

Lubrication Engineering Pty. Ltd. (ACN 053 123 523)

Standard Terms and Conditions

1. Definitions and Applicable Terms

(a) Definitions:

- (i) '**Lubeng**' means Lubrication Engineering Pty. Ltd. (ACN 053 123 523; ABN 84 053 123 523).
- (ii) '**Buyer**' means any person to whom Lubeng is to supply any Product or service.
- (iii) '**Agreement**' means these Lubeng Standard Terms and Conditions.
- (iv) '**Lubeng's Documentation**' means Purchase Order, quotation, proposal or acknowledgement executed by an employee of Lubrication Engineering who is authorised to execute documents on behalf of Lubeng, or by an agent of Lubeng who is authorised to execute documents on behalf of Lubeng.
- (v) '**Product**' means products, equipment and related services referred to in Lubeng's documentation (including Viper and Viper branded products).
- (vi) '**PPSA**' means the Personal Property Securities Act 2009.
- (vii) '**Materials**', as referred to in Clause 14 only, means all devices, designs, (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by Lubeng.

(b) Application:

- (i) This Agreement governs the purchase and sale Product referred to in Lubeng's Documentation.
- (ii) Whether this Agreement is included in an offer or an acceptance by Lubeng to any person to whom Lubeng is to supply any Product, such offer or acceptance is conditioned on Buyer's consent to this Agreement.
- (iii) Lubeng rejects all additional or different terms in any of the Buyer's Purchase Order or documents.
- (iv) If a Buyer comprises two or more persons or entities, each person comprising the Buyer is jointly and severally liable for all obligations and liabilities under this Agreement.
- (v) If the Buyer purchases goods and/or services from Lubeng through the Lubeng website or other e-commerce process, then (without limiting the foregoing) the Buyer agrees to be bound by the applicable terms and conditions set out or referred to in that site or related to that process.
- (vi) In interpreting this Agreement, headings are for convenience only and do not affect interpretation.

2. Quotation and Pricing

- (a) All quotations by Lubeng are subject to change or withdrawal without prior notice to the Buyer, unless specifically stated in the quotation. In particular but without limitation, changes may be necessary to correct errors or allow for increases in the costs of labour, materials, freight, foreign exchange rates, taxes, duty or other levies taking effect prior to the date of delivery.
- (b) Notwithstanding any other term of this Agreement, if at any time Lubeng's costs of supplying goods and/or services under this Agreement change due to government action (including imposition of a new tax or charge), a change in law, a change in tax or the introduction of any emissions trading scheme or any other scheme relating to greenhouse gases or other environmental emissions, unforeseen events or circumstances beyond Lubeng's control (for example, a significant and unexpected increase in the cost of fuel, power, feedstock or distribution), inaccurate or inadequate provision of information by the Buyer, or delay caused by the Buyer, Lubeng reserves the right to adjust prices to take account of such change in Lubeng's costs, including by applying a surcharge.
- (c) Quotations are made subject to the approval by Lubeng of Buyer's credit.

- (d) All sales contracts and orders only become effective when approved and accepted in writing by Lubeng as set out in Lubeng's Documentation.

3. Currency

- (a) All quotations and transactions are stated in Australian dollars (AUD).
- (b) Prices quoted for goods and services exclude GST unless stated otherwise.
- (c) The Buyer will pay GST and any other government charges, duties or taxes in connection with supply of goods and services under this Agreement.

4. Payments

- (a) Buyer shall pay Lubeng the full purchase price as set out in Lubeng's Documentation, or where no price has been quoted (or a quoted price is no longer valid), the price listed in Lubeng's price list current at the date of acceptance of the Buyer's Purchase Order.
- (b) Unless Lubeng's Documentation provides otherwise, freight, storage, insurance and all taxes, duties or other governmental charges relating to the Product shall be paid by the Buyer. If Lubeng is required to pay any such charges, Buyer shall immediately reimburse Lubeng. Lubeng may also at any time assess a fuel or energy surcharge (in addition to the price of each Product).
- (c) All payments are due within 30 days of the date of invoice. If Buyer fails to make payment on the due date then, without prejudice to any other right or remedy available to Lubeng, payment will become immediately due for all goods and services supplied under any agreement with the Buyer and Lubeng shall be entitled to:
 - (i) apply a monthly interest charge at the lower of 10% interest per month or the maximum rate permitted by law on all amounts not received by the due date (such interest will be calculated and will accrue daily from the date for payment until the date Lubeng actually receives payment); and/or
 - (ii) cancel the Purchase Order contract; and/or
 - (iii) suspend any further deliveries to the Buyer.
- (d) The Buyer shall pay all of Lubeng's reasonable costs (including lawyers' fees) incurred in collecting amounts due but unpaid.
- (e) All sales are subject to the approval of Lubeng's credit department.

