

General

1. These Terms together with any Credit Application completed and submitted to the Supplier by the Customer and any Additional Security reasonably required by the Supplier apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services, including all Orders, Quotes, contracts and variations. These Terms take precedence over terms of trade contained in any other document of the Customer or elsewhere.
2. The Customer is taken to have accepted these Terms, and is immediately bound, jointly and severally, by these Terms, if the Customer places an Order or accepts delivery of Goods or rendering of Services from the Supplier.
3. The variation or waiver of a provision of these Terms or a party's consent to a departure from a provision by another party is ineffective unless in writing and signed by the Supplier.

Orders

4. Orders placed by the Customer with the Supplier will considered valid when the Order is made verbally or in writing.
5. Written Orders must be signed by an authorised representative of the Customer and must specify the required date of delivery.
6. In order to protect the Supplier's legitimate business, the Supplier may in its absolute discretion refuse to provide Goods or Services where:
 - (a) Goods are unavailable for reasons beyond the Supplier's control;
 - (b) Customer credit limits cannot be agreed upon or have been exceeded; or
 - (c) payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.
7. An Order once placed cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any losses incurred by the Supplier as a result of the cancellation, including, but not limited to loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

Quotes

8. The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 30 days from the date of issue.
9. Unless otherwise expressly agreed in writing, a Quote does not include delivery and/or installation of the Goods.
10. Quotes are based upon the cost of materials, Goods and Services available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier.
11. Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Quote has been accepted by the Customer either verbally or in writing.
12. The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or quote for the purposes of these Terms.
13. An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Supplier.

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Variations

14. The Customer may request that its Order be varied by providing a request verbally or in writing to the Supplier. A request for a variation must be agreed to by the Supplier in order to have effect.
15. If the Customer wishes to vary its requirements after a Quote has been prepared or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any additional charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods and/or Services.
16. The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

Invoicing and payment

17. Unless otherwise agreed by the parties, the Supplier may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
 - (a) prior to commencing the provision of the Goods or Services, for an amount equal to the Order and additional charges where the Supplier has not previously carried out work for the Customer or where the Supplier chooses to do so;
 - (b) at the end of each week before the Order is completed, the Supplier may issue one or more invoices for a proportion or the whole of the amount of the Order (the proportion to be calculated at the Supplier's discretion either for work done to that point, work in the future or both) and require that proportion of the Order be paid in advance of any further Goods or Services being provided; or
 - (a) upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the Order or the balance of the Order outstanding, any additional charges and any amount not previously invoiced, or for an amount representing the Supplier's charge for the work performed in completing the Order and for any additional charges.
18. The Customer must pay an invoice issued by the Supplier to the Supplier within the time period specified for payment on a valid tax invoice issued to the Customer.
19. If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
20. The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
21. The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these Terms, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
22. The Customer is to pay the Supplier on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily.
23. All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these Terms.
24. The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax ("GST") under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other applicable legislation governing GST.

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Additional charges

25. The Supplier may require the Customer to pay additional charges in respect of costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).
26. The imposition of additional charges may also occur as a result of cancellation by the Customer of an Order where cancellation results in loss to the Supplier.

Acceptance of goods

27. If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 14 days of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

Title and risk

28. Risk in Goods passes to the Customer immediately upon delivery.
29. Property in Goods supplied to the Customer pursuant to these Terms does not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.
30. Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer:
- (a) is a bailee of the Goods until property in them passes to the Customer;
 - (b) irrevocably appoints the Supplier its attorney to do all acts and things necessary to ensure the retention of title to Goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
 - (c) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other Goods which are held by the customer;
 - (d) must not allow any person to have or acquire any security interest in the Goods;
 - (e) agrees that the Supplier may repossess the Goods if payment is not made within the time period specified on a valid tax invoice issued to the Customer (or such longer time as the Supplier may, in its complete discretion, approve in writing); and
 - (f) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this clause. The Customer indemnifies the Supplier in respect of any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.
31. Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and the Customer makes a new object from the Goods, whether finished or not, or the Customer mixes the Goods with other goods or the Goods become part of other goods ("New Goods"), the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these Terms or any other contract have been made and the Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.
32. For the avoidance of doubt, under clause 31, the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
33. Notwithstanding clause 30 the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business provided that:

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- (a) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale less any GST on trust for the Supplier - in a separate account - until all amounts owed by the Customer to the Supplier have been paid; or
- (b) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.

