

TORQUE POWER DIESEL (AUSTRALIA) PTY LTD

ACN 010 078 083

Including trading as Torquepower

Terms and Conditions of Use of Website

TPP1007-A Website Terms of Use

1. Acceptance of Terms

- 1.1 The services that Torque Power Diesel (Australia) Pty Ltd ACN 010 078 083 including trading as Torquepower, provides to you via the Torquepower websites www.torquepower.com.au and www.shopping.torquepower.com (the Website) are subject to these Terms and Conditions. By using the Website, you consent and agree to these Terms and Conditions.
- 1.2 If you do not agree to these Terms and Conditions, please do not use the Website and immediately destroy any information or services you have obtained from the Website.
- 1.3 Torquepower reserves the right to update these Terms and Conditions at any time without notice to you so please check these Terms and Conditions periodically for changes. Your continued use of the Website will mean that you accept those changes.

2. Application of Terms

- 2.1 These Terms and Conditions apply to the use of the Website including without limitation all resources and information obtained from the Website. Torquepower's Standard Terms and Conditions apply to all products and services provided by Torquepower separate from these Terms and Conditions. In the event that Torquepower's Standard Terms and Conditions and these Terms and Conditions apply and there is any inconsistency then Torquepower's Standard Terms and Conditions will prevail.

3. Termination

- 3.1 These Terms and Conditions, as amended by Torquepower without notice to you, are effective until terminated by Torquepower at its discretion. When these Terms and Conditions are terminated, you will no longer be permitted to have access to the Customer Login Portal or to continue to use the Website, however, all restrictions imposed on you including all Torquepower disclaimers and limitations of liability, will continue.

4. Privacy

- 4.1 See the Privacy Policy section in relation to your personal information.

5. No Unlawful or Prohibited Use

- 5.1 As a condition of your use of the Website, you will not use the Website for any purpose that is unlawful or prohibited by these terms. You will not attempt to gain unauthorised access to the Website, computer systems or networks connected to the Torquepower server or to the Website through hacking or any other means. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available to the public through the Website.

6. Links to Third Party Sites

- 6.1 Any links on the Website to third party websites will allow you to leave the Website. The linked websites are operated, controlled and produced by third parties and are not under the control of Torquepower. Torquepower is not responsible for the contents of any linked website or any link contained in a linked website or any changes or updates made to such websites. Links provided to a third party website are for user convenience only and Torquepower does not control, endorse, sponsor or approve any third-party websites or their conduct nor does Torquepower provide any warranty or take any responsibility for any aspect of those websites or their content.

7. Limitation of Liability and Indemnity

- 7.1 While Torquepower endeavours to take reasonable care in preparing and maintaining information, descriptions and classifications on the Website, Torquepower does not warrant the accuracy, reliability, adequacy or completeness of any content on the Website. You acknowledge and accept that the Website may contain inaccurate information and typographical errors. It is your responsibility to enquire with Torquepower directly as to the accuracy and currency of the information or material contained on the Website that you seek to rely upon.
- 7.2 To the maximum extent permitted by law, Torquepower and/or its related bodies corporates as defined in the Corporations Act 2001 (Cth) and/or its suppliers, exclude all liability for any loss or damage of any kind (including special, indirect or consequential losses) arising out of or in connection with the Website and with the use and/or performance of the Website. Such exclusion of liability includes any liability for loss directly or indirectly arising from your use of or reliance on the Website content.
- 7.3 Where the law implies a warranty or guarantee into these terms and conditions which may not be lawfully excluded, then provided it is fair and reasonable to do so, then subject to clause 10 of these Terms and Conditions, Torquepower's total liability to you for all damages, losses and causes of action for breach of such warranty shall be limited at its sole discretion and option, to any one of the following:
- 7.3.1 in the case of goods subject of a major failure: replacement of the goods or the supply of the equivalent goods;
- 7.3.2 otherwise the payment of the cost of repair of the goods;
- 7.3.3 in the case of services: resupplying the services or the cost of having the services supplied again.
- 7.4 Where the law implies a warranty or guarantee into these Terms and Conditions which may not be lawfully excluded, then you acknowledge and agree to be bound to the following policy and any additional Torquepower policy in respect of any claim, demand or request you provide to Torquepower to refund, replace or repair goods which you consider are in breach of such warranty or guarantee:
- 7.4.1 where any good or product purchased from Torquepower is subject to any warranty or guarantee implied by law, then such warranty or guarantee shall cover goods purchased from Torquepower for a reasonable period of time being 12 months after the date of purchase;

