

TAKE NOTE
Declaration under s47A Fair Trading Act 1987

These Terms & Conditions contain provisions that may substantially prejudicial to your rights, including terms that:

- Limit our liability to you (Clauses 68-73)
- Grant us an interest in your property to secure amounts that you owe us (Clauses 25-27)
- Require you to pay interest on overdue amounts (Clause 14)

You should read these Terms & Conditions carefully and seek independent advice if you have any questions.

Penske collects, stores and accesses personal information that you provide in accordance with our Privacy Policy. You can view our Privacy Policy at <https://penske.com.au/compliance-legal/>

TERMS AND CONDITIONS OF SALE AND SERVICE
(“Terms and Conditions”)

What is this Document?

1. These are the Terms and Conditions that Penske offers to its customers. They apply to everything that Penske sells, including goods, products and merchandise (Goods), as well as services that we perform (Services). If you purchase Goods or Services from Penske then these Terms and Conditions apply to you.

Unless we agree otherwise in writing these Terms and Conditions apply to the exclusion of all others, including any terms and conditions that might appear on customer contracts, invoices or purchase orders, for example.

Headings are included to help you navigate the document, and don't form part of the terms and conditions.

Who's Who

2. In this document 'Penske' means Penske Australia Pty Ltd.

The words 'we', 'us' or 'our' refer to Penske.

'The Customer' means any person, company, trust or other entity that places an order for the purchase of Goods or Services from Penske.

'You' and 'your' are references to the Customer.

Quotations

3. These Terms and Conditions apply to all quotations, estimates and other pricing that we provide you, whether in writing or not.
4. Sometimes we won't be able to provide you with exact pricing, and we'll provide you with an estimate instead. If you place an order based on an estimate then we will invoice you based on the actual work done or Goods provided, which might be more or less than the estimate. By placing an order based on an estimate you agree to pay for the actual work done or Goods provided, even if it's more or less than the estimate.
5. Sometimes we will need to disassemble your property in order to provide you with a quotation for Goods or Services; for example, we may need to disassemble an engine in order to diagnose the problem before we can quote to fix it. You acknowledge and agree that you will pay our costs of disassembly and diagnosis even if you don't choose to have us proceed with any further work. If you wish to have us reassemble your property (fixed or not), then you agree to

pay our reasonable costs of doing so. You acknowledge and agree that we are not obliged to reassemble your property if you do not agree to pay for that service.

6. If we need to carry out additional testing or perform additional work over and above what we've quoted you then we will try to contact you, provide an estimate of the cost involved, and ask you to authorise the additional work. If additional testing or work is a usual or incidental part of the work you've requested then we'll provide you with the pricing up front and you agree that we can carry out that additional work without further authority.

Changes to these Terms and Conditions

7. From time to time we might need to update these Terms and Conditions to keep them relevant and aligned with the legal and regulatory frameworks that apply to our business, but changes won't apply to orders that we've accepted before the date of the change.

You always view our current Terms and Conditions at <http://www.penske.com.au>, and the Terms and Conditions that appear on our website at the time that we accept your order will continue to apply to that order. You won't lose any of the rights or obligations that you had under those Terms and Conditions in the event of a later change.

The only exception is where a change is made to comply with a mandatory legal or regulatory requirement. If that's the case then the change will apply immediately.

Cancellations and Changes to Orders

8. We get it. Sometimes things change. In most cases you can cancel or change your order at no cost.

There are some exceptions. You will need to pay for:

- a. any goods or materials that we have sourced especially for your order, and you will own those items upon payment; and
- b. the cost of any labour, parts and / or tooling expended on your order up until you cancel the order.

Taxes and Duties

9. If we are obliged to pay any form of tax (including GST), duty or levy on amounts that you pay us, or on the Goods or Services that we provide to you, then you must pay or reimburse us for those amounts.

