

CAPEziparts- Online Parts Trading System – Terms and Conditions

These Terms and Conditions apply to the use of CAPEziparts and each and every person using or accessing CAPEziparts agrees to be bound by and abide the same.

1. Description of CEP

- 1.1. CEP is an online system that allows Members to make a Request directly, in an electronic format, to multiple E-Suppliers simultaneously;
- 1.2. Using the information provided by the CEP, E-Suppliers can contact Members to Quote [on the Parts] and Members can purchase on their Capricorn Account; and
- 1.3. The CEP Facility is an online form that is completed within the Member login area of the Capricorn Website.

2. General

- 2.1. These Terms and Conditions set out the basis on which CSL provides the CEP for use;
- 2.2. By a Supplier registering as an E-Supplier that Supplier accepts these Terms and Conditions and agrees to be bound by them;
- 2.3. By a Member using the CEP Facility in the Capricorn Website, that Member accepts these Terms and Conditions and agrees to be bound by them;
- 2.4. CSL may immediately amend or alter these Terms and Conditions from time to time by uploading revised Terms and Conditions on the Capricorn Website;
- 2.5. CSL will broadcast the fact that there has been a change to these Terms and Conditions to E-Suppliers, without being required or obliged to notify E-Suppliers of the precise nature of such change. This clause does not alter or affect in any way the operation of clause 2.6.
- 2.6. By continuing to use CEP after the revised Terms and Conditions are uploaded on the Capricorn Website, Members and E-Suppliers accept and agree to be bound by the revised Terms and Conditions as Members and E-Suppliers agree for notice of any change in the Terms and Conditions of the CEP to be immediate and by upload of the revised Terms and Conditions on the Capricorn Website;
- 2.7. An E-Supplier, may withdraw from CEP at any time, without limiting any other lawful method, upon giving 21 days written notice of its intention to withdraw delivered by post to Capricorn at Locked Bag 436, Victoria Park WA 6979 (Attention: Manager Automotive Operations).

3. Definitions

Unless otherwise required by the context, in these Terms and Conditions:-

- 3.1. **Capricorn Account** means the Authorised Purchaser Account established by CSL under the terms and conditions of an Authorised Purchaser Agreement for the use of a Member;
- 3.2. **Capricorn Website** means the primary corporate website maintained by CSL from time to time, whose current web address is www.capricorn.coop;
- 3.3. **CEP Facility** means the online form available from the Capricorn Website which allows Members to make a Request;
- 3.4. **CEP** means the electronic platform comprised of a system of hardware and a system of software that allows CSL to provide an online system for tender of Parts by E-Suppliers including but not limited to the CEP Facility contained within the Capricorn Website;
- 3.5. **CSL** mean Capricorn Society Limited (ACN 008 347 313);
- 3.6. **E-Supplier** means any Supplier who has agreed to be an E-Supplier under these Terms and Conditions and is registered by CSL as an E-Supplier;
- 3.7. **Member** means any person who is a New Zealand shareholder of CSL, operates a New Zealand trading account with CSL, agrees to these Terms and Conditions and is registered by CSL as a Member;
- 3.8. **Parts** means any new or used part or item that is a part which a Member makes a Request for using the CEP;
- 3.9. **Quote** means a quotation provided by an E-Supplier in response to a Request;
- 3.10. **Request** means a request made by a Member, using the CEP Facility on the CSL Website, for a quotation in relation to a Part or multiple Parts;
- 3.11. **Supplier** means any Capricorn Preferred Supplier approved by CSL in New Zealand who has an active supplier account with CSL; and
- 3.12. **Terms and Conditions** means these terms and conditions of use for CEP as amended by CSL from time to time.

4. Interpretation

- 4.1. A reference to these Terms and Conditions in any way is a reference to these Terms and Conditions as from time to time they are amended, extended, changed, varied or supplemented;
- 4.2. In these Terms and Conditions, unless the contrary intention appears, the singular includes the plural and vice versa;

- 4.3. An obligation, representation or warranty on the part of 2 or more persons binds them jointly and severally;
- 4.4. Any reference to a person includes that person's servants, employees, executors, administrators, personal representatives, insurers, successors and assigns (and where applicable that party's legal representative).

