

In this document:

**Goods** means any Goods ordered from, or supplied by us and may include services and/or repairs.

**Terms** means the terms and conditions contained in this document, as amended by us and published on our website [www.webasto.com.au](http://www.webasto.com.au) from time to time and includes any other terms comprised in a 30 Day Credit Application or Guarantee provided by you or your authorised representative.

**We, us or our** means Webasto Thermo & Comfort Australia Pty Ltd ACN 003 324 070.

**Quote** means any quote we issue from time to time.

## 1. Quotes

- 1.1 We may from time to time issue Quotes for the supply of Goods. All Quotes are subject to the Terms.
- 1.2 Unless otherwise stated, any Quote will remain open for acceptance for the time stated on the Quote and where no time is stated, for 60 days, unless withdrawn by us earlier.
- 1.3 A Quote may be accepted by signing and returning the Quote. If you accept a Quote, you are also accepting all of these Terms without amendment.
- 1.4 Where specifications, drawings or other particulars are provided by you, our price is based upon estimates of quantities required. If any adjustment in quantities is required, the price stated in any Quote is adjusted on the unit rate basis as stated in the Quote or if that Quote is older than 30 days, at such price as we shall reasonably determine having regard to the usual price at that time.

## 2. Acceptance

- 2.1 We reserve the right to refuse any order placed by acceptance of a Quote within 7 days of receipt of the acceptance.
- 2.2 We may, in our absolute discretion, accept a purchase order from you in respect of the supply of Goods. These Terms apply to any such purchase order accepted to the exclusion of any terms stated on the purchase order.
- 2.3 If you are an individual, by signing the acceptance of a Quote or by submitting a purchase order, you warrant that you are authorised to accept these Terms on behalf of the relevant entity named on the Quote or purchase order.

## 3. Your obligations

- 3.1 You must ensure that all information provided to us is true, accurate and not misleading.
- 3.2 You must act reasonably and take reasonable care to protect your own interests, including managing all safety risks associated with the operation of the Goods, having them properly installed, properly reading and following any instruction or training manuals, following any reasonable direction we may give and appropriately directing your own employees, servants and agents in relation to these things.
- 3.3 You agree to inspect the Goods immediately upon delivery, or upon collection of your order by your agent or courier.

## 4. Shortage and returns

- 4.1 Details of any Goods as recorded by us upon dispatch will be conclusive evidence of the quantity received by you on delivery unless you provide conclusive evidence proving the contrary within ten (10) days.
- 4.2 You waive any claims in respect of any shortages for any Goods delivered unless a notice of a claimed short delivery is provided to us within ten (10) days of delivery.
- 4.3 No Goods may be returned to us or any agent or representative of ours without our prior written consent. Any requests for the return of Goods to us must be made within ten (10) days of delivery of the Goods to you.

- 4.4 We are not under any obligation to accept the return of any Goods or to provide refunds however, we may do so only on terms satisfactory to us, such as on payment of a restocking and handling fee equivalent to 10% of the price for the Goods.
- 4.5 If we agree to the return of any Goods, all returns should be made freight prepaid at your expense and be accompanied by an itemised credit claim including the following information: invoice number, date of purchase, our PAR reference number (if applicable), the reason for the return of the Goods and be signed by you.
- 4.6 Goods returned will only be accepted by us if they are properly and adequately sent to us in their original and specific packaging materials (crates, bolts tightened and Goods fully secured). They otherwise remain at your risk.

## 5. Delivery and storage

- 5.1 Any dates specified by us for delivery of the Goods are approximate only. If no dates are so specified, delivery will be within a reasonable time. We may deliver the Goods in batches or in instalments. If you wish to request for deliveries by instalments, you must do this within the times stipulated in your written contract with us.
- 5.2 Where Goods are ordered by you in instalments, each instalment delivery is deemed to be a separate order and a separate contract performed by us upon delivery of that instalment.
- 5.3 You have no right of action for damages or otherwise against us and hereby release us from any claim for loss or damage directly or indirectly occurring by reason of any failure or delay in delivery or for delivery in batches.
- 5.4 If you fail to take delivery of any of Goods or to provide any instructions to enable the Goods to be delivered, without prejudice to any other rights we may have, we may store or arrange for the storage of the Goods pending delivery but as it relates to the timing of payment for the Goods under these Terms, delivery shall be deemed to have taken place at the date we store or arrange storage of the Goods.
- 5.5 Any costs or expenses incurred in relation to storage, including related insurance, of Goods pending delivery are payable by you.

