

Volvo Group Australia Pty Ltd - Terms & Conditions New Truck Sales Agreement (Part B)

CONTRACT DETAILS

1. This New Truck Sales Agreement comprises the following documents read together:
 - (a) the Order;
 - (b) these Australian Terms & Conditions; and
 - (c) the New Vehicle Warranty, **(Contract)**.
2. The Contract embodies the entire agreement between the parties in respect of its subject matter to the exclusion of all other terms and conditions and all previous oral or written representations including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.
3. Capitalised terms used in this Contract are defined in clause 118.

NO COOLING OFF PERIOD

4. If the Purchase Vehicle is sold by the Dealer in:
 - (a) New South Wales, then the Customer acknowledges and agrees that it has no cooling off rights under the *Motor Dealers and Repairers Act 2013* (NSW) in connection with the supply of the Purchase Vehicle, as the Customer represents and warrants that the Purchase Vehicle is intended to be used predominantly for business or other commercial Purposes; or
 - (b) Queensland, then the Customer acknowledges and agrees that it has no cooling off rights under the *Motor Dealers and Chattel Auctioneers Act 2014* (Qld) in connection with the supply of the Purchase Vehicle, as the Customer represents and warrants that the Purchase Vehicle is a "commercial vehicle" as that term is defined in the *Motor Dealers and Chattel Auctioneers Act 2014* (Qld).

FINANCE CONDITION

5. If the Order notes that the Customer is arranging credit or finance, then this Contract is conditional on the Customer obtaining approval of finance for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the Customer. The Customer must take all reasonable steps to obtain finance approval by the Finance Date.
6. On or before the Finance Date, the Customer must give written notice to the Dealer either that:
 - (a) approval has not been obtained by the Finance Date and the Contract is terminated, at which point the Dealer will return to the Customer any Deposit paid; or
 - (b) the finance condition has been satisfied or waived by the Customer.
7. If the Customer fails to give notice to the Dealer under clause 6 by 5:00pm on the Finance Date, the Dealer's only right will be to terminate this Contract by written notice to the Customer. The Dealer may exercise that right at any time after 5:00pm on the Finance Date and prior to the

Customer giving notice under clause 6(b), at which point the Dealer will return any Deposit paid to the Customer. Neither the Dealer nor the Customer will have any right to claim damages or compensation arising from termination pursuant to this clause 7.

ENGINEERING APPROVAL

8. If the Order notes that engineering approval is required, this Contract is conditional on Volvo's engineering department giving its approval (in its sole discretion), by the Engineering Approval Date, to proceed to manufacture the Purchase Vehicle. Without limitation, such approval may be based on satisfying itself that the design and Specifications of the Purchase Vehicle(s) requested by the Customer accord with Volvo standards, and all other standards and Laws applicable in the place of production, and the designated application.
9. On or before the Engineering Approval Date, the Dealer will give notice to the Customer either that:
 - (a) approval to proceed on the Customer's design of the Purchase Vehicle(s) has been granted by Volvo's Engineering Department; or
 - (b) approval to proceed on the Customer's design of the Purchase Vehicle(s) has not been granted by Volvo's Engineering department.
10. If Engineering Approval has not been granted and communicated to the Customer by 5:00 pm on the Engineering Approval Date, either the Dealer or the Customer may terminate this Contract by notice to the other at any time before Engineering Approval is communicated, at which point the Dealer will return any Deposit paid to the Customer. Neither the Dealer nor the Customer will have any right to claim damages or compensation arising from termination pursuant to this clause 10.

PURCHASE PRICE

11. The Customer agrees to purchase, and the Dealer agrees to sell, the Purchase Vehicle(s) for the Total Contract Price on the terms of this Contract.
12. The Dealer may, prior to the payment of the Total Contract Price in full, or delivery of the Purchase Vehicle(s) (whichever is later), vary the Total Contract Price if the costs of constructing or supplying the Purchase Vehicle(s), or otherwise discharging the Dealer's obligations under this Contract, increase due to a Change in Law (including the introduction of new taxes, imposts or other government duties or changes in the rates of existing taxes, imposts or other government duties). Such variation will reflect the increase in the costs incurred by the Dealer and its Affiliates due to the Change in Law (as reasonably determined by the Dealer). The Dealer will notify the Customer of the reason for, and the amount of, the variation to the Total Contract Price within a reasonable time of becoming aware of it.
13. If a Trade-in Vehicle is included in the Order the Customer agrees to sell and, subject to the Customer taking delivery of the Purchase Vehicle(s) in accordance with this Contract, the Dealer agrees to purchase the Trade-In Vehicle by reducing the Total Contract Price by the amount of the Trade-In Allowance.

14. If the Trade-in Vehicle is not in substantially the same condition as it was in at the Contract Date, the Dealer may:
- (a) reduce the amount specified as the Trade-in Allowance to an amount determined by the Dealer in its sole discretion to be a fair valuation of the Trade-In Vehicle in its current condition before delivery of the Purchase Vehicle(s) to the Customer; or
 - (b) terminate this Contract.

Within three (2) Working Days of notification of the change of the Trade-In Allowance by the Dealer, the Customer may either:

- (c) accept any new amount determined by the Dealer as being the Trade-In Allowance; or
- (d) seek a variation to remove the sale of the Trade-In Vehicle from this Contract, resulting in the increase of the Total Contract Price by the amount of the Trade-in Allowance.

