

SALE TERMS

Preliminary

These Sale Terms apply to the agreement (the "Agreement") between Masterparts (Pty) Ltd (company number 1965/002391/07, VAT number 4350101848 and registered address at 26 Christian Avenue, Epping 7460, Cape Town) (together with its branches, franchises, associate companies, successors and assigns, "Masterparts", "we", "us" or "our") and the party ordering Goods from Masterparts ("Customer") for the sale and purchase of goods ("Goods") as set out in Customer's order ("Order") to the exclusion of any other terms that Customer seeks to impose or apply or which may be implied. We may revise these Sale Terms from time to time without the requirement to give notice to Customer. Headings are inserted for convenience only and shall not affect the interpretation of the Agreement.

Orders

Each Order constitutes an offer by Customer to purchase Goods in accordance with these Sale Terms and shall only become binding on the parties once accepted by us in writing or once the Order is fulfilled by us. We may, in our sole discretion, accept Orders and accept requests by Customer to amend or cancel Orders, which acceptance shall only be valid if in writing. Customer should read these Sale Terms carefully.

Representations of Goods

Images, technical data, descriptions and dimensions of Goods are obtained from our suppliers and/or the relevant manufacturer and are provided on our website and in other sales literature for illustrative purposes only. Whilst all reasonable efforts are made to accurately reflect and describe the Goods, no guarantee, warranty or undertaking is given in respect of the completeness or correctness of such images, data, descriptions and dimensions. We shall also not be liable to fulfil an Order based on any errors of whatsoever nature in relation to the representation of Goods or the applicable purchase price and delivery charges.

Price and Payment

The price of the Goods (the "Price") shall be our list price for the Goods prevailing on the date of delivery or on the date on which a quotation is issued. Quotations are only valid for 30 days. The Price is based on EXW terms (Incoterms 2010) and excludes value added tax or any similar sales tax, which shall be payable by Customer. We may increase the Price at any time without the requirement to give notice to Customer. Unless otherwise agreed by us in writing, Customer shall pay the Price in advance of delivery of the Goods. Where payment terms have been agreed, our Account Terms and Conditions shall apply. Time for payment shall be of the essence and no payment shall be deemed to have been made until we receive payment in cleared funds. Without prejudice to any other right or remedy, we reserve the right to set off any amount due, owing and payable at any time from Customer to us against any amount due, owing and payable by us to Customer. Customer shall not be entitled to assert any credit, set-off, counterclaim or withholding against us, whether in whole or in part.

Interest

Interest at the rate of 18% per annum (or, if lower, the maximum rate of interest permitted by applicable law) shall, without limiting any other right or remedy, become due and payable by the Customer to us on all overdue amounts calculated from the due date until the date of payment, whether before or after judgment. Interest shall be calculated daily and compounded monthly.

Reversal of Discount

Any wholesale, trade, sub-distributor or other discount offered to the Applicant is conditional on payment in full by the due date. If any amount owing by the Applicant is not paid in full by the due date for any reason whatsoever, then any such discount that has been applied to the prices charged to the Applicant shall be forfeited and the amount owing by the Applicant to Masterparts shall be increased by the amount of such discount and shall accordingly be calculated with reference to the full retail price applicable at the date of purchase.



Delivery

Goods purchased from us can be collected at one of our branches or delivered to the physical address registered against Customer's account. Goods are delivered free of charge within the delivery area of each branch. Details of our delivery areas are available on our website at www.masterparts.com or can be obtained on request at our branches. Deliveries outside of our delivery area will be handled by a road freight company arranged by us. All road freight fees will be charged at standard rates. Insurance of Goods delivered by road freight is Customer's responsibility as Goods are consigned at Customer's risk. Orders will be processed and dispatched subject to receipt of payment or credit terms being agreed and delivery address details being correct. Delivery will be made between 8am and 5pm during weekdays and between 8am and 12pm on Saturdays and we reserve the right to deliver Goods by instalments. No deliveries are made on Sundays or public holidays. Customer will be required to sign for delivery and the Customer's representative may be asked to provide a valid form of identification when the Order is received. If COD terms apply, the exact amount including change needs to be paid as our drivers are not able to provide change. If unique delivery instructions are provided to us or the road freight company, for example, for the Order to be left with a security guard or with a neighbour, this will be at Customer's risk. If Customer is not available to take delivery of the Order or, if COD terms apply, Customer is unable to pay for the Order in full at the time of delivery, the Order will be returned to us and we will charge a delivery fee of R75. A Sales Representative will call you to discuss the situation and you will then need to collect your order or make payment in advance of any further delivery attempt, which will be in our sole and absolute discretion. If we are unable to contact you, despite all reasonable attempts to do so, we reserve the right to cancel your order and refund to you the Price or the portion thereof already paid less our reasonable administration charges including the costs incurred in attempting to deliver your Order or arranging for the return of your Order. Please note that it may not be possible for us to deliver to some locations. If this is the case, we will advise you at the time of or as soon as reasonably practicable after the Order is placed and we will arrange for cancellation of the Order or delivery to a different delivery address.