Changes to Pricing

10. Sometimes we might need to vary our pricing after you order but before the Goods or Services are delivered. You acknowledge and agree that we may change our pricing in this way where the cost of delivering the Goods or Services increase due to:
- changes to legislation, regulations, orders, directives, by-laws, licences or approvals;
 - fluctuations in currency value;
 - changes to the cost of labour; or
 - changes in the amounts that our suppliers charge us; or
 - any other reason beyond our reasonable control.

Payment Terms

11. Unless you have a current credit account with us, we generally require payment at the time that the Goods and / or Services are provided. If we have agreed to different payment terms in writing then those payment terms will apply instead. Time for payment is of the essence.
12. You agree not to withhold payment of your account, even if you have a query, dispute or set-off. If you invoke and participate in the dispute resolution process at clause 88 of these terms and conditions then you can withhold payment of the disputed portion of your claim pending the outcome of that process. If you abandon or fail to comply with the dispute resolution process then you must pay the entire balance of the account immediately.
13. We can charge you, and you agree to pay, our reasonable administration and handling fees for copying and producing any documents that you ask for, or for other tasks carried out in the course of conducting your account.
14. If we have not received payment in cleared funds by the due date under these Terms and Conditions then we can:
- change your payment terms to 'cash on delivery' or require payment in advance for any further Goods or Services that we provide to you, including Goods and Services that you have already ordered but have not yet been delivered;
 - charge you interest on all overdue amounts (including any dishonour fees and other administrative charges) at the rate of one percent (1%) per month, calculated daily. Payments that we receive from you will be applied against any accrued interest charges first;
 - charge you for any costs, expenses and charges that we incur in relation to the overdue amounts, or in relation to the recovery of Goods from you, including but not limited to any mercantile agent's costs and legal costs on a solicitor-client basis;
 - suspend or cancel any further deliveries of Goods and/or Services, and terminate any agreement in relation to Goods and/or Services that have not yet been delivered;
 - preclude you from participating in any special deals, discounts, bonus payments, redemptions, rebates or other incentive programs until all overdue amounts have been paid.
15. Until payment has been received in cleared funds you hold Goods to which the payment relates for us as a mere bailee. You must store those Goods separately from your

own goods in a way that clearly identifies them as our property. If you sell or otherwise dispose of Goods that have not been paid for you must maintain a record of who you sold the goods to, or how they were disposed of, and any payments that you received for those Goods. You must allow us to inspect those records on request.

Goods Supplied on Credit

16. We are not required to provide you with Goods or Services on credit, but if we do then the following special payment terms apply:
- Services – payment is due 30 days net from statement date;
 - spare parts – payment is due 30 days net from statement date;
 - principal product sales:
 - orders less than AUD\$100,000 (excluding GST) - payment is due 30 days net from statement date.
 - orders of AUD\$100,000 (excluding GST) or more - a 20% deposit must be paid upon order, and payment of the balance is due 30 days net from statement date.
17. We may, in our absolute discretion, accept or reject payment by credit card. If we accept a payment by credit card then we can charge you an amount equal to the amount that it costs us to accept payment using that payment type. We do not accept American Express.

Ownership and Risk

18. We own the Goods until we receive payment in full for those Goods, including any applicable GST, taxes, levies or duties.
19. If a payment for Goods or Services is voided due to the application of any legislative or common law provision, then we will be restored to rights which we would have had if the payment had not been made at all.
20. You agree that we can enter your premises and remove any Goods that we have not received payment for once the date for payment has passed, at any time and without giving you notice. Provided that we act reasonably to minimise any disturbance to your land or premises we won't have any liability to you, or to any third party claiming through you, for accessing the premises or removing the Goods. We can sell Goods recovered in this way, and we won't be liable to you for any loss that you might suffer as a result.
21. We carry the risk of damage to or loss of the Goods while they are in our physical possession. From the moment that we deliver the Goods to you, or hand them to a carrier that you nominate, the risk of damage to or loss of the Goods passes to you.
22. If risk in the Goods passes to you before we have been paid in full for those Goods, then you must insure the Goods against all insurable risks until payment in full has been made.
23. If you leave property in our possession you do so at your own risk. We are not liable for any loss of or damage to your property while it is in our possession (for example, while we are performing Services involving that property), unless that loss or damage is directly caused by our negligent act or omission.

