



TOHATSU

Feel the Wind™

DEALER GUIDE

JULY 2026





POWER EQUIPMENT

Power Equipment Pty Ltd is an Australian, family owned distributor and supplier of world-leading diesel and electric engines, power technology and a range of supporting brands within the industrial and marine industries.

Officially formed back in 1990, the company's founder had a clear goal – to bring the best diesel engine technology from around the world to Australia. Since then, Power Equipment has grown to become the largest independent distributor of marine and industrial diesel engines throughout Australia, New Zealand and the South Pacific.

Power Equipment's stable of exclusive brands include Yanmar marine and industrial engines, John Deere marine and industrial engines, Tohatsu Outboards, ePropulsion electric marine engines, Cox Marine diesel outboards, Smartgyro marine stabilisers, PSS Shaft Seals, Gori Propeller, and Mase marine generators, plus a range of supporting brands and other products.

The company's ongoing success can be traced back to the brands they represent, partnering with only the best manufacturers and suppliers from around the world. This ensures customers are getting the very best technology, products and after sales service.

With offices across Australia and New Zealand, a huge stock of spare parts, highly experienced team and Australian based support, you're never on your own with Power Equipment.





TOHATSU

Tohatsu is a global leader in marine innovation, dedicated to delivering reliable, high-performance outboard motors and boating solutions. With decades of engineering expertise, we have built a reputation for precision, durability, and consistent performance across a wide range of marine environments.

Our commitment to quality is reflected in every product we design, combining advanced technology with practical, user-focused innovation. From recreational boaters to commercial operators, Tohatsu supports customers worldwide with efficient, dependable solutions that stand the test of time.

Driven by a passion for the water, we continue to push the boundaries of marine engineering, enhancing every boating experience through reliability, efficiency, and trusted performance.



CONTENTS

Dealer Information

- 2 Dealer Standards
- 3 Dealer Independence
- 3 Retail & Service Location Standards
- 4 Service/Company Vehicles
- 4 Power Equipment's Responsibilities To Our Dealers
- 5 Training
- 6 How Power Equipment Supports Our Dealers
- 7 Maximising Your Opportunities As A Tohatsu Dealer

Systems & Portals for Dealers

- 9 Power Equipment Knowledgebase
- 9 Dealer Connect

Marketing & Branding

- 11 Tohatsu Brand Guidelines
- 17 General Marketing Support
- 18 Dealer Marketing Support Program

Spare Parts

- 20 Genuine Tohatsu Spare Parts
- 20 Dealer Connect
- 21 Parts Support

Aftersales Support & Warranty

- 23 Technical Support
- 24 Warranty

Terms & Conditions of Sale

- 26 Terms & Conditions of Sale

DEALER INFORMATION

Power Equipment and Tohatsu are dedicated to providing superior service to our customers. In conjunction with our authorised Tohatsu dealer network, we aim to provide and maintain the best customer service and support in the marine industry.

DEALER STANDARDS

We understand that you, as the dealer, are usually the first point of contact with the customer. You are the eyes and ears on and around the water. Power Equipment and Tohatsu expect every dealer to represent the Tohatsu brand and product professionally and with the utmost professionalism at all times.

Upon being appointed as an Authorised Tohatsu dealer, it is expected that the dealer is qualified and experienced in field of marine engines, and as such will take full responsibility and assume liability for the quality of the work carried out on Tohatsu products.

1. Each dealer, and any representatives of the dealer, must conduct themselves in an appropriate professional manner at all times.
2. Dealers must never communicate problems or negative issues that concern Tohatsu, Tohatsu products, Power Equipment or any other dealer in a public domain. Where there is a concern, the Dealer should contact Power Equipment.
3. All Authorised Tohatsu Dealers should work together co-operatively and assist where practical. If there is a question or issues with a dealer's work, it should not be conveyed to the customer. Please contact Power Equipment to investigate and resolve the matter.
4. Any advertising or marketing that contains the Tohatsu name or logo must adhere to the Tohatsu Brand Guidelines (see page 17)
5. All information supplied by Power Equipment, including customer data, is concerned proprietary and is not intended for public distribution (to any party) unless approved in writing.
6. Each dealer should operate their business within normal business practices, including abiding by any and all state, federal and local laws.
7. Dealers shall indemnify Power Equipment and Tohatsu from their business practices, financial performance and quality of work, including

installation, repairs and/or service on Tohatsu products.

8. All work carried out on Tohatsu products should follow Tohatsu approved manuals or guides. This includes engine installations, service and maintenance, and repairs.
9. An Installation Report and on-water Operational Check must be conducted by the installing dealer for every new boat model released, any production variant within an existing model, or any vessel re-power fitted with a new Tohatsu engine. These are mandatory to confirm that the engine is installed correctly and to Tohatsu guidelines, and is operating within its main design. Failure to conduct the Installation Report and Operational Check may void any warranty claims. Please refer to the official Tohatsu installation instructions provided with the engine, or the Tohatsu Installation Guide for further details.
10. All warranty claims and any associated works must be approved prior to any repairs. Claims must follow the approved Tohatsu process, including supplying any information requested. Warranty approvals are at the sole discretion of Tohatsu and/or Power Equipment. Please refer to the product warranty terms for more information.

➤ **PLEASE NOTE:** It is the selling and/or installing dealer's responsibility to complete the Installation Report and on-water Operational Check, and lodge any corresponding reports with Power Equipment. Failure to conduct these tests and provide the completed reports may void any warranty. Where no checks or reports are completed or lodged, Power Equipment and Tohatsu reserve the right to deny any warranty claims or provide aftersales support.

DEALER INDEPENDENCE



Each dealer shall operate independently of Power Equipment and/or Tohatsu and nothing in this document shall establish or create a principal or agent relationship, a partnership, a joint venture, a franchise or an employment relationship between Power Equipment and/or Tohatsu and the dealer.

As long as any conditions listed within the Dealer Agreement are met and/or adhered to. Each dealer will be granted certain rights with regard to Tohatsu product service and sales.

Each dealer shall indemnify Power Equipment and Tohatsu against negligence of any type and assume all liability as per relevant law.

Please refer to the Dealer Agreement for all relevant legal requirements and indemnity clauses.

RETAIL & SERVICE LOCATION STANDARDS

A retail or service location is defined by any location where customers can purchase Tohatsu products and/or services and is open to the public during normal business operating hours.

All retail and service locations must abide by applicable federal, state and local laws that a business must operate under.

