

# SCANIA GENERAL TERMS AND CONDITIONS

## Introduction

- A. You have asked Scania to provide you with goods and/or services, and Scania has agreed to provide those goods and/or services to you in accordance with these general terms and conditions (**General Terms**), and the Order Form.
- B. The Schedules to these General Terms contain additional or modified terms that apply to specific transactions, for example if you are purchasing a vehicle or if you trade-in a vehicle, the applicable Schedule will apply. You may have also agreed to Special Conditions which modify these Terms.
- C. These General Terms apply to all goods and services sold or provided to you by Scania, unless specified in writing otherwise.
- D. Your Agreement with Scania is comprised of these General Terms, any Order Form, any incorporated Schedule and any incorporated Special Conditions.

## 1. Definitions and interpretation

1.1 In these General Terms, unless the context requires otherwise:

**ACL** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), which is titled 'Australian Consumer Law'.

**Agreement** means these General Terms, including any schedules or annexures to it. If applicable, the Order Form and the Credit Account Application also form part of this Agreement.

**Business Day** means a weekday that is not a public holiday in the state or territory of the Customer Address.

**Claim** means any present or future, actual or contingent, claim, cause of action, complaint, liability, cost or expense that any person has or might have in connection with or arising in any way from Scania's supply of Goods and/or Services under this Agreement.

**Customer** means the legal person/s named in the Order Form as the customer. If only a business name and/or ABN is listed on the Order Form and not a legal person, the Customer will be the person who is the registered owner of the business and/or ABN listed on the Order Form. Customer may also be referred to as "you" or the "Purchaser".

**Customer Address** means the Customer's postal address set out in the Order Form.

**Credit Account** means an active credit account provided by Scania to the Customer in accordance with the Credit Account Application submitted by the Customer and accepted in writing by Scania.

**Credit Account Application** means the credit account application form that the Customer is provided with and must complete and submit to Scania to open a Credit Account, and includes any schedules or annexures to it.

**Deposit** means the amount that the Customer must pay to Scania in accordance with these General Terms, which Deposit amount is specified in the Order Form.

**Estimated Delivery Date** means the estimated date of delivery of the Goods, as set out in the Order Form, or as otherwise agreed in writing between the parties.

**Force Majeure** means any cause or event which is not within the reasonable control of Scania, including acts of God, industrial disputes, breakdown of plant supply, chain disruption, acts or omissions of government or other competent authority, fire, lightning, explosion or flood, pandemics or war declared or undeclared.

**General Terms** means these general terms and conditions, as updated from time to time.

**Goods** means the goods sold or supplied by Scania, or which Scania has agreed to arrange to be sold or supplied to you, as detailed in an Order Form or otherwise in writing.

**Heavy Vehicle Key** means the key to the vehicle.

**Loss** means, in relation to any person, any damage, loss, cost, expense or liability suffered or incurred by the person, however arising (including under contract, in tort, at law, in equity or under statute).

**Manufacturer** means Scania AB (publ) 556184–8564, a Swedish corporation.

**Order Form** means the order or sales form which details the goods and/or services that you would like Scania to supply or provide to you, and which Scania has agreed to supply or provide to you, and to which these General Terms apply. The Order Form may be in printed or electronic form, and may also be referred to as a Sales Order.

**Payment Terms** means the payment terms set out in Schedule 1 to this Agreement.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Privacy Policy** means Scania's privacy policy and privacy collection statement, which is available at [www.scania.com/au](http://www.scania.com/au) and can be provided to you in hard copy upon request.

**Purchaser** means the legal person/s named in the Order Form as the purchaser. If only a business name and/or ABN is listed on the Order Form and not a legal person, the Purchaser will be the person who is the registered owner of the business and/or ABN listed on the Order Form. Purchaser may also be referred to as "you" or "Customer".

**Purchase Price** means the Total Purchase Price set out in the Order Form, or as otherwise varied and agreed to by Scania and the Customer in writing.

**Purchase Vehicle** means the vehicle being purchased by the Customer, as set out in the Order Form.

**Scania** means Scania Australia Pty. Limited ACN 000 537 333.

**Scania's Bank Account** means the bank account detailed in Schedule 1, or otherwise notified to you in writing.

**Security Interest** means:

- in relation to any personal property (as defined in the PPSA and to which the PPSA applies), has the same meaning as in the PPSA; and
- in relation to any other property, means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power.

**Services** includes all services, repairs, maintenance, modifications and labour provided or contracted to be provided by or on behalf of Scania listed on the Order Form or otherwise confirmed by Scania in writing.