24. You must make sure that any property that you deliver to us has been made safe and is in a suitable condition for delivery of the Goods and / or Services that we are providing. You must ensure that there are no loose items in any vehicle that you deliver which may cause damage or injury when raising or lowering the cabin. You accept responsibility for any damage caused by a failure to comply with this clause, and indemnify us for any loss, damage or injury that we suffer as a result.

General Security

25. You grant us a Security Interest (as defined in the PPSA) in all of your present and after acquired property, and in your present and future rights in relation to any personal property as defined in the *Personal Property Securities Act 2009*.

26. If you leave property in our possession then:

- a. you grant us a lien over that property to secure any unpaid amounts that you might owe us from time to time while the property is in our possession;
- b. if you refuse to pay any amount due to us then we can sell or otherwise dispose of the property that you have left in our possession, subject to any applicable law. You authorise us to apply the proceeds of sale against the amounts that you owe to us, as well as to any costs of storage, transport, auction or sale;
- c. you acknowledge and agree that, to the extent permitted by law, the repairer's lien that we hold takes precedence and priority over any other security interest in the property.

27. Unless we consent in writing, you agree not to sell or otherwise dispose of Goods that we have not received payment for if any of the following things happen:

- a. a receiver or administrator is appointed over any of your assets;
- b. a winding up order is made against you;
- c. you go into voluntary liquidation;
- d. a bankruptcy order is made against you, or you commit an act of bankruptcy (if you are an individual).

PPSA

28. This part of the Terms and Conditions talks about specific rights and obligations connected to the *Personal Properties Securities Act 2009*. Capitalised words in this part of the Terms and Conditions have the meaning set out in the 'PPSA'.

29. To the maximum extent permitted by law, until ownership of Goods passes to you, you agree that:

- a. you hold the Goods, and that have not been re-sold, as a bailee for us;
- b. you can resell Goods, but you cannot bind us to any liability to any third party (contractual or otherwise). We can revoke our authority to sell the Goods at any time, acting reasonably;
- c. you can only resell the Goods if you make the purchaser aware of our rights under clauses 28 to 36 of these Terms and Conditions;
- d. if you sell the Goods, then you do so as agent for us and hold the proceeds of sale on trust for us (but only to the extent of any unpaid amounts that you owe us);

e. if the purchaser doesn't pay you for the Goods, then you must assign your claim against the purchaser to us upon demand (but this will not affect your obligations to pay us or to observe your obligations under these Terms and Conditions). You irrevocably appoint us as your attorney for the purpose of giving effect to this clause;

30. This clause creates a Purchase Money Security Interest in the Goods, any product that the Goods are used as a component in, and all proceeds of their respective sale, to secure your performance under these Terms and Conditions.

31. You acknowledge and agree that you grant us a Security Interest in all Goods that we supply to you, now or in the future, and the proceeds from the sale of those Goods.

32. You agree that, pursuant to sections 115(1) and 115(7) of the PPSA, sections 95, 96, 117, 118, 121(4), 125, 127, 129, 130, 132(3)(d), 132(4), 135, 136(3), 136(4), 136(5), 137, 142 and 143 of the PPSA will not apply to these Terms and Conditions (to the extent permitted by law).

33. For the purposes of section 14(6) of the PPSA, you agree that we will apply any payments that we receive from you under or in connection with a transaction under these Terms and Conditions in any order that we decide.

34. You agree to sign all documents and take any steps that we reasonably require to effect Registration of our Financing Statement or Financing Change Statement, or Perfection or enforcement of this Purchase Money Security Interest. We can register the Security Interest created under these Terms and Conditions with any relevant authority or public register, and we are not obliged to give any notice or documents under the PPSA unless the relevant obligation cannot be excluded. You agree to waive your right to be provided with verification statements pursuant to section 157 of the PPSA.