An authorised dealer's retail location must meet the basic Tohatsu standards that include the following:

1. Dealer's must display professional signage on the exterior of the building or retail location. This signage must;
 - a. Use the most up to date and approved Tohatsu branding as outlined in the Tohatsu Branding Guidelines. Power Equipment reserves the right to request any dealer to remove or replace, at their own cost, any non-compliant signage.
 - b. Competitors signage and/or branding may not be larger or more prominent than the Tohatsu brand.
 - c. Be neat, tidy and in good repair and safe for customers and visitors.
2. Point of purchase, accessories and lubricant products should be displayed for easy access by customers.
3. All retail locations should stock the minimum inventory as outlined in the Dealer Agreement, including parts, engines and any ancillary products.



SERVICE/COMPANY VEHICLES

Each vehicle used for the purpose of providing a service for Tohatsu products, including in-field service work and deliveries, should meet all applicable laws and maintain the minimum Tohatsu standards including;

1. Each vehicle should have signage that clearly identifies the dealer's company name, contact information and the Tohatsu logo.
2. Each vehicle should be in good working order, neat and presentable at all times.
3. All service vehicles should carry the necessary parts and tools to service Tohatsu products as required.
4. The driver of each vehicle shall obey all traffic laws and drive in a safe manner at all times.
5. The use of personal vehicles is not recommended.

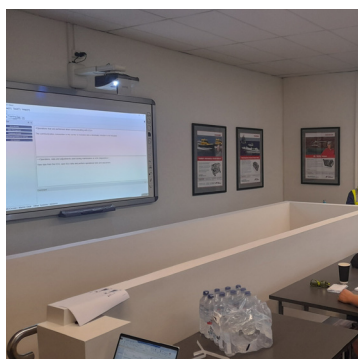


POWER EQUIPMENT'S RESPONSIBILITIES TO OUR DEALERS



Power Equipment understands that Authorised Tohatsu Dealers play a pivotal role in providing superior service for Tohatsu products and to our customers. To assist our dealers, Power Equipment will:

1. Offer formal and informal Tohatsu training on products and services to all dealers
2. Provide access to specialist tools where necessary
3. Provide information and updates on Tohatsu products and services
4. Provide technical support for Tohatsu products and services
5. Provide warranty support, approvals and payments as per the warranty statement and/or relevant laws
6. Provide sales leads and enquiries for Tohatsu products to individual dealers based on location, services offered and technical capabilities



TRAINING

Power Equipment offers comprehensive training to all dealers on Tohatsu related topics from our state of the art training facility in Melbourne, Victoria. Training sessions may also take place in other locations as required or where practical.

Training topics include, but are not limited to;

1. General Tohatsu product training
2. Technical and/or service related training
3. Engine installation training
4. Systems and processes training
5. Other training as required

It is expected that at least one representative from each dealer attend an initial general Tohatsu training session that covers a general product overview, warranty processes, accessing Tohatsu material and how to obtain or log a support request – all the basics that are required to be a successful Tohatsu dealer.

It is also highly recommended that all Authorised Tohatsu Dealers attend and complete training on a regular basis to maintain product knowledge and to stay updated on the latest technical updates. Power Equipment will communicate to all dealers when training is available and/or scheduled.

For any urgent or specific training requirement, please contact your Account Manager.

HOW POWER EQUIPMENT SUPPORTS OUR DEALERS



➤ Power Equipment can offer advice and assistance on branding, signage, stationery, store layout and promotion.

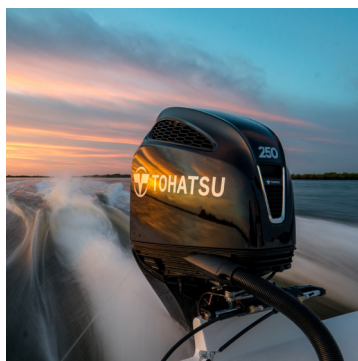
The relationship between Power Equipment and our dealers is considered a partnership, for the mutual benefit of both parties.

We believe that ongoing communication and a range of support services enhances the quality and success of our dealer network across Australia. We support our dealers in a number of ways, including;

1. Each dealer is assigned an experienced Account Manager who is your go-to contact for all Tohatsu related enquiries or questions. Our Account Managers are here to assist you in making the most out of the Tohatsu brand, and can assist in;
 - a. Provide information on products and services
 - b. Assist with technical enquiries
 - c. Organise training where required
 - d. Provide sales leads for products and services
 - e. Assist with stock/inventory planning and ordering
 - f. Provide advice on signage, sales promotions and marketing activities
2. Dealer Connect – our very own user-friendly online parts ordering system exclusive to authorised dealers. See the 'Spare Parts' section for more information on Dealer Connect.
3. Marketing Support Program – As part of our marketing efforts, we offer a program that offers financial and/or creative support for dealer marketing activities. Please see the 'Marketing' section for more information.
4. Local technical support team to offer advice and assistance with technical enquiries

We're here to help our dealers succeed and are constantly updating and introducing new dealer support programs. For more information, please contact your Account Manager.

MAXIMISING YOUR OPPORTUNITIES AS A TOHATSU DEALER



As a Tohatsu dealer, you are representing one of the best marine brands on the planet. This is a huge opportunity to take full advantage of.

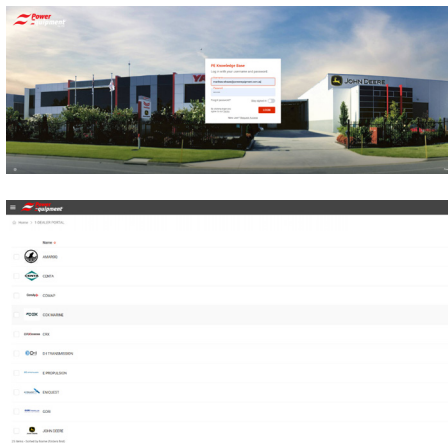
Power Equipment is committed to help you grow your business. By working closely with our team, you will have the potential to increase your turnover and profit, and increase the size and value of your business.

There are some simple things that dealers can take advantage of without a large investment or adding additional resources. These can include;

1. Develop and maintain a database of customers and potential customers. Use this database to regularly communicate product offerings, special offers, your services and more.
2. Utilise the database to keep customers up to date with service intervals, send service reminders and offer specials to lost customers.
3. Where possible, take advantage of your Account Manager. Our team are highly experienced and know the industry, and most importantly they are here to help you!
4. Take advantage of the Tohatsu brand wherever you can – uniforms, vehicle signage, local advertising, yacht clubs and more. Our marketing team are here to help you maximise your marketing potential.
5. Stay updated on Tohatsu products, including training where possible. Knowledge is power!

➤ As a Tohatsu dealer, you are representing one of the best marine brands on the planet.

SYSTEMS & PORTALS



POWER EQUIPMENT KNOWLEDGEBASE

To support our dealers even further, we have developed an easy to navigate online database that contains all the information you will need as a dealer, including product information, technical drawings, specification sheets, installation and maintenance guides, CAD files and more. It's your central hub for all product related knowledge!

