

ACTROL PARTS PTY LTD TERMS AND CONDITIONS

These Terms and Conditions (Terms), as amended or replaced from time to time, apply to any goods or services supplied or to be supplied to the Customer, or any third person on the Customer's behalf. Any reference to the Customer also includes its respective successors or permitted assigns. The singular includes the plural and the converse. If the Customer constitutes more than one person or entity, the Terms bind each of them jointly and severally.

1. Payment:

- (a) The Customer must pay the invoiced amount within 30 days of statement. Credit card payments will attract a fee. The Reece Group may allocate payments in any manner it chooses.
- (b) The price of all goods is exclusive of GST except where the price is expressed to be inclusive of GST.
- (c) The Customer will pay interest on any overdue amount calculated on a daily basis until paid in full at the rate prescribed by the *Penalty Interest Rates Act 1983* (Vic).

2. Risk and Title:

- (a) Risk in any goods passes to the Customer on delivery.
- (b) Title remains with the Reece Group until the Customer has paid the Reece Group for all goods supplied in full and in cleared funds. Until title passes to the Customer, the Customer will hold them on trust and as bailee for the Reece Group.

3. Orders and Delivery:

- (a) The Customer agrees to pay for so much of any forward order as is from time to time invoiced by the Reece Group.
- (b) Each order by a Customer will constitute an offer only, by the Customer to the Reece Group.
- (c) The Reece Group reserves the right to vary any prices quoted by the Reece Group, prior to any order being accepted.
- (d) Delivery to the Customer will be at the Reece Group's premises or as requested by the Customer. If the Customer has not collected goods from the Reece Group after 14 days of any nominated delivery date, the Customer must pay all storage costs.
- (e) The Reece Group reserves the right to refuse loading of a Customer's vehicle where in the discretion of the Reece Group branch manager, the vehicle is unsafe to load, the vehicle is not suitable for road transportation and/or the load can't be properly positioned and secured.
- (f) All expenses relating to delivery, insurance, transit or storage of goods after delivery to the Customer will be at the Customer's cost.
- (g) The Reece Group may stop goods in transit whether or not delivery has been made if the Customer is in default at any time.
- (h) The Reece Group may in its absolute discretion unload goods at any premises that the Customer nominates for delivery. If the Customer is not in attendance at any nominated premises, the Reece Group may leave any goods and the Reece Group shall not be responsible for any claims, damages, costs, or expenses arising or resulting there from including any claim that the goods were not delivered.
- (i) Delivered goods may not be returned unless defective or damaged in transit. Claims are subject to inspection.
- (j) Delivery will be organised and charged to the Customer by the Reece Group on the following basis;
 - (1) Delivery times are estimates only;
 - (2) That the delivery site has suitable all weather access for safe entry, an appropriate turning circle and exit for conventional heavy highway articulated delivery vehicles and or road trains, traffic control and a suitable stock pile site;
 - (3) That the Reece Group is not responsible for unloading the delivery;
 - (4) That the unloading of the delivery will be carried out promptly and efficiently and within 2 hours of delivery; and
 - (5) That the Customer will indemnify the Reece Group for any additional delivery costs caused by any failure to comply with these terms and conditions
- (k) Upon the occurrence of an Insolvency Event the Customer irrevocably authorises any one of the Reece Group and any of its lawful agents, at any reasonable time, to enter the Customer's premises or any premises occupied by the Customer or its agents and re-take any goods and then to re-sell those goods and retain the proceeds of the sale without prejudice to the Reece Group's rights to claim the balance of all moneys due. The Customer indemnifies the Reece Group in respect of any such entry. The provisions of this clause survive the termination of any security agreement that arises in respect of these Terms.

4. Cylinder Lease

- 4.1. Cylinders remain the sole property of the Reece Group and are supplied for the Customer's sole use in the Commonwealth of Australia only unless the Reece Group specifically agrees in writing to use elsewhere.
- 4.2. The Reece Group will only supply cylinders, consumables gases or refrigerants to Customers who are authorised recipients and users under any applicable legislation and regulations and you agree to provide, at the request of the Reece Group such authorities and will ensure that they have insurance to cover the use and transport of cylinders, refrigerant and gases and will provide copies of such policies at the request of the Reece Group.
- 4.3. The Reece Group leases the cylinders to the Customer to facilitate the regular supply of refrigerant or gases to the Customer. The Customer shall return all leased cylinders to any Reece Group Branch or Depot (freight prepaid) within the

State or Territory of delivery as soon as they are empty. (No allowance will be made for residual refrigerant or gases in cylinders.)

