

## Scania New Zealand Ltd (7047439 "Scania") Conditions of Sale General Terms

These terms and conditions, as varied from time to time, ("The General Terms") apply to all trucks, buses, industrial engines, marine engines, associated parts and any other goods and services sold or provided by Scania to the Customer. The Schedules, if any, to this Agreement contain additional or modified terms that will apply to some transactions. For example, if the transaction is a sale of a vehicle the additional terms in Schedule 1 will apply. If the goods and services are provided on credit, the additional terms in Schedule 2 will apply. Subject to these terms, these terms constitute the entire Agreement and to the extent permitted by law all other representations oral or in writing are excluded.

### 1. General

1.1. In these terms and conditions, unless the context otherwise requires:

"Customer" means the person/s named in the Sales Order;

"Goods" means the goods sold or supplied by Scania and listed on the Sales Order, whether or not owned by Scania at the time of sale;

"Manufacturer" means Scania AB (publ) 556184–8564, a Swedish corporation;

"Purchase Price" means the total gross Purchase Price set out on the face of the Sales Order or if the context requires as varied under these terms;

"Sales Order" is the order in printed or electronic form listing the Goods and/or Services to which these terms and conditions apply;

"Scania" means Scania New Zealand Limited NZCN 7047439;

"Services" includes all services, repairs, maintenance, modifications and labour provided or contracted to be provided by or on behalf of Scania and listed on the Sales Order;

"The Customer's Address" means the address set out as the postal address in the Sales Order.

1.2. Where there is more than one Customer, they agree to be jointly and severally bound by this Agreement.

### 2. Formation of Contract

2.1. Upon Scania accepting the Sales Order the parties enter into a contract for sale of Goods and/or Services upon these terms ("the Agreement").

2.2. The Agreement is not binding on Scania until the earlier of:

2.2.1. delivery of the Goods; or

2.2.2. after ten days of the acceptance of the Order by Scania

2.2.3. despite anything contained in 2(b) Schedule 1 the Agreement is not binding on Scania, if before the period specified in 2(b) Schedule 1, Scania notifies the Customer that it is unable or unwilling to deliver the Goods to the Customer.

2.2.4. If the Sales Order is not binding on Scania, Scania will repay any Deposit received from the Customer less any expenses incurred by Scania in relation to the Sale up to and including the date of notification under clause 2(c) Schedule 1.

### 3. Delays in Delivery

3.1. The delivery date, if any, set out in the Sales Order ("the estimated date for delivery") is an estimate only and the Customer agrees that Scania will not be liable to the Customer for damages for delays in delivery of the Goods.

3.2. Scania shall make every reasonable effort to make the Goods available for delivery on or before the delivery date stated in this Agreement.

3.3. The Customer shall take delivery of the Goods within 7 days of being notified by Scania that the Goods are ready for delivery. If the Customer fails to take delivery within this time Scania may terminate the Agreement by notice in writing.

3.4. This Sales Order may be cancelled by Scania under clause 2 of the Agreement.

### 4. Changes to Goods

The Goods are described in a general way only and may incorporate such structural design and mechanical modifications as are from time to time made by manufacturers in accordance with their policies of modifying their products or as are made to comply with legal requirements or to meet applicable Design Rules or standards.

### 5. Warranties, Manufacturer's Warranty, Exclusion of Implied Warranties

If applicable to the Goods the Scania "Terms of Warranty and Company Liability" published by the Manufacturer apply to this Sales Order. The warranties given by the Distributor under this Agreement replace all other representations or warranties (statutory, express or implied) and all such representations and warranties are expressly excluded to the fullest extent permitted by law.

### 6. Repairs and Spare Parts

6.1. The Customer acknowledges being informed that (except for causes beyond Scania's reasonable control, including but not limited to: industrial dispute, Acts of God, or breakdown of plant):

6.1.1. repair facilities for the Goods manufactured by the Manufacturer are available during normal working hours.

6.1.2. spare parts for the Goods manufactured by the Manufacturer shall be available for a period of 10 years after the date of production of products of the same description and type as the Goods ceases; and

6.1.3. Scania does not warrant the availability of suitable facilities for the repair of the Goods, not manufactured by the Manufacturer.

### 7. Agreement by the Customer

7.1. The Customer agrees that:

7.1.1. it will not assign its interest in the Agreement without the prior written consent of Scania;

7.1.2. it will pay all charges as invoiced pursuant to the Agreement upon the payment terms set out in this Agreement; and

7.1.3. it will pay all reasonable expenses, including legal fees, removal fees and repair fees incurred by Scania in enforcing the Agreement.

