

# Whistler Bound Pty Limited trading as Road Runner Parts (ABN 89 079 044 447) Terms and Conditions of Trade

**1 We**, and similar expressions, refer to Whistler Bound Pty Limited trading as Road Runner Parts (ABN 89 079 044 447). **You**, and similar expressions, refer to you, our customer or proposed customer.

**2 Our conditions always apply.** These conditions apply if we accept any order from you (whether for cash, or on credit). To the extent permitted by law, an accepted order is non-cancellable. These terms and conditions apply to you as a single contract if you are an ongoing customer to whom we have agreed to give credit. These terms and conditions apply to you as a separate contract each time we accept an order placed by you if we have not agreed to supply to you under a credit account.

**3 Not obliged to accept orders.** We are not obliged to accept any orders from you. No tender or quotation by us obliges us to accept any order from you.

**4 Our conditions overrule any other form.** These conditions prevail even if they are inconsistent with anything in any earlier or later order form or similar document.

**5 Time for payment.** Except as we otherwise agree in writing or if we agree to give you credit, payment for any goods supplied is due prior to despatch for delivery by us. For services we may require payment at any time in whole or in part, in advance or in arrears, as stipulated by us.

**6 Withdrawal of future credit.** You have no entitlement to credit unless in our sole discretion we extend credit to you. If in a particular case we give you credit we still reserve the right at any time and for any reason in our sole discretion to refuse to supply any goods or services to you and to refuse to supply any goods or services to you on credit terms. If we decline to give you further credit then that decision does not affect the credit terms which apply to any amounts you then owe to us.

**7 Defaults.** If any amount you owe to us is not paid within thirty (30) days of the due date then all of the monies that you owe us on any account becomes immediately due and payable. In that case, and also if at any time you default under any other agreement that we have with you, without limiting our other rights we may suspend the supply of any goods or services and defer or cancel any outstanding orders (including accepted orders). If any payment is overdue or any cheque is dishonoured or has to be re-presented, you must also pay or reimburse us for any reasonable costs or expenses we incur as a consequence or in seeking to recover payment. Recoverable costs and expenses include but are not limited to – dishonour fees; re-presentation fees; fees and commission charged by debt recovery agents; and legal costs and expenses on a full indemnity basis.

**8 Prices and price variations.** We may increase any agreed sale price or fee after we accept an order, to cover the full amount of any increases in GST or other taxes and duties such as customs duty, sales taxes, consumption taxes and stamp duty which we incur in connection with your transaction after the date of your order.

**9 Delivery and risk.** You agree to pay our standard packaging and delivery cost for delivery of the goods to you. We may despatch an order in one or more instalments. Non-delivery of one instalment does not affect the contract for the other instalments that are delivered or are to be delivered. If

part of an order of any goods is not collected or accepted by you for any reason we may place such goods in storage, including at or on our premises at your cost and risk. You must pay us for all expenses incurred in relation to storing any goods not collected or accepted and in any case not less than the commercial value of the storage space occupied by the goods. If we arrange for carriage of the goods, you take all of the risk associated with the goods in all respects from the time of delivery or, if we store goods that are ready for delivery, from the time that we notify you that the goods are held in storage. If you arrange for carriage of the goods, you carry all risk associated with the goods in all respects from the time of despatch and by us.

**10 Estimated delivery times.** Delivery times are estimates only and we are not liable for any delay in delivery.

**11 Unexpected delay.** This condition applies if something happens which is beyond our reasonable control that makes it impossible, more difficult or more expensive for us to perform our obligations in our usual way. In those cases we may wait until it is again possible for us to perform our obligations in our usual way without additional difficulty or expense and we are not liable for any delay which results. Without limiting those general words, that applies where we have problems due to accidents, strikes, transport difficulties, default or delay by any supplier to us or stock shortages.

**12 Shortages and pre-delivery damage.** We will not recognise any claim for a shortage in a delivery or for any item being delivered in a damaged state, or for any shortage or damage of any installed item, if the claim is not made within two (2) days of delivery. When you sign any delivery or consignment note or similar document on receipt of a delivery that is conclusive evidence that you received the delivery.

