

1. DEFINITIONS

In these Terms and Conditions:

"Buyer" means the buyer to whom the Goods and/or Services are to be supplied as specified in the Order Acknowledgement (or, if there is no written Order Acknowledgement, as specified on DT's invoice) and includes, where not inconsistent with the context, its officers, employees, agents and/or contractors;

"Drivetrain" means Drivetrain Australia Pty Ltd, Drivetrain Limited (NZ), Drivetrain Singapore Pte Ltd, Drivetrain Sweden AB, Drivetrain USA Inc., and/or Drivetrain Philippines Inc., all trading as Drivetrain Power and Propulsion or Gastrain Power and Compression, and includes, where not inconsistent with the context, their officers, employees, agents and/or contractors;

"DT" means Drivetrain Australia Pty Ltd, Drivetrain Limited (NZ), Drivetrain Singapore Pte Ltd, Drivetrain Sweden AB, Drivetrain USA Inc., and/or Drivetrain Philippines Inc., all trading as Drivetrain Power and Propulsion or Gastrain Power and Compression, and includes, where not inconsistent with the context, their officers, employees, agents and/or contractors;

"Goods" means the goods to be supplied by DT to the Buyer or worked on by DT for the Buyer as specified in the Order Acknowledgement (or, if there is no written Order Acknowledgement, as specified on DT's invoice);

"Powertrain" means axle, transmission and converter assemblies, sub-assemblies and associated components; and

"Services" means the services to be supplied by DT to the Buyer as specified in the Order Acknowledgement.

2. PRICE LISTS AND QUOTATIONS

DT may from time to time provide the Buyer with a price list of Goods or Services ("Price List").

If the Buyer is not provided with an applicable Price List, they may request a quotation from DT ("Quotation"). Unless stated otherwise on a Quotation and without limiting DT's rights under the last sentence of this clause 2, Quotations shall only be open for acceptance for a period of 30 days.

Price Lists and Quotations are an invitation by DT to the Buyer to make an offer to buy the goods and/or services specified therein ("the Order"), subject to these Terms and Conditions.

Price Lists and Quotations are subject to withdrawal or alteration by DT by notice to the Buyer at any time before formal acceptance by DT of the Order in accordance with clause 5.

3. PRICES

Unless otherwise stated on the Quotation, the prices for the Goods specified in the Price List and/or Quotation ("the Prices") are quoted exworks Incoterms. The Prices are based upon the cost of materials, labour, sales tax, transportation, manufacture, storage, transaction duty, import duty and other ancillary costs and charges ("Costs") as at the relevant date. The Prices are in the local currency for the relevant DT company which issues the Price List and/or Quotation (unless otherwise stated). Where the Goods identified on a Price List or Quotation are being imported by DT, Prices are also based on the relevant exchange rate as at the date of the Price List and/or Quotation. If there is a variation in any such Costs and/or the relevant exchange rate (based upon the buying rate of the foreign currency as quoted by the National Australia Bank Limited, Sydney on the date of the relevant invoice of DT) such that the cost to DT of the Goods and/or Services increases prior to DT issuing the relevant invoice to the Buyer, DT shall have the right to increase the Prices so as to pass the effect of the increase in Costs and/ or the impact of the change in exchange rate on to the Buyer in full. DT will nevertheless endeavour to supply in accordance with the Prices stated.

Unless otherwise stated, the Prices do not include any surcharges.

4. GOODS AND SERVICES TAX

Unless otherwise stated, the Prices do not include goods and services tax under the A New Tax System (Goods & Services Tax) Act 1999 ("GST"). The Buyer shall pay any GST or equivalent tax payable at the prevailing statutory rate in relation to the supply of the Goods and/or Services.

The Buyer indemnifies DT against GST paid or payable by DT in respect of any supply to the Buyer.

