.

2.2 Application

These Conditions apply to all orders made by Penske in reference to the Purchase Order, and:

- (a) to the extent the Supplier's terms and conditions are supplied with the Goods and/or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect; and
- (b) any terms and conditions implied by statute or otherwise are excluded to the extent it is lawful to do so.

2.3 Review

These Conditions are subject to periodic review by Penske.

3. BINDING TERMS AND CONDITIONS

3.1 Entire Agreement

The entire Agreement between Penske and the Supplier for the purchase of the Goods and/or Services by Penske from the Supplier is constituted by:

- (a) these Conditions;
- (b) any other terms and conditions (including Specifications) incorporated in the Purchase Order;
- (c) any other terms and conditions (including Specifications) incorporated in an order for Goods and/or Services (where the order makes reference to the Purchase Order);
- (d) any other terms and conditions which are imposed by law and which cannot be excluded; and
- (e) any agreed written variation.

3.2 Precedence

Unless there is a signed contract between Penske and Supplier in relation to the supply of the Goods and/or Services, these Conditions shall apply to all contracts for the purchase of Goods and/or Services by Penske from the Supplier to the exclusion of any other terms and conditions or any other materials which the Supplier may purport to apply or which are endorsed upon any correspondence or documents issued by the Supplier, irrespective of their date of communication to Penske. The Supplier may not rely on any representations by Penske that are not included in the Agreement.

3.3 Acceptance

Acceptance of an order for Goods and/or Services made by Penske by reference to the Purchase Order will occur on the earlier of:

- (a) the Supplier's written acceptance being received by Penske; or
- (b) 2 business days after the Purchase Order is sent by Penske to the Supplier,

and will constitute acceptance of these Conditions by the Supplier.

4. PRICE

4.1 Price of Goods and/or Services supplied

The Price specified in the Purchase Order is fixed, and is not subject to increase. The price includes all costs of testing, inspection, labelling, packing and freight, customs duty, applicable taxes (including any consumption taxes such as Value Added Tax) and delivery to and off-loading at the Delivery Point as specified in the Purchase Order.

4.2 GST

The Price at which the Goods and/or Services are provided by the Supplier to Penske includes (unless otherwise stated or agreed in writing) GST, if applicable.

4.3 Freight

Unless otherwise stated or agreed in writing, the Supplier is responsible for freight and delivery of the Goods and/or Services to the Delivery Point as specified in the Purchase Order.

5. Payment

5.1 Payment Terms

Payment for Goods and/or Services supplied by the Supplier to Penske will be tendered 30 days from the last day of the month of the date of receipt by Penske of a correctly rendered invoice or acceptance of the Goods and/or Services by Penske, whichever is the later.

5.2 Invoices

The Supplier must provide Penske with a GST compliant tax invoice for the Goods and/or Services provided under this Agreement. Each invoice must include:

- (a) a reference to the Purchase Order number;
- (b) a reference to the item number;
- (c) a detailed description of the delivered Goods or performed Services (including sizes, quantities, weight, unit and price);

- (d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order;

and

- (e) the amount of any applicable GST.

Penske will accept no liability whatsoever for invoices which do not bear such information.

5.3 Partly paid Goods

The Supplier grants Penske a charge over all amounts paid by Penske under this Purchase Order to secure performance of the Supplier's obligations under the Agreement including without limitation the delivery of the Goods.

5.4 PPSA

If Penske determines that this Agreement (or any transaction in connection with it) is or contains a Security Interest, the Supplier acknowledges that Penske will be entitled to Perfect such Security Interest by registration on the Personal Property Securities Register. The Supplier agrees, to do all acts, matters and things (including, but not limited to, waiving any entitlement under the PPSA regarding notices) necessary to ensure Penske holds a Security Interest which is valid, enforceable and Perfected under the PPSA. A failure by the Supplier to comply with this clause constitutes a breach of an essential term of this Agreement. Any cost associated with Perfecting the Security Interest shall be to the Supplier's account.