### 8. Payments

8.1. The Customer agrees to pay for Goods sold or Services provided by Scania to the Customer

8.2. Unless the Customer has a credit account with Scania (in which case the terms in Schedule 2 will apply, unless the Good is an engine) or unless otherwise agreed in writing between Scania and the Customer, payment for Goods or Services must be made prior to delivery of any Goods or the provision of any Services. Payment shall be without retention or deduction. Time is of the essence in respect of this obligation.

**9. Price Variation**

- 9.1. All prices are subject to variation without notice, and all orders are accepted on the condition that they will be invoiced at prices ruling at the date of dispatch. Acceptance of delivery of any Goods or the provision of any Services is conclusive evidence of acceptance by the Customer of any variation in pricing of the goods or services.
- 9.2. Variation in delivery charges between the date of the order and the actual delivery shall be to the Customer's account.
- 9.3. Government taxes, duties and charges (if any) included in the price are based upon the rates of those taxes, duties and charges at the time of the order. All variations in the rates of such taxes, duties and charges as a result of amendment of the relevant laws or classifications shall be to the Customer's account.
- 9.4. Unless otherwise stated, the stated price is inclusive of Goods and Services Tax ("GST"). Any GST in respect of a supply by Scania shall be payable by the Customer to Scania and Scania agrees to provide Tax Invoices in accordance with the Goods and Services Tax Act 1985 (as amended or substituted from time to time).

**10. Claims**

- 10.1. Customer's obligations during any warranty period.  
The Customer acknowledges that during any warranty period, if applicable, Goods or Services must be properly and punctually serviced and maintained using only genuine Scania components and parts, used and operated in accordance with the recommendations, instructions, capacity and operating limitations specified for the Customer.
- 10.2. Scania will not be obliged to recognize, nor will it be responsible in law or equity for, any claims concerning short delivery of or claims concerning damaged Goods unless the Customer has given written notice to Scania within seven days of the date on which the relevant Goods were delivered to or collected by the Customer.
- 10.3. If the Customer considers that it has any claim against Scania which, having regard to the Agreement, it is entitled to make, it will:
- 10.3.1. immediately upon becoming aware of the circumstances giving rise to such a claim, notify Scania of the nature of the claim; and
- 10.3.2. allow Scania full and free access to the Goods in relation to which the claim is made (or the place where the Goods have been applied or used or the Services provided) for the purpose of conducting such tests and examinations as Scania may in its absolute discretion consider necessary to determine whether the claim is justified. For clarity, if Scania considers that the claim is justified then Scania's sole liability shall be as set out in clause 10.5.
- 10.4. The Customer acknowledges that:
- 10.4.1. the supply under the Agreement is a supply for business purposes in terms of sections 2 and 43 of the Consumer Guarantees Act 1993 ("CGA") and accordingly the provisions of the CGA do not apply to any supply of Goods or Services made pursuant to the Agreement;
- 10.4.2. the Goods are supplied by Scania in trade within the meaning of the Fair Trading Act 1986, and sections 9, 12A and 13 of the Fair Trading Act 1986 will not apply to the Agreement;
- 10.4.3. the Sale of Goods provisions in the Contract and Commercial Law Act 2017 will not apply to the Agreement;
- 10.4.4. methods and conditions of application and use of the Goods or Services are beyond Scania's control following supply of the Goods or provision of the Services;
- 10.4.5. any advice, recommendation or information provided by Scania regarding the Goods or Services or the methods or conditions of application and use of the Goods or Services will not be construed as contractual conditions or warranties; and
- 10.4.6. Scania will not be liable to the customer for any loss or damage whatsoever sustained by the Customer as a consequence of any incorrect advice, recommendation or information provided by Scania regarding the Goods or Services or the methods or conditions of application and use of the Goods or Services whether such loss is caused by any negligent or reckless act or any breach of any duty of care which may be owed to the Customer by Scania.
- 10.5. The Customer acknowledges that, to the extent permitted by law, Scania's liability under this Agreement (unless otherwise agreed in writing between the parties) shall be limited and restricted to:
- 10.5.1. the replacement of the relevant Goods; or
- 10.5.2. the repair of the relevant Goods,  
at Scania's election by written notice to the Customer.

**11. Indemnity**

- 11.1. The Customer agrees to indemnify and hold harmless Scania, its staff, officers and contractors, from and against any liability to any person (including the Customer and any other person) arising from or as the result of the supply of the Goods or the provision of the Services.
- 11.2. Nothing expressed or implied in this Agreement will confer any liability on Scania in respect of any indirect, consequential or special loss, damage, cost or expense, or any loss of profits, suffered or incurred by the Customer as a result of a breach by Scania of any provision of this Agreement.