5. ACCEPTANCE

The Buyer's Order shall not be binding on DT or be deemed to be a sale or a contract of sale unless and until DT accepts that Order. DT may accept an Order by issuing either an Order acknowledgement ("Order Acknowledgement") or an invoice in respect of the Order. DT shall only supply Goods and/or Services to the Buyer on these Terms and Conditions. No terms or conditions which differ from these Terms and Conditions which are provided or referred to by or submitted or otherwise used by the Buyer shall form part of, or be incorporated into, the contract formed between the parties and DT shall not be bound by any such terms and conditions (unless DT agrees in writing to be so bound). If DT agrees to be bound by any such terms and conditions of the Buyer, and those terms and conditions are inconsistent with these Terms and Conditions, these Terms and Conditions prevail. Without limiting the foregoing and for the avoidance of doubt (unless DT accepts any terms and conditions included by the Buyer in its Order in writing), no new, additional or inconsistent terms and conditions included in, on or attached, to the Order shall be binding on DT or the Buyer (and a binding contract shall be created between the parties for the supply of the Goods and Services the subject of the Order Acknowledgement notwithstanding the purported inclusion of such terms and conditions by the Buyer, which terms and conditions shall be and be deemed to be null and void). Each Order and related Order Acknowledgement shall constitute a binding contract between the DT entity who issued the Order Acknowledgement and the Buyer for the supply of the Goods and/or Services referred to in the Order Acknowledgement on the terms and conditions referred to in the Quotation, Order and these Terms and Conditions ("the Agreement").

6. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement in respect of the supply of the Goods and/or Services.

7. CANCELLATION AND AMENDMENTS

The Buyer may cancel an Order, reduce quantities, revise specifications or extend delivery schedules only with the prior written consent of DT (in its sole and absolute discretion) and subject to such conditions which DT may impose (in its sole and absolute discretion) including as to reasonable charges to be paid by the Buyer to reimburse DT for any costs and expenses incurred by DT as a result. The Buyer shall indemnify DT against all such costs and expenses. The foregoing provisions shall not affect DT's rights against the Buyer arising out of any breach or default of the Agreement by the Buyer. DT may, at its sole discretion, immediately upon notice to the Buyer cancel or modify an Order notwithstanding that it has issued an Order Acknowledgement.

8. GOODS AND SERVICES SOLD

All Goods and/or Services to be supplied by DT to the Buyer are as described in the Order Acknowledgement (or, if there is no written Order Acknowledgement, on the Invoice) and such description prevails over all other descriptions including any specification or enquiry of the Buyer.

9. PAYMENT PROCEDURE

DT may issue an invoice (or invoices) ("the Invoice") for the Goods and/or Services at any time after it has issued the Order Acknowledgement, including prior to delivery of the Goods or supply of the Services. Where there is no written Order Acknowledgement, DT will issue an Invoice upon delivery of the Goods or the performance of the Services.

The Buyer will comply with any special terms of payment specified by DT on the Quotation or otherwise notified to the Buyer in writing at any time (including between placement of an Order and delivery) (for example, progress payments). Subject to any special terms of payment specified by DT to the Buyer on the Quotation, the Buyer shall pay any Invoice in full within 30 days from the end of the month of the Invoice.

If the Buyer does not pay any Invoice in full by its due date for payment, DT may:

- a. charge interest on any overdue amount at the rate which is two percent (2%) per annum above the standard variable interest rate charged by the National Australia Bank, Sydney on a Term Base Rate account, calculated and payable daily from the due date until the Invoice is paid in full; and
- b. terminate the Agreement for the supply of the Goods and/or Services by notice to the Buyer and/or recover the outstanding balance of the Invoice plus interest and all associated costs as a debt owing to DT by the Buyer ("the Debt").

If the Buyer fails to pay any Invoice in full by the due date for payment the Buyer shall reimburse DT all of the costs and expenses (including legal costs determined as between solicitor/own client and debt collection fees) incurred by DT in the recovery of the overdue amounts. Notwithstanding anything else contained in these Terms and Conditions, DT in its absolute discretion reserves the right to introduce or vary any special terms of payment at any time up to and including the date on which DT renders an Invoice.

DT reserves the right to cease working on Goods or supplying Services if any payments (including progress payments) are overdue to DT from the Buyer.