SPECIFICATIONS

15. The Specifications (including the performance of each Purchase Vehicle, and its dimensions and weight) are an approximation only. The Dealer's obligation is to supply to the Customer Purchase Vehicle(s) whose specifications are generally similar to the Specifications (as varied in accordance with clauses 17 to 20) such that each Purchase Vehicle supplied may be used in an equivalent manner, and will have equivalent functionality, to a vehicle built exactly to the relevant Specifications.
16. The Dealer may vary the Specifications by notice to the Customer if the Dealer considers this is required or desirable due to changes in production processes (including those of Suppliers and other subcontractors), parts availability, vehicle or component design, Laws applicable in the place of production or other factors impacting the production process (**Change Events**) provided that such change will not materially adversely affect the performance and functionality of the Purchase Vehicle (when the Purchase Vehicle is considered as a whole).
17. If the Dealer receives notice from Volvo (or any business or division of Volvo) that a variation to the Specifications is required due to a Change Event which may materially adversely affect the performance and functionality of the Purchase Vehicle (when the Purchase Vehicle is considered as a whole) it will notify the Customer of the details of those variations and any changes to the Total Contract Price and Delivery Date (**Order Change**). The Customer must notify the Dealer within 14 days confirming it accepts or rejects the Order Change.
18. If the Customer:
- (a) accepts the variation or fails to issue a notice it will be taken to have accepted the Order Change and the acceptance will take effect as an amendment to this Contract on and from that date; or
 - (b) rejects the Order Change then unless the Dealer notifies the Customer within 7 days that it has elected to proceed without the variation, the Dealer will have no further obligation to supply, and the Customer no further obligation to

acquire, the Purchase Vehicle and this Contract will be terminated with respect to that Purchase Vehicle. The Dealer shall not be liable for any losses, damages, costs or expenses whatsoever arising from such cancellation. The Dealer may retain from the Deposit for that Purchase Vehicle an amount for any reasonable and direct costs or expenses that are not otherwise recoverable. Any balance amount of the Deposit will be returned to the Customer.

This does not affect either party's obligation to supply and acquire (as applicable) any other Purchase Vehicle specified in the Order.

19. If the Customer wishes to vary any of the Specifications of a Purchase Vehicle it may request a variation by notifying the Dealer in writing. Within 30 days the Dealer will notify the Customer of its response and if the request is possible, any changes to the Total Contract Price, Delivery Date and any other terms of this Contract (**Change Offer**).
20. The Customer must accept or reject the Change Offer in writing within 14 days of its receipt. If the Change Offer is not accepted within this period it is deemed to have been rejected. If validly accepted then this Contract is taken to be amended in accordance with the terms of the Change Offer issued by the Dealer and accepted by the Customer.

PAYMENT

21. The Customer must pay the Deposit to the Dealer on signing or approving the Order. The parties acknowledge the Deposit will be held by the Dealer and will not be invested for the mutual benefit of the parties.
22. All payments under this Contract shall be made from an account in the name of the Customer (or its Financier, if applicable).
23. The Dealer may issue an invoice to the Customer for a Purchase Vehicle on or before delivery of that Purchase Vehicle or otherwise at the time, or upon satisfaction of the conditions, specified in the Order.
24. Unless the Customer notifies the Dealer that the Dealer is to forward the invoice to a third party (for example the Financier) the Dealer will send the invoice to the Customer. If the Dealer, at the request of the Customer, issues an invoice to a third party the Customer must procure the third party pays the invoice within the time required by clause 26.
25. An invoice issued by the Dealer must be paid:
- (a) if the invoice is given on or before the date of delivery of the Purchase Vehicle to which it relates, on or before the date of delivery; or
 - (b) by such later date specified in the invoice,
- in each case by electronic funds transfer to the account specified in the invoice or by such other payment method (if any) permitted by the terms of the invoice.
26. All payments made by or on behalf of the Customer under this Contract must be made without any set-off, deduction, withholding or retention of any amount unless required by Law. If the Customer is required to deduct an amount by Law it must notify the Dealer as soon as possible setting out the reason the amount is required to be deducted and must provide to the Dealer a copy of any receipt issued to

the Customer by the taxing authority to whom the deducted amount was paid.

27. If an amount owing by the Customer under this Contract is not paid when due, the Dealer may charge the Customer simple interest on that amount calculated at 12% per annum (or such lower amount specified by the Dealer) for the period from (and including) the due date for payment to (but excluding) the date the amount is paid. The charging of interest does not limit any other rights the Dealer has against the Customer for default in payment.

DELIVERY

Purchase Vehicle(s)

28. The Dealer will use reasonable endeavour to deliver a Purchase Vehicle to the Customer by the Delivery Date.
29. The Dealer may extend the Delivery Date for a Purchase Vehicle if the construction or supply of that Purchase Vehicle is delayed by an event that is outside of the Dealer's control. This includes a delay caused or contributed to by the Customer or other third-party Supplier, Event of Force Majeure, a Change in Law or COVID 19 Directions, Change Event or accepted Change Offer. The extension will reflect the Dealer's reasonable determination of the extent of the delay caused.
30. If, despite reasonable endeavours, the Dealer is unable for any reason to meet the extended Delivery Date, the Dealer will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will the Dealer have any liability to the Customer for direct, indirect or consequential loss (all three of which terms includes, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery or performance except as set out in clause 35.
31. The Dealer will notify the Customer at least 7 days in advance of the date and approximate time of delivery of a Purchase Vehicle to the Delivery Address. The Dealer may by subsequent notice vary this date or approximate time if it will be unable to deliver the Purchase Vehicle on the date nominated due to an Event of Force Majeure or COVID 19 Directions.
32. The Dealer will deliver the Purchase Vehicle to the Delivery Address. If the Customer requests delivery to a location other than the Delivery Address and the Dealer determines that the address is a suitable address to effect delivery, the Dealer will notify the Customer of any additional costs associated with the change and, if accepted by the Customer, the Delivery Address will be the address notified by the Customer and the Total Contract Price will be adjusted to include any additional charges notified by the Dealer.
33. The Customer must ensure it is able to accept delivery of the Purchase Vehicle from the Dealer on the date and time nominated by the Dealer and that it has all necessary facilities at the Delivery Address to enable safe delivery of that Purchase Vehicle.
34. If the Dealer fails to deliver a Purchase Vehicle to the Delivery Address within 90 days of the Delivery Date (as extended under clause 30) the Customer may issue a notice to the Dealer requiring that Purchase Vehicle to be delivered within a further 30 days. If the Dealer fails to do so then the Customer may terminate this Contract in so far

as it applies to that Purchase Vehicle. The Dealer may retain from the Deposit for that Purchase Vehicle an amount for any reasonable and direct costs or expenses that are not otherwise recoverable. Any balance amount of the Deposit will be returned to the Customer.