6. DELIVERY AND PERFORMANCE

6.1 Delivery of Goods

The Goods must be received on the Date for Delivery and at the Delivery Point specified in the Purchaser Order. If the Supplier fails to meet any such delivery date, Penske may, without limiting its other rights and remedies, cancel all or part of the Purchase Order. If Penske has paid a deposit, the Supplier must refund the deposit in full to Penske.

6.2 Performance of Services

- (a) The Supplier must ensure that the Services are performed at the Delivery Point on the Date for Delivery. Should any change in the Date for Delivery (or dates) be proposed by the Supplier for any reason, immediate written notice must be given to Penske who may in its absolute discretion, accept or reject such proposal.
- (b) If Penske rejects a proposal to change the Date for Delivery and the Supplier fails to deliver on the Date for Delivery, Penske may by written notice to the Supplier, terminate this Agreement or the agreement to supply particular Services under a Purchase Order.

7. TITLE AND RISK

7.1 Title in Goods

Property in the Goods passes to Penske on delivery of the Goods by the Supplier.

7.2 Risk

The Supplier bears all risks of loss and damage to the Goods until final acceptance by Penske in accordance with clause 7.4.

7.3 Final inspection and acceptance

Notwithstanding any prior inspections, usage or payments, all Goods shall be subject to:

- (a) final inspection which may include measurement, testing or examination; and
- (b) acceptance at Penske's facility within a reasonable time (but not more than 90 days) after receipt of the Goods.

7.4 Date of acceptance

Acceptance of the Goods by Penske will occur on the date upon which Penske notifies the Supplier in writing of acceptance.

7.5 Rejected Goods and/or Services

Penske may, within 90 days of delivery of the Goods and/or Services at the Delivery Point or if applicable, an Authorised Dealer's premises (whichever is the later), reject any Goods which do not comply strictly with the Agreement. Once the Goods are rejected, Penske, in its sole discretion, may require:

- (a) in the case of either Goods and/or Services, the Supplier to refund any payment within 7 days; or
- (b) in the case of Goods, replacement of the Goods to Penske's satisfaction; or
- (c) in the case of Services, the re-supply of the Services.

Title and risk in the rejected Goods immediately re-vests in the Supplier. The Supplier is liable for all Loss incurred by Penske due to the rejection of the Goods and/or Services. The Supplier must, at its cost, remove from the rejected Goods any of Penske's intellectual property or any other distinguishing features such as name or symbols.

7.6 No Waiver

Penske's acceptance does not waive rights. If Penske accepts any Goods and/or Services, this does not extinguish any of Penske's rights if the Goods and/or Services do not comply with a term of the Agreement.

8. SUPPLIER WARRANTIES

8.1 Warranties relating to Goods

The Supplier warrants that the Goods:

- (a) are safe and free from risk to health and safety;
- (b) are compliant with all relevant Laws;
- (c) are and will remain free from any Security Interest or any other security, charge or encumbrance;
- (d) are free from all defects or faults;
- (e) are of acceptable quality;
- (f) are clearly and durably labelled identifying the Goods and including any appropriate and correct warning and instructions;
- (g) are fit for the purpose for which purchased (as communicated by Penske before the Purchase Order or as should be reasonably understood by the Supplier of the Goods who is experienced in such technical and specific matters relating to the Goods and the purpose they are intended for);
- (h) match the description and the Specifications referred to in the Purchase Order;
- (i) comply with any representations, descriptions, samples or other specifications (including the Specifications) including quality, function, performance or design;
- (j) comply with all legislation, regulations and other governmental requirements in Australia relating to the Goods including those relating to manufacturing, packaging, labelling and transportation; and
- (k) include any applicable Supplier's warranty that passes to the consumer from Penske without liability to Penske.

8.2 Warranties relating to Services

The Supplier warrants that the Services: are provided with due care and skill, with the same or higher level of care and skill as would reasonably be expected of a person qualified and experienced in the supply of the same or similar Services, taking all necessary care to avoid Loss or damage.

