

TERMS AND CONDITIONS OF SALE

1. WHOLE AGREEMENT

1.1 These terms and conditions govern any sale of goods and any quotations by Rossi Gearmotors (Pty) Ltd T/A Rossi Southern Africa (hereinafter referred to as ROSSI SOUTHERN AFRICA), notwithstanding any conditions to the contrary accompanying the Purchaser's order unless such conditions have been expressly accepted by ROSSI SOUTHERN AFRICA in writing.

1.2 The contract pursuant to any written quotation between ROSSI SOUTHERN AFRICA and the Purchaser shall come into existence only when and to the extent that ROSSI SOUTHERN AFRICA has, in writing, confirmed acceptance, either wholly or in part, of an order by the Purchaser, which order has been placed within thirty days of such written quotation, and upon a written undertaking by ROSSI SOUTHERN AFRICA that it will execute the order as specified in such order acknowledgement, in which event these terms and conditions shall be deemed to be incorporated into such contract. Any order placed by the Purchaser may not be withdrawn unless it has not been accepted within thirty days.

1.3 Information provided in catalogues, schedules, advertisements, designs, drawings and price-lists, including without limitation, information concerning weights, dimensions and specifications, are not binding on ROSSI SOUTHERN AFRICA, and are intended for the purposes of identification and to give a general indication of the goods.

1.4 The terms of any letter of credit shall not override these Terms and Conditions, unless agreed by ROSSI SOUTHERN AFRICA in writing and then only to the extent of any conflict between such letter of credit and these Terms and Conditions.

2. PRICE

2.1 The prices quoted by ROSSI SOUTHERN AFRICA are based on labour rates, the cost of materials, components, accessories, customs, import and/or other duties, taxes and charges and currency exchange rates at the time of issue of such quotation.

2.2 ROSSI SOUTHERN AFRICA may, at any time before delivery of the goods, increase the quoted prices in the event of any increase in the rate or costs referred to in 2.1

2.3 All prices of the goods are expressed exclusive of VAT and no discounts are granted for early payment unless agreed by ROSSI SOUTHERN AFRICA in writing before delivery.

2.4 Unless otherwise stated in writing, the prices of the goods shall not include insurance, railage or transportation which shall be for the Purchaser's account.

2.5 In the event that ROSSI SOUTHERN AFRICA agrees, in writing, insure or transport the goods to an address nominated by the Purchaser, any expenses incurred in regard to such insurance and transportation exceeding those incorporated in a quotation by ROSSI SOUTHERN AFRICA shall be for the account of the Purchaser unless caused by the negligence of ROSSI SOUTHERN AFRICA.

2.6 To the extent that quotations are based on and/or refer to any data and/or documents including, without limitation, illustrations, drawings, specifications of weight and dimensions, performance and consumption or otherwise are approximate unless expressed to be accurate.

3. PAYMENT

3.1 The Purchaser shall pay the purchase of the goods prices plus Value Added Tax (plus, where applicable, the costs of insurance and transportation) to ROSSI SOUTHERN AFRICA in cash (free of exchange, bank charges or any other costs) at such place as ROSSI SOUTHERN AFRICA may from time to time direct in such currency determined by ROSSI SOUTHERN AFRICA on delivery or, if ROSSI SOUTHERN AFRICA has granted credit to the Purchaser in writing, by the end of the month following the month of delivery of purchases (unless otherwise agreed) and without any deduction or set-off.

3.2 Payment shall not be withheld or deferred on account of any claim or counterclaim which the Purchaser may allege exists between the Purchaser and ROSSI SOUTHERN AFRICA and the right to enforce any claim or counterclaim against ROSSI SOUTHERN AFRICA shall arise only after payment has been made by the Purchaser.