## 6. Goods and Services Tax

Unless otherwise stated, all amounts and prices provided in a Quote, any accepted purchase order or otherwise are exclusive of any taxes, duties or levies (including GST). Where the goods or services provided are subject to any taxes, duties or levies (including GST), it will be added and charged to you.

## 7. Price increases

Amounts and prices stated on any Quote are those at the date of the Quote. If you require any changes to the Quote which affect the cost or rates for insurance, freight, cartage or shipping expenses, duties, exchange rates, sorting and stacking costs, costs of materials or any other amounts used to calculate the price or amounts stated on the Quote, or if those inputs increase in cost before acceptance or during the currency of our contract, any increase in those amounts are for your account and will increase the price accordingly.

## 8. Non-Returnable Goods

The following will not be returnable under any circumstance - Goods which are:

- (a) custom made per your specifications, non-standard Goods or Goods made to special orders;
- (b) not in their original shape, form or condition;
- (c) damaged by abnormal use, faulty maintenance or when Goods have not been used or maintained according to the manufacturer or our instructions;
- (d) returned by someone other than you (as the original buyer);

- (e) expressly sold on a non-return basis; or
- (f) damaged during the installation or fitting process.

## 9. Accounts and interest

- 9.1 Unless otherwise agreed, all accounts must be paid in full on or before the last business day of the calendar month following the month of supply.
- 9.2 If our accounts are not paid in full by their due date, we may charge you interest on the unpaid amount at the rate of 15% per annum.

## 10. Outstanding accounts

- 10.1 If any account remains outstanding for a period of 60 days or more, without limitation to any other rights and remedies we may have, you hereby charge in our favour any real or personal property in which you have an interest with payment of any outstanding account (**Charge**) and you irrevocably authorise us to lodge caveats to notify and protect that Charge in relation to any real property in which you have an interest at your cost.
- 10.2 If an account remains outstanding for more than 60 days, you authorise us to provide your particulars and the particulars of the unpaid debt to any credit reporting agency to have the default in payment listed.
- 10.3 All costs and disbursements incurred by us in recovering payment of any overdue account or in enforcing our rights under these Terms, including without limitation, legal costs on a solicitor and client basis, are payable by you (**Recovery Costs**).
- 10.4 We may retain any documents or Goods held on your behalf pending payment of any outstanding account.

## 11. Retention of title

- 11.1 We reserve the following rights in relation to all Goods provided by us until all amounts owing by you to us in respect of those Goods are paid in full:
- (a) ownership of the Goods;
  - (b) to enter your premises (or the premises where the Goods are located) without liability for trespass or any resulting damage to retake possession of the Goods; and
  - (c) to keep or resell any of the Goods so repossessed.
- 11.2 You agree to:
- (a) hold the Goods as a bailee for us;
  - (b) keep the Goods separate from other goods; and
  - (c) label the Goods (or not remove labels) so that they are identifiable as our Goods.
- 11.3 In respect of the resale of the Goods pursuant to this clause 11, we will apply the net proceeds of sale firstly towards the payment of the unpaid invoice with respect to those Goods, then towards any other unpaid invoices, then towards Recovery Costs and if there is any surplus, the surplus will be paid to you. If there is a deficiency, we may recover the deficiency from you as a debt.
- 11.4 You are at liberty to sell the Goods in the ordinary course of business, provided that the money resulting from the sale will:
- (a) be held in a separate account in trust for us;
  - (b) not be mingled with other monies; and
  - (c) not be placed into an overdrawn account.
- 11.5 If you use the Goods in some manufacturing or construction process whether for you or a third party, then you agree to hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for us. Such part will be deemed to equal in dollar terms to the amount owing by you to us at the time of receipt of such proceeds.