8.3 Supplier's Indemnities

The Supplier must indemnify Penske against any Loss incurred by Penske concerning a breach of warranty, representation or term of the Agreement.

9. DEFECTIVE PARTS

Notwithstanding any other clause in these Conditions, all Parts supplied by the Supplier to Penske are accompanied by an express product warranty which is valid for at least 12 months from the date the Part is first sold to a Retail Customer. The product warranty will be available if the Part is Defective. The product warranty on a Part provides that Penske will be entitled to reimbursement of the following from the Supplier:

- (a) cost of the replacement Part;
- (b) handling charges equivalent to 25% of the cost of the replacement Part; and
- (c) actual labour costs associated with the diagnosis, removal and

testing of the Defective Part and fitment of the replacement Part.

If requested by the Supplier, Penske must provide to the Supplier reasonable documentation in support of the replacement cost and labour costs claimed by Penske.

If User Error of the Part has occurred, the product warranty will not be available to Penske but the Supplier must provide prompt notice of rejection to Penske's product warranty claim and detail the reasons for such rejection.

10. LIQUIDATED DAMAGES

The Supplier acknowledges that time is of the essence in effecting delivery of the Goods and in performing the Services.

If delivery of the Goods or performance of the Services is delayed for more than 7 days, Penske may, in addition to any other rights it has under this Agreement, with immediate effect by notifying the Supplier, deduct from the Price or recover from the Supplier as liquidated damages and not as a penalty an amount that is 0.15% of the Price per day of delay, until the earlier of:

- (a) the date of delivery of the Goods or performance of the Services; or
- (b) the date that the Agreement is terminated.

The parties acknowledge that the damages referred to in this clause represents a genuine pre-estimate of the loss and damage Penske is reasonably expected to suffer as a result of such delivery delays.

11. INTELLECTUAL PROPERTY RIGHTS

- (a) The Supplier warrants that the Goods and Services, and Penske's reasonably foreseeable use of them will not infringe the Intellectual Property Rights of any person. The Supplier indemnifies Penske against breach of this warranty.
- (b) Penske will own all Intellectual Property Rights arising from performance of the Services. The Supplier assigns such rights to Penske and agrees to execute any document reasonably required by Penske to evidence or perfect such ownership.
- (c) The Supplier grants Penske a licence of all Intellectual Property Rights owned by the Supplier and not assigned under clause 11(b) to enable it to use, modify, maintain and repair the Goods and/or enjoy the benefit of the Services.

12. CONFIDENTIALITY

The Supplier must ensure that its Representatives keep confidential all information supplied by Penske or relating to this Agreement (**Information**), and not use or disclose that information except to fulfill its obligations under this Agreement. The Information supplied remains the property of Penske and the Supplier must not disclose the Information without prior written consent of Penske.

This clause does not apply to Information which is lawfully obtained from a third party, is public knowledge, is already known or is otherwise independently developed by Representatives of the Supplier who have not been exposed to the Information.

13. WORK ON THE PURCHASER'S PREMISES

If any Services are to be performed on Penske's premises, the Supplier must comply with all applicable Laws and all of Penske's then current policies and procedures including, without limitation, Penske's then current safety and other applicable policies. The Supplier shall provide Penske with a complete list of all chemicals, hazardous materials, and ingredients in the composition of goods used in the performance of the Services and a copy of the material safety data sheet for such chemicals and hazardous materials. The submission of such list by the Supplier shall not relieve the Supplier of exclusive responsibility for the safe transportation, use, storage and disposal of such materials prior to acceptance by Penske. All chemicals and hazardous materials brought by the Supplier to Penske's premises shall bear a label stating the identity of the chemical of material and the hazards associated therewith.