3.2 ROSSI SOUTHERN AFRICA may (without prejudice to its rights) suspend performance of any of its obligations, or cancel any contract, if any amounts owing by the Purchaser to ROSSI SOUTHERN AFRICA are not paid in full on due date, including where the late / non-payment relates to a contract other than that suspended or cancelled.. Any agreement by ROSSI SOUTHERN AFRICA to grant credit to the Purchaser

shall immediately terminate and all invoices shall immediately become due owing and payable in the event that any amount owing by the Purchaser is not paid in full on due date.

3.4 ROSSI SOUTHERN AFRICA shall be entitled to charge the Purchaser interest at the ruling bank prime rate from time to time on any amount due and owing by the Purchaser to ROSSI SOUTHERN AFRICA which is not paid when due, such interest to be applied and to accrue from the first day of the month following the month during which the goods were delivered to the Purchaser.

3.5 In the event of the delivery of the Purchaser's order being spread over a period exceeding 30 days, payment for each consignment comprising such order shall be due by the end of the month following the month of delivery of the consignment in question.

3.6 In the event that the Purchaser cancels or suspends an order after the issue of an order acknowledgement and ROSSI SOUTHERN AFRICA accepts such cancellation or suspension, ROSSI SOUTHERN AFRICA is entitled to payment of:

3.6.1 the cost, calculated pro-rata, of materials utilized and of work accomplished in complying with the contract up to the date of such acceptance of the cancellation or suspension;

3.6.2 any other expenses incurred by ROSSI SOUTHERN AFRICA in complying with the contract up to the date of such acceptance of the cancellation or suspension;

3.6.3 20% of the difference between the sum of 3.6.1 and 3.6.2 and the price reflected in the order acknowledgement,

The provisions of this clause are without prejudice to the rights of ROSSI SOUTHERN AFRICA to recover damages and/or specific performance.

3.7 In the event that the Purchaser fails to pay any amount due to ROSSI SOUTHERN AFRICA or commits any other breach of these Terms and Conditions or any contract concluded hereunder, the Purchaser will be liable for the legal costs incurred by ROSSI SOUTHERN AFRICA on an attorney and client scale and collection commission.

4. DELIVERY

4.1 Packaging shall be designed to protect the goods against the risks of normal land transportation where the packages goods are not exposed to water, excessive humidity, fire, physical trauma, poor security or the like. No additional precautions against damage or loss will be taken unless agreed by ROSSI SOUTHERN AFRICA in writing.

4.2 The time for delivery is approximate only and shall be effected only after receipt by ROSSI SOUTHERN AFRICA of all information, drawings, plans and other documents necessary to enable it to execute the order.

4.3 The goods shall be deemed to be delivered by ROSSI SOUTHERN AFRICA to the Purchaser at ROSSI SOUTHERN AFRICA premises either when delivered free on rail, or free on truck, or over the counter or on delivery to any airfreight forwarding agent or other party at ROSSI SOUTHERN AFRICA premises, as the case may be.

4.4 Where ROSSI SOUTHERN AFRICA has agreed to transport the goods to an address nominated by the Purchaser delivery shall be deemed to have taken place when the vehicle transporting the goods arrives at such address, whereupon the Purchaser shall be responsible for off-loading the goods from the vehicle. The Purchaser is liable for any expenses incurred as a result of a delay in the completion of off-loading.

4.5 The Purchaser shall accept delivery immediately it is tendered, failing which ROSSI SOUTHERN AFRICA has the right to cancel the contract or to accept a later delivery date and the Purchaser shall be liable for all expenses and damages suffered by ROSSI SOUTHERN AFRICA as a result of such cancellation or delay in delivery, including without limiting the generality thereof, the costs of storage, additional costs incurred in relation to transportation, insurance and loss of profit.

4.6 ROSSI SOUTHERN AFRICA shall have the right to deem that delivery has taken place eight calendar days after such delivery has been tendered, and in that event the Purchaser shall be liable for the price of the goods, any transportation, insurance, storage, warehousing thereof and any other expenses incurred by ROSSI SOUTHERN AFRICA.