**12. Consent to Information Disclosure**

- 12.1. The Customer agrees that the information in the Agreement is not communicated in circumstances of confidentiality and, to the extent permitted by law, irrevocably authorises Scania to disclose such of that information as it considers necessary to its officers, employees, servants, agents and advisers.
- 12.2. Scania complies with the information privacy principles under the Privacy Act 1993. Any personal information collected from the Customer by Scania will only be used for the purpose of performing the specified services, to contact you in relation to the Goods or the Services or any necessary secondary purpose.

**13. Uncollected Goods**

Without limiting any other right or remedy, Scania may sell by public auction or private treaty or by retail or wholesale, by cash or on terms and generally as Scania sees fit, any Goods accepted by it for repair, maintenance, modification or other treatment which are not collected by the Customer within six months of written notice being given to the Customer that the Goods are ready for collection. Scania may deduct from the proceeds of sale any amount unpaid in respect of Scania's charges for the repair, modification or other treatment of the Goods and also Scania's costs and expenses in relation to the storage and sale of the Goods.

**14. Return of Goods for Credit**

- 14.1. With the exception of vehicles and engines, the Customer may return the Goods, freight prepaid, to Scania within sixty (60) days of the date of Scania's invoice evidencing the sale of the Goods and quoting the invoice number, but for purposes of providing a credit to the Customer, or crediting the Customer's account, if applicable, the following amounts will be deducted from the value of the Goods specified in the invoice as a result of their handling and restocking:
- 14.1.1. 5% of the total amount stated in the invoice, if the Goods are returned within thirty (30) days of the date of invoice; or
- 14.1.2. 15% of the total amount stated in the invoice, if the Goods are returned within thirty (30) days to sixty (60) days of the date of invoice.
- An additional amount may be deducted if it is deemed necessary by Scania to repackage the Goods.

- 14.2. Scania will not accept the following Goods for credit:
- 14.2.1. parts which are not suitable for resale as new including, without limitation, parts which have been damaged, rusted, soiled, fitted or specially procured;
  - 14.2.2. electronic components; or
  - 14.2.3. used or sundry stock items.
- 14.3. The Customer acknowledges that any amount described as a 'core deposit' shown on Scania's invoice is an amount payable by the Customer to Scania so that the Customer will make a separate supply of the worn part to Scania, and is not a security deposit. The Customer agrees to accept a RCTI (Recipient Created Tax Invoice) on the return of the part which is associated with the said core deposit amount.
- 15. Amendment**  
The Agreement may only be varied by written notice from Scania given not less than thirty (30) days prior to the intended date of effect of the variation.
- 16. Waiver**  
Except as otherwise expressly provided in the Agreement, no waiver or relaxation partly or wholly of any of these provisions will be valid or binding on Scania unless in writing and executed by Scania or signed on its behalf by an authorised officer. Any waiver or relaxation will apply (unless agreed otherwise and so executed or signed) to the particular occasion in question and will not be continuing or constitute a waiver or relaxation of any other term of condition.
- 17. Governing Law**  
The Agreement is subject to the laws of New Zealand and the parties submit to the jurisdiction of the New Zealand Courts in respect of all matters arising under the Agreement.
- 18. Notices**  
Any notice required to be given by Scania under the Agreement, will be in writing. The notice will be properly served on the Customer if Scania mails the notice by prepaid post to the Customer's Address stated in this Agreement and will be deemed to have been served twenty four (24) hours after the time of posting.
- 19. Severability**  
If any term of this Sales Order is invalid or unenforceable it will be severed from the Agreement and will not affect the enforceability of the remainder of the Agreement.

## Scania New Zealand Ltd (7047439 "Scania")

### Schedule 1

#### Sale of Motor Vehicle

This Schedule contains terms that apply in addition to the General Terms where the Goods listed in the Sale Order include a Vehicle. These terms shall prevail in the event of any inconsistency with the General Terms.

#### 1. INTERPRETATION

In this Agreement:

- a. "Purchaser" means the person named as the Purchaser on the Sales Order;
- b. "Purchase Price" means the total gross Purchase Price set out on the Sales Order, and if varied under clause 9 of the General Terms, and where the context requires the Purchase Price as varied;
- c. "Purchase Vehicle" means the goods described on the Sales Order;
- d. "Seller" means Scania New Zealand Limited;
- e. "Trade-in Vehicle" means the traded vehicle described on the Sales Order;
- f. "Trade-in Agreement" means the Agreement relating to the Purchaser's Trade-in Vehicle described on the Sales Order.

