

TERMS AND CONDITIONS OF SALE:

1. In these terms and conditions ("Terms and Conditions"), "**Contract**" means the contract for the supply of Products resulting from the acceptance by the Seller of an order in accordance with clause 2; "**Order**" means an order placed by an intending Customer with the Seller for the supply of Products; "**Customer**" means any person who enters into a Contract with the Seller for the sale and purchase of Products and includes the Customer's permitted assigns, successors, employees, servants and agents; "**Loss**" means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental; "**Seller**" means AmazingOZ, a Proprietary Limited company (ACN 114 468 138) incorporated in Australia, trustee of the Fenmore Trust (ABN 97 513 612 923) currently operating under the trading name of F'NB 4WD Supplies; "**Products**" means all products supplied or to be supplied by the Seller from time to time and includes (but is not restricted to) services such as delivery and fitting charges, "**Price**" means, unless the contrary intention appears, the Price for which a Product (or Products) is sold pursuant to the Terms and Conditions and is the amount payable by the Customer, inclusive of any GST (Goods and Services Tax) payable by the Seller in respect of the sale.
2. These Terms and Conditions of Sale supersede all previous terms and conditions imposed by the Seller. Each Order will constitute an offer by the Customer to acquire Products from the Seller upon and subject to the Terms and Conditions to the exclusion of all other terms and conditions. A Contract will be made between the Seller and the Customer for the sale and purchase of Products only on acceptance of an Order by the Seller, which may be by delivery of all or part of the Products ordered.
3. Unless otherwise agreed, the Seller will arrange for delivery of the Products. Risk of Loss to Products will pass to the Customer on the earlier of collection of Products by the Customer; delivery of Products to the Customer; and delivery of Products by the Seller to a carrier for the purpose of delivering Products to the Customer. The Seller will not be liable for any delay in delivery of Products.
4. The Customer will have no claim for shortages or defects in respect of any Products apparent on inspection unless a written complaint is delivered to the Seller within 14 days of receipt of the Products specifying the shortage or defect noted. The Seller will only, at its option, accept the return of, or give a credit for Products where; the Customer has complied with this clause 4; the Seller is satisfied as to the claim by the Customer; in the case of Products that have at the request of the Customer been specifically sourced, the supplier of such Products will accept return of the Products for credit; and, if the Seller elects to have the Products returned, the Products are returned to the Seller in the same condition as when first delivered to the Customer with the relevant invoice number and date of order. All Products returned will be subject to a minimum handling charge of 20% of the invoiced price except in the case of defective Products or Products incorrectly supplied. In the case of special buy-ins against customer order, credit will only be issued if the original manufacturer/supplier also accepts the return, less any transaction, delivery, and transaction costs applicable. Requests for Proof of Delivery may only be made within 30 days of delivery date.
5. Prices for Products are set in accordance with the Seller's price list which is subject to change from time to time. The price payable is the price quoted as at the date of creation of an invoice in respect to the Products. Where the Customer has been granted credit facilities by the Seller, the price of the Products is due and payable in accordance with the terms and conditions of the credit facilities. If credit facilities have not been granted to the Customer, or have been withdrawn from the Customer, the price of the Products must be paid on delivery. The Seller may from time to time charge reasonable storage fees. Where the Seller has provided the Customer with a quote in relation to the supply of Products, the Seller's standard terms and conditions of quotation as in force from time to time ("the Quotation terms") will apply in conjunction with these Terms and Conditions and to the extent of any inconsistency the terms of the Quotation Terms will prevail.
6. (a) Property in and ownership of the Products remains with the Seller and will not pass to the Customer until all Products have been paid for in full and all other debts owing to the Seller have been paid in full. The Customer acknowledges that until such time as the property in and ownership of Products passes to the Customer in accordance with this clause 6(a), the Customer is in possession of products for and on behalf of the seller as a fiduciary bailee and agent. Upon taking delivery of Products the Customer must keep the Products identifiably separate from other goods stocked, held, or sold on the Customer's premises to enable the Products to be identified and must not remove from the Products any documentation affixed to or referring to the Products. The Seller, by giving 2 days notice to the Customer, is entitled to enter the Customer's premises and inspect the Products.
(b) Until payment in full of the price of the Products and all other amounts owing by the Customer to the Seller, in the event of sale of Products by the Customer; (1) the Customer must; (a) deposit all proceeds of sale of goods received by the Customer in a separate and identifiable account bank account, (b) not mix such proceeds with any other moneys including funds of the Customer, and (c) account to the Seller for such proceeds, and (2) the Seller will be entitled to trace all proceeds of sale of Products received by the Customer through the relevant account or any other account maintained by the Customer.
(c) The Customer grants to the Seller an irrevocable licence to enter the Customer's premises, exercisable upon any event of termination specified in clause 8(a) occurring, which licence to enter permits the Seller at its sole option, to enter the Customer's premises and repossess and remove all Products on the premises. The Customer consents to such actions and agrees that the Seller will not be liable for any loss or damage suffered by the Customer as a result of the Seller taking such action. This clause 6 is not intended to create a charge over Products or any book debts. Notwithstanding that the Seller may grant the Customer credit, the Customer must in the event Products are sold and the proceeds of the sale received, comply with clause 6(b).
