

## TERMS AND CONDITIONS OF SALE AND SERVICE ("Terms and Conditions")

These are the entire Terms and Conditions of sale of all goods and merchandise (including goods supplied in connection with the provision of Services) ("Goods") and services ("Services") supplied by **PENSKE POWER SYSTEMS PTY LIMITED (ACN 073 690 990)**, **PENSKE COMMERCIAL VEHICLES PTY LTD (ACN 010 827 022)** and/or **MAN AUTOMOTIVE IMPORTS PTY LTD (ACN 008 416 402)** (all of which are hereinafter referred to as "Penske") to any person, firm or company placing an order with Penske for the purchase of any Goods and/or Services ("the Customer"). These Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer.

### GENERAL

- 1 No quotation by Penske shall constitute an offer. All orders placed with Penske shall only be accepted subject to these Terms and Conditions. Penske may at any time, and from time to time alter these Terms and Conditions by written notice to the Customer provided that the amendment:
  - a) does not apply to any order accepted by Penske prior to the date of change stipulated in the notice; and
  - b) does not affect the Customer's or Penske's accrued rights or obligations, except to the extent that the change is made to comply with a mandatory legal requirement, in which case subclauses (a) and (b) above will not apply to that change.
- 2 If a Customer cancels or alters any order or part order, whether for special goods or standard goods, or Services at any time after Penske has received the order then Penske reserves the right to charge to the Customer the costs of any special goods or materials already acquired for the order together with the cost of any labour and tooling expended to the date of such cancellation or alterations.
- 3 Goods and Services Tax ("GST") Sales Tax or any other applicable tax or duty payable shall be paid by or reimbursed by the Customer to Penske on demand and the Customer shall indemnify and keep indemnified Penske in respect of all taxes and duties including GST arising out of any sale of Goods and/or or the subsequent use of Goods and/or Service after the sale to the Customer.

### PRICE

- 4 Penske shall be entitled to vary the price of any Goods or Services at any time prior to delivery or completion if the cost to Penske of performing its obligations is increased or reduced by any new or amended legislation, regulation, order, directive, by-law, licence or approval or by reason of fluctuations in currency value or by any rise or fall in the amounts payable for labour, changes in the amount charged to Penske by its suppliers or by any cause beyond the direct control of Penske. No such reasonable variation shall entitle the Customer to cancel an order.

### QUOTATIONS FOR SERVICES

- 5 Where a price quoted by Penske for Services is specified to be an estimate, the Customer shall pay Penske the amount claimed by Penske upon completion of the Services which amount may vary from the estimated amount and which amount shall be based upon the actual work done and materials supplied by or on behalf of Penske. Where the Customer has requested Penske to prepare a quotation for

the provision of Services which requires Penske to perform disassembly of any existing property of the Customer ("**Disassembled Property**") and the Customer does not accept the quotation, the Customer shall be responsible for all labour and associated costs and charges incurred by Penske in preparing the quotation. The Disassembled Property will not be reassembled following rejection of a quotation unless the Customer requests Penske to do so and agrees to pay Penske's charges for such reassembly.

### ADDITIONAL WORK

- 6 Where the Customer has requested Penske to provide Services, and additional services and tests are required in connection with the Services, Penske will inform the Customer whether any additional services and tests are necessary in connection with the requested services and provide details of the usual or likely charges in relation to these additional services and/or tests. The Customer agrees to pay Penske's charges for performing the additional services or tests.