#### 2. FORMATION OF CONTRACT

- a. Subject to anything contained in the General Terms and to the terms of the Trade-in Agreement, the Purchaser's only right in the event that the Agreement is not binding on the Seller under clause 2 of the General Terms, is to recover any deposit paid by the Purchaser for the Purchase Vehicle.
- b. Unless otherwise agreed in writing between the Seller and the Purchaser a refundable security deposit of 5% of the Purchase Price from the Purchaser is required at the time of submitting the Sales Order.
- c. If this Order does not become binding on the Seller, the Seller shall repay any Cash Deposit received from the Purchaser to the Purchaser less any expenses incurred by the Seller in relation to the Sales Order and the Trade-in Agreement, up to and including the date of cancellation.

#### 3. SUBJECT TO FINANCE

- a. Where this Agreement is subject to the Purchaser obtaining finance, the Agreement is conditional upon the Purchaser obtaining finance approval:
  - i. within the time stated in the Sales Order;
  - ii. of the amount stated in the Sales Order;
  - iii. from the credit provider named in the Sales Order (or from a similar type of credit provider);
  - iv. for the type of finance stated in the Sales Order;
  - v. upon reasonable terms and conditions in the circumstances.
- b. The Purchaser agrees to take all reasonable steps towards obtaining finance approval.
- c. If the Purchaser does not obtain finance approval then either the Purchaser or the Seller may terminate this Agreement by giving notice to the other party.

#### 4. TRANSFER TO CREDIT PROVIDER

Where requested by the Purchaser the Seller shall transfer title to the purchase vehicle to the Purchaser's credit provider upon payment of the total purchase price to the Seller.

**5. DELAYS IN DELIVERY**

- a. The delivery date, if any, set out on the front of this Order ("the estimated date for delivery") is an estimate only and the Purchaser agrees that the Seller will not be liable to the Purchaser for damages for delays in delivery of the Purchase Vehicle.
- b. The Seller shall make every reasonable effort to make the Purchase Vehicle available for delivery on or before the delivery date stated in this agreement. Where delivery is delayed more than 14 days the Purchaser may terminate this agreement by notifying the Seller in writing, unless the delay is caused by the Purchaser.
- c. The Purchaser shall take delivery of the Purchase Vehicle within 7 days of being notified by the Seller that the vehicle is ready for delivery. If the Purchaser fails to take delivery within this time the Seller may terminate the Agreement by notice in writing.

**6. TRADE-IN CONDITIONS**

- a. Where the purchase involves a Trade-in Vehicle then the amount allowed for the trade-in (net trade-in allowance) shall be deducted from the total Purchase Price. The net trade-in allowance will be the amount allowed on the Trade-in Vehicle less any amount to be paid by the Seller to discharge the interest of any other person in the vehicle.
- b. The Trade-in Vehicle must be delivered to the Seller no later than the date of delivery of the Purchase Vehicle. If the Trade-in Vehicle is delivered after this date or is not in substantially the same condition as at the date of this Agreement then the net trade-in allowance may be adjusted by an amount equal to the change in the fair market value of the Trade-in Vehicle between the date of this Agreement and the date of delivery to the Seller.
- c. The Purchaser's interest in the Trade-in Vehicle shall pass to the Seller:
  - i. when the Purchaser accepts delivery of the Purchase Vehicle; or
  - ii. when the Purchaser has delivered the Trade-in Vehicle to the Seller and the Seller has paid the net trade-in allowance to the Purchaser or acknowledged in writing that this amount has been credited towards the total Purchase Price—
- d. The Seller shall not, without the prior written consent of the Purchaser, sell or agree to sell the Trade-in Vehicle before delivery of the Purchase Vehicle to the Purchaser.
- e. Where the amount allowed on the trade-in vehicle has been reduced by an amount to be paid by the Seller to discharge the interest of any other person in the vehicle, the Seller will pay this amount to the other person within 28 days of delivery of the trade-in vehicle to the Seller.