14. INDEMNITY AND RELEASE

Notwithstanding clause 9, the Supplier indemnifies Penske, its affiliated companies, and their Representatives, successors, and assigns and holds them harmless from and against any and all

claims, suits, actions, liabilities, Loss, judgments or damages, whether ordinary, special or consequential arising directly or indirectly from or in connection with:

- (a) the acts, negligence, omissions or wilful misconduct of the Supplier;
- (b) the Goods or Services supplied;
- (c) a breach of any of the Supplier's warranties or any other term of the Agreement;
- (d) the Supplier's negligent, unauthorised or wrongful acts or omissions with regards to the use or installations of hazardous materials;
- (e) a claim that any Goods or Services supplied to Penske infringe upon or misappropriate the Intellectual Property Rights of another person; or
- (f) a claim of any lien, security interest (including a Security Interest) or other encumbrance made by a third party.

15. TERM AND TERMINATION

15.1 Term

This Agreement shall commence and end on the dates specified in the Purchase Order unless otherwise terminated earlier in accordance with the remainder of this clause 15. Clauses 8, 11, 12, 14, 16, 17(c), 19, 25 and 27.8 survive termination of the Agreement.

15.2 Without cause

Penske may, at any time, terminate the Purchase Order, in whole or in part, without cause, upon written notice to the Supplier. Following receipt of such notice by the Supplier, the Supplier shall, to the extent specified by Penske, stop all work on the Purchase Order, and cause its suppliers and subcontractors to stop work. Charges for any such termination of the Purchase Order will be limited to actual non-recoverable costs incurred by the Supplier which the Supplier can demonstrate were properly incurred prior to the date of termination. In no event shall such reimbursement include anticipated profits for undelivered Goods or unperformed Services.

15.3 With cause

Penske may terminate the Purchase Order immediately, in whole or in part, if the Supplier:

- (a) fails to make delivery of the Goods or perform the Services within the time specified in that Purchase Order;
- (b) fails to replace defective Goods or Services in accordance with these Conditions;
- (c) fails to perform any other term specified in the Agreement; or
- (d) becomes insolvent; files or has filed against it a petition in bankruptcy or an application for winding up; has a receiver, receiver and manager, administrator or liquidator appointed; or makes an assignment for the benefit of creditors.

16. THE PURCHASER'S PROPERTY

All drawings, specifications, artwork, data, material, supplies, equipment, vehicles, tooling, dies, moulds, fixtures and patterns furnished or paid for by Penske, shall be Penske's exclusive property, and shall be used by the Supplier only in performance of the Purchase Order. Such property, while in the Supplier's custody and control, shall be held at the Supplier's sole risk and, upon Penske's request, shall be returned to Penske in the same condition in which it was supplied, normal wear and tear excepted.

The Supplier must not sell, transfer, encumber, part with possession of or create a Security Interest in Penske's property.

If the Supplier breaches this clause by selling any of Penske's property, without limiting Penske's other rights, the Supplier must hold the proceeds from the sale on trust solely for Penske and provide those proceeds to Penske immediately on demand.

Upon the Supplier's breach of this clause, Penske is entitled to be compensated by the Supplier for the full value of Penske's property and all Loss, expense and liability experienced by Penske as a result of such breach.

17. SUBCONTRACTING, ASSIGNMENT AND ADVERTISING

The Supplier must obtain Penske's written consent before it:

- (a) subcontracts any obligation under the Agreement;
- (b) assigns, charges or encumbers this Agreement or any rights under this Agreement; or
- (c) advertises or publishes anything concerning the Agreement.

18. INSURANCE

During the period of the Agreement, through to and after Penske takes delivery and risk (where applicable) of the Goods and/or Services, the Supplier must, at its own expense:

- (a) maintain appropriate insurance in relation to public liability and product liability with a reputable insurer for at least \$20,000,000;
- (b) maintain appropriate insurance in relation to professional indemnity with a reputable insurer for at least \$5,000,000 and for a period of at least 6 years from the completion of Services under this Agreement;
- (c) maintain a comprehensive motor vehicle policy for at least \$30,000,000 covering all vehicles owned, leased or hired by the Supplier for the performance of this Agreement;
- (d) maintain workers' compensation in accordance with applicable legislation; and
- (e) insure the Goods with a reputable insurer for their full replacement cost.