Trade-In Vehicle

35. If there is a Trade-in Vehicle forming part of this Contract, the Customer must deliver the Trade-in Vehicle to the Dealer at the address noted in the Order (or such other place as notified to the Customer in writing by the Dealer) on or before the date for delivery of the Purchase Vehicle(s) in accordance with this Contract.
36. If the Customer arranges for delivery of the Trade-in Vehicle to the Dealer's premises prior to the date for delivery of the Purchase Vehicle(s), the Customer acknowledges and agrees that risk of loss of or damage to the Trade-in Vehicle remains with the Customer until it is transferred in accordance with clause 47.

INSPECTION

37. The Customer must within 7 days of delivery of the Purchase Vehicle inspect it for the purposes of confirming the Customer is satisfied the Purchase Vehicle contains no Defects. Upon completion of the inspection if no Defects are identified, or if the only Defects identified are minor defects that do not materially adversely affect the use of the Purchase Vehicle for its intended use (**Minor Defects**), the Customer must issue a Certificate of Acceptance. The Customer must not use a Purchase Vehicle until a Certificate of Acceptance is, or is deemed to be, issued.
38. If Minor Defects are identified by the Customer then the Certificate of Acceptance may be accompanied by a list of such Minor Defects. The Dealer must remedy those Minor Defects within a reasonable time of provision of the list and the Customer must co-operate with the Dealer and permit the Dealer such access to the Purchase Vehicle as reasonably required to remedy those Minor Defects. Without limiting how a Minor Defect may be remedied, where a part or accessory is defective or missing, the Minor Defect may be remedied by the Dealer supplying and installing a part of equivalent functionality. Clauses 40 to 43 do not apply where a Certificate of Acceptance has been issued with Minor Defects identified.
39. If Defects are identified the Customer must issue a Defects List and:
- (a) make the Purchase Vehicle available for inspection by the Dealer at the Delivery Address at the time and date specified by the Dealer; and
 - (b) provide the Dealer with any other information the Dealer reasonably requires to identify the extent and nature of the Defects.

If the Customer fails to issue a Certificate of Acceptance or Defects List, or if it uses a Purchase Vehicle, within the 7-day period, it will be deemed to have issued a Certificate of Acceptance and determined the Purchase Vehicle has no Defects.

40. If the Customer correctly identifies Defects in a Purchase Vehicle then the Customer must, as required by the Dealer, make the Vehicle available for collection by the Dealer or permit the Dealer to undertake work on the Purchase Vehicle at the Delivery Address at the time and date specified by the Dealer. The Customer must provide the

Dealer with all necessary co-operation and access to collect the Purchase Vehicle or undertake work on it at the Delivery Address.

41. Once the Defects correctly identified by the Customer are rectified the processes set out in clauses 32 to this clause 42 (other than clause 35) will again apply to the extent relevant having regard to whether or not the Vehicle was collected (and will continue to be applied until a Certificate of Acceptance is issued or deemed to be issued). Where the Defects were rectified at the Delivery Address the 7-day period in clause 38 will run from when the Dealer notifies the Customer the Defects have been rectified.
42. The Dealer may extend the time periods in clauses 43 and 44 to reflect any delay caused to the Dealer by the failure of the Customer to comply with clause 41 or to provide any other information or assistance the Dealer reasonably requires.

RISK

Motor Vehicle

43. Risk in a Purchase Vehicle will pass to the Customer upon delivery of that Purchase Vehicle.
44. The Customer must effect and maintain insurance against all insurable risks that may result in loss of or damage to a Purchase Vehicle from the date risk passes to the Customer.
45. Once risk in a Purchase Vehicle passes to the Customer, the Dealer will not be liable to the Customer for any loss or damage to the Purchase Vehicle however caused and regardless of whether or not the Purchase Vehicle remains in the Dealer's possession or control. This clause 46 does not limit the operation of the New Vehicle Warranty.

Trade-in Vehicle

46. If applicable, risk of loss or damage to the Trade-in Vehicle will pass from the Customer upon the later of:
- (a) transfer of title in the Trade-in Vehicle to the Dealer; or
 - (b) delivery of the Trade-in Vehicle to the Dealer.

TITLE

Purchase Vehicle(s)

47. Title in a Purchase Vehicle will pass to the Customer upon all of the following being satisfied:
- (a) once the Dealer has received in cleared funds full payment of the Total Contract Price and all other payments required to be made under this Contract, for that Purchase Vehicle; and
 - (b) if applicable, the date on which the Dealer acquires clear and unencumbered title to the Trade-in Vehicle at the value of the Trade-in Allowance.
48. In respect of any period in which the Customer (or any Supplier engaged directly by the Customer with the Dealer's consent) has possession of a Purchase Vehicle before title has passed to the Customer, the Customer:
- (a) has that possession as the bailee of the Dealer;
 - (b) must not sell, transfer, encumber, lease, hire, part with possession of or otherwise deal with

the Purchase Vehicle, or any interest in it, until title has passed to the Customer;

- (c) is responsible for the proper care and maintenance of the Purchase Vehicle;
- (d) will be liable to the Dealer for use of the Purchase Vehicle at a fair market rental rate for motor vehicles of a like type (provided no amount will be due if the Dealer receives the full payment of the Total Contract Price from the Customer); and
- (e) authorises the Dealer and its agents to enter at any time any premises occupied or controlled by the Customer for the purposes of re-taking possession of the Purchase Vehicle or, if the Purchase Vehicle is stored or located at the premises of a third party, must procure for the Dealer the right to enter those premises for the purpose of re-taking possession of it.

