Application of Terms

1. These Terms set out the contractual basis upon which we agree to supply you with Goods and Services and apply to every Contract between us and you.

2. Any terms or conditions attached to your Order, or referred to in your Order, or any other document provided by you deviating from, or inconsistent with, these Terms, are expressly rejected by us and will not vary or supplement these Terms.

3. Each supply which we make following our acceptance of an Order will be regarded as a separate Contract, which is subject to these Terms.

4. Where we have granted you a credit facility, our Credit Facility Terms apply. In the event of any conflict, ambiguity, or inconsistency between these Terms and our Credit Facility Terms, our Credit Facility Terms prevail to the extent of the conflict, ambiguity, or inconsistency.

Quotations

5. Quotations made by us are estimates only and will not be construed as an offer or obligation to supply any Goods or perform any Services.

6. Unless specified otherwise, quotations made by us:
   (a) are exclusive of GST;
   (b) are exclusive of the costs of delivery; and
   (c) will remain valid for a period of forty-five (45) days from the date of quotation.

7. You acknowledge and agree that quotations made by us may include additional terms or conditions, which will supplement (and are intended to be read in conjunction with) these Terms.

8. Unless specified otherwise, insofar as quotations made by us relate to the performance of Services, the Price will be based upon Services being performed during Normal Working Hours on Business Days. If requested by you, we may from time to time agree to perform Services outside of Normal Working Hours or Business Days, in which case such Services will be deemed to be performed according to the quoted Price, if any, and additional charges will apply.

9. We reserve the right to withdraw, vary, or extend the time for acceptance in respect of any quotation made by us at any time prior to the formation of a Contract in accordance with clause 12.

Formation of Contract

10. You may accept these Terms (and you will be deemed to accept these Terms if) you, following receipt of a copy of these Terms:
   (a) confirm your acceptance of these Terms;
   (b) place an Order with us;
   (c) agree to be bound by the price quoted in our quotation.

11. We reserve the right to not accept your Order, without having to provide reasons to you for doing so. For clarity, nothing in these Terms obliges us to supply you with any Goods or perform any Services at any time.

12. Any Order placed by you will be construed as an offer. A binding Contract will only come into existence if and when we accept your Order.

13. For clarity, a Contract is formed at the location of our premises where your Order is placed.

Price and Payment terms

14. Subject to clause 15, the Price payable for the Goods or Services will be in accordance with our then prevailing price list (as notified to you by us from time to time), as applicable as at the date of your Order.

15. Where we have issued you a quotation, the Price will be our quoted price (subject to clauses 6 and 24 to 27) which will be binding on us provided you accept our quotation in writing within the period of validity for acceptance.

16. Unless otherwise agreed in writing, the terms of payment are strictly cash before delivery or on a performance basis.

17. Payment may be made by cash, Electronic Funds Transfer (EFT), Visa, and MasterCard credit cards, or by using your credit facility with us (where applicable). We reserve the right to charge payment methods that have been rejected by us at any time. You acknowledge that we will be at liberty to charge a variation and additional charges will apply.

18. If GST is imposed on a Taxable Supply made by us to you under any Contract of which these Terms form part, the price of the Taxable Supply will be equal to the GST-exclusive consideration that you must pay to us for the Taxable Supply under the Contract increased by an amount (the "GST Amount") equal to the amount of GST payable on that Taxable Supply. The GST Amount is, subject to you issuing a Tax Invoice to you, payable at the same time and in the same manner as the consideration to which it relates. If we become liable to pay any tax, duty, excise, or levy in connection with any Contract of which these Terms form part, you must pay us these additional amounts upon written demand.

19. You must check all Tax Invoices and advise us of any errors or omissions within seven (7) days of receipt. Failing advice from you that a Tax Invoice contains any errors or omissions, the Tax Invoice may be deemed accepted by you.

20. Any sums owed to us by you will be made free of any set-off or counterclaim whatsoever, and without deduction or withholding whatsoever.

21. We are entitled to deduct or set off against any monies owing to you by us any account whatsoever.

Default

22. If you default in the payment of any money due to us pursuant to any Contract of which these Terms form part by the date specified in our Tax Invoice, we are entitled to, without prejudice to any other rights which may be conferred upon us by law or equity, do any or all of the following:
   (a) charge you interest on the outstanding amount at the rate of 12.5% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full;
   (b) require you to pay, in advance, for any Goods or Services (or any part of the Goods or Services) which has not yet been supplied; and
   (c) suspend or cease the supply of any further Goods or Services to you.