For the avoidance of doubt, the Buyer must pay for any Services provided by DT even if the Buyer disagrees with any advice provided or work performed by DT as part of such Services. DT may offer credit to the Buyer on such terms (including as to a credit limit) as DT sees fit. DT may vary such credit terms (and any credit limit) at any time as DT sees fit.

Notwithstanding anything to the contrary in the Agreement, DT may withhold delivery of any Goods if such delivery will cause the Buyer to breach such credit terms and/or to cause the Buyer's credit exposure (represented by the total of all unpaid Invoices) to DT to extend beyond such credit limit.

DT may, at any time on notice to the Buyer, require the Buyer to obtain an appropriate bank guarantee prior to and as a condition to DT delivering Goods or supplying Services to the Buyer.

Where payment is made by Credit Card, DT will process the receipt as per the Invoice plus an amount of 3% plus any taxes.

10. RIGHTS IN RELATION TO GOODS

DT will retain full and unfettered ownership of all Goods, and all Goods are to be kept separate and marked as owned by DT, until all Invoices owed by the Buyer to DT for such Goods are fully paid. In addition, until all Invoices owed by the Buyer to DT are fully paid, DT reserves all of the following rights in relation to all Goods and/or Services ordered by the Buyer:

- a. to withhold delivery of the Goods;
- b. if the Goods have been delivered:-
 - i. to enter the Buyer's premises (or the premises of any associated company, agent or contractor where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods;
 - ii. and to keep or re-sell any Goods repossessed pursuant to (i) above.

If any Goods which have not been fully paid for are sold, or any products manufactured using the Goods are sold, by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the outstanding Invoice price of the Goods sold or used in the manufacture of products sold in a separate identifiable account as the beneficial property of DT and shall pay such amount to DT upon request.

Notwithstanding the provisions above DT shall be entitled to maintain an action against the Buyer for the Invoice price, and the risk of the Goods shall pass to the Buyer as set out in clause 12 below.

11. PRELIMINARY WORK

Where DT considers it is necessary to perform preliminary work prior to being able to provide a Quotation or to establish whether a valid warranty claim under clause 18 exists, DT and the Buyer shall agree in writing the reasonable charges to be paid by the Buyer to DT for such work should the Quotation be declined or the warranty claim be invalid, as a precondition to DT being required to perform such preliminary work.

12. DELIVERY RISKS AND STORAGE

Goods are supplied or serviced ex-works Incoterms. Unless otherwise stated in the Quotation, the Buyer will take delivery of the Goods at the place of delivery nominated on the Quotation within 14 days after DT notifies the Buyer that the Goods are ready for delivery.

Notwithstanding anything to the contrary in clause 9, DT may, in its sole discretion, by notice given to the Buyer at any time, make it a condition of delivery that delivery will only be made on COD terms.

Without limiting clause 7, in the case of Goods being imported, any request by the Buyer to alter the estimated delivery dates specified in the Order Acknowledgement will only be considered by DT under clause 7 if the request is in connection with standard component Goods, the request is made at least 90 days prior to the ex-factory date of the said Goods from DT's supplier and the request is approved by DT's supplier.

If the Goods are ready for delivery but the Buyer does not take delivery, the Goods shall then be entirely at the risk of the Buyer and any storage charges incurred by DT on and from the latest date for taking delivery shall be to the Buyer's account.

Subject to these Terms and Conditions, all reasonable endeavours will be made by DT to have the Goods ready for delivery on or before the estimated delivery date specified in the Order Acknowledgement however this is not guaranteed and a failure to have Goods ready for delivery by such date shall not give the Buyer the right to terminate the Agreement or render DT liable for any delays, inconvenience, loss or damage of any kind whatsoever suffered by the Buyer or its customers. Without prejudice to the generality of the foregoing, DT shall not be liable for any delay arising from strikes, lock-outs, accidents, shortage of materials or labour, shipping delays, wars or any other causes beyond its control (including, without limitation, delay in DT taking delivery from its suppliers).

13. RETURNED GOODS

DT is not under any duty to accept Goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.