49. If the Customer breaches clause 49(b) any proceeds received by the Customer are held on trust for the Dealer and are payable to the Dealer on demand. The Customer must keep such proceeds in a separate account until the Customer's liability to the Dealer under this Contract is discharged in full.

Trade-in Vehicle

50. Title in the Trade-in Vehicle (if any) will pass to the Dealer at the same time as transfer of title in the Purchase Vehicle(s).
51. On the date of transfer of title the Customer must provide all records and completed documents to the Dealer to enable immediate transfer of registration of the Trade-In Vehicle with the relevant authority.

SECURITY INTERESTS

52. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Contract, to the extent the Law permits, the Customer and the Dealer agree that:
- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - the Dealer need not comply with sections 95, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - sections 142 and 143 of the PPSA are excluded; and
 - (b) for the purposes of section 115(7) of the PPSA, the Dealer need not comply with sections 132 and 137(3) of the PPSA.
53. The Customer waives the right to receive any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded and the Customer consents to the Dealer effecting and maintaining a registration on the PPSA register (in any manner the Dealer considers appropriate) in relation to any Security Interest contemplated by this Contract and the Customer agrees to provide all assistance reasonably required to facilitate this.
54. To the extent permitted by section 275 of the PPSA, the parties agree to keep the terms of this Contract and all

information related to it (included information of the kind mentioned in section 275(1) of the PPSA) confidential and to not disclose that information to any person except where the disclosure is required by Law (other than section 275(1) of the PPSA).

WARRANTY

55. The New Vehicle Warranty will apply to a Purchase Vehicle from the last to occur of:

- (a) delivery of the Purchase Vehicle to the Customer; and
- (b) the issue, or the deemed issue, of the Certificate of Acceptance for a Purchase Vehicle,

or if a different date is specified in a warranty certificate issued by the Dealer at the time of delivery, the warranty will to the extent applicable, commence on the date specified.

56. The New Vehicle Warranty does not apply to the Body or Third-Party Equipment. The Dealer's only warranty responsibility to the Customer in respect of the Body or Third-Party Equipment is to comply with clause 58.

57. As from the time title in a Purchase Vehicle transfers to the Customer, the Dealer assigns to the Customer, to the extent lawfully possible, the benefit of any warranty received by the Dealer in relation to the Body or any Third-Party Equipment. The Customer must sign such documents as necessary to enable the Dealer to effect that assignment.

58. To the maximum extent permitted by Law any implied warranty, term or condition is excluded from this Contract. Any liability for a term which cannot be excluded is limited to the maximum extent permitted by Law. If any guarantees under Part 3.2 of the Australian Consumer Law apply to the goods or services supplied under this Contract, then liability for breach of any such guarantee (other than a guarantee arising under section 51, 52 or 53) is limited:

- (a) in the case of goods, to the Dealer doing one of the following as determined by the Dealer: replacing the goods or supplying equivalent goods; repairing the goods or paying the cost of replacing or acquiring equivalent goods or repairing the goods; and
- (b) in the case of services, to the Dealer doing one of the following as determined by the Dealer: supplying the services again or paying the cost of having the services supplied again.

TRADE-IN VEHICLE WARRANTIES

59. In relation to the Trade-in Vehicle, the Customer warrants:

- (a) that the Customer is either the owner of the Trade-in Vehicle or has the authority of the owner to transfer all right, title and interest in and to the Trade-in Vehicle to the Dealer;
- (b) the Trade-in Vehicle is either free from all encumbrances or the encumbrances in respect of the Trade-in Vehicle are limited to those encumbrances specified in the Order;
- (c) all of the particulars specified in the Order in relation to the Trade-in Vehicle are accurate;

- (d) the Trade-in Vehicle has never been used as a taxi, a rental or hire vehicle and has never been subject to hail damage or insurance write-off;
- (e) the Trade-in Vehicle has never been driven through flood waters or used in a flood;
- (f) the Trade-in Vehicle has never been modified so as to render the vehicle unregistrable or unroadworthy;
- (g) the Trade-in Vehicle is not subject to any defect notice;
- (h) there are no unpaid fines or other traffic infringement notices outstanding in respect of the Trade-in Vehicle;
- (i) the Trade-in Vehicle is registered and there are no circumstances that may cause the registration of the vehicle to be cancelled;
- (j) registration of the Trade-in Vehicle is not subject to any concessional rebate which may have been granted to the registrant of the Trade-in Vehicle;
- (k) the Customer is not (or if the Customer is not the owner of the Trade-In Vehicle, the owner is not) bankrupt, has not committed any act of bankruptcy, is not insolvent, has not had a receiver or a receiver and a manager or a controller or a liquidator appointed to its property; has not entered into a composition or arrangement for the benefit of its creditors and has not had an administrator appointed, such as to effect title in and to the Trade-in Vehicle.

60. To the extent that the benefit of any warranties made by the manufacturer or previous seller of the Trade-in Vehicle can be assigned to the Dealer, the Customer will use its reasonable endeavours to, if requested by the Dealer, assign them to the Dealer.

61. Until such assignment, the Customer will co-operate with the Dealer in any reasonable arrangements to provide the Dealer with the benefit of such warranties, including enforcement against the manufacturer or previous seller, at the cost of, and for the benefit of, the Dealer.

CUSTOMER USE OF THE PURCHASE VEHICLE

62. To the maximum extent permitted by Law but subject to the terms of the New Vehicle Warranty, the Customer assumes all risks and liabilities arising from the ownership, use and disposal of a Purchase Vehicle.

