

EUROTRED (N.Z.) PTY. LTD

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CONDITIONS OF SALE

1. Definitions

In these conditions:

"Conditions" means these Conditions of Sale;

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods from the Supplier, also referred to as the Applicant;

"goods" means goods supplied by the Supplier to the Customer;

"GST" means the goods and services tax as defined in the Goods and Services Tax Act 1985; and

"Supplier" means Eurotred (NZ) Pty Ltd

2. Basis of Contract

2.1 Unless otherwise agreed by the Supplier in writing, these Conditions apply exclusively to every contract for the sale of goods by the Supplier to the Customer and cannot be varied or supplanted by any other condition without the prior written consent of the Supplier.

2.2 The Supplier's prices are subject to change without notice and do not constitute an offer to supply.

2.3 The Supplier reserves the right to accept any order on part or in full. All accepted orders will be priced in accordance with the current price at the date of order.

2.4 Any term condition or warranty that would or could otherwise be implied in this contract is excluded to the maximum extent permitted by law.

3. Payment

3.1 Payment for goods supplied by the Supplier is to be made in full upon delivery.

3.2 If credit terms are extended by the Supplier, payment for goods must be made in full by the 26th day of the month following the month in which the Supplier's invoice is raised.

3.3 Credit terms may be immediately revoked or amended at the sole discretion of the Supplier upon giving written notice to the Customer.

3.4 Payment by the Customer will be subject to the Supplier providing a tax invoice for GST purposes.

3.5 All payments by the Customer to the Supplier are to be made in clear funds, in full without deduction whether by set-off or otherwise.

4. Payment Default

4.1 If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any other remedy available to it:-

(a) charge the Customer interest on any sum due at the prevailing rate applying to the Supplier's bank overdraft plus 5 per cent for the period from the due date until the date of payment in full;

(b) charge the Customer for all expenses and costs (including legal costs on a solicitor/own client basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;

(c) cease or suspend for such period as the Supplier thinks fit, supply of any further goods to the Customer;

(d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by the Supplier; without effect on the accrued rights of the Supplier under any contract.

4.2 Clauses 4.1(c) and (d) may also be relied upon, at the option of the Supplier:

(a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

4.3 All charges levied by the Supplier under this clause 4 are immediately due and payable by the Customer.

5. Passing of Property

5.1 Until full payment in cleared funds is received by the Supplier for all goods supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer:

(a) title and property in all goods remain vested in the Supplier and do not pass to the Customer;

(b) the Customer must hold the goods as fiduciary bailee and agent for the Supplier;

(c) the Customer must keep the goods separate from its goods and maintain the labelling and packaging of the Supplier;

(d) the Customer has no right or claim to any interest in the goods to secure any liquidated or unliquidated debt or obligation the Supplier owes to the Customer;

(e) the Customer cannot claim any lien over the goods;

(f) the Customer will not create any absolute or defeasible interest in the goods in relation to any third party except as may be authorised by the Supplier;

(g) where the Customer is in actual or constructive possession of the goods, the Customer will not deliver them or any document of title to the goods to any person except as directed by the Supplier;

(h) the Customer is required to hold the proceeds of any sale of the goods on trust for the Supplier in a separate bank account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;

(i) the Supplier may through its Agent, employees or appointees at any time and without notice, enter any premises where it suspects the goods may be and remove them, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.

5.2 The Customer grants to the Supplier a Security Interest in the goods and their proceeds to secure the obligation of the Customer to pay the purchase price of the goods and any other obligations of the Customer to the Supplier under this Contract (together "the Indebtedness") and, where the goods and/or proceeds are not readily identifiable or traceable or their recoverable value is insufficient to pay the Indebtedness, the Security Interest shall also extend to all the Customers present and after acquired motorcycles, parts and accessories, of which the goods form part, to the extent required to secure the Indebtedness.

5.3 As and when required by the Supplier the Customer shall at its own expense, provide all assistance and relevant information to enable the Supplier to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce the Supplier's Security Interest in respect of the goods supplied, in accordance with the Personal Property Securities Act 1999 ("PPSA").

5.4 The parties agree to contract out the PPSA in accordance with section 107 of the PPSA to the extent that section 107 applies for the benefit of, and does not impose a burden on, the Supplier. The Customer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of the Supplier in respect of the Security Interest created by these conditions of sale.

5.5 For the purpose of this clause words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of, the PPSA.

6. Pricing

6.1 Prices quoted for the supply of goods exclude:

(1) (a) GST; and

(b) the cost of freight, and other charges arising from the point of dispatch of the goods to the Customer, to the point of delivery.

6.2 In addition to the price for goods, the Customer must pay to the Supplier any amounts specified in clauses 6(1)(a) and 6(1)(b).

6.3 Where there is any change in the costs incurred by the Supplier in relation to goods ordered, the Supplier may vary its price for goods on order to take account of any such change and the customer shall pay the varied price.

6.4 Any recommended retail prices on goods sold by the Supplier are suggested prices only. There is no obligation to comply with the recommended retail price.

7. Risk and Insurance

7.1 Despite the fact that ownership in the goods may not have passed to the Customer, the risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately upon the goods leaving the Supplier's premises.

7.2 The Customer is responsible for the organisation and payment of insurance for the goods from the time they leave the premises of the Supplier.

8. Performance of contract

8.1 Any period or date for delivery of goods or provision of services stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier will use its reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services.

8.2 Time is of the essence in this Agreement both as to dates and times and periods in respect of the Customer's obligations.

9. Liability

9.1 This clause applies where the supply of goods and/or services pursuant to this agreement would otherwise be subject to the provisions of the Consumer Guarantees Act 1993 ("CGA"), and where such supply is a supply for business purposes. In such circumstances, the Customer agrees that the goods and/or services are supplied for business purposes in terms of the CGA and that the provisions of the CGA do not apply to the supply to the Customer. Such a buyer is not a "consumer" for the purposes of the CGA.

9.2 Where the Customer supplies the goods and/or the services to any customer of the Customer and that supply would otherwise be subject to the provisions of the CGA and where the Customer's customer acquires or holds themselves out as acquiring the goods and/or services for business purposes pursuant to the CGA then the Customer warrants that it shall obtain the agreement of the Customer's customer that the CGA shall not apply to the supply to the Customer's customer.

9.3 The Supplier is not liable to the Customer or any third party for any loss, injury, damages, costs, expenses or otherwise howsoever caused. This includes (without limitation) direct or indirect or consequential losses or expenses loss of turnover profits business or goodwill. To the extent that the Supplier is found or held liable to the Customer, the maximum aggregate liability of the Supplier to the Customer is the price of the portion of the goods to which the liability relates.

9.4 The Supplier will not be liable for any loss or damage suffered by the Customer where the Supplier has failed to meet any delivery date or cancels or suspends the supply of goods.

9.5 Nothing in these Conditions is to be interpreted as excluding, restricting, modifying or having the effect of excluding, restricting or modifying the application of the CGA insofar as it applies to the supply of goods for purposes other than business where a buyer is a consumer (as defined in the CGA).

10. Cancellation

10.1 If, through circumstances beyond the control of the Supplier, the Supplier is unable to effect delivery or provision of goods, then the Supplier may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

10.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on the Supplier after that order has been accepted by the Supplier.

11. Miscellaneous

11.1 The law of New Zealand from time to time governs the Conditions and the parties agree to the exclusive jurisdiction of the courts of New Zealand.