4.7 In the event of:

4.7.1 the quantity of the goods received by the Purchaser being less than the quantity invoiced to the Purchaser; or

4.7.2 there being any defect in the packing of the goods received by the Purchaser which has resulted in damage to the goods;

4.7.3 there being any other disparity between the goods delivered and the goods ordered;
the Purchaser shall notify ROSSI SOUTHERN AFRICA in writing of such shortfall, defect or discrepancy within 48 (FORTY EIGHT) hours of delivery of the goods, except where the goods are received by the

Purchase, its agent or principal outside of South Africa, in which event the Purchaser shall give such notice within 48 (FORTY EIGHT) hours of receipt of the goods by the Purchaser or its agent or principal.

4.8 The goods purchased and received shall not be unpacked by the Purchaser (except in so far as is necessary to establish such shortfall, defect or discrepancy); and ROSSI SOUTHERN AFRICA shall have the right to inspect the goods at the place where they are being stored. If the Purchaser has complied with the provisions of these Terms and Conditions and if ROSSI SOUTHERN AFRICA accepts that such shortfall, defect or discrepancy exists, ROSSI SOUTHERN AFRICA shall make good any shortfall, defect or discrepancy in the goods purchased, at its own cost, either by, in its sole discretion, replacing the goods, or by passing a suitable credit.

4.9 Except as set out herein ROSSI SOUTHERN AFRICA shall have no liability whatsoever to the Purchaser by reason of such short delivery, defect or discrepancy, and the Purchaser's remedies are limited to accepting replacement goods or a suitable credit in terms of the election by ROSSI SOUTHERN AFRICA.

4.10 If ROSSI SOUTHERN AFRICA is unable for any reason whatsoever to effect delivery, ROSSI SOUTHERN AFRICA may postpone the delivery alternatively ROSSI SOUTHERN AFRICA may cancel the contract concerned and the Purchaser shall in either event have no claim for damages arising from such postponement or cancellation as the case may be.

4.11 The Purchaser is obliged to return all returnable wooden packing cases, skids, drums and any other re-usable articles used for packing as are identified on the quotation and/or order acknowledgment at its cost, failing which ROSSI SOUTHERN AFRICA shall be entitled to raise a charge for non-returned items.

5. CONTINGENCIES

5.1 Should the business of ROSSI SOUTHERN AFRICA be interrupted, suspended or restricted by riots, strikes, lockouts, labour disturbances or disputes, boycotts, economic sanctions, acts of state, industrial legislation, war, terrorism, civil commotion or disturbances, attacks upon its employees or vehicles, floods, rationing or non-availability of fuel, vehicle accident, breakdown in vehicle or equipment, commercial pressure, or any other cause beyond the reasonable control of the ROSSI SOUTHERN AFRICA (whether of the foregoing or not)

5.2 ROSSI SOUTHERN AFRICA shall be entitled to postpone the date or dates of delivery until such time as the suspension, interruption or restriction has ceased alternatively to cancel the contract concerned and the Purchaser shall in either event have no claim for damages arising from such postponement or cancellation as the case may be.

6. OWNERSHIP AND RISK

6.1 Ownership of the goods shall not pass to the Purchaser until payment therefore has been made in full by the Purchaser to ROSSI SOUTHERN AFRICA.

6.2 Risk in the goods shall pass to the Purchaser upon delivery.

6.3 Between the time that risk and ownership passes, the Purchaser shall keep the goods insured and free from any lien and hypothec or other security interest and shall give appropriate notice of the interests of ROSSI SOUTHERN AFRICA and of reservation of ownership to the third parties who through the operation of law or otherwise may obtain a lien, hypothec or other security interest in or over the goods.

6.4 Between the time that risk and ownership passes, the Purchaser shall store the goods separately from other goods in a manner which makes them readily identifiable as belonging to ROSSI SOUTHERN AFRICA and shall not alter, modify or add to the goods or alter or delete any identification marks or serial numbers and shall maintain the goods in good condition.

