

TERMS AND CONDITIONS OF TRADE

These terms and conditions (**Terms**) apply when
 ('We', 'Us', 'Our') supply goods or services to a Customer ('You', 'Your').

1. Definitions

In these Terms:

"**ACL**" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth);

"**Contract**" means any agreement for the provision of goods or services by Us to You;

"**Customer**" means the person, jointly and severally if more than one, acquiring goods or services from Us, whose details are set out in the order.

"**deliverable**" means any deliverable produced by the services;

"**Defect**" or "**Defective**" means a defect or flaw in the goods which prevents the goods from being used for the purposes intended for such goods or which makes the use of the goods dangerous, but does not include anything which has been disclosed as a feature or limitation of the goods by Us before the date of purchase, or any defect that is trivial or insubstantial;

"**goods**" means goods supplied by Us to You;

"**GST**" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth);

"**Non-Excludable Rights**" has the meaning given in clause 910.1;

"**PPSA**" means the Personal Property Securities Act 2009 (Cth);

"**services**" means services supplied by Us to You;

"**Uncollected Goods Legislation**" means (as relevant) the *Australian Consumer Law and Fair Trading Act 2012* (Vic) or the *Disposal of Uncollected Goods Act 1968* (Tas).

"**Vehicle**" means any equipment or vehicle or part of a vehicle provided by You for the purpose of obtaining any goods or services.

2. Basis of Agreement

- 2.1 The Terms apply exclusively to every Contract.
- 2.2 Any quotation provided by Us to You for the proposed supply of goods or services is:
 - (a) valid for 30 days;
 - (b) an invitation to treat only; and
 - (c) only valid if in writing.
- 2.3 Any terms in Our job sheet form part of the Terms and will prevail to the extent of any inconsistency.
- 2.4 A Contract is formed when:
 - (a) We accept an order from You in response to our quotation; or
 - (b) We provide the goods or services to You based on Your instructions.
- 2.5 We have absolute discretion to refuse any order.
- 2.6 You must provide Us with Your specific requirements, if any, in relation to the goods and services.

3. Pricing & Payment

- 3.1 Prices quoted for the supply of goods and services include GST.
- 3.2 Subject to clauses 3.3 and 3.5, full payment must be made within 30 days of the date of Our invoice.
- 3.3 We reserve the right to require payment in full on delivery of the goods or completion of the services.
- 3.4 The time for payment is of the essence.
- 3.5 Payment by cheque is not deemed to have been made until the proceeds of the cheque have cleared.

4. Passing of Property

- 4.1 Until You make full payment for all goods and/or services and for all other amounts owing to Us:
 - (a) title in all goods remains vested in Us;
 - (b) You must hold the goods as fiduciary bailee and agent for Us;
 - (c) You must hold the proceeds of sale of the goods on trust for Us in a separate account with a bank to whom You have not given security however failure to do so will not affect Your obligation as trustee;
 - (d) in addition to our rights under the PPSA, We may enter any premises and remove the goods and for this purpose You irrevocably licence Us to enter such premises and also indemnify Us from and against all costs, claims, demands or

actions by any party arising from such action; and

- (e) We retain a possessory lien over any Vehicle You provide to us as security for Your payment of the goods and/or services to which that Vehicle relates and any other charges and costs payable by You to Us under these Terms.

5. Personal Property Securities Act

- 5.1 The PPSA applies to these Terms.
- 5.2 These Terms are a security agreement, and We have a purchase money security interest in all present and future goods supplied by Us to You and the proceeds of the goods. Where the goods are installed in or affixed to other goods, the security interest extends to both the accession and the other goods or mass.
- 5.3 Where permitted by the PPSA, You waive any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 5.4 Both Us and You agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- 5.5 To the extent permitted by the PPSA, You agree that:
 - (a) the provisions of chapter 4 of the PPSA which are for Your benefit or which place obligations on Us will apply only to the extent that they are mandatory, or We agree to their application in writing; and
 - (b) where We have rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply.

6. Risk

- 6.1 Risk in the goods will pass to You when You collect the goods from the delivery location, or when the goods are loaded for delivery to You at Our premises.