Variation

23. If you request or direct that any Goods or Services be supplied that are not strictly in accordance with our quotation or your Order, then such Goods or Services will constitute a variation from the Contract.

24. A notice of variation must be submitted by you in writing and is only effective if accepted by us in writing.

25. You understand and agree that:
   (a) all variations must be agreed in writing prior to the Goods or Services that are the subject of the variation being supplied; and
   (b) all variations will be, in our discretion, revoked at the rates specified in our quotation, as specifically quoted, or in accordance with our then prevailing price list.

26. Notwithstanding clauses 24 to 26, and subject to any rights you might have under the Competition and Consumer Act 2010 (Cth) or any other legislation, we reserve the right to vary the quoted Price, if:
   (a) the Goods or Services specified in your Order are varied from the Goods or Services specified in our quotation; or
   (b) otherwise as provided for in these Terms.

Order cancellations

27. You may cancel an Order (or any part of an Order) once a Contract has been formed, delivery of the Goods cannot be deferred, and Goods ordered cannot be returned, except with our written consent and, then only upon transport, storage and insurance of the Goods against all losses we have incurred or may incur as a result of the cancellation, deferral, or return, including third-party supplier restocking fees, cartage, bank charges, other incidental and expenses which will not entitle you to rescind the Contract.

28. You acknowledge and agree that cancelled Orders (if accepted by us) may be subject to a restocking charge of 20% of the Price.

Comply with Laws

29. You:
   (a) must provide suitable and safe facilities for receiving the Goods and must comply with all Laws and Environmental Laws; and
   (b) are solely responsible for the safety of your Personnel and must provide and ensure that all persons engaged in the loading, transport, and storage of the Goods observe at all times a safe system of work that complies with all relevant Laws.

Delivery

30. Unless our quotation states otherwise, you will be liable for all costs associated with packaging and delivery, including cartage/freight, handling, and other charges. Where you have engaged a carrier to deliver the Goods, you will be also responsible for the cost of returning the Goods.

31. You must make all arrangements necessary to take delivery of the Goods whenever they are made available for delivery.

32. You acknowledge and accept that any period or date for delivery stated by us is intended as an estimate only and is not a contractual commitment. We will not in any circumstances be liable for any loss or damage suffered by you or any third party for failure to meet any estimated delivery date.

33. Delivery will be made within Normal Working Hours on Business Days, unless otherwise agreed in writing.

34. Delivery is deemed to occur at the time:
   (a) if you, or any third party on your behalf, collects the Goods from us;
   (b) the Goods are delivered to the delivery location specified in your Order (or to such other location as otherwise agreed in writing);
   (c) your nominated carrier takes possession of the Goods, in which event the carrier will be deemed to be your agent.

35. If requested by you, or your duly authorised representative, we will sign our delivery docket as confirmation that the Goods ordered have been received by you in apparent good order and condition.

36. If delivery of the Goods is deferred:
   (a) at your request; or
   (b) due to you being unable to accept delivery of the Goods (for whatever reason).

37. (a) unless your Order includes instalment Terms, and
   (b) that you are not relieved from any obligation arising under these Terms, or any Contract of which these Terms form part, by reason of any delay in delivery, and delay in delivery will not entitle you to rescind the Contract.

Risk

38. Risk of loss or damage to the Goods passes to you upon delivery to you or to your agent or to a carrier commissioned by you in accordance with clause 35.

39. You must insure the Goods for their full replacement value on or before delivery against all losses which may be sustained as a result of the loss, damage, or destruction of the Goods (or any part thereof) by accident, theft, fire, explosion, flood, negligence, and such other insurable causes as may be available and must include us as co-insured.

40. If you request that Goods are to be delivered either to an unattended location, outside your premises, or left outside our premises for collection, you acknowledge that we may deliver the Goods as requested at your sole risk.