63. The Customer warrants to the Dealer that:

- (a) the Purchase Vehicle(s) is a commercial vehicle and is intended to be used predominantly for business or other commercial purposes; and
- (b) if this Contract includes the sale of a Trade-in Vehicle, that Trade-in Vehicle is a commercial vehicle and has been used predominantly for business or other commercial purposes.

64. The Customer, to the maximum extent permitted by Law, indemnifies the Dealer, its Affiliates and their respective officers, employees, agents and contractors (**those indemnified**) from and against all claims, demands, actions, costs (including legal costs on a solicitor client basis), charges, expenses, damages, loss or other liability

(including without limitation in tort, under any Law and in respect of compensation for death of or injury to any person) whether direct, indirect or consequential arising from or contributed to by:

- (a) a breach by the Customer of its obligations under this Contract;
- (b) the use of a Purchase Vehicle by or on behalf of the Customer;
- (c) any failure by the Customer to operate, store or maintain a Purchase Vehicle in accordance with the Manufacturer's Instructions or any Law (including any workplace health and safety legislation, licences, approvals or industry best practice standards or techniques, applicable to the Customer);
- (d) any modification or alteration to a Purchase Vehicle carried out by or on behalf of the Customer regardless of whether the Customer has obtained prior consent and approval from Volvo, including but not limited to the fitting of any equipment, accessories or replacement parts not expressly approved for use with such Purchase Vehicle, or not fully equivalent in specifications and quality to equipment or replacement parts so approved by Volvo;
- (e) any failure by the Customer to comply with applicable environmental Laws or regulations relating to the operation, storage, maintenance recycling or disposal of any or all components of a Purchase Vehicle;
- (f) any error or defect in, or omission from, information or documentation provided by the Customer to the Dealer for the purposes of, or in connection with, this Contract; or
- (g) any wilful, unlawful or negligent act or omission of the Customer, its officers, employees, agents or contractors in connection with this Contract,

and, for the purposes of this clause, none of the above paragraphs will be taken as limiting or qualifying the meaning or operation of any other paragraph.

65. The liability of the Customer to indemnify those indemnified shall be reduced to the extent that a negligent or wilful act or omission of those indemnified, or breach of this Contract by the Dealer, contributed to such expenses, losses, damages and costs.

MONITORING

66. Each Purchase Vehicle will contain software and other monitoring devices which will be used by the Dealer (or Volvo) to monitor the Purchase Vehicle (**Information Systems**).
67. The Customer must not interfere with the Information Systems and must not disassemble, reverse engineer, copy, access or seek to use any software forming part of the Information Systems.
68. If the Dealer becomes aware that the Information Systems are or may not be operational, it may require the Customer to make the Purchase Vehicle available to the Dealer to remedy the issue with the Information Systems. As elected by the Dealer, the Customer must either deliver the Purchase Vehicle to an Authorised Dealer or make the

Purchase Vehicle available to the Dealer at the Customer's premises within 7 days of request by the Dealer, or within such longer period determined by the Dealer and notified to the Customer.

DATA MANAGEMENT

69. By entering into this Contract the Customer:
- (a) confirms that it has read, and understands the Data Management Agreement;
 - (b) for valuable consideration, the receipt of which it acknowledges, agrees to the terms of, and to be bound by, the Data Management Agreement as if it were specifically named as a party; and
 - (c) acknowledges that the Data Management Agreement may be amended from time to time by Volvo Truck Corporation in accordance with its terms.
70. Volvo Truck Corporation has appointed the Dealer as its agent for the purposes of entering into the Data Management Agreement with the Customer. Volvo Truck Corporation may exercise its rights, and perform its obligations, under the Data Management Agreement in its own name or through the Dealer. Volvo Truck Corporation is not a party to, and has no liability under, this Contract.
71. Any data collected by the Dealer in the course of exercising its rights or discharging its obligations under this Contract (including from the Information Systems) will be used, stored and managed in accordance with the Data Management Agreement.

DEFAULT AND REMEDIES

72. Time is of the essence for the performance by the Customer of its obligations under, and the satisfaction of any conditions precedent that are for the benefit of the Customer that are contained in, this Contract.
73. If the Customer:
- (a) commits a material breach of this Contract and does not remedy that breach within 14 days of notice from the Dealer; or
 - (b) enters into insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect; or ceases to trade or appears in the reasonable opinion of the Dealer likely or is threatening to cease to trade; or
 - (c) fails to provide clear and unencumbered title in and to the Trade-In Vehicle to the Dealer (if applicable); or
 - (d) breaches clause 49(b),
- then the Dealer may affirm or terminate this Contract and, without limiting the other remedies available to the Dealer, take one or more of the following steps:
- (e) if a Purchase Vehicle is in the possession or control of the Customer and that portion of the Total Contract Price referable to the Purchase Vehicle has not been paid in full, demand the immediate return of the Purchase Vehicle (in which event the Customer must comply with this request);

- (f) at any time, exercise its rights under clause 49(e) in respect of any Purchase Vehicle for which the Total Contract Price has not been paid;
- (g) forfeit the Deposit paid by the Customer (if any);
- (h) retain, sell or otherwise dispose of such Purchase Vehicle;
- (i) if applicable, refuse to accept the Trade-In Vehicle; and
- (j) recover damages from the Customer.

74. The Customer may only terminate this Contract in the circumstances set out in clauses 42, 43 and 44.

75. If the Dealer terminates this Contract and resells a Purchase Vehicle, the damages recoverable by the Dealer include:

- (a) any amount by which the price received on a resale is less than the Total Contract Price referable to that Purchase Vehicle; and
- (b) the Dealer's expenses connected with any repossession, any failed attempt to resell, and the resale,

and to the extent the resale price exceeds the Total Contract Price (or the portion of the Total Contract Price referable to the Purchase Vehicle, if relevant) that excess may be retained by the Dealer (but to the extent required by Law will be set off against any other damages entitlement of the Dealer).