Liability for Delivery

While we are firmly committed to a quick and efficient delivery service (same day or, depending on the time of the Order, the next day), we are unable to guarantee delivery times. Accordingly, delivery times are approximate only and we shall under no circumstances be liable for any losses, liabilities, costs, damages, charges or expenses suffered or incurred by a delay in delivery. We are also not liable for any incorrect Order or delivery where you make an error in the information that you provide to us (for example, if you provide the incorrect delivery address or submit an incorrect Order).

Risk/Title

Risk in the Goods shall pass to Customer on delivery to Customer or to the road freight company, as the case may be. From the time when the risk passes to you, we will not be liable for any loss or destruction of the Goods. Title to the Goods shall not pass to Customer until we have received payment in full and cleared funds for the Goods and all other sums which are or become due to us. Without limiting any of our rights or remedies, we may at any time require Customer to deliver up the Goods and, if Customer fails to do so promptly, enter any premises of Customer or of any third party where the Goods are stored in order to recover them.

Warranty

All components, parts, equipment and related goods are sold subject to the implied warranty of the Consumer Protection Act of 2011, to the extent that the customer is a consumer as defined in the Act. We warrant that the Goods shall be free from material defects at the time of delivery. All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in the Agreement are excluded to the fullest extent permitted by law. The warranty given by us does not apply to damage or defects arising from Customer's use, misuse, alteration or repair of the Goods, fair wear and tear, wilful damage, improper storage conditions or accident or negligence by Customer or any third party. It is essential that all Goods are fitted or installed by a suitably qualified technician.



Proof of compliance is Customer's responsibility prior to any claim under our warranty being considered. Proof of failure of an electrical or electronic item must be accompanied by a certificate from an independent testing facility or a printout from a diagnostic machine to substantiate the claim. Failure to provide this is an inference that the fitment or installation was done without the correct/necessary equipment and shall void any claim. In respect of any Goods which we agree are defective at delivery, we shall, at our election and as Customer's sole remedy, repair the Goods or supply replacement Goods or grant to Customer a credit equal to the Price of the Goods, in which event we shall be deemed not to be in breach of the Agreement or have any liability to Customer for the defective Goods. In each case, Customer shall, upon request, allow us an opportunity to inspect the Goods or return the Goods (unaltered) to us for inspection as soon as possible and at its own risk and expense and Customer's failure to do so shall constitute acceptance of the Goods and a waiver of all claims by Customer in relation to the Goods. Our obligations hereunder shall not be enforceable until the Goods have been paid for in full.

Returns

When you receive your Order, it is important that you check to make sure that the items you have purchased are not damaged or defective and are in good condition. You should let us know immediately if there is a problem with your Order. If you are not satisfied with any item you have purchased, for any reason, you may return it to us within 10 business days and we will either exchange or replace it or provide a full refund. Exchanges and replacements are provided subject to stock availability. Refunds are issued in cash or to the credit card used for the original purchase or as a credit against your customer account. For items purchased in-store, please return the Goods to the branch of purchase within 10 business days of purchase. You will need to present your invoice in-store. For items purchased via telephone, email or our website, please contact a Sales Representative without delay to arrange the return. Please provide as much information as you can about the problem, including your invoice number and details of the affected Goods. If the Goods are returned because they were damaged or defective on delivery or they do not match the Order, we will arrange to collect the Goods and deliver the replacement Goods as soon as possible. This will be at no cost to Customer. To be eligible you must notify us of the issue within 10 business days of delivery and the item must meet the eligibility criteria set out below. After 10 business days, we will only accept returns for damaged or defective Goods if the damage or defect can be conclusively shown to have existed at the time of delivery. If the Goods are being returned for any other reason, you may return the Goods within 10 business days of delivery, but you will need to cover the cost of return delivery yourself. If you would like us to collect the Goods from you, we will charge an admin/collection fee. The amount of the fee will depend on the area of collection and we will advise you of the exact amount at the time of arranging the collection. To be eligible you must notify us of the return within 10 business days of delivery and the item must meet the eligibility criteria set out below.

