



## TERMS AND CONDITIONS OF SALE

### RECITALS

The **Buyer** (as identified in the related quote or Purchase Order) is interested in purchasing from PWR Performance Products Pty Ltd (AU), C&R Racing Inc (US) or PWR Europe Ltd (UK) (**PWR**) the goods and/or services (**Deliverables**) set out in the Buyer's Purchase Order or PWR's quote (**Order**), as the case may be. [These Terms & Conditions \(Ts&Cs\)](#) are deemed incorporated into the Order regardless of whether specifically referenced in that Order.

PWR acknowledges that the sale of the Deliverables may be subject to local consumer laws, whether in Australia, the USA, EU or UK (**Consumer Laws**). Nothing in the Ts&Cs seeks to, nor may, limit either the rights of the Buyer or the obligations of PWR under the applicable Consumer Laws. To the extent that the Ts&Cs are incompatible to the applicable Consumer Laws, the Consumers Laws will prevail.

### 1. OFFER, ACCEPTANCE & AGREEMENT

Once PWR accepts an Order, the Order, together with the Ts&Cs and any supplementary written information incorporated by mutual agreement, will be the complete and exclusive statement of the agreement (**Agreement**) and supersedes any prior discussions, negotiations, agreements and understandings. Neither party's modifications to the Agreement will form part of the Agreement unless that modification is in writing and accepted by the other party. Any terms or provisions in the PO that are inconsistent with the Agreement will be void unless accepted in writing by the other party. The placing of a PO by the Buyer or the shipping of Deliverables to PWR will constitute acceptance of the Ts&Cs by the Buyer. PWR reserves the right to make its acceptance of the Agreement contingent upon particular payment terms or to refuse to enter into any Agreement.

### 2. PURCHASE PRICE AND PAYMENT TERMS

The prices quoted by PWR for the Deliverables will be clearly identified by nominated currency for the quantity shown, less any taxes, freight, duty and customs charged, unless stated otherwise. The

purchase price for the Deliverables will be paid net thirty (30) days unless otherwise specified in writing by PWR. PWR reserves the right to require full or partial payment in advance or to otherwise negotiate payment terms with the Buyer for any reason. All sales are subject to approval from PWR's finance department.

Payment will not be due until the Buyer has had a reasonable opportunity to inspect the Deliverables. Payment for Deliverables prior to inspection will not constitute acceptance of the Deliverables and is without prejudice to any and all claims that the Buyer may have against PWR.

Payment of any or all of the purchase price will not be construed as a waiver of any claims of the Buyer for defects, delay in delivery or other breach of the Agreement.

For payments not made within the period provided by the Agreement, the Buyer will bear interest on the unpaid amount of one (1) % for each month or part thereof late. If PWR considers it necessary to take action to collect any unpaid amounts, the Buyer will be responsible for all costs and attorney fees reasonably incurred by PWR in connection with such action.

### 3. TAXES

Buyer will be responsible for all taxes, duties, assessments and other government charges as related to the sale, shipment and importation of the Deliverables. However, PWR will be responsible for any company or income taxes related to amounts received by PWR in connection with the sale of the Deliverables in the region of sale.

### 4. PRODUCTS

In the case of prototype products, PWR does not consider it necessary to provide an FAI 9102 form unless mutually agreed upon in advance. PWR may choose to open its supplier list for raw material, hardware or services to approved suppliers.

In the case of standard products, PWR does not consider it necessary to supply full material and manufacturing process traceability of parts unless



mutually agreed upon in advance.

Tooling and gauges, if any, for which the Buyer is invoiced will remain property of PWR unless mutually agreed upon in advance. PWR will only maintain such gauges and tooling so long as reasonable usage warrants.

## 5. WARRANTIES

Unless otherwise agreed to by the Buyer and PWR, the Deliverables are warranted to the Buyer to be free of fault for materials and workmanship for a period of one (1) year from the date of purchase and only when used under normal designed operating conditions.

Where the Deliverables are for:

- a. personal use; or
- b. use by a business where the Deliverables either:
  - i. cost less than \$100,000;
  - ii. are of the type commonly bought for personal use; or
  - iii. are not for resupply to a third party,

PWR guarantees that:

- a. the Deliverables will be of acceptable quality;
- b. the Deliverables will be fit for purpose;
- c. the Deliverables will match:
  - i. the description on the Order or the PWR website, as the case may be; and
  - ii. any sample or demonstration model provided or shown by PWR; and
- d. PWR will be able to provide any spare parts or repair services for a reasonable time after purchase; and
- e. Buyer will have full ownership of the Deliverables once paid for by Buyer.

This warranty does not cover:

- a. any Deliverables that have been modified in any way from the original design;
- b. any Deliverables damaged by Buyer;
- c. claims for damage to Buyer's other related components;
- d. charges relating to removal and replacement of the Deliverables;
- e. internal or external corrosion;
- f. freight; or
- g. any consequential damage.

This warranty voids if:

- a. the Deliverables are not fitted by an authorised

installer;

- b. the Deliverables is not serviced;
- c. the Deliverables are repaired or welded by another party other than PWR;
- d. any defect if attributable to an accident, negligence or abuse;
- e. the Deliverables are used for an application for other than it was intended; or
- f. any parts or accessories are fitted which detrimentally affect the product; or
- g. where applicable, Buyer fails to carry out and record an electrolysis test as per the instructions provided.

Buyer is responsible for the monitoring of product operations and for having the appropriate detection devices in place to warn the user of any related issues or system malfunctions. Responsibility for any damage, injury or loss attributed to any fault in material or workmanship in the Deliverables shall be limited to replacing or refunding the unit upon return thereof.