**Special Conditions** means the special conditions set out in Schedule 1.

**Terms of Delivery** means the agreed terms of delivery, as set out in Schedule 1.

**Trade-in Vehicle** means the traded vehicle described in the Order Form.

- 1.2 In this Agreement, unless the contrary intention appears, reference to:
- a. one gender includes the others;
  - b. the singular includes the plural and the plural includes the singular;
  - c. a person includes a partnership, joint venture, unincorporated association, corporation and a governmental agency;
  - d. a person or party includes the party's executors, administrators, successors and permitted assigns;
  - e. a thing includes the whole and each part of it separately;
  - f. a statute, regulation, code or other law or a provision of any of them includes:
    - i. any amendment or replacement of it; and
    - ii. another regulation or other statutory instrument made under it, or made under it as amended or replaced;
  - g. a clause or schedule is a reference to a clause or schedule of this Agreement;
  - h. time is a reference to Melbourne, Victoria, Australia time;
  - i. a day or a month means a calendar day or calendar month; and
  - j. \$ or dollars is to the lawful currency of Australia, unless otherwise stated;
  - k. "including" and similar expressions are not words of limitation; and
  - l. where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 1.3 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in it.

## **2. Order Forms for Goods or Services and Scania's acceptance of an Order Form**

- 2.1 Subject to agreement between the parties otherwise, the Customer must submit an Order Form for each supply of Goods, or provision of Services, that it would like Scania to supply or provide to the Customer.
- 2.2 Unless notified or expressly agreed in writing otherwise, Scania's agreement to fulfil each new Order Form submitted by the Customer will be the date that is the earlier of:
- a. the delivery of the Goods by Scania to the Customer detailed in an Order Form; or
  - b. ten Business Days after Scania signed the Order Form, subject to the Deposit being paid in accordance with this Agreement.
- 2.3 If, within 10 Business Days of the Order Form being signed and received by Scania, Scania determines that it is unable or unwilling to deliver the Goods and/or Services to

the Customer, Scania will notify the Customer. If Scania notifies the Customer within 10 Business Days of the Order Form being signed that it is unable to fulfil the Order Form, the parties agree that Scania is not liable to the Customer in any way in relation to the Order Form, and will repay the Deposit in full, subject to such inability to fulfil the Order Form being the direct fault of the Customer.

### **3. Payment of a Deposit**

- 3.1 If required in accordance with this Agreement, the Customer must pay the Deposit to Scania within 1 Business Day of Scania's acceptance of an Order Form.
- 3.2 Scania is not required to commence ordering or preparing the Goods until the Deposit is received.
- 3.3 You acknowledge that the Deposit reflects the commercially reasonable costs incurred by Scania in preparing to supply the Goods to you, including but not limited to administrative, handling, delivery, storage and other costs, and that it is reasonable for the Customer to compensate Scania for such costs.
- 3.4 If the Order Form is not binding on Scania or cannot be completed by Scania and it is Scania's fault, 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.
- 3.5 Subject to this Agreement, Scania will not refund the Deposit to the Customer unless:
  - a. the Order Form is cancelled by Scania due to no fault of the Customer, including where the Order Form is cancelled before it becomes binding on Scania;
  - b. the Order Form is cancelled by the Customer due to Scania's misconduct; or
  - c. the parties agree in writing otherwise.

### **4. Variation to Order Forms**

- 4.1 If you wish to change the Goods and/or Services requested in an Order Form at any time prior to delivery of the Goods or provision of the Services, you must make a written variation request for Scania to consider. Scania may agree to the requested variation in its absolute discretion, and on conditions that are commercially reasonable as determined by Scania.
- 4.2 Any variation to an Order Form or to this Agreement, including for example but not limited to amending the Purchase Price, Deposit, Estimated Delivery Date and/or imposing Special Conditions, must be agreed to in writing.
- 4.3 You agree and accept that Scania is not obliged to agree to a variation request, or to agree to reduce the Purchase Price, Deposit or other cost of Goods or Services to be supplied if the requested modification objectively reduces the market price of the Goods and/or Services to be supplied.

### **5. Cancellation of orders**

- 5.1 Except as provided in clause 5.2, the Order Form, or any subsequent order for Goods to be supplied by Scania in accordance with this Agreement, may be cancelled by the Customer providing Scania at least 10 Business Days' notice prior to the Estimated Delivery Date.