Personal Properties Securities Act 2009 (Cth) (PPSA)

- 34. In these Terms, the terms Security Agreement, Security Interest, Purchase Money Security Interest and Personal Property Securities Register have the same meaning given to them in the PPSA.
- 35. Upon agreeing to these Terms the Customer acknowledges and agrees that these Terms constitute a Security Agreement for the purposes of the PPSA.
- 36. The Customer grants a Security Interest to the Supplier in all Goods supplied to the Customer but not paid for in full, including the proceeds from those Goods.
- 37. The Customer acknowledges and agrees that the Supplier may register one or more Security Interests in the Goods and their proceeds as a Purchase Money Security Interest on the Personal Property Securities Register, at the expense of the Customer.
- 38. Where the PPSA applies to action taken by the Supplier in relation to the Goods, the Customer waives its right to receive any notices required under sections 95, 118, 120, 121(4), 123, 130, 132(4) and or 135 of the PPSA.
- 39. The Customer waives its rights under section 157 of the PPSA to receive notice of a verification statement.
- 40. The Customer agrees to sign any documents and provide all assistance and information to the Supplier that is necessary to facilitate the registration and maintenance of the Supplier's Security Interest.

Intellectual property rights

- 41. The Customer warrants that it owns all Intellectual Property Rights pertaining to its order for goods or services or has a licence to authorise the Supplier to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Supplier for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified the Supplier against all Loss incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.
- 42. Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property Rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Supplier.
- 43. Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods or Services under these Terms for the purposes contemplated by the Order.

Agency and assignment

- 44. The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these Terms.
- 45. The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these Terms.
- 46. The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms without the prior written consent of the Supplier.

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Default by customer

47. Each of the following occurrences constitutes an event of default:

- (a) the Customer breaches or is alleged to have breached these Terms for any reason (including, but not limited to, defaulting on any payment due under these Terms) and fails to remedy that breach within 14 days of being given notice by the Supplier to do so;
- (b) the Customer, being a natural person, commits an act of bankruptcy;
- (c) the Customer, being a corporation, is subject to:
 - 1. a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - 2. a receiver, receiver and manager or an administrator under Pt 5.3A of the *Corporations Act 2001* (Cth) being appointed to all or any part of the Customer's property and undertaking;
 - 3. the entering of a scheme of arrangement (other than for the purpose of restructuring); and
 - 4. any assignment for the benefit of creditors;
- (d) the Customer purports to assign its rights under these Terms without the Supplier's prior written consent; and
- (e) the Customer ceases or threatens to cease conduct of its business in the normal manner.

48. Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:

- (a) terminate these Terms;
- (b) terminate any or all Orders and credit arrangements (if any) with the Customer;
- (c) refuse to deliver Goods or provide further Services;
- (d) pursuant to clause 30, repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
- (e) retain (where applicable) all money paid on account of Goods or Services or otherwise.

49. In addition to any action permitted to be taken by the supplier under clause 48, on the occurrence of an event of default all invoices will become immediately due and payable.

Termination

50. In addition to the express rights of termination provided in these Terms, a party may terminate these Terms by giving 30 days written notice to the other party.

Exclusions and limitation of liability

51. The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these Terms by any law is excluded.
52. All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
53. The Supplier gives no warranty in relation to the Services provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- (a) any Goods or Services supplied to the Customer;

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- (b) any delay in supply of the Goods or Services; or
- (c) any failure to supply the Goods or Services.

54. Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
55. To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on terms of trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
56. The Customer acknowledges that the Goods or Services are not for personal, domestic or household purposes.
57. The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

Indemnity

58. The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these Terms including, but not limited to any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms.

Force majeure

59. If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
60. Circumstances beyond the Supplier's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

Other matters

61. These Terms are governed by the laws of the State of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
62. These Terms and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these Terms.
63. These Terms supersede all oral and written negotiations and communications by and on behalf of either of the parties.
64. In entering into these Terms the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these Terms.
65. If any provision of these Terms at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
66. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

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67. A notice or other communication required or permitted to be given by one party to another must be in writing to the address provided from time to time by that party in connection with any Order or Quote (or as varied pursuant to this clause) and delivered personally, or sent by pre-paid mail to the address of the addressee specified in the relevant Order or Quote; or sent by e-mail to the e-mail address of the addressee specified in the relevant Quote or Order with acknowledgement of delivery.
68. A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second business day after posting; or if sent by e-mail before 4pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
69. A party may only change its postal or email address for service by giving notice of that change in writing to the other party.

Interpretation

70. In these Terms:

Additional charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the supplier's then current prices; and/or
- (b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Additional Security means any personal guarantee, indemnity or charge given to the Supplier to secure the Customer's payments and obligations to the Supplier.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Credit Application means a credit application which has been properly completed by the Customer and approved by the Supplier.

Customer means the person identified on a Quote, Order or Credit Application as the Customer and includes the Customer's agents and permitted assigns.

Goods means any goods supplied by the Supplier including those supplied in the course of providing Services.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Loss includes, but is not limited to, costs (including, but not limited to, party to party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order means any request for the provision of Goods or Services by the Customer with the Supplier which has been accepted by the Supplier.

PPS Law means:

- (a) the *Personal Property Security Act 2009* (Cth) (PPS Act) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

Quote means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

Services means the services to be provided by the Supplier to the Customer in accordance with an Order or Quote and these Terms.

Supplier means GB Electric Vehicles Pty Ltd ABN 61 630 097 862 and includes the Supplier's agents and permitted assigns.

Terms means the terms of this terms of trade document.

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71. In these terms of trade, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause is a reference to a clause of these Terms;
- (d) a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade;
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - 1. if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - 2. in all other cases, must be done on the next Business Day.

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GUARANTEE AND INDEMNITY DEED POLL

1. In this Deed Poll words and phrases have the same meaning as given in the GB Electric Vehicles Pty Ltd Terms and Conditions of Trade.
2. We each of the undersigned, for ourselves, our respective executors and administrators jointly and severally agree:
 - (a) that if at any time the Customer shall default in any part of its performance under the Terms, we will on demand by the Supplier, pay to the Supplier the whole of the monies owed by the Customer to the Supplier;
 - (b) we will keep the Supplier indemnified against all losses, costs, charges and expenses whatsoever which the Supplier may incur by any default on the part of the Customer;
 - (c) this is a continuing guarantee and indemnity and shall not be released by any neglect or forbearance on the part of the Supplier enforcing payment of any of the monies owed;
 - (d) we acknowledge by signing this Deed Poll that we have read and understood the Terms and that we have been advised to consult our respective solicitors as to our liability with respect to this Guarantee and we agree to abide by this Deed Poll.

EXECUTED AS A DEED POLL on this day of 20

SIGNED SEALED AND DELIVERED BY:

Guarantor 1:

Name:

Address:

Contact Number (H)

Contact Number (M)

SIGNATURE:

IN THE PRESENCE OF:

Witness Name:

Address:

SIGNATURE:

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SIGNED SEALED AND DELIVERED BY:Guarantor 2:

Name:

Address:

Contact Number (H)

Contact Number (M)

SIGNATURE:

IN THE PRESENCE OF:

Witness Name:

Address:

SIGNATURE:

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