Retention of title

41. Until such time as you have made payment in full for the Goods and until such time as you have made payment in full of all other money owing to you by us (whether in respect of money payable under a specific Contract or on any other account whatsoever) title in the Goods does not pass to you, and you agree that property and title in the Goods will not pass to you, and we retain the legal and equitable title in those Goods supplied and not yet sold.

Returns

42. You must, within seven (7) days of the date of delivery:
   (a) give us written notice, with particulars, of any claim that the Goods delivered are not in accordance with your Order (including any claim for shortfall, incorrect supply, or damage to the Goods); and
   (b) provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods.

43. If you do not provide us with notice under clause 42, then to the extent permitted by law, the Goods must be treated as having been accepted by you and you must pay for the Goods in accordance with the Contract.

44. Unless otherwise agreed in writing, you must pay all costs associated with the return of any Goods (either to us or from us to you or to any third party) including freight, insurance, handling, and other charges.
72. Subject to clause 4, the Contract constitutes the entire agreement and understanding between the Parties. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of the Contract are merged in the Contract and are superseded by it. No oral expression of information provided by a Party to another Party affects the meaning or interpretation of the Contract, or constitutes any collateral agreement, warranty, or understanding.

Governing law
73. and any Contract of which these Terms form part, will be governed by and construed in accordance with the laws of New South Wales, and the laws of the Commonwealth of Australia in force in New South Wales.

Disputes
74. In these Terms:

Business Day means a day that is not a Saturday, Sunday, or public holiday in Sydney. 

Contract means a contract for the supply of Goods or Services, as constituted by our quotation(s), your order(s), these Terms, and the Supplementary Agreement(s).

Credit Facility Terms means our credit facility terms, as set out in the credit agreement executed by (you) when these Terms form part of the Contract.

Customer, "you", your means the corporation, partnership, person, or other entity acquiring Goods or Services from us.

Environmental Law means environmental protection policies and directives, standards, and guidelines of any Government regulation or otherwise to the environment.

Excluded Loss means any:

(a) consequential loss; 
(b) loss of revenues; 
(c) loss of reputation; 
(d) loss of profits; 
(e) loss of bargain; 
(f) indirect loss; 
(g) lost opportunities, including opportunities to enter into arrangements with third parties; 
(h) loss in connection with terms against you by third parties; 
(i) loss or corruption of data.

Force Majeure Event means any act of God, acts, decrees, or regulations of government authorities, casualty, fire, explosion, storm, flood, earthquake, embargo, industrial action, strike, lockout, civil commotion, riot, insurrection, war, epidemic or pandemic, damage to or destruction of facilities, equipment or mechanical breakdown, failure of a third-party supplier or service provider, or any other cause beyond our reasonable control.

Goods means all goods supplied by us to you (and where the context so permits includes the performance of Services).

Governing Law means (a) a government or government department or other body; (b) a governmental, semi-governmental, or judicial person; or (c) a person (whether autonomous or not) who is charged with the administration of a "Law".

GST has the meaning given to it by the GST Act.


Gulf Western, "we", "us", "our" means Gulf Western Premium Quality Lubricating Oils (Management) Pty Ltd, and its related bodies corporate.

 hvis the Contract or otherwise.

Interpretation
75. In case any conflict, ambiguity, or inconsistency among any of the documents which comprise a Contract, it is expressly agreed the order of precedence will be in descending order of precedence:

(a) any additional terms or conditions contained in our quotation (where applicable); 
(b) our Credit Facility Terms (where applicable); 
(c) these Terms; and 
(d) any other documents issued by us.

76. Unless the contrary intention appears from the text, any reference to:

(a) these Terms or another document includes any variation or replacement of them notwithstanding any change in the identity of the Parties; 
(b) a reference to a clause is a reference to a clause contained in these Terms; 
(c) the singular includes the plural and vice versa; 
(d) any rights includes any profits, remedy, authority, discretion, or power; 
(e) person includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority or agency, or other entity; 
(f) a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a Party by novation), and assigns; and 
(g) any statute, ordinance, code, or other law includes regulations and other statutory requirements under any of them and consolidations, amendments, re-enactments, or replacement of any of them.

77. Definitions in "Geographical" and "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

78. Where two or more persons are defined as a Party in these Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.

79. An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally, and any person placed by you or us as a guarantor, co-vendor, co-representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.

80. Unless otherwise stated, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties will be in the English language.