**13 Sale by specification.** If we offer any goods by specification, you are solely responsible for determining your technical requirements and the purpose for use of the goods or re-supply of them. You are also solely responsible for determining whether any goods we supply is fit and suitable for your purpose. Any performance figures we provide are approximations and only for general guidance: a particular performance figure, even after allowing an approximation tolerance, may not be obtainable continuously or in all circumstances. Dimensions and specifications are all subject to tolerances and may be a little more or less and are also subject to minor variations between similar items. We are not supplying any advice of any nature. The provisions of this condition 13 apply despite any comment or representation made or implied by us. We intend that you do not rely on any advice from or representation by us unless made in writing and signed by one of our directors. In relation to any order you may not rely on any prior agreement, representation or negotiation by us, our agent or any third party unless made in writing and signed by one of our directors.

**14 Manufacturer.** We will use our reasonable endeavours to obtain for you the benefit of any warranty from the manufacturer of any goods that we supply to you that are not manufactured by us. This provision does not require us to commence legal proceedings or incur legal costs. We make

certain endeavours to ensure that goods supplied by us are sourced from reputable and qualified manufacturers based on appropriate product model or type certifications, by making preliminary enquiries about suppliers and by making preliminary checks or certifications. It is not practicable to test individual items for compliance or defects prior to supply.

**15 No other representations.** We rely on the following warranties from you as essential conditions. You have not relied on any representation made or implied by us or arising out of or implied by our conduct, nor upon any description, illustration or specification contained in any document produced by us, including any catalogue or publicity material (in any material form), unless made in writing for the purposes of this transaction and signed by one of our directors. To the extent that we have made or implied, or by conduct given rise to or implied, any representation that is not expressly stated in these conditions, you are not proceeding in reliance on the representation, because you have had and taken the opportunity to independently check and form your own view about the significance, and the accuracy or otherwise, of the representation. Without limitation, you acknowledge that you are not relying on being able to make any claim against us, for any representation made or conduct occurring before, under or in connection with any order, beyond the claims that can be made, and the limits applying, as provided in these trading conditions.

**16 Warranties, Exclusions and Limitations.** Any warranty we give in relation to the goods supplied by us will be in accordance with the warranty document that is provided with the goods. Otherwise, to the extent permitted by law, we exclude all other conditions, warranties, representations and liability in relation to the goods and services that are or might otherwise be implied by law, practice, trade usage or international convention.

**17 Australian Consumer Law.** To the extent legislation implies in these terms and conditions any condition or guarantee which cannot be excluded or modified, the condition or guarantee is deemed to be included in these terms and conditions. You may be entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You may also be entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Where there is a major failure you cannot reject the goods if:

- (a) you do not do so within a reasonable period after the goods were supplied to you
- (b) the goods are lost, destroyed or you have disposed of them
- (c) the goods became damaged after the goods were supplied to you not related to their state or condition at the time of supply, and
- (d) the goods have been attached to other property and the goods cannot be detached without damaging the goods.

If you exercise your right to reject the goods, you must notify us that you reject the goods and the ground for the rejection and you must return the goods in its original packaging to us at your cost except where the goods cannot be returned, removed or transported without significant cost because of the nature of the failure to comply with the guarantee to which the rejection relates or the size or height, or method of attachment of the goods, in which case we may, at our discretion, collect the goods at our expense. If we choose not to collect the goods and notify you to that effect, you are responsible all costs associated with storage or disposal of the goods.

**18 Liability.** To the extent permitted by law, our liability for breach of any non-excludable condition or guarantee is limited, at our option, to the following:

- (a) in the case of goods: (i) replacement or repair of the goods or supply of equivalent goods; (ii) payment of the cost of repairing or replacing the goods or acquiring equivalent goods, by credit to your account, payment in cash or by cheque at our discretion; (iii) repayment of any part of the purchase price of the goods which you have paid, by credit to your account, payment in cash or by cheque at our discretion;
- (b) in the case of services: the supply of or the payment for the cost of supply of the services again, by credit to your account, payment in cash or by cheque at our discretion.

Except as stated above and to the maximum extent permitted by law, we are not liable for, and you do not rely on being able to claim against us for, any loss or damage or Consequential Damage arising out of or in connection with our agreement or the supply of the goods or services.

**Consequential Damage** in these terms and conditions includes loss of use, lost production, lost income or profits, loss of opportunity, lost savings, increased or wasted expenses, delay or lost time, loss of or damage to goodwill, increased operating costs, rental costs for replacement of goods, wasted or increased financing costs, loss of or damage to data or records, loss of or unavailability of or damage to tangible or intangible property, claims made against you by others, losses or costs or expenses associated with identification, investigation, assessment, repair, replacement or servicing and any other economic loss or damage and any other special, indirect or consequential loss or damage.