5. Delivery

- (a) Deliveries will be subject to freight charges unless otherwise previously agreed to in writing by Lubeng and the Buyer. Freight costs accepted by the Buyer will be stated in Lubeng's Documentation or in an invoice as it applies.
- (b) Lubeng will use its reasonable endeavours to provide Product in accordance with the delivery times quoted in Lubeng's Documentation.
- (c) All special freight requests will be at the Buyer's expense unless otherwise agreed in writing by Lubeng.
- (d) Unless Lubeng's Documentation provides otherwise, delivery terms are EX-works Lubeng's facility (INCOTERMS 2000), Lubeng assumes no liability for any loss, damage or delay suffered by the Buyer due to delays, including any direct or consequential damages due to a delay in delivery.

6. Title and Risk

- (a) The risk in Product sold or supplied passes to the Buyer upon delivery to the Buyer or the Buyer's agent or collection by the Buyer or the Buyer's agent.
- (b) The Buyer has the obligation to insure Product once title passes.
- (c) Lubeng retains and the Buyer hereby grants to LUBENG a security interest in Product shipped by Lubeng to the Buyer hereunder until payment in respect of Product is received by Lubeng.

7. Services

- (a) Lubeng will provide such services as are expressly described in Lubeng's Documentation during normal business hours, unless otherwise specified.
- (b) Services requested or required by the Buyer outside of the hours referred to in Clause 7(a), or in addition to the quoted or agreed upon services will be charged at Lubeng's then current schedule of rates, including overtime charges, if applicable, and will be in addition to the charges outlined in Lubeng's Documentation.

8. Changes

- (a) The Buyer may, from time to time, either in writing or by telephone, request Lubeng to vary any provision of a Purchase Order. Lubeng will use reasonable endeavours to accommodate any such request for variation, but Lubeng shall not be liable to the Buyer to the extent it is not able to accommodate any such request.
- (b) Lubeng may change the manufacturer's specifications from time to time of any Product to take into account improvements of design and unavailability of materials without obtaining the Buyer's approval if, in the reasonable opinion of Lubeng, the changes:
 - (i) improve the Product's function, operation or use, or
 - (ii) do not result in the Product differing in any substantial way from the original specifications of the Product as were relevant at the time the Buyer made the Purchase Order.
- (c) In all other cases, Lubeng will obtain the Buyer's written approval prior to making any changes to the manufacturer's specifications of any Product.

9. Cancellation

- (a) Buyer may not cancel its order after Lubeng's acceptance unless all the details are approved in writing by Lubeng and the Buyer, including Buyer's agreement to pay a stated amount of cancellation charges.

10. Defects

- (a) The Buyer will notify Lubeng in writing as soon as reasonably practicable after the Buyer becomes aware of any defect in Product supplied by Lubeng, any alleged breach of contract on Lubeng's part, any negligence or other tort on Lubeng's part, or any breach of statutory duty by Lubeng.
- (b) The Buyer acknowledges and agrees that prompt notification may enable Lubeng to mitigate the loss or damage suffered by the Buyer as a result of the alleged act or omission or to assist the Buyer in doing so. Prompt notification may also enable Lubeng to identify defective Product and prevent other customers of Lubeng from suffering loss or injury.

11. Product Returns

- (a) Product may not be returned for any reason without:
 - (i) the prior written authorisation of Lubeng; and
 - (ii) shipping instructions from Lubeng.
- (b) Product shipped without Lubeng's authorisation shall be returned at the Buyer's expense.
- (c) Credit for any returned Product is at the discretion of LUBENG after receipt and inspection by Lubeng of the Product and may be subject to a restocking charge.