As part of your onboarding you will receive your login details. If you do not receive your access within 14 days, please contact your Account Manager.

Get access to
Dealer Connect:



DEALER CONNECT

Order, track and save time online!

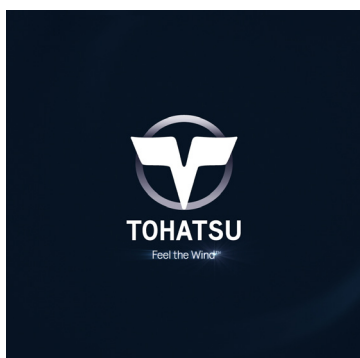
Dealer Connect is Power Equipment's very own online parts ordering platform, exclusive to our dealer network. In just a few clicks you can check the availability and pricing of parts, place orders, check the status of your order and more.

All Tohatsu parts and accessories are available to order via our Dealer Connect platform.

Any eligible discounts or monthly stock order discounts are automatically calculated, and we also offer variety of exclusive special offers for Dealer Connect users.

Contact the Parts Team or your Account Manager to find out if you are eligible for Dealer Connect access.

MARKETING & BRANDING



TOHATSU BRAND GUIDELINES

Why the guidelines are important

For the Tohatsu Group, the Tohatsu brand represents responsibility, reliability, and quality. Built carefully since the company's founding, these values reflect a strong commitment to customers and support the Group's ongoing growth and future direction.

To ensure strong recognition, the brand must be presented consistently and memorably. A clear visual identity system, including logotypes and brand colours, brings this value to life and strengthens customer recall.

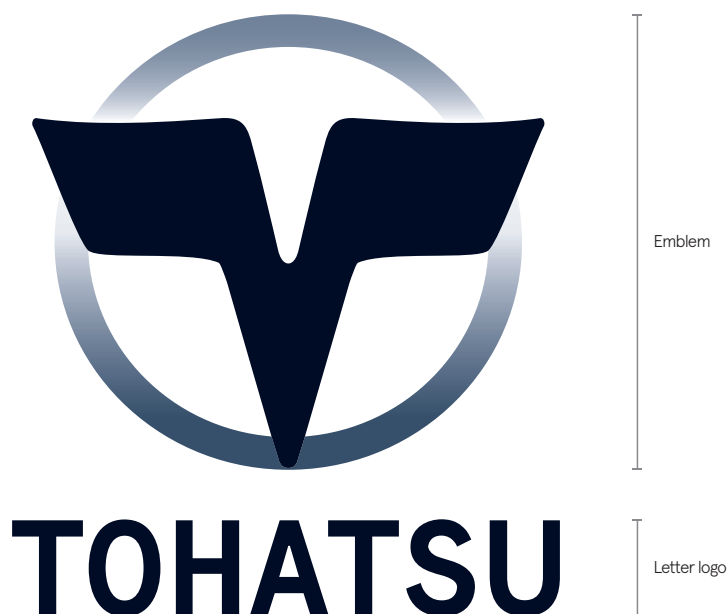
All distributors and dealers play a key role in applying these guidelines correctly to project a strong, unified brand image.

Use of the Tohatsu Brand

Distributors and dealers who have entered into a Distributor Agreement with Power Equipment may make limited use of the Tohatsu brand on stationery, advertising, signage and other approved materials, strictly in accordance with the Distributor Agreement and Tohatsu Brand Guidelines.

These guidelines define the core visual elements and set clear rules for their application to strengthen and promote the brand.

Consistent and correct use enhances brand recognition both internally and externally. Every Tohatsu dealer plays an important role in protecting and building the value of the Tohatsu brand.



The Tohatsu Logo

The Tohatsu Blue Wings, represents who they are. The logo is available in several approved lockup combinations of its component elements, the emblem and the letter logo. The emblem may be displayed by itself on products, novelty items, exhibit booths and other spaces when conditions make it difficult to display the emblem and letter logo combined. The letter logo may be displayed independently if the emblem is displayed in the same area or space.

Emblem



Brand logo



Tagline Brand logo



Emblem/letter logo combinations

The brand logo is available in two types: the preferred type, which is rendered vertically, and the horizontal type. Brand logos with our tagline are also available for each brand logo.

Horizontal Brand logo



Horizontal Tagline Brand logo



Use the preferred type whenever the display space presents no constraints. Use the horizontal type in horizontal display spaces that will not easily accommodate the preferred type.

Brand Logo Color is Tohatsu Grand Blue. There are three sets of display color rules governing different versions of the logos, including gradated and non-gradated types. Both color and monochrome data is available for all three versions. When using gold, silver, or other metallic colors, monochromatic rules apply.

The preferred background color is white. When the background is black or another dark color, use the reverse display version.



Basic Colour

The basic brand logo display color is the version that includes gradation. When the logo is used on a background that is black, dark gray, or another dark color, use the reverse display version. Logo data is available for all display colors.



Without gradation

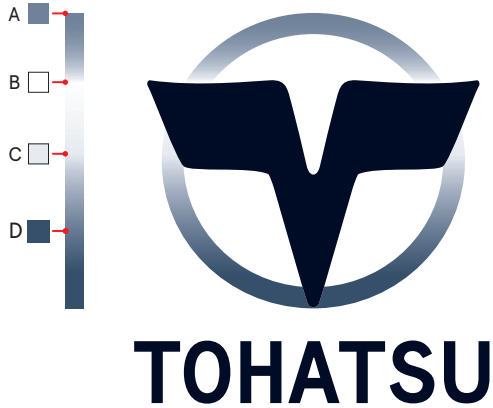
This version is for use when displaying the brand logo with gradation is difficult. This version displays the gradated section at a uniform color density.



100% Colour

The mold version, which clearly separates the emblem and letter logo, is the model for using the logo with die casting, etching, embossing, and debossing. The single color/100% color version may be used when rendering gradation or using grays is not possible.

Basic Colour (with gradation)



Tohatsu Grand Blue	A	B	C	D
PANTONE 296C CMYK 90 / 50 / 11 / 90 RGB 24 / 27 / 57 WEB #181B39	PANTONE 296C 40% CMYK 36 / 20 / 5 / 36	WHITE	PANTONE 296C 5% CMYK 5 / 3 / 0 / 5	PANTONE 296C 64% CMYK 58 / 32 / 7 / 58



White	E	F	G
	PANTONE 296C 10% CMYK 9 / 5 / 0 / 9	PANTONE 296C 84% CMYK 76 / 42 / 9 / 76	PANTONE 296C 50% CMYK 27 / 15 / 3 / 27

Without gradation



Tohatsu Grand Blue	
PANTONE 296C CMYK 90 / 50 / 11 / 90 RGB 24 / 27 / 57 WEB #181B39	PANTONE 296C 35% CMYK 21 / 17 / 5 / 31 RGB 143 / 155 / 176 WEB #8F9BB0



White	
	PANTONE 296C 35% CMYK 21 / 17 / 5 / 31 RGB 143 / 155 / 176 WEB #8F9BB0

Logo Usage



Do not change the aspect ratio.