- 4.4. For the purpose of Clause 4.4 a cylinder shall be deemed not to have been returned to the Reece Group until –
 - (1) it has been received by the Reece Group; and
 - (2) The Reece Group Lease cylinder return docket or similar document has been duly issued.
- 4.5. Cylinders are not transferable to any other person and must not be used for any other purpose other than containers for refrigerant or gases sold by the Reece Group and must not be recharged other than by the Reece Group or be delivered or sent for recharging to any other place other than a branch or depot of the Reece Group.
- 4.6. The Customer shall be responsible for a cylinder from receipt (whether at the delivery point or at the Reece Group's premises) until it is returned to the Reece Group as set out in Clause 4.3. Any loss or damage shall be reported to the Reece Group promptly. The Customer shall indemnify the Reece Group against the cost of replacing a cylinder or the cost of repairing same upon any loss, destruction or damage occurring to a cylinder from any cause or action of the Customer.
- 4.7. Payment of an invoice for cylinder lease shall be a presumption in favour of the Reece Group (subject to transactions prior to the date of invoice which have not been included in the invoice and to Clause 4.8) of the Customer's holding at the date of such invoice of the number and type of cylinders on lease from the Reece Group as shown on such invoice.
- 4.8. If a cylinder transaction or notification by the Customer indicates a cylinder holding different to that recorded, the Reece Group reserves the right to amend its records and charge the Customer accordingly.
- 4.9. Unless otherwise agreed, cylinder lease is due in advance at the beginning of each lease period on the Customer's Reece Group cylinder holding as shown in the Reece Group's records at the beginning of the lease period. If a cylinder holding is increased during a lease period the increased lease amount will be charged on the extra cylinders at the rates then current for that Customer.
- 4.10. The Customer shall be responsible for any loss, damage or injury to property or to persons caused by the cylinder for any reason whatsoever, during the period of lease (except loss, damage or injury directly arising out of the negligence of the Reece Group, its agents or employees) and the Customer shall indemnify the Reece Group in respect of all such claims, damages and expenses in relation thereto.
- 4.11. If for any reason, a cylinder needs to be repaired, the Customer shall forthwith return them to the Reece Group premises and under no circumstances repair or attempt to repair them itself.
- 4.12. If, upon return of a cylinder to the Reece Group, it is necessary for the Reece Group to clean them, the Reece Group may charge and the Customer shall pay the cost of such cleaning on demand.
- 4.13. The lease of cylinders by the Customer shall be determined upon an event of Default.
- 4.14. Upon any repossession of cylinders the Customer shall be required to pay on demand to the Reece Group a fee for the cost of collection and repossession of those cylinders.
- 4.15. For the purpose of condition 4.13 the Customer shall allow the Reece Group full and free access to the cylinders without any liability on the part of the Reece Group for any loss or damage suffered as a consequence of retaking possession of same and the Customer shall be responsible for and indemnify the Reece Group against all such loss and damage and/or claims relating to same.
- 4.16. Where a Customer requests the Reece Group to top up a cylinder with refrigerant or gases matching the identification of such gas on the cylinder brought in by the Customer, then the Customer shall hold harmless the Reece Group, indemnify the Reece Group and keep the Reece Group indemnified in respect of all claims which may flow from the handling, storage or use of such topped up cylinder of refrigerant or gases. The Reece Group does not accept any responsibility for the quality or identification of any residual gas which may be in a cylinder presented by the Customer for top up.

5. Security agreement

The Customer agrees that these Terms, including any order and invoice covering any goods ordered by the Customer, constitute a security agreement for the purposes of the PPSA.

6. Security Interest

- (a) The Customer gives the Reece Group a security interest in:
 - (1) all goods the Reece Group supplies whether by way of sale or lease to the Customer that are described in any invoice, delivery or shipping documents of the Reece Group's and/or order documents that the Customer gives the Reece Group; and
 - (2) all present and future property of the Customer including real property. The Customer agrees that the Reece Group may lodge a caveat against any of its real property and agrees to give the Reece Group a mortgage in respect of the relevant property in registrable form if required by the Reece Group using memorandum of common provisions AA 2712. The security interest given by the Customer is given as beneficial owner. If the Customer is trustee of any trust, the Customer acknowledges that the security interest given by it applies to the assets of the trust and its personal assets. The Customer irrevocably appoints any one of the Reece Group as its attorney by way of security for the purposes of this clause and in respect of any enforcement powers.
- (b) Any security interest that arises in respect of these Terms is a continuing security interest and in respect of any goods supplied by the Reece Group applies to all goods and their proceeds. It is not extinguished or in any way diminished even if the goods or any part of them is processed or commingled with or becomes part of a product or a mass as part of a manufacturing, assembling or commingling process.
- (c) Any security interest arising secures the due and punctual payment of all moneys payable by the Customer under the Terms. Any account arising by virtue of any sale of any goods supplied to the Customer takes effect as a transfer.
- (d) The Reece Group may register a financing statement including any financing change statement on the PPSR. The Customer will reimburse the Reece Group for any costs and expenses and other charges incurred by the Reece Group in registering them. The Customer irrevocably waives any rights to receive a copy of any verification statement.
- (e) The Customer acknowledges that until it has paid for all goods it is not the owner of those goods and, as such, if chapter 4 of the PPSA applies to these Terms, then the Customer contracts out of the enforcement provisions in s 115(1) except sections 120 and 121.