76. In respect of the period prior to the issue, or deemed issue, of the Certificate of Acceptance for a Purchase Vehicle, the Dealer's sole liability to the Customer in respect of any failure of the Purchase Vehicle to comply with this Contract is to remedy any Defects identified in the Purchase Vehicle.

77. Once the Certificate of Acceptance for a Purchase Vehicle has been issued, or is deemed to be issued, the Dealer's sole liability in respect of a Purchase Vehicle, including in respect of any Defects identified after issue or deemed issue of the Certificate of Acceptance, is to undertake any repair or replacement of parts of the Purchase Vehicle required under the New Vehicle Warranty.

78. Once a Vehicle has been delivered the Dealer's (and Volvo's) sole liability in respect of a Purchase Vehicle is to undertake any repair or replacement of parts of the Vehicle required under the New Vehicle Warranty. This exclusion of liability shall not apply to claims for personal injury or death arising out of the Dealer's negligence, or any matter for which it would be illegal for the Dealer to exclude (or attempt to exclude) its liability.

79. In no circumstances under or in connection with this Contract or a Purchase Vehicle or any steps taken in connection with its manufacture or supply (including any breach, act or omission of any nature in connection with this Contract) is the Dealer liable to the Customer for:

- (a) any loss of profits or revenue;
- (b) any loss of use;
- (c) claims by third parties;
- (d) consequential loss;

- (e) special loss; or
- (f) indirect loss.

No paragraph of this clause 80 limits the scope of any other paragraph in this clause 80.

80. The Customer acknowledges that clause 80 is reasonable and reflected in the Price which would be higher without those provisions, and the Customer will accept such risk and/or insure accordingly.

81. The limitations and exclusions in clauses 77 to 80 of this Contract apply to all claims of any nature (whether for breach of contract, in tort (including negligence), for breach of statute, in equity, in restitution or of any other kind whatsoever or howsoever arising).

NOTICES

82. Any notice or other communication of a party contemplated by this Contract (including any agreement, request, demand, direction, consent, waiver or approval) must be:

- (a) in writing in English, legible and signed by the party or its agent; and
- (b) be sent by one of the methods in clause 84 in each case using the relevant details set out in the Order or any new details later notified by the recipient; and
- (c) if a party sends a communication other than by email, it must use all reasonable endeavours to send a copy of the communication promptly by email.

83. A communication contemplated by this Contract is taken to be received:

Notice Delivery Method	When Notice is regarded as being given and received
Hand delivered	At the time of delivery
Express Post / Registered Post (with delivery confirmation)	5 Working Days after posting
Email	5 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered

84. Any notices received after 5:00pm local time on a Working Day shall be deemed to have been received on the following Working Day. The place of receipt of an email is the address of the recipient stated in the Order.

GST

85. If a party (**Supplier**) is required to pay GST in respect of a supply made under or in connection with (including by reason of a breach of) this Contract, the recipient of the supply must (in addition to any other payment for, or in connection with, the supply) pay to the Supplier an amount equal to such GST (**GST gross-up**).

86. If a GST gross-up is payable, then the Supplier must give the recipient a tax invoice for the supply.

87. Provided a tax invoice has been given, the GST gross-up must be paid by the recipient:
- (a) if any monetary consideration is payable for the supply, at the same time and in the same manner as such monetary consideration; or
 - (b) if no monetary consideration is payable for the supply, within 14 days after the day on which the tax invoice is given.
88. Terms used in the clauses in this Contract relating to GST (**GST clauses**) which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act.
89. For the purposes of the GST clauses, a reference to a payment includes any payment of money and any form of consideration other than payment of money.
90. In this Contract, all references to payments and obligations to make payments, including all references to compensation (including by way of reimbursement or indemnity), are, except as expressly provided otherwise, exclusive of GST.
91. The Customer warrants:
- (a) unless otherwise notified to the Dealer, the Customer is registered for GST purposes; and
 - (b) the Australian Business Number (ABN) specified in the Order is current and validly issued to the Customer pursuant to the provisions of the GST law.
- GENERAL**
92. No addition or amendment to the terms of this Contract will have any effect or be implied as terms of this Contract unless that addition or amendment is in writing and signed by both the Customer and a person duly authorised by the Dealer.
93. The Customer cannot assign or otherwise deal with its rights under this Contract without the consent of the Dealer. The Dealer may novate its rights and obligations under this Contract to any of its Affiliates or to any person to whom the Dealer transfers all or a material part of its truck supply business. The Customer must sign such documentation as the Dealer requires to give effect to such novation.
94. A party may exercise a right or a remedy, or give or withhold a consent, waiver or approval, in its absolute discretion (including by imposing conditions), unless this Contract expressly provides otherwise.
95. A party is only bound by a waiver that it gives or confirms in writing. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given. No other conduct of a party (including a failure to exercise, or delay in exercising a right) operates as a waiver of a right or otherwise prevents the exercise of a right.
96. Unless this Contract provides otherwise:
- (a) each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Contract;
 - (b) it is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Contract; and
 - (c) the making of a claim by a party under an indemnity contained in this Contract in respect of a particular event does not preclude that party from subsequently making further claims under that indemnity in respect of the same event.
97. If a provision of this Contract would, but for this clause 98, be void, unenforceable or illegal in a jurisdiction:
- (a) the provision is read down to the extent necessary to avoid that result; and
 - (b) if the provision cannot be read down, to that extent, it is severed in that jurisdiction, without affecting the validity and enforceability of that provision in any other jurisdiction or any other provisions of this Contract. This clause 98 has no effect if its operation alters the basic nature of this Contract or is contrary to public policy.
98. If it is necessary to determine the portion of the Total Contract Price referable to a particular Purchase Vehicle, that determination shall be made by the Dealer and will be final and binding on the parties, except in the case of fraud or manifest error.
99. The rights and remedies provided in this Contract are in addition to other rights and remedies given by Law independently of this Contract unless this Contract expressly provides otherwise.
100. This Contract will expire upon the expiry of each New Vehicle Warranty which applies under this Contract other than:
- (a) clauses 67 to 69 which will continue in operation until the Dealer ceases to monitor the Purchase Vehicle,
 - (b) clauses 103 to 106 which expire 5 years after the expiry of each New Vehicle Warranty; and
 - (c) clause 64, which does not expire.
101. Termination or expiry of this Contract for any reason does not affect the accrued rights of the parties under it.
102. Each party must keep confidential any information disclosed to it by the other party under this Contract or in the course of negotiations leading to its conclusion (**Confidential Information**).
103. Despite clause 103, a party may disclose Confidential Information:
- (a) on a confidential basis to its employees, officers, auditors, financiers, insurers, accountants and lawyers;
 - (b) as required to exercise its rights and discharge its obligations under this Contract; and
 - (c) as required by Law.
104. The Customer must also treat the terms of this Contract as Confidential Information.
105. A party must notify the other party as soon as reasonably practicable after it becomes aware that it may be required by Law to disclose Confidential Information of the other