Do not use unapproved colors.



Do not pair with words other than the tagline.



Do not modify the shape or slant.



Do not pair with company name.



Do not frame smaller than the preferred isolation rules.



Do not use a busy background.



Do not bordering.

Signage & Presentation Tips



It's in our best interest and yours to have visible and professionally executed signage on your service vehicles. Include your phone number and website.



You're welcome to put the Tohatsu logo on your business cards stating your account type - just ensure that you follow the logo guidelines stated in this manual.



We expect the exterior of your premises to have high quality signage. The Tohatsu logo is to be of equal or greater presence to any additional supplier logos.



We expect the interior of your premises to project a professional image. We encourage promotion of the Tohatsu and expect the Tohatsu logo to be of equal or greater presence to any additional supplier brand presence.



Power Equipment works closely with its Tohatsu Authorised Dealers, subsidising approved signage and offering a range of Tohatsu- branded promotional items.



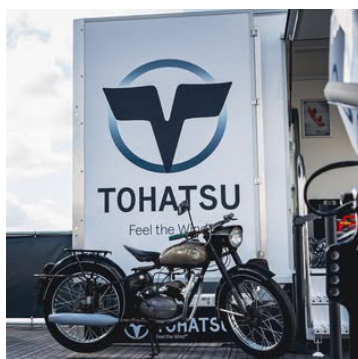
At boat shows, your signage needs to stand out from your competitors. Contact marketing@powerequipment.com.au if you need any assistance.



GENERAL MARKETING SUPPORT

Our Marketing team can assist in marketing your business, gaining new sales leads and maintaining your existing customer base, along with providing marketing material and artwork for just about any marketing activity.

We can help with and/or supply:



Product Images



Lifestyle Images



Logos & branding



Advertising Material



Point of sale material
(posters, flyers, etc)



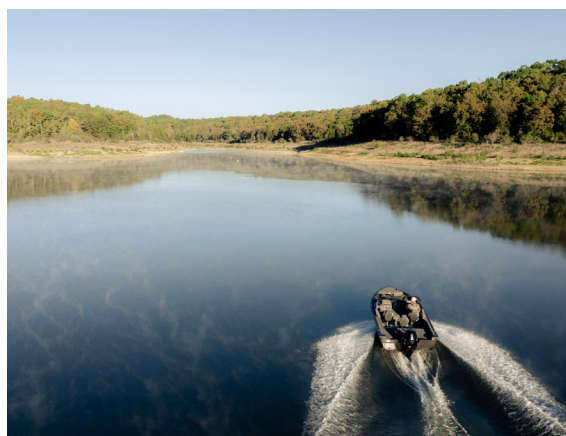
Banners & flags

DEALER MARKETING SUPPORT PROGRAM

Our Dealer Marketing Support Program has been designed to provide marketing funds to support our dealers' efforts in local advertising and marketing activities.

Under this program, selected dealer advertising and marketing activities are eligible for reimbursement from Power Equipment of up to 50% of the total cost excluding GST. Reimbursement is only valid for eligible marketing activities that highlight the Tohatsu brand or products, and is at the discretion of Power Equipment. Eligible marketing and advertising activities include, but are not limited to;

1. Traditional Marketing
 - a. Local newspapers & magazines
 - b. Radio, TV & cinema advertising
 - c. Direct mail/letterbox drops
2. Digital Marketing
 - a. Online banner ads (on 3rd party websites)
 - b. Social media advertising
 - c. Email marketing (eDM)
3. Other
 - a. Branded uniforms/clothing
 - b. Dealer/vehicle signage
 - c. Expos or trade shows
 - d. Sponsorships



Before making a claim, please contact the Marketing team (marketing@powerequipment.com.au) or your Account Manager for pre-approval. It is the dealer's responsibility to ensure any submissions are approved prior to publication. The final decision for reimbursement (whether at all, in total, or in partial amount) will be at the sole discretion of Power Equipment.

Please refer to the complete 'Dealer Marketing Support' guide for more information on eligible activities, ineligible activities, guidelines and making a claim.

Power Equipment reserves the right to amend, modify, or cancel this program, or any portion at any time. Any exceptions to this program and/or guidelines must be approved in writing by an authorised Power Equipment representative.

SPARE PARTS



GENUINE TOHATSU SPARE PARTS

To get the very best out of a Tohatsu engine, Power Equipment recommends and only supplies genuine Tohatsu factory parts, as recommended by the manufacturer.

As an Authorised Tohatsu dealer, it is imperative that you recommend genuine parts to the customer, including the benefits and any warranty implications. Using non-genuine or non-recommended parts may void a factory warranty.

It is also expected that as a member of our dealer network, a minimum stock holding of consumables and replacement parts be kept for quick turnaround times and emergency breakdowns. This can include filters, belts, impellers, and also oils and coolants. Your Account Manager can assist in recommending the necessary parts to keep on hand.

DEALER CONNECT

Order, track and save time online!

Dealer Connect is Power Equipment's very own online parts ordering platform, exclusive to our dealer network. In just a few clicks you can check the availability and pricing of parts, place orders, check the status of your order and more.

All Tohatsu parts and accessories are available to order via our Dealer Connect platform.

Any eligible discounts or monthly stock order discounts are automatically calculated, and we also offer variety of exclusive special offers for Dealer Connect users.

Contact the Parts Team or your Account Manager to find out if you are eligible for Dealer Connect access.

Get access to
Dealer Connect:



PARTS SUPPORT

We have a dedicated Parts Team that are here to help. Whether you're looking for a particular part, you're not sure which part is needed, or you just need some helpful advice, the team is just an email or phone call away.

We also have a range of material to assist in identifying parts, part numbers and engine compatibility.

Monthly Orders

Each dealer receives one (1) monthly stock order which features the following:

- Additional 5% discount
- Free freight

To be eligible for the monthly order, the minimum invoice value must be \$500 (excluding GST and back order releases). The expectation is that this monthly order will be used to replenish parts stock holdings.

Back Order

When placing an order and some parts are on back order, it is our default to ship complete orders only. Parts availability can be found in our Dealer Connect ordering portal.

If you require partial shipment, please request when placing the order.

Emergency Breakdown

Where there is a commercial vessel breakdown scenario, our team will do our best to provide the necessary parts as quickly as possible. Determination of emergency breakdown and freight selection is at the discretion of Power Equipment. All costs incurred are passed onto the dealer.