## 6. SHIPMENT AND DELIVERY

Except as provided in paragraph 7 above regarding returned products, shipment of the processed Deliverables will be [EXW](#) PWR's place of business.

Buyer will be responsible for all transportation and delivery costs.

PWR will bear the risk of any loss or damage in transit. Delivery dates, if specified by PWR, are estimates only and are neither guaranteed by, nor binding on, PWR unless otherwise agreed in writing.

## 7. INSPECTION AND REJECTION

Final inspection of the Deliverables will be at Buyer's premises unless agreed upon in advance. Any Deliverables rejected by the Buyer as either not conforming to the Order or otherwise defective will be returned to PWR at Buyer's initial expense, including transportation and handling costs. However, any such reasonable costs incurred by Buyer will be reimbursed by PWR upon confirmation of the defect. Acceptance of Buyer of shipment of Deliverables will be deemed to have occurred ten (10) days following delivery to Buyer or Buyer's designated customer, unless a rejection notice is received by PWR prior.



## 8. RETURNS

When purchasing genuine PWR products, please make sure that your part number selection is correct for your vehicle and/or purpose. If you are unsure, please contact our sales staff prior to purchasing at [info@pwr.com.au](mailto:info@pwr.com.au) or (07) 5547 1600 to discuss in more depth.

If you change your mind regarding your purchase, PWR may offer you a replacement or refund, subject to certain conditions, including a 10% restocking fee where Deliverables are replaced or refunded 30 days after delivery. However, PWR reserves the right to refuse to replace or refund any Deliverables that comply with the applicable Consumer Law and warranty requirements set out above.

PWR will typically refuse to replace or refund Deliverables:

- a. 60 days after they have been delivered;
- b. that have been test fitted, filled with coolant or modified in any way from the original design;
- c. that are damaged or not in the state in which they were sold; or
- d. that are not a catalogue item or standard part.

If you wish to return the Deliverables, please contact the sales staff at PWR via phone or email. You will be required to supply four (4) photos of the Deliverables to confirm their condition, invoice number and a reason as to why you want to return it. If PWR approves your return request, you will be contacted to organise shipment back to PWR.

Once the Deliverables arrive back to PWR, they will be inspected and, if deemed to be in their original condition, the refund will be approved and then processed within seven (7) business days.

## 9. CONFIDENTIALITY AND NON-DISCLOSURE

Buyer recognises that PWR is the owner of certain confidential and proprietary information relating to the development and applications of the Deliverables. Such information includes specifications, designs, technological know-how and other types of information and data (**Technical Information**). Buyer agrees to neither directly or nor indirectly disclose, disseminate or otherwise publish to any third party any of the Technical Information. Buyer further agrees to protect PWR's Technical Information from disclosure to the same

extent that it itself seeks to protect its own Technical Information, but in no event will Buyer exercise less than reasonable measures.

The confidentiality obligations under this paragraph will not apply to any Technical Information that either:

- a. is in the public domain at the time of disclosure;
- b. comes into the public domain following disclosure, other than through a breach of a non-disclosure obligation; or
- c. was received by the Buyer from a third party who acquired the Technical Information through lawful means and without breaches of any non-disclosure obligation.

If PWR and Buyer are party to a separate confidentiality or non-disclosure agreement or deed, the placement of an Order, as well as the design, development, testing and manufacture of the Deliverables, are hereby incorporated into the definition of the "Purpose" in any such instrument.

## 10. INTELLECTUAL PROPERTY (IP)

If the Deliverables are made in accordance with the Buyer's design, the Buyer will own any intellectual property in that design. However, despite this and the Buyer's total ownership of the Deliverables per paragraph 6 above, insofar as the Deliverables embody or contain Technical Information or intellectual property already owned by PWR, Buyer does not acquire any right or licence in or to that Technical Information or intellectual property. If PWR conceives of, develops or discovers any new processes or procedures in the design, development, testing or manufacture of the Deliverables, PWR will own all intellectual property rights in such processes, procedures and discoveries.

## 11. TERMINATION

The Agreement may be terminated by:

- a. mutual written agreement;
- b. either party, without liability to the other, on thirty (30) days' prior written notice in the event that:
  - i. the other party materially breaches, or otherwise fails to comply with, any provision of the Agreement; the terminating provides notice of such breach; and, that



- breach is not cured within a reasonable time;
- ii. the terminating party has a reasonable suspicion that the other party's financial condition places it in a position of being unlikely to meet its obligations under the Agreement; the terminating party notifies the other party of such suspicion; and, the other party fails to provide adequate assurances of its financial condition within ten (10) business days;
  - iii. the other party defaults under any other material third party contract to which it is a party; or
  - iv. the other party sells all of, or substantially all of, its assets; sells a majority of its voting stock; or, merges with another entity; or
- c. either party for convenience on thirty (30) days' prior written notice. If the Agreement is terminated for convenience, the terminating party will be liable for all direct costs reasonably incurred by the other party arising from such termination up to the effective termination date, provided that the other party takes reasonable steps to mitigate its losses arising from such termination once it receives notice from the terminating party.

## **12. LIMITATION OF LIABILITY**

Neither party will be liable for any special, incidental or consequential damages, losses or expenses directly or indirectly arising from the sale, provision, inspection, handling or use of the Deliverables or from any other cause relating thereto.

PWR's liability under the Agreement will in no case exceed either the value of:

- a. the relevant Order; or
- b. PWR's applicable insurance limit.