

Purchase Order - Terms and Conditions

1. INTERPRETATION

1.1 For the purpose of these Terms and Conditions and unless the context otherwise requires:

"Agreement" means the Agreement formed in accordance with Clause 2;

"Confidential Information" means any ideas, methods, trade secrets, know-how and other intellectual property in any form, furnished to Seller by Inchcape, but does not include information that is:

- (i) publicly known at the time;
- (ii) known to Seller at the time of disclosure through no wrongful act of Seller;
- (iii) received by Seller from a third party without confidential obligation, or
- (iv) independently developed by Seller.

"Goods or Services" means any goods or services supplied or provided by the Seller;

"Order" means the cover page to this document to which these terms and conditions are attached and bearing an order number;

"Seller" means the person described in the front page of the Order and includes sub-contractors and all other persons performing any work under the Order.

"Inchcape" means Inchcape Australia Limited (ABN 50 050 035 277) or any of its related corporate entities as set out in clause 19;

2. ACCEPTANCE OF ORDER

2.1 Upon acceptance by the Seller of an Order the Agreement shall take effect and together with the Inchcape Purchase Agreement (if any), shall form the entire agreement between the parties, to the exclusion of any conditions of sale appearing on any document of Seller. Any document of Seller which purports to modify the Agreement does not apply unless expressly accepted in writing by Inchcape.

3. PRICES AND TERMS OF PAYMENT

3.1 No extra charges of any kind (including but not limited to packing, boxing, crating, delivery freight or insurance) will be paid by Inchcape unless provided for in the Order.

3.2 Prices shown on an Order are not subject to escalation or variation for any reason whatsoever unless agreed to in writing by Inchcape.

3.3 Seller represents and warrants that the prices quoted in an Order shall not be in excess of Seller's list, catalogue or published prices.

3.4 Invoices for Goods are to be submitted to Inchcape via one of the following methods and must display the Order number. Subject to clause 5.1 (and unless contrary to law), accounts will be settled 30 days from end of month.

- I. Coupa Supplier Portal (CSP): Purchase Orders can be viewed, and invoices sent electronically. This is our recommended option as you will have full visibility of all your orders and invoices.
- II. Supplier Actionable Notification (SAN): Enables action directly from your email inbox. Purchase Orders can be received, and invoices created without registering or logging in to the Coupa Supplier Portal.
- III. cXML transmission: Invoices are sent in an Invoice Detail Request cXML format and posted directly to Coupa via an HTTP post.
- IV. Other methods if approved and agreed in writing by the Inchcape Group Procurement Manager.

3.5 In the case of Services, progress claims are to be submitted monthly or as otherwise agreed.

3.6 Inchcape will not pay for Services performed or Goods supplied by the Seller in excess of the Agreement. Excess Goods will be returned at the Seller's expense.

3.7 Except as otherwise specified in an Order, the price includes all federal, state, local or foreign taxes (including any goods and service tax), stamp duties and other governmental charges. Any invoice must include a tax invoice complying with the legislation and is a precondition to payment.

3.8 Inchcape is entitled to set off any amount owing at any time by Seller.

4. PACKING AND DELIVERY

4.1 The Seller shall, at its expense mark Goods with the Order number, crate, package or otherwise prepare goods for shipment in accordance with Inchcape's instructions and otherwise will ensure safe and secure delivery to Inchcape. The Seller will include a packing slip with the shipment of Goods.

4.2 Goods are to be shipped to the delivery point set out in the Order by the due date set out in the Order.

4.2 The time for delivery shall be of the essence. If the Seller does not comply with the delivery schedule, Inchcape may cancel the Order without liability.

5. INSPECTION AND ACCEPTANCE

5.1 Goods shall be deemed not to have been accepted until Inchcape has inspected the Goods, conducted acceptance tests and signified its acceptance. Goods will not be accepted with a remaining shelf life of less than 80%.

5.2 If Inchcape determines that supplied Goods in whole or part do not conform to the Agreement it may, without prejudice to any other remedies available to it:

- (a) return (at the Seller's expense) the whole or any part of the Goods for repair, replacement or credit;
- (b) repair the Goods at the Seller's expense; or
- (c) require the Seller to fix any defects.

5.3 If Inchcape determines that supplied Services do not conform to the Agreement in whole or in part, it may, without prejudice to any other remedies available to it:

- (a) require the Seller to supply the Services again; or
- (b) arrange to have the Services supplied by a different Seller at the Seller's expense; or
- (c) require the Seller to provide it with a credit equal to the price of the Services;

5.4 Where the Seller is supplying Goods to specifications, Inchcape reserves the right to inspect these items and Seller's facilities at reasonable times during any stage of manufacture.