**7. TERMINATION**

- a. Where this Agreement is lawfully terminated by the Seller due to a breach of this Agreement by the Purchaser then:
  - i. the Purchaser shall forfeit the amount stated in this Agreement to the Seller provided that amount does not exceed 5 per cent of the total Purchase Price;
  - ii. where an amount has been paid towards the purchase price and that amount exceeds the forfeitable amount then the Seller shall—
    1. refund to the Purchaser so much of the amount paid that exceeds the forfeitable amount; and
    2. return any Trade-in Vehicle to the Purchaser; and
  - iii. where an amount has been paid towards the Purchase Price and that amount does not provide the Seller with the forfeitable amount and a Trade-in Vehicle has been delivered to the Seller then the Trade-in Vehicle may be forfeited to the Seller and the Purchaser credited with the net trade-in allowance. If this amount and any other amount paid by the Purchaser exceeds the forfeitable amount then the excess shall be refunded to the Purchaser.
- b. Where this Agreement is lawfully terminated by the Purchaser due to a breach of this Agreement by the Seller then the Seller shall:
  - i. refund to the Purchaser all money paid by or on behalf of the Purchaser; and
  - ii. return any Trade-in Vehicle to the Purchaser.
- c. Where this Agreement is lawfully terminated by either the Purchaser or the Seller due to clause 1 or for any reason other than a breach of this Agreement then the Seller shall:
  - i. refund to the Purchaser all money paid by or on behalf of the Purchaser; and
  - ii. return any Trade-in Vehicle to the Purchaser.
- d. Where this Agreement provides for the Seller to return any Trade-in Vehicle to the Purchaser but the Seller has, with the prior written consent of the Purchaser, sold or agreed to sell the Trade-in Vehicle then this Agreement will be complied with if the Seller pays to the Purchaser:
  - i. an amount equal to the net trade-in allowance; or
  - ii. where the Purchaser and Seller have agreed on a value as the fair market value of the Trade-in Vehicle—that agreed value less any trade-in payout made or to be made by the Seller.
- e. Where the Seller returns any trade-in vehicle to the Purchaser and the Seller has carried out repairs on the vehicle with the consent of the Purchaser then the Seller shall be entitled to an amount equal to the reasonable cost of those repairs.
- f. Where either the Purchaser or Seller wishes to terminate this Agreement in accordance with this clause they must give written notice to the other party of the decision to terminate.
- g. This Sales Order, any Trade-in Agreement and any Contract made pursuant to clause 2 of this Agreement may be cancelled:
  - i. By the Seller:
    1. if the Seller fails to deliver the Purchase Vehicle within 90 days of the estimated date for delivery;
    2. if the Purchaser is in breach of any of the terms of this Order or the Trade-in Agreement or of any warranty or representation made by the Purchaser in relation to this Agreement or the Trade-in Agreement is inaccurate or untrue in any respect;
    3. under clause 5 of this Agreement; and
    4. if the Trade-in Vehicle, when delivered to the Seller does not match the description set out in the Used Vehicle Appraisal or the Trade-in Agreement.

**8. PURCHASE PRICE CHANGES**

- a. The Seller can vary the Purchase Price, including by increasing it, in line with price changes introduced prior to the date of delivery of the Purchase Vehicle by the Seller for goods of the same or similar description and type as the Purchase Vehicle;
- b. If the Purchase Price is increased by more than 7.5%, the Seller will notify the Purchaser before delivery and the Purchaser may, within 4 business days of receiving the notice, cancel this Sales Order.
- c. Notwithstanding clause 5(b) the Purchaser shall not have the right to cancel the Sales Order if the Purchase Price increase is due to an increase in existing government taxes or duties or the imposition of new taxes or duties.
- d. Unless a Sales Order is cancelled under clause 5(b) the Purchaser must accept delivery and pay the Purchase Price as varied.

**9. DELIVERY AND RISK**

- a. The Purchase Vehicle shall be delivered to the address set out on the face of this Sales Order.
- b. Risk in the Purchase Vehicle passes to the Purchaser upon delivery of the Purchase Vehicle to the Purchaser or their authorised representative at the said address.

**10. PAYMENT AND TITLE**

- a. Delivery will take place only upon the full payment of the Purchase Price (including the security deposit) together with registration, stamp duty, CTP, any freight charges and extra equipment balance to the Seller. The security deposit will be refunded to you upon delivery.
- b. Title in the Purchase Vehicle does not pass to the Purchaser until payment of the Purchase Price.
- c. Payment is not made until cleared funds have been credited to the Seller's account.
- d. Until title passes to the Purchaser the Purchaser holds the Purchase Vehicle as bailee for the Seller and will keep the Purchase Vehicle with reasonable care and in a form in which the Purchase Vehicle is identifiable as property of the Seller.
- e. If Scania determines that this Agreement or any transaction under it is or contains a security interest (within the meaning of the Personal Property Securities Act 1999 (PPSA)) then the bailee will do anything which Scania reasonably requests (such as obtaining consents, signing or producing documents, getting documents signed or completed and supplying information) for the purpose of ensuring that any such security interest is enforceable, perfected and otherwise effective, and enabling Scania to apply for any registration or give any notification in connection with that security interest (including registration of a financing statement). The Purchaser waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between Scania and the Customer, the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA and where Scania has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

**11. TIME OF THE ESSENCE**

If a date or time is set out in this Agreement or any Trade-in Agreement in respect of the Purchaser's obligations to make payment, take delivery of the Purchase Vehicle or make delivery of any Trade-in Vehicle, that time shall be a fundamental term of this Agreement.