The Supplier must, upon Penske's request, provide Penske with certificates of currency with respect to these insurance policies and noting the interests of Penske.

19. RECOVERY OF MONIES

Any debt due from or moneys payable by the Supplier to Penske whether under this Agreement or otherwise may be deducted by Penske from any moneys due or to become due to the Supplier under this Agreement. Penske is entitled to recover from the Supplier any balance that remains owing after deduction.

20. DISPUTE

- (a) Without affecting the rights of Penske or of the Supplier at law or under any relevant or applicable statute, any dispute in connection with this Agreement must be resolved, at first instance, by discussion between a Representative nominated by Penske and a Representative nominated by the Supplier.
- (b) If the Representatives fail to resolve the dispute, the dispute shall be referred to mediation. The mediator and the process will be agreed upon by the Supplier and Penske.
- (c) Notwithstanding the existence of a dispute, the Supplier must continue to perform its obligations under this Agreement.

21. RELATIONSHIP

The Supplier is an independent contractor of Penske. Nothing in these Conditions constitute any other type of relationship between the parties.

22. WAIVER

A waiver by either party:

- (a) in respect of a breach of a provision of the Agreement by the other party will not constitute a waiver in respect of any other breach; and
- (b) is not effective unless it is in writing, and only relates to the specific purpose for which it is given.

23. NO LIMITATION OF STATUTORY RIGHTS AND SEVERANCE

Nothing in this Agreement has the effect of or is taken to have the effect of excluding, restricting or modifying the provisions of any relevant or applicable statute. If it is determined that a word, phrase, sentence, paragraph or clause is unenforceable, illegal or void, then it is severed and the other provisions of this Agreement remain operative.

24. VARIATIONS

24.1 Variation

Penske may, prior to delivery of Goods or performance of the Services, direct the Supplier in writing to add, omit, amend, supplement or replace any Purchase Order, Specification or these Conditions. The changes then apply to any Agreement as Penske notifies after the date of change.

24.2 Price and Date for Delivery

Where a direction for a variation would result in variation to the Price or Date for Delivery, the Supplier must immediately advise Penske in writing of the varied Price (which must be determined by the same method of pricing for the provision of the original Goods and/or Services) and varied Date for Delivery. A variation to the Price or a variation to the Date for Delivery is not effective unless it is communicated to Penske in writing and signed by Penske.

24.3 Agreement

If, in the opinion of the Supplier, a direction for a variation is likely to prevent the Supplier from meeting its obligations under the Agreement, it must immediately notify Penske. Penske will decide whether the variation will take effect and notify the Supplier of its decision in writing and may, in its discretion, modify the Agreement to the extent required to enable the Supplier to deliver the variation.

25. PRIVACY

Penske collects Personal Information for the purposes of performing its obligations under this Agreement.

By executing this Agreement the Supplier consents to Penske using the Personal Information to perform its obligations under this Agreement. Penske will use that Personal Information in accordance with its Privacy Policy available at <https://penske.com.au/compliance-legal/> (**Penske's Privacy Policy**).

The Supplier may contact Penske to gain access to and request correction or amendment to the Supplier's Personal Information.

Penske may disclose the Supplier's Personal Information to:

- (a) third parties that are associated or connected with giving effect to the transaction contemplated under the Agreement and the performance of Penske's or Supplier's obligations under this Agreement; and
- (b) the Purchaser's or Supplier's Related Entities (as defined in section 9 of the *Corporations Act 2001*) which may involve disclosure of Supplier's Personal Information outside of Australia.

Where Penske has been requested to extend credit to the Supplier, the Supplier:

- (c) agrees that Penske may disclose the Supplier's Personal Information to investigate the creditworthiness of the Supplier, including (without limitation), conducting a credit check at any time, making enquiries with persons nominated by the Supplier as trade references, its bankers or any other credit providers (**Information Sources**);
- (d) authorises the Information Sources to disclose to Penske all information concerning the Supplier which is within the possession of the Information Sources, and which is requested by Penske; and
- (e) consents to Penske giving to, and obtaining from, the Information Sources, Personal Information about the Supplier and information about the commercial credit arrangements of the Supplier for the purpose of collecting overdue payments or for notifying other credit providers of default by the Supplier.