**19 Returns.** You are not entitled to cancel an order or to return items, just because you have changed your mind. A return under warranty (where available) can only be accepted at Unit 2/44 Whyalla Place, Prestons, New South Wales, Australia 2170.

**20 Variations in specifications.** We reserve the right to vary the specifications or performance criteria of any product from time to time and to obtain goods from different sources, at our absolute discretion. We may do that without telling you provided we have reasonable grounds for believing that the alternative product offered is substantially similar to that previously offered or represents an improvement.

**21 Availability of repairs and spare parts.** To the extent the Australian Consumer Law applies, we make every reasonable effort to ensure the reasonable availability of facilities for repairs and spare parts for any goods we supply for a reasonable period of time after the date we supply the goods to you. In either case, we are not liable if, having used reasonable efforts, we are unable to do so for a temporary or permanent period. We may not be able to arrange for the availability of facilities for repair or spare parts after the end of two (2) year period from the date of supply of the relevant goods.

**22 Ownership passes to you on payment.** Title and property in the goods supplied under our agreement will not pass to you until you have paid the full purchase price in cleared funds for the goods. Payments by cheque do not count until we receive cleared funds in relation to the cheque. Until title and property in goods have passed to you, you (a) hold all such goods as our bailee and agent; (b) must store the goods so as to show clearly that they are our property and keep the goods fully insured at your expense and hold the proceeds of any insurance claim in respect of the goods (to the extent of your debt to us) in trust for us and you grant to us a *security interest* in such proceeds; (c) irrevocably authorise us by our servants or agents to enter

any premises or vehicle owned, leased or otherwise occupied by you, or by any of your agents or associates for the purpose of inspecting, recovering or taking possession of the goods (even if mixed with other goods) if we have reasonable grounds to expect that we may find any part of the goods there and you authorise us by our servants or agents to use all reasonable force to exercise our rights as owner conferred by common law, contract, statute or in any other way. That applies even if we hold some negotiable instrument or security for the amount unpaid. In the event we exercise our rights, we may dispose of the goods removed and claim from you the loss to us on such disposal. You indemnify us against any liability to any person in connection with the entry or reclamation; (d) must not sell the goods (even if mixed with other goods) other than in the ordinary course of your business, in which case you must hold the proceeds of the sale in trust for us in a separate account (however failure to do so will not affect your obligation to deal with the proceeds as trustee) and you grant to us a *security interest* in every payment to you for the goods (both as *proceeds* of the goods and as original *collateral*); and (e) any agreement by us to extend credit to you or any other indulgence does not affect your liability to account to us.

**23 Security interest.** You acknowledge and agree our agreement constitutes a security agreement and condition 22 creates a *purchase money security interest* in all present and after acquired goods and any *proceeds* as security for your obligations to us. We are a *secured party* in relation to the goods and any *proceeds* of the goods, and are entitled to, and you authorise us to, register our interest on the register as a *purchase money security interest*. We may, by notice to you, require you to take all steps requested by us to ensure our *purchase money security interest* in the goods and the *proceeds* are enforceable and to perfect or better secure or position and you must comply with that notice. We are not obliged to give any notice, document or information under the *Personal Property Securities Act 2009* (Cth) (“**PPSA**”) unless the provision of the notice, document or information is required by the PPSA and cannot be excluded. You consent to waive any right you may have to receive such notice, copies of documents or information. Terms that are in italics in conditions 22 to 25 (inclusive) have the same meaning as in the PPSA.

**24 Application of receipts.** Until the goods have been paid in full and any other money owing by you to us has been repaid, every payment you make to us will be taken to be a payment:

- (a) firstly, of any amount owed by you to us that is not subject to a *security interest*
- (b) secondly, of any amount owed by you to us that is subject to a *security interest*, to the extent that the security is not a *purchase money security interest*, and
- (c) thirdly, of any amount owed by you to us that is subject to a *security interest*, to the extent that it is a *purchase money security interest*.

An ordinary acknowledgment by us to you that an invoice has been paid is not, and must not be treated as, an agreement by us to amend the order of priority set out in this condition.