- 5.2 An Order Form in respect of a Purchase Vehicle may be terminated by the Customer if Scania does not, or is unable to, deliver the Purchase Vehicle within 120 days of the Estimated Delivery Date unless otherwise agreed.
- 5.3 Where an Order Form is cancelled by the Customer for any reason, other than in accordance with clause 20.2 or due to the misconduct, fraud or negligence of Scania, Customer agrees that Scania is entitled to retain the Deposit by way of reasonable compensation for costs incurred in relation to the intended sale. Scania may, in its sole discretion, agree to refund a portion of the Deposit if and only if such costs were not incurred. If the Deposit retained under this sub-clause is insufficient to compensate Scania for its reasonable losses actually incurred, Scania may commence recovery proceedings against the Customer for its losses in a court of competent jurisdiction.
- 5.4 If the Customer has paid any amount in addition to the Deposit and in part payment for the Purchase Price corresponding to the cancelled Order Form or other order for Goods (**Additional Amount**), subject to sub-clause 5.3, Scania will refund the Additional Amount to the Customer within 14 days of the cancellation by crediting the Additional Amount into the Customer's nominated bank account.
- 5.5 Scania may cancel an Order Form, or any subsequent order for Goods to be supplied by Scania in accordance with the terms of this Agreement.
- 5.6 For the avoidance of doubt, if the Order Form or other order for Goods is cancelled by the Customer, Scania is entitled to retain the Deposit and, where applicable, any Additional Amount.

## **6. Payment for Goods and Services**

- 6.1 The Customer agrees to pay for the Goods and/or Services supplied to the Customer by Scania, and all amounts and charges validly invoiced from time to time, in accordance with the Payments Terms and this Agreement, unless otherwise agreed between the parties in writing.
- 6.2 Unless the Customer has a Credit Account or it is agreed by the parties in writing otherwise, payment for Goods or Services must be made prior to delivery of Goods or provision of Services.
- 6.3 Unless otherwise stated, the prices of Goods and/or Services provided by Scania pursuant to this Agreement are 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 *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended or substituted from time to time).
- 6.4 Any payment by the Customer to Scania under this Agreement must be made in cleared funds, without withholding or deduction, and will only be deemed as made when cleared funds have been credited to Scania's Bank Account.
- 6.5 Time is of the essence in respect of the obligations in this clause 6.

## **7. Scania Credit Account**

- 7.1 The Scania Credit Account will be made available to the Customer and maintained in accordance with this Agreement, including the additional terms contained in the Credit Account Application.

## **8. Delivery of Goods**

- 8.1 The Estimated Delivery Date is an estimate only and the Customer agrees that, subject to Scania's compliance with this clause 8, Scania is not liable to the Customer for any Loss incurred by the Customer as a direct or indirect result of any delay in the delivery of Goods.
- 8.2 Scania will make commercially reasonable efforts to make the Goods available for delivery on or before the Estimated Delivery Date. In the event the Estimated Delivery Date will not be met, Scania will provide the Customer with at least 5 Business Days written notice of the delay. This clause is intended to provide the Customer notice only and does not provide an additional right for the Customer to terminate the Order Form in addition to clause 5.2.
- 8.3 Scania will notify the Customer when the Goods are available for delivery. The Customer agrees, in accordance with the General Terms of Delivery, to:
- a. take delivery of the Goods; or
  - b. arrange for Scania to deliver the Goods to the Customer Address,
- within 14 days of being notified by Scania.
- 8.4 If the Customer fails to take or arrange for delivery within this time, and the delay has not been agreed to by Scania, Scania may terminate the Order Form by notice in writing. Alternatively, the parties may agree for Scania to store the undelivered Goods at a commercially reasonable cost to the Customer, as determined by Scania, which cost will be invoiced to the Customer in accordance with this Agreement.
- 8.5 Goods will be deemed to be delivered when they are in the possession of, and have been accepted by, the Customer. Unless stated otherwise, the title and risk in the Goods passes from Scania to the Customer upon delivery of the Goods.
- 8.6 For the avoidance of doubt, subject to the terms of this Agreement, Goods will not be delivered or made available for delivery unless and until the Goods have been paid for by the Customer in full, or the Customer otherwise has a Credit Account covering the cost of the Goods.

## **9. Refunds and Returns of Goods for Credit**

- 9.1 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, and Scania will provide a credit to the Customer, or credit the Customer's account, if applicable, less the following amounts, which will be deducted from the value of the Goods specified in the invoice to compensate Scania for handling and restocking the returned Goods:
- a. 5% of the total amount stated in the invoice, if the Goods are returned within thirty (30) days of the date of invoice; or
  - b. 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.
- 9.2 Scania will not accept the following Goods for credit:
- a. parts or vehicles which are not suitable for resale as new including, without limitation, parts which have been damaged, rusted, soiled, fitted or specially procured; or
  - b. electronic components.