The Supplier must not collect, use or disclose Personal Information of Penske's employees, officers, representatives, agents, contractors, dealers or customers in a manner inconsistent with the requirements of the *Privacy Act 1988* (Cth) and must where possible adhere to the principles as set out in Penske's Privacy Policy. The Supplier must indemnify and hold harmless Penske for the Supplier's failure to comply with the requirements in this clause.

26. CHAIN OF RESPONSIBILITY

The Supplier must comply with, and ensure that its Representatives:

- (a) comply with all legislative requirements relating to the Chain of Responsibility Law, to the extent applicable;
- (b) cooperate with Penske and any other duty holders under Chain of Responsibility Law for compliance purposes; and
- (c) comply with Penske's Chain of Responsibility procedures made known to the Supplier and which may be amended from time to time with notice to the Supplier.

To the extent applicable, the Supplier agrees to strictly observe and adhere to all requirements of the Chain of Responsibility Law including but not limited to in respect of vehicle speed, driver fatigue, mass, dimension and loading and vehicle maintenance, and will

provide information and copies of all relevant records to Penske as required, including where such information or records are required for Penske to meet its obligations under the Chain of Responsibility Law, or where one of Penske's customers has requested the information or records.

Where Penske requests any system or control to be put in place by the Supplier (including any amendment to an existing Supplier safety system or control) and that amendment is necessary to comply with obligations under the Chain of Responsibility Law, the Supplier will immediately put in place (or amend) such safety system or control, without any entitlement to claim against Penske. The Supplier consents to Penske, with no less than 3 days' notice, undertaking an audit of the Supplier's safety systems and controls for the purpose of determining whether the Supplier is complying with the Chain of Responsibility Law. The Supplier will produce any documentation or comply with any other reasonable request made by Penske as part of any such audit.

Where the Supplier is collecting, handling, loading, unloading or delivering Goods, the Supplier is responsible for:

- (a) safely loading, unloading and securing the Goods;
- (b) ensuring that any vehicle used to collect or deliver the Goods is roadworthy, properly maintained, not overloaded and does not exceed legislative requirements for mass or dimension;
- (c) ensuring that it and any drivers employed or engaged by it or by its contractors hold any necessary permits and licences in relation to the transport of the Goods; and
- (d) ensuring that all drivers employed or engaged by it or by its contractors adhere to any legislative requirements in relation to speed and fatigue management clause.

27. ETHICAL BUSINESS

27.1 Definitions

In this clause, the following definitions apply:

- (a) **ABC Laws** mean any anti-bribery and corruption laws relevant to the Supplier's performance of this Agreement.
- (b) **Bribe** means any undue advantage:
 - i. promised, offered, given, solicited or accepted;
 - ii. directly or indirectly through or to an intermediary or other person;
 - iii. to improperly influence or reward action, inaction or decision of any person in their business or official capacity.

In this definition, advantage includes anything of value and a Facilitation Payment is considered a Bribe.

- (c) **Facilitation Payment** means a payment made to facilitate or expedite decisions or routine actions by government agencies or Government Officials even where such payment may not be considered a Bribe under local laws or may not otherwise violate local laws. The payment of an official and published fee is not a Facilitation Payment e.g. fee for expediting passport renewal.
- (d) **Government Official** means any:
 - i. person holding, or candidate for, a legislative, administrative or judicial office whether appointed or elected;
 - ii. person exercising a public function;
 - iii. person representing a public agency, or enterprise in which a government has an influence;
 - iv. official or agent of a public international organisation; and
 - v. family member of any of the above.

The term Government Official is to be interpreted broadly.