5. Registration – E-Suppliers

- 5.1. CSL, in its absolute and unfettered discretion, may register or refuse to register Suppliers as E-Suppliers;
- 5.2. Each and every E-Supplier agrees by applying to become an E-Supplier to receiving any and all Requests by email or otherwise until such time as they terminate their E-Supplier status under clause 2.7 above;
- 5.3. Each and every E-Supplier agrees:-
 - 5.3.1. that they will continue to keep their E-Supplier information in the CEP true, complete, accurate and up-to date;
 - 5.3.2. that there has been no pre-contractual advice, representation or warranty made or given by CSL or any of its employees, agents, servants, delegates or associates in relation to the CEP;
 - 5.3.3. not to discuss any Request with any other E-Supplier;
 - 5.3.4. subject to the operation of clause 5.3.3, not to discuss any Request with any person other than for the dominant purpose of providing a Quote;
- 5.4. E-Suppliers may update their details at any time by emailing CAPeziparts@capricorn.coop;
- 5.5. Nothing in these Terms and Conditions prevents CSL, in its absolute and unfettered discretion, from allowing new E-Suppliers to use CEP.

6. Registration – Members

- 6.1. CSL, in its absolute and unfettered discretion, may register or refuse to register members of CSL as Members;
- 6.2. Each and every Member agrees by making a Request to receive Quotes by email or otherwise in response to the Request;
- 6.3. Each and every Member agrees:-
 - 6.3.1. that they will continue to keep their Member information in the CEP true, complete, accurate and up-to date;

- 6.3.2. that there has been no pre-contractual advice, representation, or warranty made or given by CSL or any of its employees, agents, servants, delegates or associates in relation to the CEP; and
- 6.3.3. to make a Request for the sole purpose of obtaining a Quote for their personal use;
- 6.4. Members may update their details at any time by emailing CAPEziparts@capricorn.coop
- 6.5. Nothing in these Terms and Conditions prevents CSL, in its absolute and unfettered discretion, from allowing new Members to use CEP.

7. Use of CEP

- 7.1. CEP enables a Member to make a Request by using the CEP Facility on the CSL Website;
- 7.2. CSL maintains a database of the types of Parts E-Suppliers normally stock;
- 7.3. CSL, in its absolute and unfettered discretion, determines which E-Suppliers, if any, a Request will be provided to and can in its absolute and unfettered discretion remove any Request;
- 7.4. The Request contains the information relating to the Part and the Member's approved contact information;
- 7.5. E-Suppliers, in their absolute and unfettered discretion, determine:-
 - 7.5.1. if they wish to provide the Member with a Quote;
 - 7.5.2. the method by which they contact the Member (limited by the contact information provided by the Member in their Request);
- 7.6. No contract is formed between the Member and an E-supplier at:-
 - 7.6.1. the time a Member makes a request by using the CEP Facility on the Capricorn Website; or
 - 7.6.2. the time an E-Supplier provides a Quote to the Member;
- 7.7. The Member is not obliged to accept any Quote provided by an E-Supplier;
- 7.8. It is a matter between the Member and E-Supplier to determine:-
 - 7.8.1. if a Member will purchase a Part from an E-Supplier;
 - 7.8.2. the price paid for that Part;
 - 7.8.3. the delivery method for that Part;
 - 7.8.4. any charges associated with the supply of that Part;
 - 7.8.5. when title shall pass for that Part; and

7.8.6. any warranties or guarantees (if any) that attach to the supply of the Part to the Member by the E-Supplier.

8. CEP Rules

8.1. All Members and E-Suppliers in using the CEP agree to and abide by the following:-

- 8.1.1. All Requests and Quotes are made in good faith;
- 8.1.2. All Quotes are to be made in New Zealand Dollars and are to indicate that portion of the price that relates to Good and Services Tax or equivalent;
- 8.1.3. No E-Supplier shall act in such a way as to prevent another E-Supplier from providing a Quote;
- 8.1.4. No Member or E-Supplier shall assign, transfer or novate any of its obligations under these Term and Conditions without prior written approval of CSL, which approval CSL may refuse to give in its absolute and unfettered discretion;
- 8.1.5. Members and E-Suppliers must not breach these Terms and Conditions as they appear or are supplemented or amended from time to time;
- 8.1.6. No E-Supplier will spam or otherwise send to Members unsolicited email or other communication.