35. You agree to give us at least 14 days written notice of any proposed change to your name or other details, including but not limited to your address, telephone number, fax number, email address or trading name.

36. You agree that each other provision of Part 4.3 of the PPSA shall not apply to the extent contemplated by sections 115(7) and 116(2), but only to the extent that the provision imposes obligations on us.

Specifications May Vary

37. From time to time it may be necessary to provide you with Goods that are different to the Goods that you have ordered, or from specifications that we have given you. It might be that the manufacturer has made changes to the product, or that the original product is not available, for example. Provided that the Goods we provide aren't materially different in terms of their function or suitability then these sort of changes don't entitle you to reject the Goods and won't give rise to any liability to you.

38. We might need to subcontract some or all of the Services that we perform for you. You acknowledge and agree that we can subcontract the performance of Services in our absolute discretion. We will be responsible for Services that we subcontract unless otherwise agreed in writing.

Delivery

39. Unless we specifically include it in our quote, our prices do not include the cost of delivery. If you ask us to deliver

Goods then we will charge you a reasonable delivery fee over and above the cost of the Goods.

40. Times or dates for delivery are only estimates. We will try to deliver at the times and dates that you request, but you release and indemnify us from any loss or damages that you or any third party sustain, directly or indirectly, as a result of early or delayed delivery. You cannot cancel your order, refuse to accept delivery, or avoid payment for the Goods because of early or late delivery.
41. You are responsible for unloading Goods upon delivery, and for any damage to the Goods sustained in the course of unloading.
42. Our obligation to deliver Goods is discharged as soon as the Goods arrive at your nominated delivery destination, transport company, agent, or the address appearing on the invoice. We can make and invoice partial deliveries at our discretion, and if we do so, each partial delivery is a separate sale under these Terms & Conditions.
43. If you do not accept physical delivery of the Goods when they are ready for delivery then we can charge you a reasonable fee to cover any additional delivery, storage or other costs that we incur as a result.
44. You should inspect Goods immediately after delivery. If you identify any mis-delivery, shortage, defect or damage you must:
 - a. note it on the consignment note; or
 - b. tell us about it, in writing, within seven (7) days of the Goods being delivered.

If you fail to do so your ability to claim for any loss suffered is excluded to the extent permitted by law.

45. You agree that delivery will be deemed to have been completed unless you send us notice that you have not received the Goods within seven (7) days of receiving a delivery advice or invoice from us (whichever is later).
46. If you have arranged to collect Goods from our premises but have not done so within seven (7) days of being notified that the Goods are ready, then payment for those Goods will be due and payable immediately. We can charge you a reasonable fee to cover any additional costs, including storage and transport fees.

Trusts

47. Clauses under this heading apply if you are a trustee, and:
 - a. you enter into these terms and conditions on behalf of a trust; or
 - b. our customer is comprised of more than one entity, and one of those entities is a trust;whether we know about the trust or not.
48. You warrant that:
 - a. you are and will remain personally responsible for meeting the obligations that the trust (including payment obligations) under these terms and conditions;
 - b. you have and will retain the power to enter into this agreement with us on behalf of the trust;
 - c. you have and will retain full rights of indemnity against the property of the trust, and you have not and will not diminish or release that right;

- d. you will not, without our consent:
 - i. resign or be removed as trustee of the trust, or appoint or allow the appointment of a new or additional trustee;
 - ii. amend or revoke any of the terms of the trust;
 - iii. vest or distribute the property of the trust, or advance or distribute any capital of the trust to a beneficiary, or resettle any property of the trust, or pay any income of the trust to any beneficiary of the trust, if doing so will prejudice or affect the trust's ability to meet its obligations under these terms and conditions;
 - iv. do or fail to do anything in breach of trust which would permit you to be removed as trustee;
 - v. 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;
 - vi. lend any money, give any guarantee or incur any debt other than in the ordinary course of business of the trust.