party and provide such information requested by the other party in respect of that requirement.

- 106. No Contract shall constitute or effect any licence, transfer, sale or other disposal to the Customer or any third party of any intellectual property rights of Volvo or of any third party in any Product.
- 107. If the Customer was referred or introduced by the Dealer by any third party, or if a third party has acted as agent of the Customer or broker or intermediary in relation to this Contract, the Customer acknowledges that the Dealer may pay or give a fee, commission, rebate, gift or other benefit to the third party. If further details are required, the Customer should refer to the third party (if any) for further information. Any disclosures required, by law, are to be given by the Dealer to the Customer.
- 108. The Customer agrees not to act as an unauthorised reseller of new Purchase Vehicles. This means specifically that all new Purchase Vehicles are sold on condition that the Customer will neither resell the Purchase Vehicle for commercial gain while new nor enter into a leasing contract involving a transfer of ownership or a purchase option prior to the expiry of the contract and which would allow the lessee to purchase the Purchase Vehicle at any time including when the Purchase Vehicle is still new.
- 109. The Customer's making of this Contract does not and its performance of this Contract will not violate in any respect any Law.

GOVERNING LAW AND JURISDICTION

- 110. This Contract is governed by and is to be construed according to the Laws of the Jurisdiction.
- 111. The parties unconditionally accept and submit to the non-exclusive jurisdiction of the courts and appellate courts of the Jurisdiction, with respect to any legal action or proceedings which may be brought at any time relating in any way to this Contract.
- 112. Each of the parties waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that the action or proceeding has been brought in an inconvenient forum.

PRIVACY STATEMENT

- 113. The Dealer is an organisation bound by the Information Privacy Principles pursuant to the *Privacy Act 1988* (Cth).
- 114. Details of the kinds of information, including consumer credit information, the Dealer collects, how it is used and whom it is shared are also set out in our Privacy Policy. For the full Privacy Policy please see <http://www.volvotrucks.com.au/en-au/misc/privacy.html>.
- 115. Any query or access to your personal information should be referred to our Privacy Officer at Volvo Group Australia Pty Ltd, 41 Bivouac Place, Wacol QLD 4076, telephone: +61 7 3718 3500, email: hpsc.au@Volvo.com.
- 116. You authorise and consent to the Dealer (and its Affiliates) collecting, using, storing and disclosing your personal information within and outside Australia in accordance with this Contract and the Privacy Policy.

DEFINITIONS

- 117. In this Contract the following words have the meanings shown opposite them:
 - Accessory** in relation to a Purchase Vehicle, any options, parts, accessories and their installation that are either factory fitted to a Purchase Vehicle by the Dealer or an Authorised Dealer prior to Delivery but excludes all options, parts and/or accessories of or in relation to the Body or Third-Party Equipment, even if the Third-Party Equipment is fitted to the Purchase Vehicle by the Dealer or an Authorised Dealer.
 - Affiliate** any Related Body Corporate of the Dealer (as Related Body Corporate is defined in the *Corporations Act 2001* (Cth)) or any entity which controls or is controlled by the Dealer (as control is defined in section 50AA of the *Corporations Act 2001* (Cth)).
 - Authorised Dealer** a dealer that has been authorised by Volvo to retail and/or repair products relevant to Volvo, Mack or UD trucks a current list of which is available at <https://www.volvotrucks.com.au/en-au/tools/dealer-locator.html>.
 - Body** a body that will be manufactured, supplied and fitted to a Chassis by a Supplier specified in the Order.
 - Certificate of Acceptance** a certificate so titled in the form provided by the Dealer and completed by the Customer.
 - Chassis** a truck chassis manufactured, imported or distributed by the Dealer, but does not include any Body or Third-Party Equipment.
 - Change in Law** the enactment, amendment, repeal, revocation or change in the application or interpretation of any Law (including Government Agency policy relating to the practical application of the Law).
 - Contract** is defined in clause 1.
 - Contract Date** the date this Contract formed.
 - COVID 19 Direction** any binding requirement issued by a Government Agency of any country from time to time which impacts the production or supply of the Purchase Vehicle (including the time required for such production or supply).
 - Customer** the person purchasing the Purchase Vehicle from the Dealer, described as the 'Customer' in the Order.
 - Data Management Agreement** the Volvo Trucks Data Management Agreement between Volvo Truck Corporation and the Customer, the current terms of which are available at <https://www.volvotrucks.com.au/en->