### TERMS OF PAYMENT

- 7
  - a) The time specified by Penske for payment is of the essence and, subject to clause 9, is the payment term as specified in the invoice issued by Penske to any Customer or failing specification within 14 days of the date of the invoice. If the Customer fails to make any payment by a due date then Penske shall be entitled to, without prejudice to any other remedy, recover such monies pursuant to these Terms and Conditions.
  - b) Customers shall not be entitled to withhold payment of any account by reason of any account query, dispute or set off unless the Customer strictly complies with the dispute resolution procedure in clause 67 in relation to that account query, dispute or set off. If the Customer abandons or does not comply with the dispute resolution procedure in clause 67, the Customer must pay the account or invoice in full.
  - c) The Customer agrees to pay Penske administration and handling fees incurred in the normal course of business in respect of any copies of documents required or other processing involved in the conduct of the account and such fees will be charged to the Customer's account.
- 8 If the Customer fails to make payment in accordance with Clause 7, Penske shall be entitled to:
  - a) require the payment of cash upon delivery of any further Goods or Services;
  - b) charge an interest charge at the rate of one per centum (1.00%) per month on a cumulative basis on all overdue amounts (including late payment charges amounting to the sum of any dishonour fees plus other administration related fees, other than the price, as applied by Penske from time to time in accordance with its internal policy) calculated on a day to day basis on any monies due but unpaid, such interest charge to be computed from the due date for payment AND the parties agree that such interest charge is not a penalty but is a true measure of damages incurred by Penske. Payments received from the Customer will be credited first against any interest charge and all such fees shall be payable forthwith;
  - c) claim from the Customer all costs, expenses and charges incurred on any account whatsoever including but not limited to any action taken by Penske to recover monies

or Goods due from the Customer including but not limited to any mercantile agent's costs and legal costs and disbursements on a solicitor-client basis;

- d) cease any further deliveries to the Customer of Goods and/or Services and to terminate any agreement in relation to Goods or Services that have not been delivered; and
  - e) preclude Customers having overdue accounts from participating in any special deals, discounts, bonus payments, redemptions, rebates and all other incentive programs until their accounts are no longer overdue.
- 9 Goods and Services supplied to the Customer upon credit, are subject to the following payment terms:
- a) service work – payment by 30 days' net from statement date;
  - b) spare parts – payment by 30 days' net from statement date;
  - c) principal product sales: orders less than AUD\$100,000 (excluding GST) - payment by net 30 days from statement date. Orders from AUD\$100,000 (excluding GST) and greater - a 20% deposit must be paid upon order and balance to be paid 30 days' net from statement date.
- 10 Penske may, in its absolute discretion, accept or reject payment by credit card. If Penske should choose to accept credit card payments, it is entitled to charge a reasonable credit card surcharge fee. Penske will not accept payment by American Express.

#### SPECIFICATIONS MAY VARY

11

- a) Penske reserves the right to make any changes to the Goods found necessary due to the unavailability of Goods or which Penske or the manufacturer reasonably considers would improve the Goods, subject to any change not altering the function or nature of the Goods in a substantial or material way.
  - b) Specifications including (without limitation), performance, dimension and weight are approximate only and Penske shall not be liable for any error or inaccuracy in the specifications provided the error or inaccuracy:
    - (i) arises from any of the circumstances described in clause 11(a); or
    - (ii) arises from a change made to the Goods by the manufacturer.
- c) The Customer acknowledges that Penske may subcontract the performance of the Services in its absolute discretion.

#### DELIVERY

12 The Customer shall be responsible for the cost of any delivery made ex-Penske's premises. If Penske is requested to arrange for delivery of Goods beyond Penske's premises, the Customer shall pay the delivery charges stipulated by Penske from time to time.

13 Late Delivery

- a) Any date or time quoted for delivery of Goods or Services is an estimate only. While Penske shall endeavour to effect delivery at the time or times required by the Customer, time will not be of the essence and Penske cannot guarantee any quoted time or date for delivery.
- b) A failure to deliver on time shall not confer any right of cancellation or refusal of delivery on the Customer or render Penske liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof except to the extent that loss or damage is caused or contributed to by Penske's negligence or a substantial breach of these Terms and Conditions.

14 The Customer shall not be relieved of any obligation to accept or pay for Goods or Services by reason of any delay in delivery due to any strike, lockout, unavailability of materials or machinery, fires, floods, storm or tempest, transport delays, acts of God, restrictions or intervention imposed by any laws, regulations, governments or agencies thereof and any other causes beyond the reasonable control of Penske provided that if the delay or failure continues for in excess of 45 days, then Penske will offer the Customer an opportunity to terminate the relevant order, where Penske is able to cancel the order placed with its suppliers without penalty.