12. PPSA

- (a) Lubeng may allocate amounts received from the Buyer in any manner determined by Lubeng, but in default will apply same first to payment of any unsecured amount owing to Lubeng, next as to any reasonable enforcement expenses and then as to any secured balance owing to Lubeng.

- (b) The Buyer agrees to reimburse LUBENG for all costs and/or expenses incurred or payable by Lubeng in relation to registering, maintaining or releasing any financing statement or financing change statement under this Agreement.
- (c) The Buyer will not (except with the written consent of Lubeng) allow to be, or be liable to become, perfected or attached in favour of any person, a security interest or transitional security interest in any of the monies from time to time payable to Lubeng (if any) or otherwise, or in Lubeng property and whether to a provider of new value or otherwise.
- (d) The Buyer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interests under this Agreement. The Buyer agrees that the Buyer and Lubeng contract out of and nothing in the provisions of Sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA shall apply to this Agreement.
- (e) The Buyer and Lubeng acknowledge that the Buyer is the grantor and LUBENG is the holder of a Purchase Money Security Interest ("PMSI") by virtue of this Agreement and/ or the PPSA. The Buyer agrees to do anything that Lubeng reasonably requires to ensure that Lubeng has at all times a continuously perfected security interest over all of Lubeng's property.

13. Warranty

- (a) There is no warranty of merchantability or fitness for any particular purpose with respect to any Product, nor is there any other warranty express or implied, except as provided for in this Agreement.
- (b) For a period of twelve (12) months from the date of delivery from Lubeng, Lubeng warrants that Product manufactured by Lubeng, when properly installed and maintained, and operated at ratings, specifications and design conditions specified by LUBENG, will meet Lubeng's specifications for such Product appearing in its Product catalogues and literature or in Lubeng's Documentation. Lubeng's liability under any Product warranty is limited solely in Lubeng's discretion to replacing, repairing or issuing credit, for a Product which fails to meet Lubeng's specifications for that Product, during the twelve (12) month Warranty Period.
- (c) LUBENG further warrants that all services will be performed in a workmanlike manner and that Lubeng will use suitably qualified personnel. This warranty shall survive for 90 days following Lubeng's completion of the services. Lubeng's liability under any service warranty is limited in Lubeng's discretion to repeating the service that during the foregoing 90 day period does not meet this warranty or issuing credit for the nonconforming portion of the service.
- (d) If Lubeng determines that any warranty claim is not, in fact, covered by the foregoing warranties, Buyer shall pay Lubeng its customary charges for any additionally required Product. The Buyer shall notify Lubeng promptly in writing of any claims and provide Lubeng with a copy of the original invoice for the Product and prepay all freight charges to return any Product to Lubeng's facility, or other facility designated by Lubeng. All claims must be accompanied by full particulars, including system operating conditions, if applicable.
- (e) In no event shall Lubeng be liable for any Product altered outside Lubeng's factory by someone other than Lubeng or for a Product subjected to misuse, abuse, improper installation, application, operation, maintenance or repair, alteration, accident or for negligence in use, storage, transportation or handling or other negligence of the Buyer.

14. Ownership of Materials

- (a) All materials prepared or disclosed by Lubeng and all related intellectual property rights, shall remain Lubeng's property.

- (b) Lubeng grants the Buyer a non-exclusive, non-transferable license to use such Materials to the extent necessary and solely for the Buyer's use of Product purchased by the Buyer from Lubeng hereunder.
- (c) The Buyer shall not disclose such Materials to third parties without Lubeng's prior written consent.
- (d) As a condition to Lubeng's delivery to the Buyer of Product, the Buyer shall not, directly or indirectly, and shall cause its employees, agents and representatives not to:
 - (i) alter or modify the Product;
 - (ii) disassemble, decompile or otherwise reverse engineer or analyse the Product;
 - (iii) remove any Product identification or property rights notices;
 - (iv) modify or create derivative works;
 - (v) otherwise take any action contrary to Lubeng's rights in the technology and intellectual property relating to the Product; and/or
 - (vi) assist or ask others to do any of the foregoing.