Return Eligibility

To be eligible for a return Goods must be unopened, unused, in their original packaging and in a condition suitable for resale. Please note that we cannot accept returns of Goods without their original packaging or which have been opened or had their security seal (if any) broken or Goods which have been or damaged such that they are unsaleable.

Promotional Items

Where an item was purchased as part of a promotion together with other qualifying items, the promotional item must be returned with the items it was offered with in order for an exchange, replacement or refund to be processed. As such, this type of promotional item is not returnable by itself.



Breach

If Customer breaches any of these Sale Terms or the Account Terms and Conditions (including without limitation a failure to pay any amount due on the due date), then, without prejudice to any of our rights or remedies, all amounts owing by Customer to us, whether or not then due and payable, shall thereupon immediately become due and payable and we shall have the right at any time to: (a) suspend further deliveries of Goods; (b) revoke or alter payment terms; and/or (c) terminate any or all Orders and agreements between us and Customer. If we instruct our agents or attorneys to recover monies from Customer, Customer shall be liable for all agency debt collection fees and/or legal costs on the attorney and own client scale, including collection commission and tracing fees, which may be incurred by us.

Limitation of Liability

In no circumstances whatsoever shall our liability under the Agreement exceed the Price of the Goods to which the claim relates. We shall not be liable, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any indirect, special or consequential loss or damage, any loss of data, equipment or property, economic loss or damage, liability for loss or damage suffered by third parties (including in each case incidental and punitive damages) or any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill, even if we are advised in advance of the possibility of any such losses or damages. We shall not be liable to Customer for a defect in the Goods unless it is notified to us in writing within 10 business days after the date of delivery or within 3 days after the date of delivery for incomplete delivery, shipment errors or damage to or loss of all or part of the Goods in transit (where the Goods are carried by our own transport or by a carrier on our behalf). If Customer fails to give written notice as required then the Goods shall conclusively be presumed to comply with the Agreement and accordingly Customer shall be deemed to have accepted the Goods in question and we shall have no liability to Customer with respect to that delivery of Goods.

Indemnity

Customer hereby indemnifies Masterparts, its affiliates and its and their directors, officers, employees, agents and contractors in full against all claims, losses, liabilities, damages and expenses (including legal and other professional fees and expenses) arising as a result of or in connection with Customer's purchase, use or resale of the Goods.

Confidentiality

Customer shall keep in strict confidence and shall not disclose to any third party the terms of the Agreement (including the Price of the Goods) and all proprietary and/or confidential information (including without limitation commercial and technical information) disclosed by or relating to Masterparts, its affiliates or their businesses or activities and including such information viewed on or obtained from the Masterparts online customer portal located at <https://online.masterparts.co.za>.

Data Protection

We will use personal information of or supplied by or on behalf of Customer to supply Goods, to process payment for Goods and to inform Customer about similar goods sold by us (Customer may contact us at any time to opt out of these communications). Customer agrees that we may pass such personal information to credit reference agencies and we may keep a record of any search results. We will not give such personal data to any other third party.

Force Majeure

Delay in our performance or our failure to perform shall be excused to the extent caused by circumstances beyond our reasonable control (including without limitation acts of God, fire, flood, earthquake, explosion, accident, epidemic, war, threat of war, civil disturbance, riot, terrorism, lock-outs, strikes or other labour disputes, interruption of facilities, utilities or transportation and governmental actions).



Governing Law and Jurisdiction

The Agreement shall be governed by and construed in accordance with South African law. The parties irrevocably submit to the exclusive jurisdiction of the South African courts, however we may take proceedings against Customer in any other court of competent jurisdiction. We shall be entitled, but not obliged, to institute any legal proceedings in any Magistrate's Court having jurisdiction notwithstanding that the amount for which the action is instituted is beyond the jurisdiction of that court.

Miscellaneous

(a) These Sale Terms and the Account Terms and Conditions are the whole agreement between the parties relating to their subject matters. (b) No amendment or variation of the Agreement shall be effective unless agreed to by us in writing. (c) A waiver of any right or remedy under the Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No course of dealing or failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. (d) Customer shall not, without our prior written consent, assign, transfer or delegate the Agreement or any of its rights or obligations under the Agreement or purport to do any of the same. (e) If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of the Agreement shall not be affected. (f) Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute either party the agent of the other party for any purpose. (g) Customer chooses its physical address and any other address as Customer may specify in writing to us as its *domicilia citandi et executandi* for all purposes in connection with the Agreement. (h) A person who is not a party to the Agreement shall not have any rights under or in connection with it.