15 Obligations on delivery

- a) Penske's obligation to deliver shall be discharged on arrival of the Goods at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice.
- b) The Customer shall unload the Goods upon delivery.
- c) If the Customer is unable or unwilling to accept physical delivery of the Goods when the Goods are ready for delivery, Penske shall be entitled to charge a reasonable fee for any changes to the delivery or arrange for the storage of the Goods at the sole risk and cost of the Customer including all reasonable transportation, storage and other consequential costs.
  - d) Penske may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions.

16 The Customer must immediately notify Penske in writing if Goods or property owned by the Customer in respect of which Services are being provided ('**Customer's Property**') is not received within seven (7) days of receipt by the Customer of Penske's delivery advice or invoice (whichever is the later). Unless the Customer notifies Penske of any shortage within seven (7) days of receipt by the Customer of the Goods or Customer's Property, complete delivery will be deemed to have occurred.

17 If, as a result of any action or inaction of the Customer, Goods or Customer's Property is not collected or dispatched from Penske's premises within seven (7) days after Penske notifies the Customer that the Goods or Customer's Property is ready, Penske shall then be entitled to full payment notwithstanding any other payment terms agreed and Penske shall further be entitled to charge the Customer for additional costs including without limitation reasonable storage and/or transport of the Goods or Customer's Property until such time as the Goods or the Customer's Property are delivered to or collected by the Customer.

18 The Customer's address for service of notices is as specified on the face of this document or in any attached or associated documents.

19 If the Customer's Property is left with Penske, the Customer grants a lien over such Customer's Property to Penske for the value of all Goods and Services provided by Penske. If the Customer fails or refuses to pay the amount due to Penske, the Customer authorises Penske to sell the Customer's Property by public auction or private sale without any further authorisation or approval, and on a period of reasonable notice (of not less than two (2) months from the date the Customer's Property is ready for re-delivery or collection), as reasonably determined by Penske from time to time and otherwise subject to law. The Customer authorises Penske to satisfy all amounts due to Penske by the Customer and the costs of storage, transport, auction and sale from the proceeds of sale.

## INSPECTION

- 20 The Customer shall examine the Goods immediately after delivery and Penske shall not be liable for any claim for liability for any misdelivery, shortage, defect or damage unless:
- where reasonable, the misdelivery, shortage, defect or damage is noted by the Customer on the consignment note; or
  - Penske receives details in writing within seven (7) days of the date of delivery of the Goods.  
In this clause, damage or defect means a defect or damage which is reasonably capable of being identified by the Customer on inspection and examination of the Goods upon delivery.

## LIEN

- 21 In addition to the above, all Goods or Customer's Property shall, immediately after they come into possession of Penske be subject to a particular and general lien and right of detention for all moneys due to Penske by the Customer, whether in respect of such Goods, Services provided or otherwise.
- 22 The Customer acknowledges that Penske acquires a Priority Interest under section 73(1) of the PPSA without actual knowledge that the acquisition constitutes a breach of any security agreement that provides for any security interest in the Good or vehicles of the Customer and that by virtue of that section, the repairer's lien held by Penske takes precedence and priority over any security interest in the Goods, Customer's Property or vehicles of the Customer.