- 9.3 The Customer acknowledges that any amount described as a 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 returned part to Scania, and the Customer is not entitled to a refund of the Deposit. The Customer agrees to accept a RCTI (Recipient Created Tax Invoice) on the return of the part which is associated with the said Deposit.

## **10. Provision of Repair Services and Spare Parts**

- 10.1 Scania may provide repair services, and supply spare parts, upon the Customer's request from time to time.
- 10.2 The Customer acknowledges that:
- a. repair facilities for the Goods manufactured by the Manufacturer are available between the hours of 9.00am and 4.30pm on any business day that is not a public holiday in the state or territory in which the repair facility is located;
  - b. spare parts for the Goods manufactured by the Manufacturer shall be available for a period of 5 years after the date of production of products of the same description and type as the Goods ceases, subject to government regulation;
  - c. Scania does not warrant the availability of suitable facilities for the repair of the Goods that are not manufactured by the Manufacturer;
  - d. changes to government regulation, including relating to technology and vehicle specifications, impact Scania's ability to provide repair services and/or supply spare parts.

## **11. Uncollected Goods**

- 11.1 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.
- 11.2 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.

## **12. Variations to goods and prices**

- 12.1 The Goods are described by Scania in general terms only, and may incorporate such varied structural design and mechanical modifications as are from time to time made by the Manufacturer or component 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. For the avoidance of doubt, Goods will comply will applicable legal requirements, Design Rules and standards.
- 12.2 All prices for Goods and Services that Scania makes available to the Customer from time to time in accordance with these General Terms are subject to change without notice.
- 12.3 The prices for Scania's Goods and/or Services that will apply in respect of an Order Form will be provided to the Customer in writing, for example in a written sales quote or a price list, before the Customer submits and before Scania agrees to an Order Form, or before Scania otherwise agrees to provide the Goods and/or Services. Scania accepts the Customer's order on the condition that the Customer agrees to the price for the Goods and/or Services that have been notified to the Customer by Scania as current

as at the date of the Order Form, and submitting an Order Form will be taken as acceptance by the Customer of the pricing of the Goods and/or Services to be provided by Scania.

- 12.4 For the avoidance of doubt, Scania will not retrospectively apply or vary the price of an Order Form that has been submitted and accepted by Scania.
- 12.5 Commonwealth and State 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 Acts, Regulations, By-Laws or classifications shall be to the Customer's account.

### **13. Customer obligations, representations and warranties**

- 13.1 The Customer warrants that it has the capacity to enter into and perform the obligations under this Agreement, and that any person executing an Order Form on behalf of the Customer has the authority to bind the Customer.
- 13.2 The Customer acknowledges that heavy commercial vehicles and any accessories, including the Heavy Vehicle Key, are not intended to be used around children and must be used with extreme caution in accordance with all applicable guidelines and appropriate safety standards.
- 13.3 The Customer acknowledges and agrees that methods and conditions of application and use of the Goods or Services are beyond Scania's control following the supply of the Goods or provision of the Services and Scania has no liability for the negligent, careless, wrongful or reckless operation or use of Goods by the Customer or any third party.
- 13.4 The Customer agrees to communicate in a timely and professional manner in all dealings with Scania, and to keep Scania updated at all times of any changes in the Customer's circumstances that may affect, either directly or indirectly, Scania's rights under this Agreement, or the Customer's ability to perform its obligations under this Agreement, including for example in relation to Delivery.
- 13.5 Where the Customer is a partnership or joint venture, each party constituting the Customer agrees that it is jointly and severally bound by this Agreement.

### **14. Guarantees and warranties relating to Goods and/or Services**

- 14.1 Where applicable to the Goods in the Order Form, the Scania "Terms of Warranty and Company Liability" published by the Manufacturer will apply to the Goods.
- 14.2 The benefits conferred by this Agreement and by Scania or the Manufacturer's warranty, if any, are in addition to all other rights and remedies in respect of the Purchase Vehicle which the Customer has under the ACL and any other Commonwealth, State and Territory laws.
- 14.3 If the ACL applies to Scania's provision to you of Goods and/or Services under this Agreement, you are entitled to a replacement or refund for a major failure (as that term is defined in the ACL). You are also entitled to have the goods repaired or replaced if the Purchase Vehicle fails to be of acceptable quality and the failure does not amount to a major failure.