- (e) **Modern Slavery** describes situations where coercion, threats or deception are used to exploit victims and undermine their freedom, including trafficking in persons, slavery, servitude, forced marriage, forced labour, debt bondage, deceptive recruiting for labour or services, and illegal forms of child labour.
- (f) **Personnel** means a party's directors, officers, employees, agents, contractors and their Personnel.

27.2 Penske's values

The Supplier must ensure it and its Personnel act in a manner which is consistent with the principles contained in:

- (a) Penske's Code of Ethical Conduct; and
- (b) any other relevant Penske policies available at <https://penske.com.au/compliance-legal> as may be updated from time to time.

27.3 Anti-Bribery and Corruption

The Supplier must comply with and ensure its Personnel comply with ABC Laws.

27.4 Modern Slavery

- (a) The Supplier must take reasonable steps to ensure it, its suppliers, and, to the extent practicable, its sub-suppliers and other business partners, have adequate procedures and policies in place to act against Modern Slavery. Such procedures and policies should be in line with Australian and recognised international standards, including the UN Guiding Principles on Business and Human Rights.
- (b) On request by Penske, the Supplier must provide:
- i. a copy of any Modern Slavery statement it is required to or voluntarily prepares under relevant Modern Slavery reporting legislation;
 - ii. information about its labour practices; and
 - iii. reasonable access for Penske to inspect its premises and interview its workers about their labour conditions.

27.5 Whistleblowing

The Supplier must make its employees aware that Penske Whistleblower Policy and hotline (via <https://penske.com.au/compliance-legal/>) are available to its employees and their family members should they become aware of any misconduct, illegal activity or an improper state of affairs concerning Penske.

27.6 Representations, warranties and undertakings

The Supplier warrants, represents and undertakes to Penske that:

- (a) this agreement and its performance does not and will not violate, or put Penske in breach of the ABC Laws;
- (b) neither the Supplier nor its Personnel, have provided or will provide any Bribes;
- (c) it is not aware of any activity, practice or circumstance within its operations or supply chain that would constitute Modern Slavery;
- (d) neither the Supplier nor its Personnel has been:
- i. convicted of any offence involving contravention of the ABC Laws or involving Modern Slavery; or
 - ii. the subject of any investigation, inquiry or enforcement proceedings regarding an offence involving contravention of ABC Laws or in connection with Modern Slavery; and
- (e) any information supplied by the Supplier is true and accurate and may be relied upon by Penske for the *Modern Slavery Act 2018* (Cth).

The Supplier undertakes to notify Penske if:

- (f) it is or becomes subject to any of the actions set out in clause 27.6(d); or
- (g) it is alleged to be involved in any Modern Slavery activity or in breach of ABC Laws.

27.7 Notification, suspension and termination

The Supplier must notify Penske of a breach of these Ethical Business provisions and include details of the facts and circumstances surrounding the breach. If Penske becomes aware of a breach of the Supplier's obligations in these Ethical Business provisions, Penske may:

- (a) suspend the Goods and/or Services provided by the Supplier until such time Penske's enquiry into the breach of the Supplier's obligations are concluded to Penske's reasonable satisfaction;
- (b) suspend the goods and services provided by the Supplier until such time that the investigation, inquiry or enforcement proceedings in clause 27.6(d) have been concluded to Penske's reasonable satisfaction; or
- (c) immediately terminate this agreement without any liability to the Supplier except for fees payable to the Supplier for Goods and/or Services supplied in accordance with this agreement up

to the date of termination.

Penske is not be liable for any costs of suspension under this clause. If the suspension continues for 30 days, Penske may terminate this Agreement in accordance with clause 27.7(c).

27.8 Indemnity

The Supplier agrees to indemnify and hold Penske harmless for any loss or damage caused to, or cost (including on a solicitor/client basis) incurred by, it or its related entities due to a breach of these Ethical Business provisions.

28. GOVERNING LAW

The law of Queensland, Australia governs this Agreement. The parties irrevocably submit to the exclusive jurisdiction of the courts of Queensland, Australia.

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