Our Freight

We use both air and road freight services for our spare parts orders.

Small orders (generally under 5kg) are sent via standard courier, larger orders are sent via road freight.

Our team may reach out if freight method cannot be achieved efficiently.

- Order by 2pm for best chance of same or next day dispatch
- Every attempt will be made to consolidate orders
- We can drop ship direct to your customer
- We are unable to ship to PO Boxes
- Deliveries to residential addresses may incur additional charges

Returns

Parts supplied by Power Equipment are covered under limited warranty.

Parts may be returned and accepted for credit at the discretion of Power Equipment

Any returns must be accompanied by an invoice and a completed 'Parts Return Authority' form

Parts returned for credit will incur a re-stocking fee, unless agreed in writing prior to return by Power Equipment

All parts must be returned in new and re-sellable condition, and in their original packaging

Our Parts Team can be contacted on (03) 9709 8590 or partsteam@powerequipment.com.au

AFTERSALES SUPPORT & WARRANTY



TECHNICAL SUPPORT

As an authorised Tohatsu dealer, you're not on your own.

Have an installation question or just not sure about something? Power Equipment's Australian based technical experts are on hand to guide and support you from product specification to engine installation and servicing, and everything in between.

Our support services are provided by highly trained engineers and mechanics, with many years of experience in the industry. From recreational to commercial marine applications, we're here to help.

What we can assist with:



Engine Application /
Suitability



Technical Advice



Service Assistance



Error Codes



Emergency
Breakdown Support



Technical Training

WARRANTY

Tohatsu provides a manufacturers limited warranty on all products, including parts. Warranty periods may vary between models and applications (recreation vs commercial). Please refer to the product documentation for relevant warranty period.

Important Warranty information:

- The selling dealer must be an approved Tohatsu dealer, as agreed with the distributor (Power Equipment)
- The dealer must enter the necessary items into the Warranty Registration Card and supply to the customer at time of purchase
- The dealer must conduct a pre-delivery, operational and/or on-water check as outlined in the terms of sale
- As a dealer, you must submit the Warranty Registration Card and any pre-delivery or installation checklist to Power Equipment no later than 10 days after the sale

Warranty Claims Process:

In order to submit a warranty claim, please follow the following steps:

1. Owner takes engine/boat to dealer for assessment. Customer must produce their Warranty Registration Card or proof of purchase. The initial inspection must take place within 3 months of the occurrence of the issue.

2. Dealer inspects and if a possible warranty claim, submits a claim to service@powerequipment.com.au. Claims must include a brief summary/report and photos.

3. Power Equipment reviews claim, submits to Tohatsu if all conditions are met and deemed a warrantable claim.

4. Tohatsu will approve or deny claim. If approved, dealer can conduct repairs as directed. If not approved, owner is responsible for any dealer costs to date and repairs.

No work is to be conducted until a written purchase order is provided by Power Equipment. Costs/repairs outside of warranty work are the responsibility of the owner. This information is to be used as a guide only. Please refer to the official Tohatsu Warranty Policy and/or Product Documentation. Warranty process and conditions are subject to change.

TERMS & CONDITIONS OF SALE

1. Definitions

"ACL" means the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

"Agreement" means the agreement (incorporating these Conditions) for the sale of goods and/or services by the Supplier to the Customer as specified in the tax invoice to which these Conditions are attached, formed upon the Supplier's acceptance and confirmation of the Customer's order for such goods and/or services;

"Conditions" means these Terms and Conditions of Sale;

"Consumer" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the ACL;

"Customer" means the person or persons (jointly and severally if more than one) acquiring goods and/or services from the Supplier, being the person(s) to whom the tax invoice attached to these Conditions is/are addressed;

"Customer's Property" means the vessel, including its hull, motors, controls, equipment, accessories, dinghies, tenders and their motors, and any other property of the Customer, delivered to or made available to the Supplier for its performance of the services;

"Deposit" means, with respect to the supply of goods, any deposit (being a fixed amount or a percentage of the GST-inclusive price of the goods) specified as such in the written quotation provided by the Supplier to the Customer under clause 2.2 or the Supplier's written confirmation of its acceptance of the Customer's order for the goods;

"End User" means any person, firm or corporation who has acquired any goods from the Customer;

"goods" means the goods supplied by the Supplier to the Customer under the Agreement;

"GST" means any consumption tax imposed by government, whether at point of supply or at some other specified occurrence, by whatever name, and includes (without limitation) a goods and services tax, a broad based consumption or indirect tax, or value-added tax, including "GST" as defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"PPSA" means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

"services" means the services supplied by the Supplier to the Customer under the Agreement, which may include repairs, installation, operation, maintenance, improvements, shipwright work or the removal of parts as specified in the tax invoice to which these Conditions are attached;

"Supplier" means the Power Equipment Group entity issuing the tax invoice to which these Conditions are attached, being the seller of the Goods and/or Services to the Customer under the Agreement.

"tax invoice" means a tax invoice which complies with the definition contained in section 29-70 of *A New Tax System (Goods and Services Tax) Act 1999* or any amending legislation.

2. Basis of Contract

- 2.1 These Conditions apply exclusively to every Agreement and cannot be varied or replaced by any other condition(s) including the Customer's terms and conditions of purchase

(if any) unless expressly agreed in writing (including via email) by the Supplier and the Customer.

- 2.2 Any written quotation provided by the Supplier to the Customer for the proposed supply of goods or services is deemed to be an invitation only to the Customer to place an order based upon that quotation. Quotations are valid for 30 days from the quotation date.

- 2.3 If the Customer authorises the commencement of the services specified in the Supplier's quote or estimate, it will be regarded as having accepted the Supplier's quote or estimate, and will be bound by these Conditions and the Agreement for the supply of the services which is deemed to have been formed.

- 2.4 The Supplier may, at its discretion, subcontract on any terms the whole or part of the services, provided that the Supplier must ensure that the services are provided in accordance with these Conditions.

- 2.5 The Supplier has absolute discretion to refuse to accept any offer.

- 2.6 The Customer must provide the Supplier with its specific requirements, if any, in relation to the goods and/or services at the time of placing its order for them.

- 2.7 The Supplier may, where reasonably necessary, vary or amend these Conditions by written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date.

3. Customer's Authority

- 3.1 The Customer warrants that it is the owner of the Customer's Property and has the authority to request the Supplier to perform the Services. The Customer must indemnify the Supplier against any damage or loss suffered by the Supplier as a result of any breach of this warranty.

4. Pricing

- 4.1 Prices quoted for the supply of goods or services exclude GST and any other taxes or duties imposed on or in relation to the goods or services.