## PROPERTY AND RISK

- 23 Notwithstanding delivery of the Goods or their installation, property in any given Goods shall remain with Penske until the Customer has paid and discharged any and all other indebtedness to Penske on any account whatsoever, including all applicable GST and other taxes, levies and duties. Any payment made by or on behalf of a Customer which is later avoided by the application of any statutory provision shall be deemed not to discharge the Customer's indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.
- 24 The risk in the Goods shall pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer notwithstanding that Penske retains ownership until full payment. The Customer must effect and maintain insurance against all insurable risks to the Goods until such time as property passes to the Customer.
- 25 Risk in the Customer's Property shall remain with the Customer at all times, including when the Customer's Property is in the possession of Penske (such as where Penske is performing Services in relation to the property). Penske will not be liable for any damage to, or claim in relation to the Customer's Property unless that damage or claim resulted directly from Penske's negligent act or omission.
- 26 Receipt by Penske 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 Penske's ownership of rights in respect of the Goods shall continue.
- 27 The Customer acknowledges that it is in possession of the Goods solely as a bailee for Penske until payment has been made in full to Penske in accordance with these Terms and Conditions and until such payment:

- the Customer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery; and
  - the Customer shall store the Goods separately from its own goods and those of any other party and in a manner which clearly identifies the Goods, whether as separate chattels or as components, as the property of Penske; and
  - the Customer shall maintain records of Goods owned by Penske identifying them as Penske's property, of the persons to whom the Goods are sold or disposed of and of the payments made by such persons for such Goods. The Customer shall allow Penske to inspect these records and the Goods themselves on request.
- 28 Until payment of the Goods is discharged in full, the Customer hereby irrevocably grants to Penske, its agents and servants, an unrestricted right and licence, without notice to enter premises occupied by the Customer to identify and remove any of the Goods the property of Penske in accordance with the Terms and Conditions without in any way being liable to the Customer or any person claiming through the Customer, provided Penske and its agents use reasonable endeavours to minimise any disturbance to the land and premises. Penske shall have the right to sell or dispose of any such Goods removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.
- 29 Penske licenses the Customer to install the Goods. If the Goods are affixed to other materials, the totality thereof shall be the sole and exclusive property of Penske until payment in accordance with these Terms and Conditions has been made in full to Penske unless the other materials or part thereof are or is the property of a party or parties other than the Customer in which case the totality thereof shall be deemed to be owned as tenants in common with such other party or parties in shares corresponding to the respective amounts paid or payable by the Customer in respect of such other party or parties.
- 30 The Customer shall be at liberty to agree to sell the Goods (independently or affixed to other materials) subject to the condition that until payment has been made in accordance with these Terms and Conditions, the Customer shall sell as an agent and bailee for Penske and that the entire proceeds from the sale thereof shall be held in a separate account and on trust for Penske. If the Customer is not paid by the third party, the Customer agrees, at Penske's option, to assign the Customer's claim against the third party to Penske upon written request by Penske. For the purpose of giving effect to this clause, the Customer irrevocably appoints Penske as its attorney.
- 31 The right to on-sell, deal or otherwise dispose of the Goods in the normal course of trade may be revoked at any time by Penske and shall automatically cease if a Receiver is appointed over any of the assets or the undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or administration or calls a meeting of, or makes any arrangement or composition with, creditors or commits any act of bankruptcy or where the Customer is in default of any of its obligations to Penske.

## CHARGE AND SECURITY INTEREST

- 32 The Customer hereby charges with payment of any indebtedness to Penske all legal and beneficial interest (freehold or leasehold) in land and property, other than personal property to which the Personal Property Securities Act 2009 (Cth) applies, held now or in the future by the Customer.



- 33 The Customer agrees that if a demand is made by Penske, the Customer receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required.
- 34 The Customer hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by Penske to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto Penske may lodge a caveat noting the interest given by this charge on the title of any property of the Customer whenever it so wishes.
- 35 The Customer grants a Security Interest to Penske in all of its present and after acquired property and in all of its present and future rights in relation to any personal property as defined in the Personal Property Securities Act 2009 (Cth).

**PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)  
("PPSA")**

- 36 In these Terms & Conditions the terms "Security Agreement", "Security Interest", "Registration", "Registration Commencement Time", "Personal Property Securities Register" (or "PPSR"), "Priority Interest", "Purchase Money Security Interest", "Financing Statement", "Financing Change Statement" and "Verification Statement" have the meanings given in the PPSA.
- 37 The Customer acknowledges and agrees that these Terms and Conditions constitute a Security Agreement which creates a Security Interest in all Goods and the proceeds of the sale of the Goods supplied to the Customer by Penske to secure any payment from time to time that becomes due and payable by the Customer to Penske.
- 38 The Customer acknowledges that by agreeing to these Terms and Conditions, the Customer grants a Security Interest (by virtue of the retention of title and bailment clauses in these Terms and Conditions) to Penske and in all Goods supplied by Penske to the Customer (or for the Customer's account) and these Terms and Conditions shall apply notwithstanding anything express or implied to the contrary contained in the Customer's purchase order. The Customer additionally agrees that Penske can without notice to the Customer seek Registration of its Security Interest as a Purchase Money Security Interest on the PPSR and under the PPSA.
- 39 The Customer acknowledges, agrees and undertakes:
- a) to sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which Penske may reasonably require to enable perfection of its Security Interest or Registration of a Financing Statement or Financing Change Statement on the PPSR or anything also required by Penske to ensure that Penske's Purchase Money Security Interest is a perfected security interest;
- b) to not register a Financing Change Statement as defined in section 10 of the PPSA or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of Penske;
- c) to give Penske not less than 14 days' written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, email address, trading name or business practice);
- d) to pay all costs incurred by Penske in the Registration and maintenance of its Financing Statement to enable Registration of its Security Interest (including registering a

Financing Change Statement) on the PPSR and such costs –

- (i) shall not exceed the regulated cost for registering or maintaining (updating) a Security Interest, as amended from time to time and/or enforcing or attempting to enforce the Security Interest created by this Security Agreement including but not limited to, executing subordination agreements; and
- (ii) may be debited by Penske against the Customer's account;
- e) pursuant to section 157 of the PPSA, unless otherwise agreed in writing by Penske, to waive the right to receive the Verification Statement in respect of any Financing Statement relating to the Security Interest;
- f) to immediately on request by Penske, procure from any persons considered by Penske to be relevant to its security position, such agreement and waivers as Penske may at any time require;
- g) to release and hold harmless Penske from any liability whatsoever in the event of any dispute between Penske and the Customer as to whether any interest registered on the PPSR constitutes a valid Security Interest, where the registration was made in good faith by or on behalf of Penske;
- h) to indemnify Penske from any cost reasonably incurred by the Customer in amending or withdrawing any Security Interest registered by Penske over the Goods, where the registration was made in good faith by or on behalf of Penske;
- i) not to permit anything to be done that may result in the Purchase Money Security Interest granted to Penske ranking in priority behind any other Security Interest;
- j) that nothing in sections 125, 132(3)(d), 132(4), 135, 142 or 143 of the PPSA will apply to any agreement between Penske and the Customer, or the security under this agreement;
- k) to waive its rights to do any of the following or to receive any of the following notices or for Penske to carry out the following obligations under the following provisions of the PPSA:
- (i) receive notice of removal of an accession under section 95;
- (ii) receive notice of a decision, under paragraph 117(2)(b), to enforce the security interest in the personal property in the same way as the interest in the land may be enforced under land law under section 118;
- (iii) received notice of any action to be taken in accordance with subsection 120(2) under section 121(4);
- (iv) receive notice of intention to seize collateral under section 123;
- (v) receive notice of disposal of collateral under section 130;
- (vi) receive a statement of account if there is disposal of collateral under section 132(3)(d);
- (vii) receive every six months statements of account until there is disposal of collateral under section 132(4);
- (viii) receive notice of retention of collateral under section 135;
- (ix) the Customer and Penske also contract out of each other provision of Part 4.3 of the PPSA, under sections 115(7) and 116(2), but only to the extent that the provision imposes obligations on Penske; and
- (x) the Customer and Penske agree that neither the Customer nor Penske will disclose information of

the kind mentioned in section 275(1) to any persons other than to Penske's related parties, shareholders, advisers, financiers or bankers.