Australian Consumer Law

49. Clauses 49 to 54 only apply if you are a consumer within the meaning of the Australian Consumer Law (ACL).
50. Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law (ACL).
51. If the goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability for breach of a consumer guarantee given in respect of the goods under the ACL (other than a guarantee under sections 51, 52 or 53 of the ACL) is limited, at our discretion, to one or more of the following:
 - a. replacement of the goods, or the supply of equivalent goods;
 - b. repair of the goods;
52. If the services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability for breach of a consumer guarantee given in respect of the services under the ACL is limited to supplying the services again.
53. 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. For major failures with the service, you are entitled:
 - a. to cancel your service contract with us; and
 - b. to a refund for the unused portion, or to compensation for its reduced value.
54. Nothing in these Terms and Conditions operates to limit or exclude the rights and remedies granted to you under the ACL.

Warranty

55. The rights described under this heading are in addition to the statutory rights to which you are entitled to under the

Australian Consumer Law, and under other applicable Australian consumer protection laws and regulations that cannot be excluded by law ('Statutory Rights').

56. Subject to the full and final payment of the Goods that we sell you, the Goods will come with the applicable manufacturer's warranty (if any), in addition to your Statutory Rights. You must comply with the terms of the manufacturer's warranty if you wish to make a claim under it and ensure that defective goods are appropriately preserved and made available for inspection.
57. Subject to the full and final payment for the Services, we warrant that where we provide Services comprised of the supply of labour, those Services will be free from defects for a period of six (6) months from the date that the Services are completed, in addition to your Statutory Rights. The terms of the warranty are that:
 - a. you must provide us with written notice of the claim within the warranty period;
 - b. you must deliver any components, parts or other material relevant to the failure to an address that we specify at your own expense; and
 - c. we must be satisfied, acting reasonably, that the Services that we supplied were defective.
58. If we provide Services that only involve supplying labour directly related to the supply of Goods (for example, supplying labour to install a part), then we will warrant those Services for the duration of the manufacturer's warranty on the Goods or six (6) months, whichever is longer.
59. Where Services are supplied by a subcontractor, those Services come with the applicable subcontractor's warranty (if any), in addition to your Statutory Rights, instead of our standard Services warranty.
60. Notwithstanding anything in this document, you acknowledge and agree that you will not be afforded any warranties as set out in clauses 55 to 59 in addition to your Statutory Rights unless full and final payment of the Goods or Services has been made. You indemnify us (on a full indemnity basis) from any claims of warranty made by you if full and final payment of the Goods or Services has not been made at the time of making such claim.

Change of Mind

61. We are not required to provide a refund or replacement if you change your mind.
62. At our complete discretion we may choose to accept the return of Goods for credit where agreed in advance in writing.
63. If we do choose to accept Goods returned for change of mind then you agree to pay a reasonable handling and administration charge of up to 20% of the invoiced value of the returned Goods.
64. Freight and other costs of returning Goods for change of mind are your responsibility.
65. We will not accept return of Goods for change of mind where the goods have been specially sourced.
66. You must include the invoice number that the Goods were supplied under with any Goods returned under this heading.
67. Core deposits will not be accepted if returned within three (3) months of the original component purchase date.

Limitation of Liability

68. Nothing in these Terms and Conditions exclude or limit any of your Statutory Rights.
69. If you are a Consumer within the meaning of the Australian Consumer Law our liability will be limited to the extent of the remedies available to you under the Australian Consumer Law.
70. If you are not a Consumer within the meaning of the Australian Consumer Law our liability will be limited to:
 - a. a replacement or a refund, at our election, for Goods that don't correspond with their description or that are defective, provided that you return the Goods to us within twenty-one (21) days of receiving them; and
 - b. supply of Services again, or payment of the cost of having the services supplied again, at our election;and our total liability for any claim by you and / or any claim by a third party in respect of Goods and / or Services is limited to one hundred percent (100%) of the amount that you actually paid to us for the relevant Goods and / or Services.
71. If a third party makes a claim or demand against us that exceeds the liability set out in these terms and conditions, then you must indemnify us to the extent that it does so.
72. We are not liable for any 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 for any other reason whatsoever, to the extent permitted by law.
73. You agree to inform us immediately of any damage or loss that might result in liability on our part so that we can act quickly to preserve our rights and inspect the damage or loss.