- 4.2 Where a price quoted by the Supplier for services is specified to be an estimate, the Customer shall pay the Supplier the amount claimed by the Supplier on completion of the services, which may vary from the estimated amount and which will be based upon the Supplier's standard hourly rate (as stated in the Supplier's quotation) for the actual work done and materials supplied by or on behalf of the Supplier.

- 4.3 Where the Customer has requested the Supplier to prepare a quotation for the provision of the services, the Supplier shall provide to the Customer for approval before preparing the quotation an estimate of any labour and other associated costs and charges for preparing the quotation which, in the event that the Customer does not accept the quotation, the Customer shall be responsible for paying to the Supplier. The Customer's Property will not be reassembled following rejection of a quotation unless the Customer requests the Supplier to do so and agrees, at the time of the request, to pay the Supplier's charges for such work.

- 4.4 Where there is a change in the costs incurred by the Supplier in relation to the goods and/or services beyond the control of the Supplier, the Supplier may vary its price

for the goods and/or services in order to take account of such change.

5. Payment

5.1 Payment for goods must be made as follows unless otherwise specified by the Supplier in writing:

- (a) any Deposit must be paid immediately upon the Supplier's confirmation of its acceptance of the Customer's order for the goods; and
- (b) the balance of the GST-inclusive price of the goods must be paid immediately upon the Supplier's notification to the Customer that the goods are ready for delivery and/or shipment.

For the avoidance of doubt:

- (i) the Supplier is not obliged to proceed with the Customer's order unless and until the deposit is paid in full; and
- (ii) the Supplier is not obliged to deliver and/or ship the goods to the Customer unless and until the balance of the GST-inclusive price of the goods is paid, and the Supplier will not be in any way be responsible or liable for any delay in the supply of the goods and/or any cost, expense, damage, loss or other liability arising from the delay in payment by the Customer.

5.2 Unless otherwise agreed in writing by the Supplier, payment for services will be:

- (a) 50% of the quoted price immediately prior to commencement of the services ("Initial Payment"); and
- (b) the remaining balance of the quoted price or the price for actual work done under clause 4.2 within 7 days of the date of the Supplier's final invoice for the services being issued upon completion of the services.

5.3 Time for payment is of the essence.

5.4 The Supplier will not commence the services until the Initial Payment has been made by the Customer.

5.5 For the purposes of the GST, a tax invoice will be provided by the Supplier within 14 days of receipt of full payment in cleared funds from the Customer.

6. Payment Default

6.1 If the Customer defaults in payment by the due date of any amount payable to the Supplier, then the Supplier may, without prejudice to any of its other accrued or contingent right:-

- (a) charge the Customer interest on any overdue sum at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic.) plus 2% cent for the period from the due date until the date of payment in full;
- (b) charge the Customer for all expenses and costs (including without limitation all legal costs, mercantile agents commission and expenses) reasonably incurred by it in taking whatever action it deems appropriate to recover any sum due;
- (c) cease or suspend the supply of goods and/or services to the Customer without liability to the Customer or any third party for any loss or damage whether directly or consequentially; and
- (d) by written notice to the Customer, terminate this Agreement and any other uncompleted contract with the Customer, and recover from the Customer payment for any goods and/or services already supplied to the Customer, or ordered for the Customer

which cannot be cancelled without penalty, but not paid for by the Customer.

6.2 Clause 6.1 may also be relied upon, at the Supplier's option where the Customer becomes bankrupt or insolvent or enters into any scheme of arrangement or with or for the benefit of its creditors.

7. Provision of Credit

7.1 The Supplier may, where reasonably necessary, suspend, cancel, reduce or review a Customer's credit facility by providing written notice to the Customer.

7.2 The Supplier may, at any time, request additional information or the provision of further security in relation to a credit facility and may suspend or cancel a credit facility if the information or security requested is not provided within a reasonable time.

8. Retention of Title and Passing of Property

8.1 Until full payment in cleared funds is received by the Supplier for all goods supplied by it to the Customer:-

- (a) title in the goods remains vested in the Supplier and does not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for the Supplier, and must keep the goods safe and free from deterioration, destruction, loss or harm, and must clearly designate the goods as the property of the Supplier, and store them in such a way they are clearly identified as the property of the Supplier;
- (c) if the Customer sells any of the goods, it sells as principal and not as agent of the Supplier, and must hold the proceeds of sale of the goods on trust for the Supplier in a separate account with a bank to whom the Customer has not given security, however failure to do so will not affect the Customer's obligation as trustee;
- (d) in addition to its rights under the PPSA, the Supplier and/or its agents may at any time and from time to time by giving the Customer reasonable notice, enter any premises and access any Customer's Property where it suspects the goods are to inspect, recover and remove them and otherwise exercise in relation to such goods any of the Supplier's rights (whether those rights are conferred by common law, contract, statute or otherwise), notwithstanding that they may have been attached to other goods or services not the property of the Supplier, and for this purpose the Customer irrevocably authorises the Supplier to enter such premises and to access such Customer's Property, and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action except to the extent that such costs, claims, demands or actions arise from the negligence or wilful default of the Supplier. The Supplier and its agents agree to take reasonable care in the removal of any goods from the premises or the Customer's Property but, to the extent this liability may be disclaimed by law, are not liable for any loss, damage or injury to such premises or Customer's Property caused by the removal of the goods.

8.2 The Supplier will exercise its right of entry under clause 8.1(d) in accordance with all applicable laws.

8.3 The reservation of title and ownership under this clause 8 is effective whether or not the goods have been altered from their supplied form, or commingled with other goods.

9. Lien

- 9.1 The Supplier retains a repairer's lien over the Customer's Property and/or a general lien over any other property of the Customer that comes into the possession of the Supplier for any reason until all amounts owing by the Customer to the Supplier are paid in full.
- 9.2 Without limitation, the repairer's lien entitles the Supplier to:
 - (a) refuse to return the Customer's Property to the Customer; and/or
 - (b) charge the Customer transport, rent, storage and all other expenses reasonably incurred relating to the possession of the Customer's Property.
- 9.3 Without limitation, the general lien, entitles the Supplier, subject to giving 14 days' notice to the Customer, sell the property by private treaty or public auction, whichever the Supplier in its sole discretion deems appropriate, and apply the proceeds to the repayment of its costs and expenses and any sum which is due and payable by the Customer.
- 9.4 Should the Customer fail to collect any of the Customer's Property within 3 months of notification of the services being completed, the Supplier is authorised to sell such of the Customer's Property as remains in its possession in such manner as it sees fit (and is hereby appointed as the Customer's attorney for this purpose) and shall be at liberty to apply the proceeds of sale towards payment of any money due by the Customer to the Supplier and thereafter refund any excess to the Customer at its last known address.
- 9.5 The sale or delivery of part of the Customer's Property does not affect the repairer's lien.
- 9.6 The lien is in addition to any common law or legislative rights available to the Supplier concerning liens or unpaid invoices or unclaimed goods.