## 12. PPSA Registration

- 12.1 You agree that all Goods supplied to you by us will be subject to a security interest as that term is defined in the *Personal Property Securities Act 2009 (PPSA)* and will treat the security interest in the Goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors.
- 12.2 Accordingly, you grant us a security interest in the Goods and in any proceeds arising from the sale of the Goods or in any accessions in the Goods or if the Goods become an accession, the accession and the Goods, to secure your obligations to us including, but not limited to, your obligation to make payment for the Goods.
- 12.3 You are responsible for all costs incurred by us in registering our interest under the PPSA and all costs of enforcement however, we may choose to waive this.
- 12.4 If we, pursuant to the PPSA, take all or any of the Goods in satisfaction of your obligations to us you agree that you will remain liable to us for the difference between the market value of the Goods at the time they are first able to be sold by us free from all rights and interests of you and other persons and the amount of your obligation for which you are in default.
- 12.5 You agree that, to the maximum extent possible, you forever waive at law the following rights under the PPSA:
- (a) receipt of a verification statement pursuant to section 157 and a statement of account under section 132;
  - (b) to recover any proceeds under section 140;
  - (c) to receive notice from us to dispose of collateral under section 130, to retain collateral under section 135 and to object to that notice under section 137;
  - (d) to redeem collateral under section 142;
  - (e) to reinstate a security agreement under section 143;
  - (f) to not have Goods damaged or to be reimbursed in respect of such damage if we take possession of an accession of Goods (section 92 and 93);
  - (g) to refuse permission to remove an accession until security is given by us for reimbursement as per section 94);
  - (h) to receive notice of removal of an accession under section 95);
  - (i) to apply to court for an order concerning removal of an accession; and
  - (j) any other right in favour of you that can be lawfully contracted out of under the PPSA (including but not limited to the provisions listed in section 115).
- 12.6 You must immediately notify us of any change in your name, address, contact or personal details to enable us to register a financing change statement if required. In the absence of such notification, the address we hold in our records is deemed to be your relevant address.
- 12.7 You must not agree, encourage or allow any other entity to register a financing statement without our express written consent and you must notify us as soon as you are aware of any other person taking steps to register an interest in the Goods.

## 13. Termination

- 13.1 We may terminate any order at any time without cause and in our absolute discretion
- 13.2 You may only terminate an order with our consent and on terms which indemnify us from all costs and losses in respect of the order sought to be cancelled and pay such amounts within 7 days of the cancellation.
- 13.3 Subject to these Terms, on termination, that part of the price paid (if paid in advance) will be refunded to you within 14 days of the cancellation of the relevant order, less the costs and losses associated with that order.

#### 14. Advice and Information

Any advice, recommendation, information, assistance or service given by us in relation to Goods sold or manufactured by us or their use or application is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability and we do not accept any liability or responsibility for any loss suffered from reliance on such advice, recommendation, information, assistance or service.

#### 15. Release and indemnity

- 15.1 You hereby release and indemnify us and agree to forever keep us indemnified from any loss, cost, damage, liability, or expense, including indirect, consequential and special losses (including loss of income or profit), that we may incur in relation to you or any third party, where the loss, cost, damage, liability or expense is caused by or contributed to by the Goods, any defect or fault in workmanship or design or their use or for any other reason whatsoever. You acknowledge and agree that no such loss, cost, damage, liability or expense is reasonably foreseeable other than those stated/limited in clause 18.
- 15.2 We endeavour to keep delivery dates, however where a delivery is delayed for any reason whatsoever, you will not be entitled to claim for any loss or damage (whether direct, indirect, consequential or special), or cancel, rescind or terminate the agreement.
- 15.3 This indemnity applies to Goods we have supplied, that are on loan to you, or are in your possession for demonstration or training purposes.

#### 16. Risk and insurance

- 16.1 Risk of damage to or loss of the Goods the subject of an order passes to you immediately upon dispatch from us, that is, whilst on transit for delivery to you or where we are storing the Goods for you pursuant to clause 5 at the date we store or arrange storage of the Goods for you.
- 16.2 Any property of yours (being property other than the Goods we are providing as part of an order) in our possession, custody or control for whatever purpose remain at your risk as regards loss and damage and you agree to effect and maintain appropriate insurances against such loss and damage.
- 16.3 You shall be liable for and must maintain at your own cost a policy of insurance with a reputable insurer to cover all such risks as may reasonably arise including public liability for all Goods which are on loan to you or in your possession for the purpose of demonstration or training. In relation to public liability such insurance shall be for an amount not less than \$10,000,000.

#### 17. Warranties

- 17.1 Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also 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
- 17.2 We do not provide any warranties in relation to any Goods. The only warranties in relation to the Goods are those of the manufacturer and not us and to that end, the rights in any manufacturer's warranty are required to be assigned to you, to the extent possible, they are assigned and title passes with the Goods subject to these Terms.
- 17.3 Any warranty or condition which would otherwise be implied in any agreement between us or in these Terms (including, but not limited to, merchantability, suitability or fitness for purpose, quality, design, assembly, installation, operation or otherwise) is expressly denied and is excluded to the maximum extent permitted by law.

- 17.4 To the maximum extent permitted by law, we do not warrant or guarantee the quality or workmanship or fitness for purpose of any Goods. Any warranties provided in relation to Goods are those of the manufacturer.