## TRUSTS

40. This chapter on Trust applies if the Customer is a trustee and whether or not Penske has notice of the trust.
41. Where the Customer comprises two or more persons and any of those persons is a trustee this chapter applies to such trustee.
42. The Customer agrees that even though the Customer hereby enters into an agreement with Penske as trustee of the trust, the Customer shall also be liable personally for the performance and observance of every covenant to be observed and performed by the Customer expressed or implied in these Terms and Conditions.
43. The Customer warrants its complete, valid and unfettered power to enter into this agreement with Penske.
44. The Customer covenants that the rights of indemnity which it may have against the property of the trust have not been, and in the future will not be, excluded, modified, released, lost or diminished (whether by agreement, breach of trust or otherwise).
45. The Customer shall not, without Penske's prior written consent:
- resign or be removed as trustee of the trust or appoint or allow the appointment of a new or additional trustee of the trust;
  - amend or revoke any of the terms of the trust;
  - vest or distribute the property of the trust or advance or distribute any capital of the trust to a beneficiary or resettle any of the property of the trust;
  - permit a beneficiary to have the use, occupation, employment or possession of the property of the trust;
  - do or permit to do an act or thing in breach of the trust which would permit the trustee to be removed as trustee of the trust;
  - exercise or permit to be exercised a power to change the vesting date of the trust or provide for an early determination of the trust;
  - lend any money, give any guarantee or incur any debt other than in the ordinary course of business of the trust; or
  - pay any of the income of the trust to any beneficiary of the trust if such payment will prejudice or affect the Customer's ability to pay all monies due to Penske.

## WARRANTY

46. Goods supplied by Penske are subject only to the then applicable manufacturer's written warranty (if any) and, except to the extent prohibited by law, all other warranties with respect to Goods are hereby excluded.
47. Unless stated otherwise by Penske in writing, in the case of Services which comprise the supply of labour that is directly related to the supply of Goods (such as labour for the installation of the Goods):
- the Goods component is subject only to the then applicable manufacturer's written warranty (if any) and, except to the extent prohibited by law, all other warranties are hereby excluded; and
  - the labour component is warranted by Penske to be free from defects for the same duration and subject to the same terms and conditions as the then applicable manufacturer's written warranty applying to the Goods (if any).

48. Unless stated otherwise by Penske in writing, in the case of Services performed on Penske's behalf by a subcontractor, those Services are subject only to the then applicable subcontractor's warranty (if any) and, except to the extent prohibited by law, all other warranties with respect to those Services are hereby excluded.
49. Unless stated otherwise by Penske in writing, in the case of Services which comprise the supply of labour (and subject to clause 47.b), the Services are warranted to be free from defects for a period of 6 months from the date of completion of the Services and except to the extent prohibited by law, all other warranties with respect to Services are hereby excluded. This warranty is conditional upon the following:
- the Customer providing Penske with written notice of any claim pursuant to the warranty within the warranty period;
  - delivery at the Customer's expense of the components to Penske at an address nominated by Penske; and
  - Penske being satisfied that the Services supplied by Penske were defective.
50. If you are a "consumer" (as that term is defined in the Competition & Consumer Act 2010 (Cth) ("Act")) then:
- the benefits conferred by the warranty set out in clauses 46 to 49 are in addition to other rights and remedies of the consumer under a law in relation to the Goods and/or Services to which the warranty relates; and
  - our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
    - to cancel your service contract with us; and
    - to a refund for the unused portion, or to compensation for its reduced value.
- You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service; and
- any claim under the terms of the warranty set out in clauses 46 to 50 must be made by the Customer at its own cost by contacting Penske.