DT is under no duty to agree such terms.

If DT agrees (in its sole and absolute discretion) to accept returned Goods from the Buyer the Buyer must, at its cost, return the Goods to DT at DT's place of business as advised by DT. Goods returned will be subject to a credit service fee equal to fifteen percent (15%) of the Invoiced price of the returned Goods, unless the return is due to a supply error.

14. BUYER'S PROPERTY

Any property of the Buyer in DT's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

15. SHORTAGE

The Buyer waives any claim for shortage of any Goods delivered if a claim in respect of short delivery has not been lodged with DT within two (2) days from the date of receipt of Goods by the Buyer.

16. PARTIAL DELIVERY

Partial delivery of an accepted Order may be made by DT. Notwithstanding the foregoing, payments shall become due in accordance with these Terms and Condition as Invoices are presented.

17. IMPROVEMENTS

DT is constantly striving to improve its Goods and Services. Changes in design and improvements will be made whenever DT believes the efficiency of its Goods will be improved but DT shall not be under any obligation to incorporate any such changes in design or improvements in any Goods which are already the subject of an accepted Order. DT shall not incur any liability in respect of the non-incorporation of such changes or improvements in any such Goods.

18. WARRANTY

18.1. DT warrants to the Buyer that, on and subject to the conditions specified below and in this clause 18 and in clause 21:

- a. all new Powertrain components used in marine and industrial equipment including off-highway equipment which are supplied by it will be free from material defects in material under normal and proper use and maintenance for a period of 12 months after delivery to the first ultimate user or 2000 hours of service, whichever shall occur first (provided that this warranty shall only apply if the Powertrain components are placed in service within twelve (12) months after shipment from the designated factory plant); and
- b. all assembled Powertrain components used in marine and industrial equipment including off-highway equipment which are supplied by it will be free from material defects in material and workmanship under normal and proper use and maintenance for a period of twelve (12) months after delivery.

The above warranties are given on the proviso and condition that notice of any such defect and satisfactory proof is given by the Buyer to DT within fourteen (14) days of discovery of the defect and such Powertrain component is returned to DT with transportation charges prepaid by the Buyer and DT's examination proves such Powertrain component to be defective. This warranty does not apply in respect of damage to any Powertrain component caused by overloading or other misuse, improper installation, interference, neglect, accident or other circumstances beyond DT's control nor from any application of the Powertrain component not expressly approved by DT in writing for that specific application. This warranty does not apply to any Powertrain component which has been altered or repaired in any manner which in the sole judgment of DT affects the performance or general purpose for which it was manufactured. This warranty does not apply in the circumstances set out in clause 21. DT's liability for Powertrain components which are supplied by it is limited to repairing, replacing or allowing credit for, at DT's option, any Powertrain component which under normal and proper use and maintenance proves defective in material or workmanship. Items removed for replacement under warranty become the property of DT.

18.2. In the case of all other Goods which are supplied by DT (including but not limited to Powertrain and engine spare parts, hoses and fittings), the

warranty (if any) of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee or warranty given to the Buyer in respect of those Goods, save that if DT performs modifications on such Goods at the Buyer's request, DT may agree in writing to grant a warranty on a case by case basis. DT agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to DT under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

18.3. DT warrants to the Buyer that, on and subject to the conditions specified below and in this clause 18:

- a. all maintenance, repair and overhaul rebuild services provided by it in connection with Powertrain components or subassemblies used in marine and industrial equipment including off-highway equipment will be free from material defects in workmanship under normal and proper use and maintenance for a period of six (6) months from the date of issue of the Invoice for such services or one thousand (1,000) hours of operation, whichever shall occur first; and
- b. all maintenance, repair and overhaul services provided by it in connection with engines and engine components will be free from material defects in workmanship under normal and proper use and maintenance for a period of ninety (90) days from the date of issue of the Invoice for such services.