#### 18. Contractual limitation of liability

To the extent permitted by law, and notwithstanding Clauses 15 and 17, our liability to you in respect of any cost, damage, liability, expense or loss (including those caused or contributed to by our negligence or breach of any condition or warranty) is limited to, at our absolute discretion:

- replacement of the Goods or the supply of equivalent Goods;
- repair of the Goods supplied;
- repay the purchase price to the extent payment has been received from you; or
- payment of the cost of replacing, repairing or acquiring equivalent Goods.

#### 19. Intellectual property

- 19.1 In this clause, "intellectual property" means all methodologies, processes, inventions, discoveries and novel designs whether or not registrable including any invention of or developments or improvements to equipment, methods or techniques.
- 19.2 All rights we may hold in any intellectual property associated with Goods sold or delivered remains our property, whether under licence from another or otherwise.

#### 20. Force majeure

Each of us will be released from our respective obligations under these Terms (except your obligations as to payment and indemnity) in the event of national emergency, war, prohibitive governmental regulations or where any other cause beyond the reasonable control of either you or us, including (but not limited to) strike, riot, lockout, trade disputes, rebellions, fire, acts of God, shortages of raw materials, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems for a period of 7 days or more renders provision of the Goods the subject of an accepted Quote or purchase order impossible.

#### 21. No agency

You are not, and will not hold yourself out as being, our agent.

#### 22. General

##### Information

- 22.1 By signing these Terms, you acknowledge that you have been notified of our Privacy Policy and our Credit Information and Credit Reporting Policy (all available for viewing online on our website), and you consent to Webasto collecting, using and disclosing your information in accordance with those policies.
- 22.2 By signing these Terms, you expressly consent to us transferring your personal information or any other information we hold on you to companies in the Webasto Group located outside Australia.
- 22.3 You expressly consent to us using any personal information or any other information we hold on you for the purposes of assessing your creditworthiness, including but not limited to conducting a credit check on you.

##### Notices

- 22.4 All notices required or permitted to be given under our Terms must be in writing and given by personal service, pre-paid postage, facsimile transmission or e-mail transmission at the addresses of the parties as stated in communications between us from time to time.

**No waiver**

- 22.5 No right under our Terms will be waived except as expressly agreed in writing and signed by us. We will not waive a right if we grant an extension or forbearance to you.
- 22.6 A waiver by us of any matter does not prejudice our rights in respect of any subsequent or other matter. Any non-exercise or partial exercise of, or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.
- 22.7 These Terms may only be amended in writing signed by each of us.

**Independent legal advice**

- 22.8 You acknowledge that you have had adequate opportunity to obtain independent legal advice as to the meaning and effect of our Terms before they were accepted.

**Entire agreement**

- 22.9 These Terms apply to all transactions between us and you and supersede any previous agreements between us and embody the entire agreement in relation to any accepted Quote, offer, order or sale or any other arrangement between us (except that other arrangement is governed by specific terms identified in a separate signed agreement between us in relation to that other arrangement).
- 22.10 Any previous correspondence, negotiations or representations between us do not bind either us or you and neither we nor you can rely on them.

**Delegation**

- 22.11 We may delegate or sub-contract the performance of any obligation in our absolute discretion.

**No assignment**

- 22.12 You may not assign the benefits or obligations under any agreement with us to any entity without our consent, which may be withheld in our absolute discretion.

**Severance**

- 22.13 If (but for this clause) a provision of these Terms would be illegal, void, unenforceable or contravene any law, these Terms are to be varied so as to give effect to the intention of the Terms or severed without affecting the enforceability of the other provisions and failing that, the offending provision is to be interpreted as if the provision was omitted.

**Disputes and arbitration**

- 22.14 All questions, disputes or differences which arise between us with respect to these Terms or its subject matter are to be referred to a single arbitrator in accordance with the provisions of the *Commercial Arbitration Act 1984* (NSW) or any re-enactment or statutory modification of that law for the time being in force.

**Governing law and jurisdiction**

- 22.15 These Terms and the transactions contemplated by them are governed by the law of New South Wales, Australia.
- 22.16 We each irrevocably submit to the jurisdiction of the courts of New South Wales, Australia and all courts called to hear appeals from the courts of New South Wales in respect of the Terms or its subject matter.

**23. Acceptance**

- 23.1 These terms are accepted by the signing and return of the acceptance on a Quote, the submission of a purchase order, by emailing, faxing or writing to us accepting or purporting to accept a Quote, by completing and submitting an application for credit to us and/or by signing below.

- 23.2 By signing below, the person signing warrants that they have authority to enter into this agreement and to accept these terms and conditions on behalf of the buyer;