6.5 The Purchaser irrevocably agrees to allow ROSSI SOUTHERN AFRICA to retake possession of such goods and to resell same in the event that the sum due to ROSSI SOUTHERN AFRICA is not paid on due date.

7. WARRANTY

7.1 Subject as herein otherwise provided ROSSI SOUTHERN AFRICA guarantees ROSSI components which are assembled by ROSSI SOUTHERN AFRICA against any defect which are and can be shown to ROSSI SOUTHERN AFRICA's satisfaction to have been caused by reason only of the use of defective materials or by reason of faulty workmanship and which appears and arises within the following periods only:

7.1.1 a period of three years for products which are sold to operate in two shifts of eight hours each per twenty four hours, or

7.1.2 a period of two years for products which are sold to operate in three shifts of eight hours each per twenty four hours.

7.2 The period of the aforementioned warranty commences from the date of delivery provided that the Purchaser has notified ROSSI SOUTHERN AFRICA in writing of the fault as soon as possible after the fault has become apparent / should reasonably have become apparent to the Purchaser.

7.3 Should such defect appear and be notified within such applicable period ROSSI SOUTHERN AFRICA's liability is hereby limited to an amount equal to the cost of replacing the defective goods or parts; the cost of obtaining equivalent goods or parts; or the cost of having the goods repaired, whichever is the lowest amount and such guarantee shall extend only as to the cost of any defective material or materials utilised in such repair, to labour, dismantling and re-assembly and the transportation of personnel of ROSSI SOUTHERN AFRICA to the premises of ROSSI SOUTHERN AFRICA. All other costs shall be borne by the Purchaser.

7.4 ROSSI SOUTHERN AFRICA shall not be liable for any such defect in any circumstances if

7.4.1 the goods or part of the goods supplied have been the subject of abuse or misuse and such abuse or misuse is to be deemed to include the use of any such goods supplied or parts thereof otherwise than for the purpose for which they are intended or otherwise than in the fashion specified by ROSSI SOUTHERN AFRICA or any modification and/or repair carried out in respect thereof or dismantling thereof otherwise than in accordance with the specifications of ROSSI SOUTHERN AFRICA,

7.4.2 the goods supplied have been subjected to unsuitable storage, treatment or handling or to abnormal use or to use under abnormal conditions or beyond their capacity as rated and recommended by ROSSI SOUTHERN AFRICA or

7.4.3 the defect has been caused or contributed to by exposure to direct weather conditions (whether before or after installation), or by operation in abnormal atmospheric conditions or by reason of faulty installation, servicing or repair of the goods by any person other than a duly authorised representative of ROSSI SOUTHERN AFRICA or

7.4.4 the Purchaser fails as soon as possible after the assumed defect has become apparent / should reasonably have become apparent to the Purchaser to notify that defect to ROSSI SOUTHERN AFRICA in writing quoting ROSSI SOUTHERN AFRICA's reference number if any and the date of purchase of the goods alleged to be defective.

7.5 Any repair or examination of defective goods or parts may be carried out at ROSSI SOUTHERN AFRICA's premises but in that event the Purchaser shall bear the expense of adequate packaging and transportation of the goods to ROSSI SOUTHERN AFRICA and the subsequent expenses of redelivery to the Purchaser, and such transportation to and from ROSSI SOUTHERN AFRICA shall be entirely at the risk of the Purchaser.

7.6 The decision of ROSSI SOUTHERN AFRICA is final as to whether or not a defect exists and if it is due to faulty workmanship or material.

7.7 If in the opinion of ROSSI SOUTHERN AFRICA the goods are satisfactory in operation or if defective, then defective only as a result of circumstances for which ROSSI SOUTHERN AFRICA is not liable hereunder or as a result of fair wear and tear, the Purchaser shall be required to pay a reasonable charge for the examination of the goods by ROSSI SOUTHERN AFRICA and any costs incurred in carrying out such examination. In such case ROSSI SOUTHERN AFRICA shall submit to the Purchaser a quotation for repair of the goods before effecting any repair.