The above warranties are given on the proviso and condition that notice of any such defect in the Services and satisfactory proof is given by the Buyer to DT within fourteen (14) days of discovery of the defect and such serviced Good is returned to DT with transportation charges prepaid by the Buyer and DT's examination proves such Services to be defective. This warranty does not apply in respect of damage to any serviced Good caused by overloading or other misuse, improper installation, interference, neglect, accident or other circumstances beyond DT's control. This warranty does not apply to any serviced Good which has been altered or repaired in any manner which in the sole judgment of DT affects the performance or general purpose for which it was manufactured. DT's liability for Services supplied by it is limited to re-supplying or allowing credit for, at DT's option, any Service (or part thereof) which under normal and proper use and maintenance of the serviced Good proves defective in workmanship. Items removed for replacement under warranty become the property of DT.

18.4. Save as set out above and to the maximum extent permitted by law, all express and implied warranties, conditions, guarantees, rights and remedies under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods or Services for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded.

18.5. In no event shall DT be liable for any indirect, consequential or special damages in respect of any loss caused by use of a defective Good or Service.

18.6. DT's liability for a breach of a condition or warranty implied by Div 2 of Pt V of the Trade Practices Act 1974 (other than s 69) is limited to, at DT's option:

1. in the case of Goods, any one or more of the following:
 - the replacement of the Goods or the supply of equivalent goods;
 - the repair of the Goods;
 - the payment of the cost of replacing the Goods or of acquiring equivalent goods;
 - the payment of the cost of having the Goods repaired; or

2. in the case of Services:
the supplying of the Services again; or
the payment of the cost of having the Services supplied again.
- 18.7. DT's liability under s 74H of the Trade Practices Act 1974 is expressly limited to a liability to pay to the Buyer an amount equal to:
1. the cost of replacing the Goods;
 2. the cost of obtaining equivalent goods; or
 3. the cost of having the Goods repaired, whichever is the lowest amount.
19. SPECIFICATIONS AND DRAWINGS
Every effort is made to ensure that specifications, drawings and other information in correspondence, catalogues etc are correct and accurate, however no warranty is given in respect of them and DT shall not be liable for any error therein.
20. LIMITATION OF LIABILITY
To the maximum extent permitted by law, DT shall not be liable for, and excludes liability for, any loss or damage or injury of any kind whatsoever caused to the Buyer or its customers arising from or in connection with the Goods and/or Services whether such loss or damage was caused by an act, default, omission or negligence by DT or otherwise.
- To the maximum extent permitted by law, DT excludes liability for any indirect, special, incidental or consequential loss, damage, costs or expenses of any kind whatsoever to the Buyer or its customers and howsoever caused, and whether arising under contract, tort (including negligence) or otherwise, including for loss of profits or revenue even if DT has been advised by the Buyer of the possibility of such loss.
- To the extent to which DT cannot exclude or limit its liability, DT's maximum liability to the Buyer, whether in contract, tort (including negligence) or otherwise arising from or in connection with the Goods and/or Services for any costs, losses, claims, damages, expenses or proceedings incurred or suffered by the Buyer or its customers will be limited in aggregate to the price paid by the Buyer for the Goods and/or Services as specified in the Order Acknowledgement (or, if one is not issued, the Invoice) for such Goods and Services.
21. APPLICATION APPROVAL
DT, in its absolute discretion, will not accept any Order for any Goods described in the Quotation or Order unless the application in which the Goods are to be used has been approved in writing by DT for each specific application ("Factory Approved Application"). Goods must be used strictly in accordance with the Factory Approved Application. If any modifications are made to the Goods by DT (at the Buyer's request) or otherwise by or on behalf of the Buyer which result in the Goods not being used strictly in accordance with the Factory Approved Application, DT expressly excludes all liability and responsibility relating to, arising out of or in any way connected with such Goods including, without limitation, for any defects therein (and the warranty in clause 18.1 shall not apply to such Goods).
22. MODIFICATIONS
DT reserves the right to refuse to carry out any modifications to the Goods or any other products that are not modifications for Factory Approved Applications. Without limiting clauses 20 and 23, DT will have no liability for any design modifications to Goods specifically requested by the Buyer and the Buyer acknowledges that such modifications may void the warranty provided by the manufacturer of the Goods.
23. INTELLECTUAL PROPERTY
All intellectual property rights in any subject matter developed or supplied by or on behalf of DT in the course of supplying the Goods and/or Services is owned by DT.
- In ordering Goods or Services to its own design, the Buyer guarantees that in the making or performing of them, DT will not be liable for any infringement of the Buyer's or any third party's intellectual property rights (including but not limited to patent, design, copyright or trade mark rights) and the Buyer agrees to indemnify DT against any action, loss or damage that may be brought against or suffered by DT in relation to such works.
24. CONFIDENTIAL INFORMATION
DT and the Buyer shall treat all information supplied to them by the other as confidential, except to the extent that such information becomes public knowledge or is required, by law, to be disclosed.
25. ASSIGNMENT
The Buyer shall not in any way assign or otherwise deal with its interests under the Agreement without DT's prior written consent.
26. VARIATIONS
DT may vary these Terms and Conditions at any time, with immediate effect, by placing a copy of the amended Terms and Conditions on its website (which amended terms shall govern all Orders made after the effective date of the change).
27. WAIVER
DT shall not be deemed to have waived any of its rights under the Agreement unless such waiver is in writing and signed by a representative of DT.
28. SEVERABILITY
If any provision of the Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force, apart from such provision, which shall be deemed to be deleted.
29. JURISDICTION AND GOVERNING LAW
The Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
30. PPSA
The Buyer acknowledges that these terms and conditions (and, where applicable, any contract) constitute a security agreement for the purposes of the PPSA. A security interest is taken in all Products previously delivered to the Buyer and all the Products that may be supplied in the future to the Buyer securing the performance by the Buyer of its obligations under these terms and conditions and any contract between DT and the Buyer.
- The Buyer acknowledges and agrees that all Products supplied under these terms and conditions from time to time constitute its inventory, within the meaning of that term in the PPSA.
- The Buyer must ensure that no security interest (within the meaning of the PPSA) is created, exists or subsists over the Products in its possession or control other than a security interest arising under these terms and conditions.
- The Buyer agrees to do anything (such as obtaining consents, completing, signing and producing documents and supplying information) which DT considers necessary for the purposes of:
- a. ensuring that any security interest under these terms and conditions is enforceable, perfected and otherwise effective;