**12. WARRANTY OF AUTHORITY**

Any person signing this order and/or the Trade-in Agreement for the Purchaser warrants to the Seller that he/she has authority to complete this Sales Order and the Trade-in Agreement, if any, for and on behalf of the Purchaser.

**13. SEVERABILITY**

If any term the Trade-in Agreement is invalid or unenforceable it will be severed from the Agreement and will not affect the enforceability of the remainder of the Agreement.

## Scania New Zealand Ltd (7047439 "Scania") Schedule 2 Credit Account Holders

This Schedule contains terms that apply as amended from time to time ("the Credit Account Terms") In addition to the General Terms where the Goods listed in the Sale Order are sold to a Customer with a Scania Credit Account. These terms shall prevail in the event of any inconsistency with the General Terms.

**1. Definitions**

"Customer" means the person named in Parts A, B and C of the Credit Account Application.

**2. Orders**

- 2.1 Scania reserves the right to accept or reject in its absolute discretion any order which may be received by it.
- 2.2 Until Scania accepts an order submitted by the Customer, Scania will not be obliged to supply the Goods or the Services to the Customer. Scania may at its discretion, accept in writing or otherwise, any order which relates to work to be performed by its workshop. If at any time, the Customer defaults in respect of its payment obligations under this Agreement, Scania may cancel or suspend any uncompleted order that has been accepted by it without being liable to the Customer in any way whatsoever. Scania will not be responsible to the Customer under any circumstances for a breach of its obligations to supply Goods or provide Services pursuant to an order that it has accepted if failure to supply or provide is caused by matters beyond Scania's reasonable control, including (without limitation) acts of God, acts of any Government, war or other hostility, national or international disaster, the elements, fire, explosion, power failure, equipment failure, strikes or lockouts, inability to obtain necessary supplies and any other force majeure occurrence.
- 2.3 Other than where the Customer has a statutory right of rescission, orders for the Goods or for the provision of Services accepted by Scania shall not be cancellable either wholly or in part by the Customer, nor may the Customer suspend delivery of the Goods or provision of the Services without the consent in writing of Scania and subject to compliance by the Customer with Scania's reasonable requirements for compensation of its costs and loss of profit.

**3. Payments**

- 3.1 Payment must be made by the Customer on or before 30 days from the invoice date.
- 3.2 Any payments tendered by the Customer to Scania under this clause 3 or under clause 8 of the General Terms (in the case of engines) will be applied as follows:
  - 3.2.1 firstly, towards any debits to the Customer's account arising from the operation of paragraph 5.2.1.1 Paragraph relating to fees and expenses of recovery
  - 3.2.2 secondly, towards any debits to the Customer's account arising from the operation of paragraph 5.2.1.2 relating to interest on amounts unpaid under the heading 'Default'
  - 3.2.3 thirdly, in satisfaction of amounts included in any outstanding statement in such order as Scania, in its discretion, elects.

**4. Retention of Title**

- 4.1 The parties agree that the ownership of any Goods supplied by Scania to the Customer is only transferred to the Customer when the Customer has paid all sums owing to Scania under this Agreement.
- 4.2 Until such payment has been made, the Customer acknowledges that:

- 4.2.1 The Customer will hold the Goods as fiduciary, bailee and agent for Scania (but the Customer must not, in acting as agent, represent in any way to third parties that it is so acting and hereby indemnifies Scania against any breach of such representation to the intent that Scania will have no obligations whatsoever under any contracts between the Customer and third parties);
- 4.2.2 The Customer shall safely and securely store the Goods separately from the Customer's own goods or those of any other person, in a manner which enables them to be identified as Scania's Goods;
- 4.2.3 Upon giving 24 hours notice, Scania will be entitled to enter the Customer's premises between 8.00am and 6.00pm to inspect the Goods;
- 4.2.4 If the Customer mixes Goods which remain the property of Scania (or any of them) with other products or items such that the relevant Goods are no longer separately identifiable, then the Customer and Scania will be owners in common of the new product;
- 4.2.5 The Customer is authorised to sell Goods which remain the property of Scania in the ordinary course of the customer's business, as agent for Scania (unless otherwise notified in writing by Scania), and the Customer will account to Scania for the proceeds; and
- 4.2.6 The proceeds of any Goods which remain the property of Scania and which are sold by the Customer will be kept in a separate account and will not be mixed with any other money, including the Customer's money.
- 4.3 Until payment has been made, Scania may at any time (without prejudice to any of its other rights), without previous notice to the Customer:
- 4.3.1 Take and resume possession of the Goods;
- 4.3.2 Enter the Customer's premises and do all things necessary in order to take possession of the Goods, including (without limitation) any Goods that have been mixed with other goods and the Customer undertakes to Scania to procure the consent of all other persons having any interest in the premises where Scania's Goods may be situated to Scania, by its servants, agents or employees, entering the premises; and indemnifies and will keep indemnified Scania against all claims, actions and suits whatsoever arising from Scania entering any premises where the Goods may be situated;
- 4.3.3 With or without taking possession of the Goods, sell the Goods by public auction or private treaty or by retail or wholesale, by cash or on terms and generally as Scania sees fit, and apply the proceeds actually received by Scania (after defraying expenses of sale and enforcement) in or towards reduction of any debt owed by the Customer to Scania.
- 4.4 The Customer will pay to Scania on demand (as money due to Scania and on a full indemnity basis), any and all costs and expenses incurred or payable by Scania to or in connection with solicitors, legal advisers, mercantile agents and other advisers and agents acting on Scania's behalf in respect of any enforcement action or any recovery or attempts recovery of moneys owing by the Customer to Scania or of possession of the Goods.
- 4.5 All the risk in the Goods supplied by Scania to the Customer shall pass to the Customer on the first occurring of the following events: the departure of the Goods from Scania's premises or the Goods are delivered to a third party arranged or authorised by the Customer. The Customer shall bear the entire risk of loss, damage, destruction or theft of the Goods and in the event of which the Customer's obligations under this Agreement shall not be relieved.
- 4.6 The Customer must insure all Goods (and keep them insured), on its own behalf and on behalf of Scania, from the time of delivery of each item of the Goods.
- 4.7 Scania may retain possession of Goods provided by the Customer for works, or for the provision of the Services, by way of lien until payment in full of money owing to Scania by the Customer.
- 4.8 Any provision or part of this Clause 4, which is or becomes illegal, invalid, prohibited or unenforceable will be ineffective only to the extent of such illegality, invalidity, prohibition or unenforceability and the remaining provisions of this Clause 4 will not be impaired or affected in any way.
- 4.9 If Scania determines in its sole discretion that this Agreement or any transaction under it is or contains a security interest (within the meaning of the Personal Property Securities Act 1999 (PPSA)) then the Customer will do anything which Scania requests (such as obtaining consents, signing or producing documents, getting documents signed or completed and supplying information) for the purpose of ensuring that any such security interest is enforceable, perfected and otherwise effective, and enabling Scania to apply for any registration or give any notification in connection with that security interest (including registration of a financing statement). The Customer waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between Scania and the Customer, the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA and where Scania has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 5 Default**
- 5.1 This Agreement will be terminated if the Customer:
- 5.1.1 defaults in making payment to Scania in accordance with this Agreement; or
- 5.1.2 defaults in any of the other terms of this Agreement and the defaults continue uncorrected for 10 days following Scania sending written notice of the default to the Customer; or
- 5.1.3 if the Customer is an individual, the Customer becomes insolvent, or if a bankruptcy notice is filed against the Customer under the Insolvency Act 2006 or any other legislation relating to obtaining relief of debts, makes an assignment for the benefit of his or her creditors, dies or becomes of unsound mind or permanently disabled; or
- 5.1.4 if the Customer is a company, if the Customer has an application filed with a Court by any person seeking its winding up or has a liquidator, provisional liquidator, controller, receiver, receiver and manager or administrator appointed (alone or jointly or jointly and severally with another person), or an entity takes possession of its undertaking or property or any part.
- 5.2 If one of the above occurs, this Agreement is deemed to be terminated immediately and:
- 5.2.1 the whole of the sum then owing by the Customer to Scania for all Goods sold or Services provided by Scania to the Customer will become immediately due and payable, and Scania may in its absolute discretion debit the Customer's account with:
- 5.2.1.1 all collection fees and commissions, administrative costs out of pocket expenses and legal costs (calculated on a full indemnity basis) incurred or payable by Scania as a direct or indirect consequence of such default, including costs incurred in relation to the termination of the Agreement and the removal of the Goods.