7.8 ROSSI SOUTHERN AFRICA shall not in any case be liable under this clause or at all in respect of any goods not of ROSSI SOUTHERN AFRICA's manufacture although ROSSI SOUTHERN AFRICA will do all that is reasonable at the Purchaser's expense to secure the benefit (with corresponding liabilities) to the Purchaser of any right which ROSSI SOUTHERN AFRICA may have in respect of goods not manufactured by ROSSI SOUTHERN AFRICA against the supplier of such goods (including any related company) but not so as to impose upon ROSSI SOUTHERN AFRICA a greater liability than will be imposed by its own guarantee herein contained.

7.9 ROSSI SOUTHERN AFRICA shall under no circumstances be liable to the Purchaser or to any third party in respect of any loss damage or injury of any kind (which for the avoidance of doubt includes consequential loss or damage) whether suffered by the Purchaser or any other party and howsoever caused (including being caused by any defect in, failure of or unsuitability for any purpose of the goods or by any negligence whether in relation to design or manufacture of the goods or at all) and all conditions, warranties or other terms whether expressed or implied, statutory or otherwise are hereby excluded.

7.10 The expression "consequential loss" shall be deemed to include loss of profits, loss of business revenues, loss of use or loss of goodwill whether of the Purchaser or of any other party.

7.11 Notwithstanding the foregoing, the liability of ROSSI SOUTHERN AFRICA in respect of any claim under these terms and conditions and any contract concluded under these terms and conditions shall in any event be limited to One Hundred Thousand Rands (R100 000).

8. WAIVER AND INDEMNITY

8.1 Under no circumstances shall ROSSI SOUTHERN AFRICA at any time be liable in contract or in delict for any special damages or consequential losses suffered by the Purchaser or by any third party from whatsoever cause arising including negligence arising from the sale and / or delivery of the goods, any failure

or delay whatever to deliver these goods or out of any use or application of the goods sold or from any other cause whatsoever which consequential losses and special damages include, without limitation, damages for loss of business, turnover, production, profit, good will and reputation. The Purchaser waives such claims (if any) and indemnifies and holds harmless ROSSI SOUTHERN AFRICA against any such claims including without limitation any claims for losses resulting from damage to or destruction of any property of whatsoever nature, or injury to or the death of any person arising out of any use or application of the goods sold.

8.2 ROSSI SOUTHERN AFRICA shall in any event not be liable for losses arising from improper, incorrect or excessive use, improper, incorrect or inadequate maintenance, use which is contrary to manufacturer's or ROSSI SOUTHERN AFRICA's warnings or to the intended use, use of non-genuine parts or components, and/or ordinary wear and tear.

9. RETURN OF GOODS

The return of any goods purchased from ROSSI SOUTHERN AFRICA by the Purchaser shall only be accepted by ROSSI SOUTHERN AFRICA at its sole discretion and provided such goods are returned to ROSSI SOUTHERN AFRICA within 10 (TEN) calendar days of delivery. Returned goods accepted by ROSSI SOUTHERN AFRICA will be subject to a 10% (TEN PERCENTUM) handling charge payable by the Purchaser.

10. CONFIDENTIALITY

10.1 The Purchaser is obliged to observe the utmost confidentiality regarding all technical and commercial information received from ROSSI SOUTHERN AFRICA in the performance of any contract between the parties, including without limitation, quotations, estimates, illustrations, drawings, catalogues, schedules, designs and price-lists and information contained therein.

10.2 The Purchaser shall return all such information to ROSSI SOUTHERN AFRICA on demand, refrain from reproducing, copying, transmitting, disclosing or revealing such information to third parties, refrain from re-engineering or attempting to re-engineer or assisting any third party to re-engineer or attempt to re-engineer goods using such information and shall ensure that its partners, employees, agents and consultants comply with the provisions of this clause.