7. Enforcement

- (a) If an event of Default occurs or is continuing, the Reece Group may immediately enforce these Terms. Without limitation, this includes:
- (1) retaking possession of any goods not paid for by the Customer;
 - (2) suspending delivery of any goods on order and/or refusing to process any unfulfilled order.
 - (3) enforcing any security interest.
 - (4) requiring payment of any proceeds held by the Customer in a separate account or otherwise.
 - (5) appointing a receiver and manager of any of the Customer's real or personal property. The Customer agrees that any such receiver and manager has the powers conferred by the *Corporations Act*.
- (b) The powers exercisable by the Reece Group are those given by these Terms including by statute, at law or in equity.
- (c) In the event that the Customer has not been paid for the sale of the Reece Group's goods by any of its own customers, at the Reece Group's option, the Reece Group may in addition to the powers in s 120 of the PPSA, collect that account on giving, to that customer, notice in writing to that effect. The Reece Group will be entitled to issue proceedings in the Customer's name against its customer for recovery of that account for the Reece Group's benefit. The Customer appoints any one of the Reece Group as its attorney for that purpose. For the purposes of this clause, the Customer must keep proper records and accounts in respect of such unpaid sales, including the dates of sale, price, amount and identity of such customer and the Reece Group's goods.
- (d) The Reece Group may in its discretion despite s 14(6) of the PPSA apply any moneys received in respect of any PMSI obligations of the Customer on a pro rata basis.
- (e) The Customer will pay the Reece Group for its expenses, including mercantile agent's fees and any fees and commission paid to mercantile agents engaged by the Reece Group in relation to the actual or contemplated enforcement of the supply agreement including legal costs and expenses.

8. Negative pledge

The Customer agrees not to grant:

- (a) any security interest over any of its personal property except in the ordinary course of business; or
- (b) a security interest in any account as original collateral under s 64 of the PPSA.

9. Force Majeure

The Reece Group is not liable for any delay or the failure to perform any obligation in the Customer's favour arising as a result of any event beyond the Reece Group's control.

10. Confidentiality

Any security agreement that arises under these Terms is confidential. Despite this, the Customer agrees that the Reece Group may disclose any information concerning it to any interested person under s 275(6) of the PPSA.

11. General

- (a) The Customer will advise the Reece Group in writing, if it changes its name, its structure or officers or management, its registered office, become a trustee of any trust or if the constitution of any partnership of which it is a member changes.
- (b) If any provision of these Terms is unenforceable for any reason, it will not invalidate any other provision which will remain in full force and effect despite that invalidity.
- (c) These Terms contain the entire agreement in respect of the supply of goods or services to the Customer.
- (d) The Reece Group may at any time set off any amount the Reece Group owes the Customer against any amount payable by the Customer to the Reece Group.

12. Governing law

These Terms are governed by the laws of Victoria. The Customer submits to the non-exclusive jurisdiction of any Victorian court and waives any rights to claim that courts there are an inconvenient forum.

13. Notices

- (a) Any notice required under these Terms may be given by any party, including any director or authorised person of that party.
- (b) Any notice may be given at that party's registered address or other address stipulated in any application in connection with these Terms or as notified in writing for the purposes of this clause. Without limitation, this includes any electronic address notified to the other party.

14. Time

For the purposes of any payment obligation under these Terms, time is of the essence.

15. Survival of indemnities

- (a) Each indemnity and payment obligation of the Customer under these Terms is a continuing obligation, separate and independent from all other obligations, and survives termination of these Terms.
- (b) It is not necessary for the Reece Group to incur expense or make a payment before enforcing a right of indemnity.

16. Exclusion of implied terms

To the extent permitted by law, the Reece Group excludes all conditions, warranties, terms and consumer guarantees implied by law (including the *Australian Consumer Law*) arising in connection with a supply of goods or services. To the extent permitted by law, the Reece Group limits its liability in its discretion to replacing the goods or supplying equivalent

goods, or, in the case of services, by supplying the services again. The Customer will rely entirely on its own knowledge, skill and judgment in selecting goods which it orders from the Reece Group from time to time.