- 7.4.2 the Customer will notify Torquepower immediately in writing upon becoming aware of any fault or defect in a product or good purchased from Torquepower within a period not exceeding 12 months from the date of purchase;
- 7.4.3 upon receiving written notification from the Customer, Torquepower at its sole discretion, shall have the exclusive right through itself or its agent to direct the Customer to deliver the goods or to make them available for inspection so as to identify the cause of any fault or defect;
- 7.4.4 if a fault or defect in the goods purchased from Torquepower is determined by Torquepower in its sole discretion to be a major problem affecting a good or product supplied by Torquepower, then the Customer shall be entitled to either a refund or replacement of the goods or the supply of the equivalent goods.
- 7.4.5 if a fault or defect in the goods purchased from Torquepower is determined by Torquepower in its sole discretion to be capable of being repaired, then Torquepower shall within a reasonable period of time, repair the goods at its cost.
- 7.4.6 you are not entitled to a refund or replacement of any goods purchased from Torquepower if any exceptions to consumer guarantees within the Australian Consumer Law apply, or if you change your mind after purchasing such goods, or if Torquepower identifies that the product has been damaged due to misuse of the product; or the installation of the product in a faulty, damaged or defective product not purchased from Torquepower. You acknowledge that you will abide by all manufacturer's directions when installing a product or good purchased from Torquepower.
- 7.4.7 For the purposes of clarity, this policy applies only to goods and services the subject of a warranty or guarantee implied by law including the Australian Consumer Law.
- 7.5 If Torquepower suffers any loss or damage or incurs any liability or costs whatsoever in connection with the use by you of the Website or any other legal obligation then you unconditionally agree to indemnify Torquepower and its Officers for those losses, damages and any liability and costs including costs of legal representation (on an indemnity basis or alternatively a solicitor and client basis) for advising or acting on Torquepower's behalf in relation to any aspect of a claim or potential claim.
- 8. Disclaimer**
- 8.1 Torquepower does not warrant that the functions contained in the Website or the Website itself will be uninterrupted or error-free, that defects will be corrected, or that the Website of the Website's server are free of viruses or other harmful components. Torquepower does not warrant or make any representations regarding the use of the results of the use of the materials on the Website in terms of their correctness, accuracy, reliability, timeliness, completeness or otherwise.
- 8.2 Details of any express warranties that apply in respect of goods supplied by Torquepower are contained in Torquepower's Standard Terms and Conditions available on the Website or on request.

9. Trade Marks and Copyright

- 9.1 The material displayed on this website, including without limitation all trademarks, information, names, photographs, logos and other product and service names are the property of Torquepower and/or respective third-party owners and are protected by copyright, trade mark and other intellectual property laws. You agree not to reproduce, distribute, disseminate, sell, publish or circulate any such material to any third-party without the express prior written consent of Torquepower. Nothing contained on the Website should be construed as granting any licence or right of use of any trade mark displayed on the Website without the express written permission of the trade mark owner.
- 9.2 Copyright in the Website is the property of Torquepower unless otherwise specified. All rights are reserved.

10. Jurisdiction and Severability

- 10.1 These Terms and Conditions will be governed and construed by the laws of the State of Queensland, Australia and you and Torquepower hereby submit to the non-exclusive jurisdiction of the Queensland courts notwithstanding the domicile or residence of you or Torquepower or the occurrence of any act, matter or thing outside of Queensland.
- 10.2 If any provision of these Terms and Conditions are unlawful, void or for any reason unenforceable, then that provision will be deemed severable from these Terms and Conditions and will not affect the validity and enforceability of the remaining provisions of these Terms and Conditions.