10.3 The Purchaser acknowledges that ROSSI SOUTHERN AFRICA will suffer damages in the event that this clause is breached.

11. BREACH

11.1 If the Purchaser commits any breach whatever of these terms and conditions and any contract concluded under these terms and conditions (and every breach shall be deemed to be a material breach), ROSSI SOUTHERN AFRICA may cancel such contract without prejudice to any rights which ROSSI SOUTHERN AFRICA may have arising out of such breach and / or its right to claim immediate payment of the amounts owing by the Purchaser to ROSSI SOUTHERN AFRICA and / or to recover from the Purchaser any damages which it may have sustained arising out of the breach by the Purchaser of its obligations hereunder, provided further that ROSSI SOUTHERN AFRICA shall be entitled to retain any amounts paid by the Purchaser on account of the purchase price until the damage suffered by ROSSI SOUTHERN AFRICA shall have been determined and thereupon to apply and / or set off the amount so retained against such damages suffered by ROSSI SOUTHERN AFRICA.

11.2 The amount of the Purchaser's indebtedness to ROSSI SOUTHERN AFRICA at any time (including interest and the rate of interest payable) may be determined by ROSSI SOUTHERN AFRICA and proved by a certificate signed by any financial manager or any director of ROSSI SOUTHERN AFRICA and it shall not be necessary to prove the appointment of the person signing which certificate shall be prima facie proof of the amount of the Purchaser's indebtedness to ROSSI SOUTHERN AFRICA and shall be valid as a liquid document against the Purchaser in any competent court for the purpose of obtaining judgement and / or provisional sentence against the Purchaser thereon.

12. JURISDICTION

The Purchaser consents and submits to the jurisdiction of the KwaZulu-Natal High Court or (at the option of ROSSI SOUTHERN AFRICA), the jurisdiction of the Magistrate's Court in regard to any claim which may arise out of the contract between ROSSI SOUTHERN AFRICA and the Purchaser notwithstanding that the amount in dispute may exceed the jurisdiction of the Magistrate's Court. These terms and conditions and any contract concluded hereunder are interpreted in terms of and governed by South African law.

13. NOTICES

The parties appoint their addresses below as their domicilium citandi et executandi and any written notice required to be given in terms hereof, shall:

13.1 Be given by prepaid registered letter sent:

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13.1.1 to ROSSI SOUTHERN AFRICA at 2 Umlazi Close, Tradezone, Dube Tradeport, King Shaka International Airport, La Mercy, 4405

13.1.2 to the Purchaser at the principal place of business of the Purchaser; or

13.2 Be transmitted by means of a facsimile transmission to the addressee's telefax number and in respect of which telefax and acknowledgment has been received.

14. GENERAL

14.1 No variation of these terms and conditions shall bind ROSSI SOUTHERN AFRICA unless in writing and signed on behalf of ROSSI SOUTHERN AFRICA by an authorised director of ROSSI SOUTHERN AFRICA.

14.2 ROSSI SOUTHERN AFRICA is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for or on behalf of ROSSI SOUTHERN AFRICA whether negligently or otherwise unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by a director of ROSSI SOUTHERN AFRICA.

14.3 No relaxation which ROSSI SOUTHERN AFRICA may permit in regard to the carrying out of any of the terms of the contract by the Purchaser shall in any way prejudice, or be a waiver of any of ROSSI SOUTHERN AFRICA rights in terms of the contract.

14.4 If any provision of these Terms and Conditions is unenforceable, then ROSSI SOUTHERN AFRICA shall be entitled to elect (which election may be made at any time) that such provision shall be severed (removed) from the remaining provisions of these Terms and Conditions which shall not be affected and shall remain in full force and effect.

14.5 ROSSI SOUTHERN AFRICA may cede, transfer or assign any or all of its rights and/or obligations under a contract and/or these Terms and Conditions.