(d) The Customer may use Products with other products but only on the condition that if Products are admixed, united, or incorporated with other products, the resulting product which incorporates Products is the property of the Seller until Products have been paid for in full and all other debts owing to the Seller by the Customer have been paid in full.
7. (a) Except only for such rights and remedies which the Customer has in respect of the supply of Products under the Trade Practices Act and other applicable laws and which cannot be lawfully excluded, restricted or modified, the Customer agrees that: (1) all conditions and warranties whether statutory or otherwise are excluded in relation to the Products and any services provided by the Seller, and (2) the Seller will not be liable for any Loss (other than in accordance with clause 4) which the Customer suffers, incurs or is liable for in connection with the supply of the Products under these Terms and Conditions, the promotion or sale of the products by the Customer, or the provision of services by the Seller. Where the Seller is permitted under the Trade Practices Act or other applicable laws to limit its liability for the breach of a condition or warranty that is implied by the Trade Practices Act or any other applicable laws the Seller's liability is limited to (1) in the case of Products, any one of the following as determined by the Seller (i) the replacement of the Products or the supply of equivalent Products, (ii) the repair of the Products, (iii) the payment of the cost of replacing the Products or of acquiring equivalent Products, or (iv) the payment of the cost of having the Products repaired; (2) in the case of services any one of the following as determined by the Seller (i) the supply of the services again, or (ii) the payment of the cost of having the services supplied again.
(b) The Customer acknowledges that it has not relied upon any representation made by the Seller which has not been stated expressly in these Terms and Conditions. Any representation, advice, recommendation, information or assistance provided by the Seller in relation to Products supplied or their use or application must not be relied upon by the Customer and the Customer acknowledges that it is the responsibility of the Customer to satisfy itself as to the appropriate use or application of Products and that the Products are suitable for any particular purpose. The Customer indemnifies the Seller against all Loss incurred by the Seller in connection with any act or omission of the Customer including but not limited to, negligence of the Customer or any unauthorised representation made or warranty given by the Customer in connection with Products.
8. (a) It is an event of termination if: (1) the Customer breaches or fails to observe any of the terms of these Terms and Conditions, (2) the Customer trades outside the terms and conditions of the Customer's credit facilities (if any), (3) the Customer becomes insolvent, the Customer enters into bankruptcy or the Seller notifies in writing the Customer of its view that the Customer is in financial difficulties, (4) an administrator or receiver is appointed over all or any of the business undertaking of the Customer or the Customer is served with a statutory demand pursuant to the Corporations Law, or any guarantor of the Customer's indebtedness to the Seller revokes its guarantee.
(b) If an event of termination as specified in clause 8(a) occurs the Seller will have an immediate right to possession of Products held by the Customer and all amounts owing by the Customer in respect of the Products together with all other debts owing by the Customer to the Seller will become due and payable and must be paid by the Customer on demand by the Seller. Further the Seller will be entitled (without prejudice to any other right or remedy provide under these Terms and Conditions or otherwise) to do any one or more of the following, (1) suspend indefinitely all further deliveries of Products in respect of the Order or any other Orders being processed for delivery and cancel any Order or refuse to accept any further Orders, (2) cancel any credit facility provided to the Customer, (3) require the return of all Products the property in, and ownership of, has not passed in accordance with clause 6, and terminate the Contract by written notice to the Customer. The Seller will not be liable for any Loss (including Loss arising from negligence) suffered by the Customer as a result of the Seller taking any action under this clause.
(c) Where the Customer trades outside the Terms and Conditions of the Customer's credit facilities or the supply of Product to the Customer will result in the Customer trading outside the Terms and Conditions of the Customer's credit facilities and, in particular, the credit limit in force from time to time, the Seller may, among other things, refuse to supply Products to the Customer irrespective of whether an Order has been accepted or not and will not be liable for any Loss resulting from directly or indirectly from such action.
9. The Seller will not be liable for any Loss incurred as a result of delay or failure to observe any of these Terms and Conditions due to an event of force majeure, being any cause or circumstance beyond the Seller's control, or due to any failure or delay in performance caused by lack of production capacity, manufacturing machinery breakdown, failure of supply by suppliers of the Seller, shortage of raw materials or components, any strikes, floods, lock-outs, labour disputes, fire, acts of God or public enemy, acts or results of terrorism, malicious or accidental damage, delays in transport, or restrictions or prohibitions by any government or any semi-government authorities or embargoes. During the continuance of an event of force majeure or an event described in this clause, the Seller's obligations under these Terms and Conditions will be suspended and will resume as soon as the cause or circumstance has ceased to have effect.
10. All notices to be given by a party under these Terms and Conditions must be in writing and may be given to the other party by hand delivery, prepaid post, or facsimile addressed to the other party at its last known address or facsimile number or as specified by the other party. Any notice given under these Terms and Conditions will be deemed to have been received by the person to whom it was sent in the case of hand delivery, upon delivery; in the case of prepaid post, three days after despatch; and in the case of facsimile, upon completion of the transmission. These Terms and Conditions are governed by and must be construed in accordance with the laws of South Australia.