6. TITLE AND RISK

Risk of loss for Goods shall pass to Inchcape at the delivery point specified in the Order. Title to the Goods shall pass to Inchcape on dispatch of the Goods from the Seller.

7. TERMINATION

7.1 This Agreement may be terminated immediately by either party by written notice if the other party:

- (a) breaches a provision of this Agreement and if capable of remedy, fails to remedy within seven (7) days after having been given written notice;
- (b) passes a resolution for its winding up or a receiver or manager or official manager is appointed, or a liquidator or provisional liquidator is appointed; or
- (c) enters into a scheme of arrangement with its creditors or has a judgment entered against it or is declared a bankrupt.

7.2 Upon termination Seller shall deliver at its sole expense all Goods which have been paid for by Inchcape, whether completed or not.

7.3 Inchcape may terminate this Agreement, without cause, on 30 days' written notice to the Seller.

7.4 In the event of any termination under this clause 7, the Seller shall have no further claim against Inchcape for the payment of any moneys to the Seller under or in connection with this Agreement, whether by way of further moneys payable to the Seller for the future supply of Goods or Services or compensation for any alleged loss or damage sustained by the Seller (including without limitation any special, incidental, consequential or indirect damages or any economic loss or loss of profits), other than for any amounts outstanding in respect of the price for Goods or Services ordered prior to the date of termination.

8. NON-EXCLUSIVE APPOINTMENT

Seller acknowledges that Inchcape is free to use other Sellers of similar Goods and Services to those provided by the Seller and Inchcape is not bound to use the Goods or Services of the Seller at any particular level.

9. WARRANTY

9.1 The Seller warrants that the Goods are, free and clear of all liens, charges and encumbrances and that the Seller has good title to the Goods, and

- (a) all Goods:
 - (i) shall be free from defects in materials and workmanship and be of acceptable quality and fit for the purpose;
 - (ii) shall conform to the Agreement; and
 - (iii) shall be free from defects in design;
- (b) the Goods and Services, (including all materials used and labour performed with respect to the Goods and Services) shall:
 - (i) conform with current Australian Standard Specifications and Codes unless otherwise specified;
 - (ii) comply with all applicable laws;

- (iii) strictly conform with the Agreement; and
- (iv) in the case of materials, be fit for the purpose intended and in the case of labour, be rendered with due care and skill.

10. PROPRIETARY RIGHTS, CONFIDENTIALITY

10.1 All Confidential Information furnished to Seller for the purposes of this Agreement and all its' property rights remain the property of Inchcape. It shall be treated by Seller as confidential and it will not in whole or in part be used, communicated, copied, disclosed, sold or reproduced for any purpose whatsoever, except in the performance of the Agreement, or with the express written permission of Inchcape.

10.2 On completion, cancellation or termination of the Agreement, or at any time if Inchcape so requests in writing, Seller shall immediately return to Inchcape all documents supplied by Inchcape to Seller for purposes of the performance of the Agreement.

11. INTELLECTUAL PROPERTY

11.1 Nothing in these Terms and Conditions is intended to transfer ownership of Background Intellectual Property Rights. The Seller grants Buyer an irrevocable, non-exclusive, transferable, royalty-free licence (with the right to sub-licence), to use Background Intellectual Property Rights in connection with the Services and for the use, repair, maintenance, upgrade or modification of the Services and/or any associated Goods.

11.2 Subject to clause 11.1, the Seller:

- a. presently assigns to Buyer all existing and future Intellectual Property Rights created by the Seller or the Seller's personnel in performing the Services; and
- b. acknowledges that by virtue of this clause all such existing Intellectual Property Rights are vested in Buyer and on their creation, all such future Intellectual Property Rights will vest in Buyer. The Seller shall, at its cost, do all things reasonably requested by Buyer to enable Buyer to assure further the rights assigned under this clause.

11.3 The Seller:

- a. warrants that Buyer's use of the Goods will not infringe any author's moral rights under the *Copyright Act 1968*; and
- b. shall indemnify Buyer and Buyer's personnel against any claims, or costs, expenses, liability, losses or damage suffered or incurred by Buyer and Buyer's personnel arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the *Copyright Act 1968*.

11.4 For the purposes of this clause, Buyer's use of the material provided by the Seller includes Buyer's right to reproduce, publish, copy, adapt, communicate to the public, destroy or in any way change the Goods or part of the Services:

- a. with or without attribution of authorship;
- b. in any medium; and
- c. in any context and in any way it sees fit.