	au/tools/privacy/data-management.html .		to obtain any necessary consent or approval of a Government Agency;
Dealer	means Volvo Group Australia Pty Ltd trading as VCV Australia, or for National Fleet sales, Volvo Group Australia Pty Ltd.		<ul style="list-style-type: none"> delays by any third party to supply goods or services; and shortages of parts, equipment, utilities or services.
Defect	any failure of a Purchase Vehicle to: <ul style="list-style-type: none"> comply with the requirements of the Laws of the Jurisdiction; comply with the Specifications but only if that failure materially adversely affects the performance and functionality of the Purchase Vehicle (when the Purchase Vehicle is considered as a whole); or include any Accessories or Third-Party Equipment specified in the Order. 	Finance Amount	the amount stated in the Order as the 'Finance Amount' (or such other amount as agreed by the parties in writing).
		Finance Date	the date stated in the Order as the 'Finance Date' (or such later date as agreed by the parties in writing).
		Financier	the person stated on the Order or otherwise notified in writing as the Customer's financier, being a third-party providing credit or advancing money to the Customer.
Defects List	a document so titled in the form provided by the Dealer and completed by the Customer.	Government Agency	<ul style="list-style-type: none"> a government (whether federal, state or local); a governmental, semi-governmental or judicial entity or authority including any department of government; and a statutory, public, municipal, local or other authority charged with the responsibility for administering any legislation, regulation, ordinance or by-law.
Delivery Address	for a Purchase Vehicle, the address specified in the Order or such other delivery address the Dealer and the Customer agree in writing.		
Delivery Date	for a Purchase Vehicle, the date set out in the Order as varied from time to time in accordance with this Contract.		
Deposit	means an amount for a deposit payable by the Customer as stated in the Order.	Jurisdiction	the jurisdiction specified in the Order and if no jurisdiction has been specified, the Australian State or Territory in which the Delivery Address is located.
Engineering Approval	means if noted in the Order, the condition to be satisfied as described in clause 8.	Law	means: <ul style="list-style-type: none"> all statutes; all legally binding regulations, codes, ordinances, local laws, by-laws, legislative instruments, orders, judgements, licences, rules and permits; and legally binding requirements of Government Agencies.
Engineering Approval Date	the date which is 15 Working Days from the Contract Date or such later date as agreed in writing by the Parties.	Manufacturer's Instructions	any driver's handbook, service manuals, technical manuals and operating manuals relating to the Purchase Vehicle made available by the Dealer to the Customer from time to time (including by the Dealer providing links to webpages at which these documents may be downloaded) and including as they are updated or supplemented from time to time by service bulletins and other written instructions.
Event of Force Majeure	any event or circumstances not within the reasonable control of the Dealer and which by the exercise of reasonable care the Dealer is not able to prevent or overcome including without limitation the following events to the extent they are not within the reasonable control of the Dealer: <ul style="list-style-type: none"> an act of God, landslide, earthquake, flood, wash-out, lightning, storm and the elements; strikes, lock-out, ban or other industrial disturbance; war, blockade, insurrection, terrorism, riot or civil disturbance; fire or explosion; epidemic or quarantine; the order of any court or the order, act or omission or failure to act of any Government Agency or failure 	New Vehicle Warranty	Volvo's standard New Vehicle Warranty Terms and Conditions at the Contract Date, a copy of which is set out in Part C or otherwise separately provided to the Customer.

V O L V O

Order	the order details and confirmation in Part A or such other document (or documents) designated as the "Order" by the Dealer.	(d)	a reference to legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
Part	a part of this Contract described as such.		
PPSA	<i>Personal Property Securities Act 2009</i> (Cth).	(e)	a reference to any party includes that party's executors, administrators, successors, substitutes and permitted assigns, including any person taking by way of novation;
Purchase Vehicle	a vehicle described in the Order comprising a Chassis and, if applicable: <ul style="list-style-type: none"> • Body; • Accessories; and • Third Party Equipment. 	(f)	the meaning of general words is not limited by specific examples introduced by "including" or "for example" or similar expressions; and
Security Interest	has the meaning given in the PPSA.	(g)	where an act would be required to be done (including the payment of any money), or a time limit or period would expire, on a day that is not a Working Day, the act must be done or the limit or period will expire, on the following Working Day.
Specifications	for a Purchase Vehicle, the specifications set out in the Order as varied from time to time in accordance with this Contract.	120.	References to Laws in clauses 12 and in the definition of Change in Law are references to the Laws of any country in which any part of the Purchase Vehicle is designed, manufactured, commissioned, transported or delivered. References to Laws in any other clauses in this Contract are to Australian laws.
Supplier	any or all of the suppliers (as the case may be) of the suppliers nominated by the Customer, specified in the Order or otherwise agreed in writing between the Dealer and the Customer to supply and fit the Body or Third-Party Equipment.	121.	Where a word or expression is defined or given meaning in this Contract, another grammatical form has a corresponding meaning.
Third Party Equipment	any equipment, accessories, parts or materials that are incorporated into a Purchase Vehicle, either before or after Delivery, by or at the request of the Customer, but excluding: <ul style="list-style-type: none"> • Accessories; • the Chassis; and • ESS. 	122.	A provision of this Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Contract or the inclusion of the provision in this Contract.
Total Contract Price	the amount specified as the total contract price in the Order as may be varied from time to time in accordance with this Contract.		
Volvo	means AB Volvo or any of its related bodies corporate.		
Volvo Truck Corporation	Volvo Truck Corporation, Registration Number 556013-9700, Sweden.		
Working Day	a day other than a Saturday, Sunday or public holiday in the Jurisdiction.		

INTERPRETATION

118. Terms in this Contract not defined in clause 118 are defined in the Order or the clause in which they are first used.
119. In this Contract unless the context otherwise indicates:
- (a) the singular includes the plural and vice versa;
 - (b) a person includes an individual, body corporate, firm, partnership, joint venture, unincorporated body and government agency;
 - (c) if a party to this Contract comprises more than one person, this Contract binds all of them jointly and each of them severally;