10. Personal Property Securities Act

- 10.1 Notwithstanding anything to the contrary contained in these Conditions, the PPSA applies to these Conditions.
- 10.2 For the purposes of the PPSA, these Conditions and the Agreement:
 - (a) terms used in this clause 10 that are defined in the PPSA have the same meaning as in the PPSA; and
 - (b) this clause 10 constitutes a security agreement and the retention of title arrangement described in clause 8 constitutes the grant of a Purchase Money Security Interest (PMSI) by the Customer in favour of the Supplier in respect of all present and after-acquired/future goods supplied by the Supplier to the Customer from time to time and the proceeds of such goods.
- 10.3 The Customer must, if requested by the Supplier, immediately do whatever is necessary (including but not limited to signing any documents and providing any necessary information) in order to ensure that the Supplier's PMSI is a perfected security interest which is able to be registered by the Supplier on the Personal Property Securities Register. The Customer must, if requested by the Supplier, pay or reimburse the Supplier for any costs of registration, amendment or discharge of any financing statement or financing change statement and any reasonable costs the Supplier incurs with respect to or in connection with its PMSI and the exercise of its rights under the security agreement.

- 10.4 The security interest arising under this clause 10 attaches to the goods when the goods are collected or dispatched from the Supplier's premises and not at any later time.
- 10.5 The Customer must not without the Supplier's prior written consent grant any security interest or enter into any other arrangement that permits any other person to have or to register any security interest in respect of the goods or any proceeds from the sale of the goods that would have priority over the Supplier's security interest in respect of the goods or any proceeds from the sale of the goods (including the Supplier's PMSI referred to in clause 10.2(b)).
- 10.6 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95 (notice of removal of accession), 118 (enforcing security interests in accordance with land law decisions), 121(4) (notice to grantor in enforcement of security interests in liquid assets), 130 (notice of disposal of collateral), 132(3)(d) (statements of account following disposal), 132(4) (statements of account if no disposal), 135 (notice of retention of collateral) and 157 (verification statements) of the PPSA.
- 10.7 The Supplier and the Customer agree to contract out of and nothing in the provisions of sections 96 (retention of accession when person has interest in the whole), 125 (obligation to dispose of or retain collateral), 129 (disposal by purchase), 142 (entitled persons' redemption of collateral) and 143 (entitled persons' reinstatement of security agreement) of the PPSA will apply to these Conditions.
- 10.8 To the extent permitted by the PPSA, the Customer agrees that:
 - (a) the provisions of Chapter 4 (enforcement of security interests) of the PPSA which are for the benefit of the Customer or which place obligations on the Supplier will apply only to the extent that they are mandatory or the Supplier agrees to their application in writing; and
 - (b) where the Supplier has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 10.9 The Customer must immediately upon the Supplier's request:
 - (a) do all things and execute all documents necessary to give effect to the security interest created under the security agreement; and
 - (b) procure from any person considered by the Supplier to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Supplier may at any time reasonably require.
- 10.10 The Supplier may allocate amounts received from the Customer in any manner the Supplier determines, including in any manner required to preserve any Purchase Money Security Interest it has in the goods supplied by the Supplier.
- 10.11 For the purposes of section 275(6) (secured party to provide certain information relating to security interest) of the PPSA, the parties agree and undertake that these Conditions and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Conditions or the sale of the goods,

except as otherwise required by law or that is already in the public domain.

11. Performance of contract

11.1 Any period or date for delivery of goods or provision of services stated by the Supplier is an estimate only and not a contractual commitment.

11.2 The Supplier will use its best endeavours to meet any estimated dates for delivery of goods but will not be liable for any loss or damage suffered by the Customer, the End User or any third party for failure to meet any estimated date, except to the extent of any liability imposed under the ACL.

11.3 If the Supplier cannot complete the services by any estimated date, it will complete the services within a reasonable time.

12. Risk in goods

12.1 The goods are provided ex-works with risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer from the time the goods leave the Supplier's premises whether or not the Supplier has arranged freight of the goods to the customer's requested destination. Where goods are supplied on a trial basis, risk in the goods remains at all times with the Customer.

12.2 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, End User or third parties arising out of the use, installation or possession of any of the goods sold by the Supplier, unless recoverable from the Supplier on the failure to comply with any statutory guarantee under the ACL.

12.3 The Customer's Property will be at the Customer's risk while in the Supplier's possession for the provision of the services and the Supplier will not be liable for any loss or damage to the Customer's Property whilst in its possession, except to the extent of any liability imposed by the ACL or arising from the negligence or wilful default of the Supplier.

12.4 The Customer agrees to indemnify the Supplier against all actions, suits, claims and demands against the Supplier arising directly or indirectly out of such loss or damage to the Customer's Property under clause 12.3, except to the extent of any liability imposed on the Supplier under the ACL or arising from the negligence or wilful default of the Supplier.

13. Delivery and Collection of goods or Customer's Property

13.1 The Customer will arrange and pay for all costs associated with the carriage and insurance of the goods or the Customer's Property (in respect of which services have been performed) from the Supplier's nominated collection address unless otherwise specified by the Supplier.

13.2 If the Customer does not arrange for the collection of the goods or the Customer's Property within 7 days of being advised that they are available for collection, the Customer is deemed to have taken delivery of the goods or the Customer's Property and is liable for reasonable storage charges payable monthly on demand.

13.3 Where it is agreed that the Supplier will arrange delivery, the Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.

13.4 Unless otherwise agreed, the Customer indemnifies the Supplier against any loss or damage suffered by the

Supplier, its sub-contractors or employees as a result of delivery, except where such loss or damage arose from the negligence or wilful default of the Supplier.

13.5 Where the Supplier arranges the delivery of the Customer's Property, the Customer must accept delivery of the Customer's Property within 2 days of the Supplier providing notification to the Customer that it is ready for delivery and if the Customer's Property is not accepted within such time, the Supplier will be entitled to claim reasonable storage costs for each day that the Customer's Property remains in the custody of the Supplier.

13.6 The Customer agrees that by accepting delivery of the Customer's Property it has inspected the end result of the services and satisfied itself that the services have been performed and completed with due care and skill and to a proper and satisfactory standard, subject to any rights available to the Customer under the ACL.

14. Security Trade Control

14.1 If the Customer directly or indirectly sells, leases, exports, or otherwise disposes of the goods or services (collectively referred to as "**Transactions**"), the Customer must comply with any applicable laws and regulations of relevant countries ("**Applicable Laws**"). The Customer must provide the Supplier with such information and documentation that the Supplier requests so as to comply with the Applicable Laws.