## LIMITATION OF LIABILITY

51. These Terms and Conditions do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which by law cannot be excluded, restricted or modified.
52. Sale to Non-Consumers:
- In the case of Goods supplied by Penske to a Customer who is not a "consumer" (as defined in the Act), if the Goods do not correspond with the description of them on the invoice or are defective, then provided that the Goods are preserved intact and made available for inspection by a representative of Penske and are returned to Penske in the same order and condition as that in which they were delivered, Penske's liability shall be limited at Penske's option to replace those Goods or reimburse the Customer for the amount of the purchase price paid for them.
  - Any claim under subclause (a) must be made in writing within twenty-one (21) days of the date of delivery of those Goods. However, where the non-compliance or defect was reasonably capable of being identified by the Customer on inspection and examination of the Goods upon delivery, then any notice or claim in relation to the Goods must be noted,

w here reasonable, on the consignment note, and otherwise must be made within seven (7) days of the date of delivery of those Goods.

**53. Sales to Consumers:**

In the case of Goods supplied by Penske to a Customer who is a "consumer" (as that term is defined in the Act), to the extent that the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of Penske to the Customer for breach of any consumer guarantee given in respect of the Goods under the Act (other than a guarantee under sections 51, 52 or 53 of the Australian Consumer Law) shall in all cases be limited, at the option of Penske, to any one or more of the following:

- a) the replacement of the Goods or the supply of equivalent goods;
- b) the repair of the Goods;
- c) the payment for the reasonable cost of replacing the Goods or of acquiring equivalent goods; or
- d) the payment of the reasonable cost of having the Goods repaired.

**54. Services to Non-Consumers:**

Penske's liability in connection with the supply of Services to a person who is not a "consumer" (as that term is defined in the Act) shall be limited to:

- a) the supply of the Services again; or
- b) the payment of the cost of having the Services supplied again; at Penske's sole discretion.

**55. Services to Consumers:**

In the case of Services supplied by Penske to a Customer who is a "consumer" (as that term is defined in the Act), to the extent that the Services supplied are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of Penske to the Customer for breach of any consumer guarantee given in respect of the Services under the Act shall in all cases be limited, at the option of Penske, to any one or more of the following:

- a) the supplying of the Services again; or
- b) the payment of the cost of having the Services supplied again.

**56. Subject to the Act and these Terms and Conditions, the Customer agrees that:**

- a) it has not relied on any inducement, representation or statement made by or on behalf of Penske in purchasing the Goods or Services;
- b) these Terms and Conditions set out the entire liability of Penske in respect of its liability under the Act or otherwise in respect of liabilities to a consumer for a breach of a condition, warranty or guarantee with respect to the sale of Goods or Services;
- c) to the extent that the limitations in clauses 53 to 56 do not apply, and to the extent permitted by law, Penske's total aggregate liability in respect of any other claim by the Customer or a third party in connection with these Terms and Conditions shall be limited as follows:
  - (i) in respect of damage to property, Penske's liability shall be limited to 100% of the value of the relevant Goods and/or Services;
  - (ii) in respect of special, indirect or consequential loss, clause 56(d) applies;
  - (iii) in respect of any other damages that are not indirect, special or consequential, Penske's liability shall be limited to a maximum of 10% of the value of the relevant Goods and/or Services;

- d) Penske is not liable for indirect, special or consequential loss or damage (including but not limited to loss of goodwill, loss of profit, loss of revenue, loss of expected savings, opportunity costs, loss of business, loss of reputation and business interruption) whether arising in contract, tort (including negligence), under any statute or otherwise arising from or related in any way to these Terms and Conditions or their subject matter. The exclusion of liability under this clause shall be to the extent permitted by law;
- e) to the extent any claim or demand brought against Penske by any third party exceeds the liability set forth in these Terms and Conditions the Customer shall indemnify, defend and hold harmless Penske from and against such claim and demand. The Customer shall be obliged to advise Penske in writing and without delay of any damage or loss to be borne by Penske, or to have such damage or loss assessed by Penske. The exclusion of liability under this clause shall be to the extent permitted by law; and
- f) any dealer or third party that performs a repair job for a Penske account customer that is a "Non-Warranty Repair" including breakdowns must secure a direct method of payment from the customer for the repair.