9. Breach and Termination

- 9.1. CSL, in its absolute and unfettered discretion, may immediately terminate an E-Supplier relationship at any time without notice and temporarily or permanently remove that E-Supplier from its database of E-Suppliers;
- 9.2. CSL, in its absolute and unfettered discretion, may immediately terminate a Member's right to use the CEP at any time without notice;
- 9.3. Without limiting clause 11, in consideration of CSL establishing the CEP and the Terms and Conditions contained herein, any E-Supplier or Member whose ability to use the CEP is terminated agrees to and hereby does fully and finally release and discharge CSL from any and all liability, claim, loss, damage, action, right or entitlement whatsoever whether known or unknown, whether accrued, contingent or inchoate arising out of, concerning in any way or relating to such termination. Each and every Member and E-Supplier acknowledges this limit of liability and agrees to limit any claim accordingly. This clause survives termination of any agreement to which these Terms and Conditions apply;

9.4. Without limiting clause 15.11, clauses 9.3, 11, 12 and 15 survive the termination of an E-Supplier relationship or Member's right to use the CEP in accordance with this clause.

10. Information Technology

10.1. It is the Member and E-Supplier's sole responsibility to have sufficient computer hardware and software to use and access CEP and CSL is not liable for and accepts no responsibility for any CEP failure, or failure of the Member's or E-Supplier's other software or systems, due to interoperability issues;

10.2. It is the Member's sole responsibility to maintain control of their respective passwords and access to CEP;

10.3. A Member must change their password if requested to do so by CSL; and

10.4. A Member must notify CSL immediately if a Member suspects any unauthorised use or disclosure of their password.

11. Disclaimer, Liability, Indemnity and Release

11.1. CEP is an online venue that allows Members and E-Suppliers to communicate in relation to the trade of Parts. The Members and E-Suppliers understand and agree that:-

11.1.1. the CEP Facility is provided by CSL on an as available basis and CSL may from time to time and without notice in its absolute and unfettered discretion modify, withdraw or amend the CEP including any of the facilities or services available via the CEP;

11.1.2. the Member and E-Supplier use CEP at their sole risk and voluntarily and CSL is not liable and accepts no responsibility for any CEP failures or disruptions (including but not limited to the loss of data) attributable to a systems or equipment failure;

11.1.3. CSL is not involved in any way whatsoever in transactions between the Member and the E-Supplier, subject to the operation of any preferred supplier agreement entered into between Capricorn and the E Supplier;

11.1.4. CSL will not take part or be involved in the resolution of any disputes between Members and E-Suppliers as a result of the use of CEP;

11.1.5. CSL has no control over the quality, safety or suitability of the Parts traded through CEP;

11.1.6. CSL has no control over, and does not warrant in any way, the accuracy of any of the content published or provided by a Member or E-Supplier through CEP;

- 11.1.7. CSL makes no warranties as to the ownership or title of the Parts sold or traded through CEP or the quality, safety or suitability of the Parts traded through CEP;
- 11.1.8. the CEP Facility will only be used by a Member and E-Supplier for the strict purpose for which it has been established and for no other purpose and each and every Member and E-Supplier indemnifies and holds CSL harmless against any loss, damage, action, demand, expense, claim or obligation CSL has or may suffer or incur by reason of or in any way consequent upon, arising out of or incidental to a breach of these Terms and Conditions by any conduct, act or omission of the respective Member or E-Supplier as the case may be including but not limited to any misuse or abuse of the CEP or use of the CEP other than as contemplated by the Terms and Conditions contained herein;
- 11.1.9. they will not grant or facilitate any access to the CEP by any other person.
- 11.2. CSL makes no warranty whatsoever that:-
 - 11.2.1. CEP will be continually available without interruption;
 - 11.2.2. CEP is secure and virus free;
 - 11.2.3. that the information provided on the CEP Website is accurate and free of errors; and
 - 11.2.4. that a Request or Quote made through CEP will result in a sale or purchase;
- 11.3. To the fullest extent permitted by law all terms, conditions or warranties that would otherwise be implied in these Terms and Conditions are expressly disclaimed and excluded. Where such warranties cannot be disclaimed and excluded, CSL's liability for any breach of such implied terms, conditions or warranties is limited solely to the re-supply of the relevant service or good or the payment of the cost of having the service and good provided again (at CSL's option).
- 11.4. In consideration of CSL establishing the CEP and the Terms and Conditions contained herein, to the fullest extent permitted by law, each and every Member and E-Supplier agrees to and hereby does fully and finally release and discharge CSL from any and all claims, liability, action, right or entitlement, kinds of loss or damages including but not limited to for personal injury, any damage to property and/or contingent, consequential, direct, indirect, special or punitive damages whatsoever whether known or unknown, whether accrued, contingent or inchoate arising:-
 - 11.4.1. in connection with CEP;
 - 11.4.2. without limiting the foregoing, as a result of the availability (or non availability) or the performance (or non performance) of CEP;