14.2 A Transaction will be prohibited if, to the best of the Customer's knowledge:

- (a) it is highly likely that a customer of the Customer (referred to as a "**Purchaser**") may make use of the goods or services for the design, development, production, use or stockpiling of any weapons of mass destruction such as nuclear weapons, biological weapons, chemical weapons and missiles, and/or
- (b) it is highly likely that a Purchaser in any country and/or area determined as a country and/or area to which no weapons are to be exported under the resolutions approved by the Security Council of the United Nations ("**UN**"), the Council of the European Union and/or the Organization for Security and Co-operation in Europe, may make use of the goods for military purposes.

14.3 If the Customer receives any inquiry as to the Transactions involving the goods or services from the following Purchasers, the Customer must immediately inform and verify with the Supplier prior to acceptance of such Transactions:

- (a) any Purchaser listed on the latest version of the Foreign End User List issued by the Ministry of Economy, Trade and Industry of Japan, which is shown at the following website address:
<http://www.meti.go.jp/policy/anpo/englishpage.html>;
- (b) any Purchaser listed on the latest version of the Denied Persons List and/or the Entity List issued by the Bureau of Industry and Security of the US Department of Commerce, which is shown at the following website address:
<http://www.bis.doc.gov/index.php/policy-guidance/listsof-parties-of-concern>;
- (c) any Purchaser located in any countries and/or areas, against which any economic sanctions have been imposed under resolution(s) approved by the Security Council of the UN and/or the Council of the European

Union, the Organization for Security and Co-operation in Europe as far as the goods or services remain a "prohibited subject", whose export to such countries and/or area is prohibited thereunder; and/or

- (d) any ultimate armament end user such as military force, military-related parties and/or organization including Coast Guard.

14.4 The Customer hereby agrees to indemnify and hold the Supplier harmless from and against any and all fines, damages, losses, costs and expenses including reasonable legal fees ("**Costs**") incurred by the Supplier as a result of any breach of this clause 14 by the Customer or any of the Customer's distributors, dealers or retailers (collectively referred to as the "**Customer's Distributors**").

14.5 The Customer must include wording at least as stringent as this clause 14 in its agreements with the Customer's Distributors whereby the indemnification obligation by such of the Customer's Distributors for any fines, damages, losses, costs and expenses including reasonable legal fees must not be limited in any way, except to the extent required by law. Such indemnification will not affect the Supplier's rights against the Customer nor its ability to terminate all agreements between the Supplier and the Customer.

15. Liability

15.1 Except as the Conditions specifically state, or as contained in any express warranty provided in relation to the goods or services, and to the maximum extent permitted by law, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

15.2 To the extent that goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the ACL, the Customer agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit under the ACL (other than a guarantee under sections 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of the Supplier, one or more of the following:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired.

15.3 To the extent that services supplied by the Supplier are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with a consumer guarantee that the Customer may have the benefit of is limited to, at the option of the Supplier:

- (a) the supply of the services again; or
- (b) the payment of the cost of having the services supplied again.

15.4 If the End User is a consumer and:

- (a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or

consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Supplier's liability to the Customer;

- (b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of the Supplier's liability to the Customer; howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

15.5 If clauses 15.2, 15.3 and 15.4 do not apply, then other than as stated in the Conditions or any written warranty statement the Supplier is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer, End User or any third party.

15.6 The Supplier is not liable for any consequential loss or expense suffered by the Customer, End User or any third party however caused, including but not limited to loss of profits, business or goodwill or any liability to the End User or a third party, except to the extent of any liability imposed by the ACL or arising from the negligence or wilful default of the Supplier.

15.7 The Customer acknowledges that:

- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Supplier in relation to the goods or services or their use or application. Any advice, recommendations, information or assistance provided by the Supplier in relation to the goods or services supplied by it or their use or application is given in good faith, is believed by the Supplier to be appropriate and reliable, however, as far as permitted by law, the Supplier is not liable for any loss or damage arising there from.
- (b) it has not made known, either expressly or by implication, to the Supplier any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer.
- (c) all written or verbal comments made by the Supplier or Supplier's Representative at any testing stage of the goods are provided "as is" and without warranties of any kind either express or implied. Any testing of the goods is provided for informational purposes only and should not be considered a substitute for a comprehensive check of the goods by the Customer.

15.8 Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified by law.

16. Manufacturer's Warranty

16.1 The Supplier is not responsible or liable under any manufacturer's warranty however, the Supplier will use its best endeavours to pass on for the benefit of the Customer any warranty provided by the manufacturer of the goods.

17. Cancellation

17.1 If the Supplier is unable to deliver or provide the goods or services due to reasons beyond its control, then the Supplier will notify the Customer and the parties will liaise

with each other in good faith with a view to reaching agreement on an alternative arrangement. If the parties are unable to reach agreement after liaising with each other for 14 days, the Supplier may cancel the Customer's order (even if it has been accepted) by written notice to the Customer. The Supplier will be under no liability to the Customer, End User or any third party for any damages or losses, direct or indirect, resulting from such cancellation, except to the extent of any liability imposed by the ACL.

17.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on the Supplier once the order has been accepted and processed by the Supplier.

17.3 If the Customer cancels its order after it has been accepted and processed by the Supplier, the Supplier is entitled to reasonable damages for breach of contract.

18. Installation Requirements

18.1 The Customer agrees to ensure that the manufacturers installation requirements are met, and an Operational Check is conducted. This is compulsory and is the Supplier's policy and that of the manufacturer.

18.2 It is the responsibility of the Customer to check the suitability of the goods for the desired application. No responsibility whatsoever is accepted for the incorrect installation of goods. This is the responsibility of the Customer. Goods should not be used for a purpose other than for the purpose for which they were manufactured.

19. Force Majeure

19.1 Neither party is liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control ("**force majeure**") including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs and a party is prevented from performing any of its obligations under the Agreement for a period of more than 3 months, either party may suspend or terminate the Agreement by written notice to the other party.

20. Dispute Resolution

20.1 Prior to commencing any other actions, the Customer agrees to inform Supplier of any issues and allow Supplier reasonable time and access to inspect and/or investigate (including consulting with the manufacturer).

20.2 If a dispute arises from the contract, a party to the contract must not commence court or arbitration proceedings relating to the dispute unless that party has participated in a formal mediation in Melbourne, Victoria.

21. Jurisdiction

21.1 These Conditions and the Agreement will be governed by the laws of Victoria. The parties hereby submit to the exclusive jurisdiction of the Victorian Courts and the Federal Court of Australia Victoria Registry.