**SERVICE REPAIR**

- 57. The Customer acknowledges that any property is presented by the Customer having taken all necessary steps to ensure that no loose items are able to damage that property, e.g. windscreens or any other part of the Customer's equipment when raising and lowering a vehicle cabin.
- 58. The Customer accepts responsibility for any damages that may occur in this way.

**FORCE MAJEURE**

- 59. Penske shall not be liable for any failure or delay in supply or delivery of the Goods or Services where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of Penske including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

**TERMINATION**

- 60. If the Customer fails to comply with any of these Terms and Conditions or being a natural person or persons commits any act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors or if a receiver or manager or administrator or controller is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator or administrator is appointed, Penske may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately recover possession of any Goods not paid for in accordance with these Terms and Conditions.

**RETURNS**

- 61.
  - a) Other than as set out in these Terms and Conditions, Penske shall not be liable to accept any returned Goods but may in its absolute discretion accept the return of Goods, provided that such Goods shall only be accepted



for return with the prior written approval of a duly authorised representative of Penske.

- b) Goods returned for credit pursuant to this clause will be subject to a handling and administration charge equivalent to 20% of the invoiced value of the returned Goods.
- c) For all Goods submitted for return, all freight and other related expenses are the responsibility of the Customer.
- d) Goods which are specially sourced within Australia and/or overseas are non-returnable.
- e) All goods submitted for return must be accompanied by relevant invoice numbers.
- f) The return of core deposits are excluded from this policy if returned within three months of original component purchase date.

#### GOVERNING LAW

62. The Customer agrees that these Terms and Conditions shall be construed according to the laws of the State or Territory as Penske may in its sole discretion determine. Proceedings by either Penske or the Customer may be instituted and/or continued in such State or Territory as Penske may in its sole discretion determine. Failing such determination, the Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the State of New South Wales.

#### SERVICE OF DOCUMENTS

63. The Customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Customer.

#### STATEMENT OF DEBT

64. A certificate signed by a Director, Secretary, Financial Controller or Credit Manager of Penske shall be prima facie evidence of the amount of indebtedness of the Customer to Penske.

#### PRIVACY

65. By entering into this contract the Customer authorises Penske to hold and use the information the Customer provides to it, in any document including without limitation the Customer's application for credit with Penske and during the term of the contract, to:
- a) manage the Customer's account with Penske, including to send the Customer statements and invoices and collection purposes;
  - b) obtain credit information about the Customer from credit referees and credit reference agencies; disclose credit information to credit reference agencies or other persons seeking credit references. The credit information is collected to assist Penske to ascertain the Customer's credit status. Failure to provide the requested information may result in credit being refused;
  - c) provide the Customer with information about Penske products and any special offers Penske believe may be of interest to the Customer, unless the Customer advises Penske otherwise; and
  - d) transfer Customer information to related or associated companies and other entities that assist Penske to provide Customers with Goods and Services including sub-contractors.

#### DISPUTE RESOLUTION

66. The parties agree that a dispute or disagreement arising under this agreement will be dealt with as follows:
- a) the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute. If there is a dispute regarding an invoice or account issued by Penske, or if the Customer intends to withhold payment of all or part of an invoice or account for any reason, the Customer must issue a notice setting out the nature of the dispute or set off promptly after receipt of the invoice or account and by no later than 10 days after the date of the invoice or account;
  - b) within 5 business days of the issue of the notice under clause (a) (or such other period as agreed by the parties in writing) each party will nominate a representative to meet to discuss the issues raised in the notice;
  - c) the representatives will try to settle the dispute by direct negotiation between them within 5 business days of the parties nominating a representative;
  - d) failing settlement within a further 10 business days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in above), the parties may commence legal proceedings or agree on some other means of resolving the dispute.

For the avoidance of doubt, nothing in this clause 66 will prevent Penske from commencing proceedings (or taking other enforcement action) to enforce payment by the Customer of an unpaid debt, regardless of whether Penske has first complied with in this clause 66.

**The remainder of this column is intentionally blank.**