15. Patent or Trademark Infringement and Product Liability

- (a) The Buyer has no authorisation to make any representation, statement or warranty on behalf of Lubeng relating to Product sold hereunder.
- (b) The Buyer shall indemnify and defend, at its own expense, Lubeng against claims or liability for any applicable patent, trademark or other intellectual property infringement and for Product liability arising from the preparation of manufacture of Product according to the Buyer's specifications, or from the Buyer's unauthorised use of Lubeng's Product or from any changes or alterations to Lubeng's Product made by persons other than Lubeng or improper use of Lubeng's Product or from the manufacture or sale or use of the Buyer's products which incorporate or integrate Lubeng's Product.

16. Force Majeure

- (a) Under no circumstances shall either Lubeng or the Buyer have any liability for any breach (except for breach of payment obligations) caused by extreme weather or other act of God, strike or other labour shortage or disturbance, fire, flood, accidents, war or civil disturbance, terrorism, embargoes, delay of carriers, failure of normal sources or supply, act of government or any other cause beyond such party's reasonable control.

17. Limitation of Liability

- (a) In no event will Lubeng be liable for any damages, incidental, special, consequential or otherwise, including loss of profit, remanufacturing costs and rework costs, and lost Buyer products costs (other than price of warranty or otherwise) and whatever the forum, whether arising out of or in connection with the manufacture, packaging, delivery, storage, use, misuse or non-use or resale of any of its Products or any other cause whatsoever. Without limiting the generality of the foregoing, in no event will Lubeng be liable for any losses or damages in excess of the price paid to Lubeng with respect to the Products sold to the buyer under this Agreement.

18. Set-off

- (a) The Buyer may not seek to effect or effect any set-off against any liabilities due by Lubeng to the Buyer against any liabilities due or which may fall due by the Buyer to Lubeng, and vice versa.

19. Export Control

- (a) As a condition to Lubeng's delivery to the Buyer of Product and/or parts thereof, the Buyer agrees, with respect to the exportation or resale of Product and/or parts thereof by the Buyer, to comply with all National and International government laws and regulations on export controls, including laws and regulations pertaining to export licenses, restrictions on export to embargoed countries and restrictions on sales to certain persons and/or entities.

20. Confidentiality

- (a) If Lubeng discloses or grants Buyer access to any research, development, technical, economic, or other business information of "know-how" of a confidential nature, whether reduced to writing or not, the Buyer will not use or disclose any such information to any other person or company at any time, without Lubeng's prior written consent.
- (b) The Buyer agrees that all pricing information and any other commercially sensitive or confidential information relating to this Agreement is strictly confidential (Confidential Information).
- (c) Except as stated in this Agreement or where required by PPSA, the parties to this Agreement are under an obligation to not and must not permit any of their officers, employees, agents, contractors or related bodies corporate to disclose any Confidential Information to any person, other than their professional advisers or as required by law, without the prior written consent of the party to whom the Confidential Information relates.
- (d) In the event that the Buyer and Lubeng have entered into a separate confidentiality agreement, the terms and conditions of such agreement shall take precedence over the terms of this Clause.

21. Miscellaneous

- (a) These terms, together with any quotation, Purchase Order or acknowledgement issued or signed by Lubeng, comprise the complete and exclusive statement of the agreement between the parties and supersede any terms contained in Buyer's documents, unless separately signed by:
 - (i) an employee of Lubeng who is authorised to execute documents on behalf of Lubeng; or
 - (ii) an agent of Lubeng who is authorised to execute documents on behalf of Lubeng.
- (b) No part of this Agreement may be changed or cancelled except by a written document signed by an employee of Lubeng who is authorised to execute documents on behalf of Lubeng, or an agent of Lubeng who is authorised to execute documents on behalf of Lubeng, and the Buyer.
- (c) No course of dealing or performance, usage of trade, or failure to enforce any term shall be used to modify this Agreement. If any of these terms are unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect.
- (d) This Agreement and the contract between Lubeng and the Buyer shall be governed by the laws of New South Wales, Australia and any dispute that cannot be settled shall be settled under the Rules of the Australian Commercial Disputes Centre. The arbitration award will be final and binding on the parties.