14.4 You agree that 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, are not guarantees or warranties.

## **15. Conditions and limitations relating to warranty claims**

15.1 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, and must only be used and operated in accordance with the recommendations, instructions, capacity and operating limitations specified in respect of those Goods and Services for the Customer.

15.2 If the Customer has any Claim concerning short delivery of, or damaged, Goods, the Customer must give written notice of such short delivery and/or damage to Scania within five Business Days of the date on which the relevant Goods were delivered to or collected by the Customer.

15.3 If the Customer considers that it has any Claim against Scania (other than claims for indemnity in accordance with this Agreement) which, it is entitled to make, the Customer will:

- a. immediately upon becoming aware of the circumstances giving rise to such a Claim, notify Scania of the nature of the Claim; and
- b. 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 address the Claim.

15.4 The Customer acknowledges that:

- a. methods and conditions of application and use of the Goods are beyond Scania's control following supply of the Goods;
- b. 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;
- c. it has the obligation to mitigate its Loss. Scania is not liable in respect of any warranty or Claim to the extent that the Claim arises from, or is increased by, the failure of the Customer to take reasonable steps to mitigate its Loss; and
- d. subject to any statutory guarantees or warranties under the ACL or similar legislation, or other implied guarantee or warranty at law, 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.

## **16. Indemnity**

16.1 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 Customer's misuse, recklessness or negligent use of the Goods supplied or the Services acquired.

## 17. Limit of liability

- 17.1 If the ACL applies to the Agreement, then to the extent permitted by law, liability of Scania in connection with the sale of the Goods or Services, however arising, shall be limited and restricted to the least value of:
- a. the replacement of the Goods or the supply of equivalent Goods;
  - b. the repair of the Goods;
  - c. the payment of the cost of replacing the goods or of acquiring equivalent Goods;  
or
  - d. the payment of the cost of having the Goods repaired.
- 17.2 Scania is not liable for any Loss suffered by the Customer to the extent that the Claim is for consequential loss, loss of opportunity, loss of goodwill, loss of profits, loss of business reputation, loss of future reputation or adverse publicity.
- 17.3 Nothing in this Agreement limits or modifies any statutory guarantees or warranties that may apply pursuant to the ACL or similar applicable legislation.

## 18. Privacy

- 18.1 Scania obtains, uses and discloses personal information in accordance with its Information Collection Statement and Privacy Policy, both of which are available on Scania's website and in hard copy upon request.
- 18.2 The Customer acknowledges having been provided with a copy of, or access to, Scania's privacy policy.

## 19. Complaints and disputes

- 19.1 In the event of any dispute between the parties in the interpretation of this Agreement or about the performance by any party of its obligations under this Agreement (**Dispute**), the parties must use their best endeavours to resolve the Dispute between themselves without delay.
- 19.2 If the Dispute relates to payment of an invoice, then the Customer must give notice of the Dispute (**Notice**) to Scania within 30 days of receipt of the invoice. If the dispute is not resolved within a further 5 Business Days of the date of the Notice, Scania may block the Customer's Credit Account until such time as the invoice is paid in full, or the Dispute is otherwise resolved.
- 19.3 If the Dispute relates to any other obligation under this Agreement, and the parties cannot resolve the Dispute within 7 Business Days of the Dispute arising, either party may require, by written notice, the Dispute to be referred to mediation (**Mediation**).
- 19.4 The mediator (**Mediator**) to be appointed must be agreed by the Parties within 5 Business Days of the written notice, but failing agreement, appointed by the President of the Law Institute of Victoria.
- 19.5 Mediation must occur within 14 Business Days of selection or nomination of a Mediator.
- 19.6 The costs of any Mediation must be shared equally by the Customer and Scania. Each party must pay its own costs of the mediation.

19.7 Any determination made by the Mediator shall be advisory in relation to the Dispute. Nothing in this clause will be interpreted to prevent the parties from agreeing that the determination is or will be binding.

19.8 Unless a party has complied with this clause 19, that party may not commence court proceedings or arbitration relating to a Dispute except where that party seeks urgent interlocutory relief, in which case that party need not comply with this clause before seeking relief.

19.9 This clause 19 applies even where the Agreement is otherwise void or voidable.

## **20. Force Majeure**

20.1 If Scania is required to perform an obligation or do any act or thing by a designated time or date under this Agreement, including under an Order Form (**Obligation**), Scania is not liable for any delay in performing the Obligation or for a failure to perform an Obligation, if the delay or failure is because of a Force Majeure Event, subject to compliance with this clause 20.