- b. enabling DT to apply for any registration, or give any notification, in connection with any security interest under these terms and conditions so that it has the priority required by DT; and
- c. enabling DT to exercise its rights in connection with any security interest under these terms and conditions.

The Seller may apply all payments or other amounts it receives from the Buyer or in exercise of its rights and remedies under these terms and conditions, first, in payment of any interest owing by the Buyer to DT; secondly, in payment of any costs, charges and expenses incurred by DT as a consequence of any breach by the Buyer of these terms and conditions; thirdly, in payment of all fees and charges due to DT under or in connection with these terms and conditions; and, fourthly, in payment and satisfaction of all other moneys owing by the Buyer to DT in accordance with the order of priority set out in section

14(6)(c) of the PPSA and DT's application of such payments and amounts shall prevail notwithstanding any purported application or appropriation to the contrary by the Buyer.

The Seller need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

To the extent permitted by law, the following provisions of the PPSA shall not apply as between DT and the Buyer: section 121(4); section 125; section 130 (

to the extent that it requires DT to give a notice to the Buyer); section 132(3)(d); section 132(4); section 135; section 142; section 143; and all provisions of Part 4.3 of the PPSA in relation to any of the Products while a person is a controller of that property in a capacity other than those mentioned in section 116(1) of the PPSA.

Notwithstanding clause 24, neither party will not disclose any of the information set out in section 275(1) of the PPSA in relation to this document or any security interest created under this document to any person (except that DT may do so where required due to the operation of section 275(7) of the PPSA or in accordance with another provision of this document).

"PPSA" means:

- a. the Personal Property Securities Act 2009 (Cth) (PPS Act) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- b. any amendment made at any time to any other legislation as a consequence of the PPSA.