11.5 The Seller warrants that Buyer's use of the Services and any associated Goods shall not infringe any third party Intellectual Property Rights. The Seller shall indemnify Buyer against any loss, costs (including legal fees) and expenses arising from any claim by a third party in respect of the Services and associated Goods including a claim that the use of any Supply constitutes an infringement of any third party Intellectual Property Rights. The Seller shall at Buyer's option and at the Seller's expense either replace such infringing part with a non-infringing part or modify such part so as to render it to be non-infringing (in either case, to deliver the same functionality and performance as the infringing part), or procure for Buyer the right to use such a part.

11.6 For the purposes of this clause:

- a. **Background Intellectual Property Rights** means Intellectual Property Rights of a party which:
 - a. are in existence prior to the date of issue of the associated Purchase Order; or
 - b. come into existence after the date of issue of the associated Purchase Order otherwise than in connection with that Purchase Order;
- b. **Intellectual Property Rights** means all intellectual and industrial property rights, including but not limited to all rights protected or recognised under copyright, patents and applications, know-how, confidential information and trade secrets, computer programs or graphics, source codes or the like, registered designs, circuit layout rights, trademarks, service mark and applications for registration of trademarks and any contractual rights which may

exist in relation to any innovation or work.

12. INSURANCE AND INDEMNITY

12.1 Seller shall indemnify Inchcape from and against any and all proceedings, claims, demands, losses, costs, damage and expenses arising out of a defect in the Goods and/or in respect of any act, omission or negligence of Seller or any of its officers, employees, agents or representatives in connection with the Goods or Services to be provided under this Agreement or otherwise in connection with Seller's performance or breach of this Agreement.

12.2 The Seller shall, if requested by Inchcape, at its sole expense, effect proper insurances against all risks arising under this agreement (including public liability, product liability and workers compensation insurance) and shall, if required by Inchcape, produce evidence of the currency and validity of any such policy.

13. SURVIVAL OF CLAUSES

Clauses 10, 11 and 12 shall survive the termination and/or expiry the Agreement.

14. WAIVER

A waiver by Inchcape of a breach or default of Seller under this Agreement shall not be a waiver of any subsequent default and failure of Inchcape.

15. ASSIGNMENT

The Seller shall not without the previous consent in writing of Inchcape assign or transfer this Agreement or sub-Agreement any part of the work required to be done under this Agreement.

16. WORK HEALTH & SAFETY

16.1 The Seller warrants and covenants that in connection with the supply of Goods or Services under this Agreement, the Seller will comply with any relevant work health and safety legislation applicable in the jurisdiction.

16.2 Seller will also supply to Inchcape all information relevant to the safe use of Goods or Services whether formally requested or not.

16.3 Inchcape appoints the Seller as principal contractor under the relevant State WH&S Regulation whenever applicable. Without limiting the obligations of the Seller under any WH&S legislation, Inchcape expects the Seller to comply with all relevant WH&S legislation, ensure its subcontractors comply with their respective obligations, ensure plant and equipment complies with safety standards, keep necessary records, identify the geographical scope of works, and immediately inform Inchcape of all incidents on site of an WH&S nature.

17. MODERN SLAVERY

The Seller acknowledges, agrees and warrants that neither the Seller nor any of its sub-contractors will utilise slave, prisoner, child, or any other form of forced, involuntary, or unpaid/underpaid labour in connection with the provision of the Goods or Services.

18. SEVERABILITY

If any part of this Agreement or the application thereof to any person or circumstances shall become void, voidable or otherwise unenforceable, that part shall be severed, and the balance of this Agreement shall remain in full force and effect.

19. GOVERNING LAW

The laws of New South Wales, Australia govern this Agreement. The parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

20. INCCAPE ENTITIES

References to **Inchcape** throughout this agreement includes Inchcape Australia Limited (ABN 50 050 035 277), and its related corporate entities including but not limited to AutoNexus Pty Limited (ABN 39 052 355 969), Subaru (Aust) Pty Limited (ABN 95 000 312 792), Inchcape European Automotive Pty Limited (ABN 97 070 000 789), Trivett Automotive Retail Pty Limited (ABN 94 000 806 904), Trivett Classic Holdings Pty Limited (ABN 11 085 878 995), Trivett Automotive Group Pty Limited (ABN 90 003 667 007), Trivett Bespoke Automotive Pty Limited (ABN 48 125 643 941), Bespoke Automotive Australia Pty Limited (ABN 43 076 101 883), Trivett Classic Garage Pty Limited (ABN 98 072 353 434), Trivett Classic Pty Limited (ABN 35 000 874 706), Trivett Pty Limited (36 580 068 845).