20.2 If there is a Force Majeure Event, Scania will:

- a. promptly notify the Customer, detailing the expected extent and duration of the delay or inability to perform the Obligation; and
- b. use commercially reasonable efforts to perform the Obligation as quickly as possible.

20.3 If the delay continues beyond 30 days after Scania provides notice to the Customer, the parties agree to meet to discuss in good faith a mutually satisfactory resolution of the problem. If a resolution cannot be achieved within a further 60 days, either party may elect to terminate this Agreement.

## **21. PPSR**

21.1 If this Agreement or any transaction under it is, or contains, a security interest (within the meaning of the PPSA) then the Customer 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.

## **22. Termination of this Agreement**

22.1 Subject to the specific terms of this Agreement, it may otherwise be terminated by either party immediately by either party, if the other party is in material breach of the terms of this Agreement, an Order Form or any warranty or representation made by the party in relation to the Agreement is inaccurate or untrue in any respect.

22.2 Where this Agreement is validly terminated by the Customer, due to a breach of this Agreement by Scania, then Scania will promptly refund the Deposit to the Customer's nominated bank account, less any amount reasonably incurred at the Customer's instruction.

- 22.3 Upon termination of this Agreement, any unfulfilled Order form which forms part this Agreement, will also terminate.
- 22.4 Nothing in this clause affects the rights and duties conferred by section 43 of the *Motor Car Traders Act 1986* or regulation 11 of the *Motor Car Traders Regulations 2008*.

### 23. Miscellaneous

- 23.1 **Entire Agreement:** Subject to this Agreement and to the extent permitted by law, this Agreement constitutes the entire agreement between the Customer and Scania and any other representations, whether oral or in writing, are excluded.
- 23.2 **Variation:** Unless stated otherwise in this Agreement, this Agreement may only be varied in writing signed by the parties.
- 23.3 **Waiver:** Except as otherwise expressly provided in the Agreement, no waiver, concession 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, concession 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, concession or relaxation of any other term of condition.
- 23.4 **Time is of the essence:** If a date or time is set out in this Agreement in respect of the Customer's obligations to make payment, take delivery of the Purchase Vehicle or deliver any Trade-in Vehicle, that time is a fundamental term of this Agreement.
- 23.5 **Counterparts:** This Agreement may be signed in any number of counterparts and all counterparts taken together will be taken to constitute one document.
- 23.6 **Notices:** Any notice required to be given by Scania under the Agreement, will be in writing and sent electronically via email. The notice will be properly served on the Customer if Scania emails the notice to the Customer's email address stated in the Order Form, and will be deemed to have been served on the day the email is sent if sent before 4.30pm on a Business Day, or the first Business Day immediately following if the email is sent after 4.30pm.
- 23.7 **Electronic communication:** You agree to receiving written communication from us electronically. Agreements may be signed digitally.
- 23.8 **Assignment:** The Customer must not assign its interest in this Agreement without the prior written consent of Scania.
- 23.9 **Severability:** If any term this Agreement is invalid or unenforceable it will be severed from the Agreement and will not affect the enforceability of the remainder of the Agreement.
- 23.10 **Governing law:** The Agreement is subject to the laws of the State of Victoria and the parties submit to the jurisdiction of the Courts of that State (and of all Courts competent to hear appeals therefrom) in respect of all matters arising under the Agreement.

## **SCHEDULE 2**

### **Goods & Service Provided to 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 or destruction or theft of the Goods and in the event of same 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  
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#### [Credit Account Application](#)

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 that this agreement or any transaction under it is or contains a security interest (within the meaning of the 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.

## **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 petition is filed against the Customer under the Bankruptcy Act or any other legislation relating to obtaining relief of debts, makes an assignment for the benefit his or her creditors, dies or becomes of unsound mind or permanently disabled; or

5.1.4 if the Customer is a corporation, 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 Australian Reserve Bank 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 right 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 privacy principles under the Federal Privacy Act 1988. Scania is bound by the Australian Privacy Principles (APP's) contained in the Privacy Act 1988 (C'th). 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 The Privacy Act does not apply to commercial credit provided to companies or other entities. Where you are an individual applying for commercial credit or guaranteeing the obligations of a company our privacy policy will apply in respect of any uses of individuals' credit-related information as part of any assessment of the creditworthiness of that individual. The Customer acknowledges having been provided with a copy of, or access to, Scania's privacy policy.