- 11.4.3. without limiting the foregoing, in connection with any agreement however arising between a Member and an E-Supplier as a result of information provided or received as part of or in connection with the CEP;
 - 11.4.4. without limiting the foregoing, for any modification, discontinuance or disturbance to CEP either temporarily or permanently;
 - 11.4.5. without limiting the foregoing, the failure of an E-Supplier to provide a Member with a Quote;
 - 11.4.6. without limiting the foregoing, the failure of CSL, for any reason, to provide an E-Supplier with a Request or Member's details to allow an E-Supplier to provide a Member with a Quote;
 - 11.4.7. without limiting the foregoing, from the unauthorised use of Member passwords or the CEP Facility in anyway whatsoever,
- 11.5. Each and every Member and E-Supplier acknowledge this limit of liability and agrees to limit any claim accordingly. This clause survives termination of any agreement to which these Terms and Conditions apply;

12. Privacy and Collection of Information

- 12.1. CSL may keep information relating to transactions processed via the CEP including auditing, tracking and recording any Member or E-Supplier's use of CEP or for any other lawful purpose; and
- 12.2. Information collected by CSL relating to transactions processed via the CEP may be used in any manner provided that its use is in compliance with CSL's Privacy Statement and as required by law.

13. Confidentiality

- 13.1. By accepting these Terms and Conditions, Members acknowledge and agree that they are providing information for the purposes of a public tender and CSL, in its absolute and unfettered discretion, may determine which E-Suppliers that information (limited to the information provided in the CEP Facility) may be disseminated to.

14. Intellectual Property

- 14.1. The Capricorn Website and the CEP Facility including all text, graphics, sounds and layout viewable is owned by CSL may not, either wholly or partially, be reproduced in any form or be adopted, stored, printed, displayed, sold or otherwise used without the prior written consent of CSL.

15. Governing Law

- 15.1. These Terms and Conditions represent the entire agreement relating to a Member or E-Supplier's use of CEP between CSL, each and every Member as the case may be and each and every E-Supplier as the case may be, but does not otherwise affect, amend or alter existing contractual relations between CSL and each and every Member and between CSL and each and every E-Supplier. No other terms and conditions sought to be imposed by any Member or E-Supplier on CSL in respect of the CEP shall apply;
- 15.2. Nothing contained in these Terms and Condition or the use of CEP constitutes CSL being in a relationship of agency, employment, partnership, joint venture or another legal relationship with any Member or E-Supplier whatsoever;
- 15.3. CSL accepts no responsibility for its failure to comply with these Terms and Conditions where such failure is a result of force majeure or circumstances beyond CSL's reasonable control including but not limited to industrial dispute, terrorist act, Act of God, fire, epidemic or health risk;
- 15.4. CSL, any Member and any E-Supplier as the case may be shall make, execute, do or cause to be made, executed or done all things, agreements, instruments and acts which are reasonable and necessary or desirable to implement and give full effect to the provisions and purpose of these Terms and Conditions;
- 15.5. To the extent that any one or more of the sections, subsections, clauses, subclauses and/or portions of these Terms and Conditions are rendered unenforceable or prohibited those sections, subsections, clauses, subclauses and/or portions shall be (to the extent that they are unenforceable or prohibited) severed, without invalidating or modifying the remainder of these Terms and Conditions, which shall continue to operate as if those sections, subsections, clauses, subclauses and/or portions had not been included.
- 15.6. No term or condition will deemed to have been waived and no delay or default will be excused unless the waiver or excuse is contained in writing and signed by an authorised representative of CSL;
- 15.7. A waiver of a breach is not a waiver of any other term or condition or breach;
- 15.8. The failure of CSL to take advantage of a default or breach of these Terms and Conditions shall not be treated as a waiver of that default or breach;
- 15.9. No custom or practice which may grow up between a Member and/or E-Supplier and/or CSL in the course of using CEP shall be construed to waive or reduce the rights

of CSL to insist on a Member or E-Supplier acting in strict accordance with these Terms and Conditions;

15.10. These Terms and Conditions are governed by the law of New Zealand. In any action or other legal process in connection with these Terms and Conditions each and every Member and E-Supplier irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New Zealand. This clause survives termination of any agreement to which these Terms and Conditions apply;

15.11. Lawful termination under or pursuant to these Terms and Conditions shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to any person to which these Terms and Conditions apply and all provisions of these Terms and Conditions which are to survive the termination of any agreement to which these Terms and Conditions apply or impliedly do so shall remain in force and in effect.

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