Force Majeure

74. If either party is or will be prevented from performing any of its obligations under these Terms & Conditions by Force Majeure then that party is excused from performing the affected obligations for as long as the circumstance giving rise to Force Majeure persists.
75. A party affected by Force Majeure must notify the other party immediately, and try to minimise its effects to the extent commercially reasonable.
76. A party cannot make a claim for loss, damage, costs or expenses suffered in connection with a Force Majeure event.
77. For the purpose of this clause Force Majeure means any occurrence or non-occurrence that directly or indirectly results in a party being delayed in performing its obligations (other than obligations to pay money) under these Terms and Conditions that is beyond the reasonable control of that party, and which could not have been foreseen and mitigated by a party acting reasonably.

Termination

78. We can terminate any supply of Goods and / or Services by giving notice to you in writing if:
 - a. you don't comply with any of these Terms and Conditions;

- b. being a natural person, you commit any act of bankruptcy;
- c. being a corporation, you pass a resolution for winding up or liquidation (other than for the purposes of solvent reorganisation or reconstruction) or administration, or enter into any composition or arrangement with creditors, or if a receiver or manager or administrator or controller is appointed for any of your property or assets, or you become liable to be wound up by reason of insolvency, or if a petition is presented for your winding up, or if a liquidator or provisional liquidator or administrator is appointed.

79. In the event of termination we may, in addition to exercising all or any of our rights, suspend any further deliveries and immediately recover possession of any Goods not paid for in accordance with these Terms and Conditions.

80. You can terminate any supply of Goods and / or Services by giving notice to us in writing if we don't comply with any of these Terms and Conditions in a way likely to cause you loss or damage.

Notices

81. You agree that we can send you notices, including by way of service, by posting them to your last known mailing address or by emailing them to the most recent email address that we have on file for you.

82. You can send us notices, including by way of service, by posting or emailing them to our registered address.

No Representations

83. You acknowledge and agree that you have not relied on any inducement, representation or statement made by or on behalf of us in making your decision to purchase Goods or Services.

Jurisdiction and Governing Law

84. These Terms and Conditions will be governed by and construed in accordance with the laws of the State of Queensland, Australia.

85. The parties submit to the exclusive jurisdiction of the Courts of Queensland, Australia, including the Federal Court of Australia sitting in Queensland.

Statement of Debt

86. You agree that a certificate signed by a Director, Secretary, Financial Controller or Credit Manager of our company is prima facie evidence of the amount that you owe us.

Privacy

87. By entering into these Terms and Conditions you authorise us to hold and use the information that you provide to us in any document (including without limitation your application for commercial credit with us) during the term of the contract, to:

- a. manage your account, including to send you statements and invoices and for collections purposes;
- b. obtain credit information about you from credit referees and credit reference agencies, and to disclose credit information to credit reference agencies or other persons seeking credit references. The credit information is collected to assist us to ascertain your

credit status. Failure to provide the requested information may result in credit being refused;

- c. provide you with information about our products and any special offers we believe may be of interest to you, unless you advise us otherwise; and
- d. transfer your information to related or associated companies and other entities that assist us to provide our customers with Goods and Services, including sub-contractors.

Dispute Resolution

88. You agree to deal with any dispute or disagreement arising under this agreement 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 us, or if you intend to withhold payment of all or part of an invoice or account for any reason, you must issue a notice setting out the nature of the dispute or set off promptly after receipt of the invoice or account and no later than 10 days after the date of the invoice or account;
- b. within 5 business days issuing the notice under clause (a) (or such other period we agree 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. if a settlement has not been reached within a further 10 business days (or such other period as we agree in writing), or if one or both parties fail 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 will prevent us from commencing proceedings (or taking other enforcement action) to enforce payment of an unpaid debt, regardless of whether we have first complied with this clause.

The remainder of this column is intentionally blank.