- 5.2.1.2 an amount calculated daily on the portion of the Customer's account overdue from time to time at the rate of the current Reserve Bank of New Zealand Official Cash Rate plus 4% per month from the date on which such default arose until the overdue portion is paid in full, as compensation for loss suffered by Scania as a consequence of the late payment; and
- 5.3 If this Agreement is terminated, Scania may enter onto the Customer's property and take possession of the Goods. Upon retaking possession of the Goods, Scania will inspect those Goods within a reasonable time and credit the Customer's account with such sum as Scania in its absolute discretion considers to be a fair and reasonable value of the Goods, after making due allowance for:
- 5.3.1 the price of the Goods invoiced to the Customer;
- 5.3.2 the condition of the Goods at the time of taking possession; and
- 5.3.3 all costs incurred or payable by Scania in connection with taking possession, sorting and examination of the Goods.

## **6 Trustee**

- 6.1 Where the Customer holds any property or assets as trustee of a trust, the Customer:
- 6.1.1 Warrants that it has full power and authority to make this application for the benefit of the trust and that its right of indemnity against the trust property and assets is not limited or restricted in any way and will not be adversely affected by making this application or entering into this Agreement;
- 6.1.2 Will be bound by the Agreement, both personally and in its capacity as trustee of the trust;
- 6.1.3 Acknowledges that its liability will not be limited to the assets of the trust and its liability will apply notwithstanding that it may cease for any reason to be trustee of the trust; and
- 6.1.4 Undertakes not to retire as trustee of the trust.

## **7 Guarantee**

- 7.1 The Guarantor(s) covenant and agree with Scania that:
- 7.1.1 The Customer will make all payments due in accordance with and on the days and in the manner set out in this Agreement.
- 7.1.2 If at any time default shall be made in the punctual payment of any money owing by the Customer to Scania then the Guarantor(s) will on demand pay to Scania the whole of the money due or payable to Scania without set-off or reduction for any cause.
- 7.1.3 The Guarantor(s) guarantee the due and punctual observance and performance of obligations of the Customer pursuant to this Agreement. The Guarantor(s) agree to pay on demand and make good all loss damage claims costs charges and expenses sustained or incurred by Scania by reason of or in consequence of such default by the Customer.
- 7.1.4 In the event of any default by the Customer, the Guarantor(s) as a separate covenant agree to indemnify and keep indemnified Scania from and against all loss of moneys and all losses damages claims costs (including legal costs on a solicitor/client basis) and charges and expenses whatsoever that Scania may incur by reason of any such default on the part of the Customer or their successors or assigns.
- 7.1.5 The Guarantor(s) agree that no postponement or forbearance on the part of Scania to enforce the terms and conditions by and on the part of the Customer to be performed under this Agreement or any other remedies available to Scania shall affect this guarantee. The Guarantor(s) shall not be released by reason of Scania's postponement or forbearance or by any variation in the provisions of this Agreement or by any other thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Guarantors.
- 7.1.6 This Guarantee is a continuing one and shall not be determined or discharged by reason of the liquidation (voluntary or otherwise) or of the reconstruction or of the amalgamation of any Company. The Guarantor(s) acknowledge that this Guarantee and Indemnity shall apply even if the Customer is not required to pay money under the terms of the Agreement. In order to give effect to this Guarantee and Indemnity the Guarantor(s) declare Scania shall be at liberty to act as though the Guarantor(s) were the principal debtors and the Guarantor(s) hereby waive all or any of their rights and sureties which may at any time be inconsistent with any provision hereof. If there is more than one Guarantor then this Guarantee and Indemnity shall not be affected by the failure of any one of the Guarantors to sign this Agreement or by Scania agreeing to a postponement or forbearance in relation to the enforcement of this Guarantee against any one of them.

## **8 Consent to Information Disclosure**

- 8.1 The Customer agrees that the information in this Agreement is not communicated in circumstances of confidentiality and, to the extent permitted by law, irrevocably authorises Scania;
- 8.1.1 to disclose such of that information as it considers necessary to its officers, employees, servants, agents and advisers and to any other person; and
- 8.1.2 to seek from any person such information as may be relevant for the purposes of assessing the credit worthiness from time to time of the Customer and for any other purpose whatsoever relating to this Agreement (whether or not this Agreement is accepted by Scania), and consents to the disclosure of such information to Scania.
- 8.2 Scania complies with the information privacy principles under the Privacy Act 1993. Any personal information collected from the Customer by Scania will only be used for the purpose of performing the specified services, assessment of creditworthiness, to contact you in relation to the Goods or the Services or any necessary secondary purpose.