17. Limitation of liability

To the extent permitted by law, the Reece Group excludes any liability in contract, tort (including negligence) or otherwise, in connection with the supply of goods and services for any indirect damages or losses, or for any special, punitive or exemplary damages. This includes any liability for a claim that the goods are not fit for a particular purpose, except where the goods are consumer goods or services in which case the Reece Group's liability is limited as under clause 16.

18. Consent

The Customer agrees that the Reece Group may, subject to the Privacy Act, disclose commercial credit-related information of the Customer, or in the case of a Company, of the proprietors of the Customer, to credit reporting bodies for the purposes of assessing credit worthiness and providing the credit to the Customer. The Customer consents to the collection of commercial credit-related information about the Customer, from credit reporting bodies and other sources in accordance with the Reece Group Privacy (Credit Information) Policy, located on its website.

The Customer also agrees that the Reece Group may use personal information other than commercial-credit related information for direct marketing in accordance with the Reece Group's Privacy Policy located on its website.

19. Export of goods purchased from the Reece Group

The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the goods as are required from time to time, paying any costs, duty or excise associated with the export from Australia and the importation into the country of delivery and ensuring that the goods comply with and are suitable for the country in which the goods are to be used.

If requested the Customer shall provide such licences and consents to the Reece Group prior to the goods being exported.

The Reece Group do not make any representation that the goods are suitable for use in the importing country nor that the goods are able to be exported from Australia.

20. Electronic Communication

The Customer agrees that;

- (1) If a Customer's signature or execution is required, the requirement is taken to have been met by an electronic communication; and
- (2) If the Reece Group is required to produce a document that is in the form of paper, the requirement is taken to have been met by an electronic communication.

21. Dictionary

Default means:

- (a) the Customer fails to pay when due any moneys owing to the Reece Group under these Terms;
- (b) the Customer gives any third party a security interest in accounts as original collateral in respect of the proceeds of any goods supplied by the Reece Group;
- (c) an Insolvency Event occurs or is continuing;
- (d) the Customer breaches any other provision of these Terms; or
- (e) upon any member of the Reece Group's Credit Team, posting by ordinary pre paid post, emailing or faxing a letter advising that all money owing to the Reece Group is, despite any agreement to the contrary, immediately due and owing.

electronic communication means a communication of information in the form of data, text or images by guided or unguided electromagnetic energy and includes a scanned image or any other form of digital storage.

goods mean any goods the Reece Group supplies to the Customer whether on consignment or otherwise under these Terms. They include goods described on any invoice, quotation, work authorisation or any other forms the Reece Group provides the Customer or any order the Customer gives the Reece Group.

GST means any goods and services or similar tax, together with any related interest, penalties, fines or other charge.

Tax invoice, taxable supply and **value** have the meaning given to them by the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantor means that person, or entity, who agrees to be liable for the Customer's debts whether on a principal debtor basis or who is otherwise a surety of the Customer.

Insolvency Event means:

- (a) An administrator is appointed to the Customer or any Guarantor.
- (b) Except for the purpose of a solvent reconstruction or amalgamation previously approved by the Reece Group:
 - (1) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
 - (i) the Customer's winding up, dissolution or administration or of any Guarantor; or
 - (ii) the Customer or any Guarantor entering into an arrangement, compromise or composition with or assignment for the benefit of creditors or a class of them; or
 - (2) the Customer ceases, suspends or threatens to cease or suspend the conduct of all or a material part of its business or dispose of or threaten to dispose of a material part its assets.

- (c) the Customer or any Guarantor is, or under legislation is presumed or taken to be, insolvent or cease to carry on our business.
- (d) A receiver, receiver and manager, administrative receiver or similar officer is appointed in respect of the Customer or any Guarantor.
- (e) Any distress, attachment, execution or other legal process is levied, enforced or sued out on or against all or any material part of the Customer's assets or of any Guarantor and is not discharged or stayed within 14 business days.
- (f) A security interest becomes enforceable or is enforced.

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

The Reece Group means Metalflex Pty Ltd ACN 007 133 057, Metalflex (S.A.) Pty Ltd ACN 084 260 837, Metalflex (W.A.) Pty Ltd ACN 105 291 263, Metalflex Regional Pty Ltd ACN 142 651 509, Airplus Pty Ltd ACN 135 270 718, A. C. Components Pty Ltd ACN 134 588 935, Actrol Parts Pty Ltd ACN 142 654 564, Viadux Pty Ltd ACN 087 415 745 and Reece Australia Pty Ltd ACN 004 097 090 individually and collectively and jointly and severally.

The expressions **account, financing statement, financing change statement, PPSR, proceeds, purchase money security interest (pmsi), security agreement, security interest, verification statement** have the meanings given by the PPSA. Without limitation, security interest bears its natural meaning and applies to all land and licences and personal property that is not personal property covered by the PPSA.