**25 Exclusion of and waiver of rights under PPSA provisions.** To the extent permitted by law: (a) for the purposes of sections 115(1) and 115(7) of the PPSA: (i) we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 134 or 135; and (ii) sections 142 and 143 are excluded; (b) for the purposes of section 115(7) of the PPSA, we need not comply with sections 132 and 137(3); (c) if the PPSA is amended after our agreement to permit you and us to agree to not comply with or exclude other

provisions of the PPSA, we may notify you that any of these provisions is excluded, or that we need not comply with any of these provisions, as notified to you by us; and (d) you agree not to exercise your rights to make any request of us under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section. To the extent permitted by law, you waive your right to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a *secured party* or receiver exercises a right, power or remedy, and any time period that must otherwise lapse under any law before a *secured party* or receiver exercises a right, power or remedy. If the law requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one (1) day or the minimum period the law allows to be agreed (whichever is the longer). However, nothing in this condition prohibits us or any receiver from giving a notice under the PPSA or any other law. You will unconditionally ratify and procure that each guarantor, if required by us, ratify, any actions taken by us.

**26 Certificates.** You are bound by any certificate signed by any of our directors or solicitors which shows any relevant date for the purposes of any calculation, or any amount or calculation relevant to what you owe us. The only exception is where you can prove the certificate is wrong.

**27 Trade Markings and IP Rights.** You may refer to goods acquired from us by their associated names, including associated trade marks and logos, provided that such reference is not misleading nor prejudicial in any way to us or our intellectual property rights. You may not remove or alter any serial numbers, trade marks or other markings or get-up, nor may you co-brand or co-logo any goods provided by us. You do not acquire any right to any of our intellectual property. You must not incorporate any of our trade marks into your trade marks, company names, Internet addresses, domain names or any other designations.

**28 IP Infringement.** If there is any allegation or apprehension that any goods we have supplied to you infringe the rights of others you must notify us reasonably promptly and give us the opportunity to modify, alter or substitute the alleged infringing item or items. This provision is in addition to our other rights.

**29 Personal information and privacy arrangements.** We collect personal information during our dealings with you for the purpose of providing you with any goods or services that you request, to provide you with information about our goods and services, promotions and discounts from us from time to time and otherwise in connection with our agreement with you. We may also confirm whether you are a member of a trade association and collect personal information from trade associations that we are members of, for example the Traffic Management Association of Australia. You consent to the collection and use of this information. If we do not receive the requested personal information, we may not be able to fully and effectively communicate with you, sell you the goods or services or administer our agreement with you. We may disclose personal information to third party contractors, such as debt collection agencies, who we may engage if necessary. Our Privacy and Management of Credit Related Information Policy (a copy of which is available at [www.roadrunnerparts.com.au](http://www.roadrunnerparts.com.au)), which forms a part of these terms and conditions, contains information about how to access and correct personal information held by us, or make a complaint about a breach of the Australian Privacy Principles and how we will deal with complaints.

**30 Publicity.** We may use your name in promotional materials, including press releases, presentations and customer references regarding the sale of any goods. You give us that permission free of charge for worldwide use in any medium. However, we will obtain your prior approval for publicity that contains quotes or endorsements attributed to you.

**31 Variation.** We may amend these terms and conditions at any time, and any such amendments will be posted on our website at [www.roadrunnerparts.com.au](http://www.roadrunnerparts.com.au) We will also notify you by email of any such amendments, and give you seven (7) days to consider before it takes effect. If you do not accept the amendments we notify you, you must notify us in writing by sending an email to [privacy@roadrunnerparts.com.au](mailto:privacy@roadrunnerparts.com.au) that you do not accept the amendments within seven (7) days of our email to you and our agreement with you will terminate with effect from when we receive your written notification subject to you paying us all money you owe us under our agreement. If we do not receive your written notification that you do not accept the amendments for whatever reason including, without limitation, you not notifying us of updates to your contact details, you will be deemed to accept the amendments which will take effect seven (7) days after the date we notify you of the amendments or such other later date we might specify.

**32 Notices.** All notices you and we give each other must be in writing and signed. A notice from us may be signed by any of our managers, directors or solicitors. Notices must either be delivered by hand or sent by prepaid post. Notices must be given at the address shown on the proposal form or a changed address of which due notice has been given. Notices are deemed given on the day of delivery if delivered between 9am and 5pm on a day in which banks are open in Sydney that is not a Saturday, Sunday or public holiday, or on the next such day following delivery if delivered at some other time, or two days after posting if given by prepaid post. Notices must not be given by facsimile.

**33 Assignment and Subcontractors.** We may, but you must not, assign any part or the whole of any right or benefit of any contract we have with you. We may choose to use one or more subcontractors to fulfil our obligations under any contract we have with you.

**34 Blanks.** We may complete any blanks on any relevant document, on your behalf.

**35 Governing Law.** Our agreement with you is governed by and is to be interpreted according to the laws in force in NSW and you submit to the non-exclusive jurisdiction of the Courts operating in NSW.