7. Delivery

- 7.1 Any date for delivery of goods or provision of services stated by Us is an estimate only.
- 7.2 Subject to any Non-Excludable Rights, We will not be liable for any loss or damage suffered by You or any third party for any failure to meet an estimated collection, delivery or performance date, except that we will refund you in relation to goods and services which are unperformed or undelivered.
- 7.3 If We cannot complete the services by any estimated date, We will complete the services within a reasonable time.
- 7.4 Unless otherwise agreed in writing, You must collect the goods or any Vehicle within 5 business days of being advised that they are ready.

8. Storage and disposal

- 8.1 You agree to pay Us a storage fee in relation to any goods and/or Vehicles that you fail to pay for or collect by the relevant date set out in this Contract, charged at Our standard applicable rates for the duration of the storage. Our storage fees, along with any other amounts owing for goods and/or services under this Contract, must be paid before You can collect or arrange for delivery of the goods and/or Vehicles.
- 8.2 If you fail to:
 - (a) make payment for goods and/or services within 30 days after the date for payment under this Contract; or
 - (b) collect goods and/or Vehicles within 30 days after the date for collection under this Contract,

We may sell or dispose of the relevant goods and/or Vehicles in any manner We deem as appropriate, provided that We have first made reasonable attempts to contact You and have not otherwise caused You to be unable to make payment for, or collect or accept the delivery of the goods and/or Vehicles.

- 8.3 Where We exercise our right to dispose of goods and/or Vehicles under clause 8.2, We will retain from the proceeds of sale all amounts owing to us under this Contract. The balance of the proceeds of sale will be dealt with in accordance with Uncollected

Goods Legislation.

9. Defects

- 9.1 You must, as soon as possible after delivery of the goods or services, check whether the goods or services are Defective when delivered. You must advise Us of any Defects within 14 days after delivery. If You give Us notice under this clause, You must preserve the goods or deliverables in the state in which they were delivered or performed and allow Us to access Your premises to inspect the goods or deliverables.
- 9.2 The process set out in clause 9.1 does not apply to Defects that are not obvious or are not able to be detected by a visual inspection of the goods or deliverables. For goods or deliverables in that category, You must advise Us of any Defects within the period following delivery or performance of the goods or services in which it would be reasonable to expect the relevant Defect to become apparent.
- 9.3 Subject to these Terms and any Non-Excludable Rights:
- (a) We will not be liable for any Defective goods or services unless You notify Us with full details and a description within the relevant period under clauses 9.1 and 9.2, otherwise You are deemed to have accepted the goods;
 - (b) If We determine, acting reasonably, that the goods or services are Defective, We may, at Our option:
 - (i) in relation to goods, replace or repair the goods, supply goods that are equivalent or refund the price of the goods; or
 - (ii) in relation to services, resupply the services or refund the price of the services; and
 - (c) We will not be liable to You for any Defective goods or services or for any other loss arising out of or in connection with:
 - (i) Your failure to adhere to Our warnings and follow Our instructions in relation to the goods or services;
 - (ii) Your wilful misconduct or deliberate misuse of the goods or services;
 - (iii) modification to the goods or services carried out by anyone other than Us or Our authorised service providers; or
 - (iv) in relation to services performed on a Vehicle, any defect or loss that is caused by any spare parts you direct us to use in performing the services, where those spare parts are supplied by anyone other than Us or Our authorised service providers.

10. Liability and Disclaimers

- 10.1 Nothing in this Contract is intended to have the effect of excluding any applicable law that cannot be excluded, restricted, or modified by agreement of the parties (Non-Excludable Rights).
- 10.2 Subject to clause 9.10.1, and to the extent permitted by law:
- (a) neither party will be liable to the other party for any indirect or consequential loss;
 - (b) all conditions, implied terms and warranties, whether statutory or otherwise, are excluded in relation to the goods and services;
 - (c) Our liability to You for any Defective goods or services or for any other loss however caused is limited to:
 - (i) in the case of goods, the replacement or repair of the goods, the supply of equivalent goods or payment of the cost of doing so; and
 - (ii) in the case of services, the resupply of the services or payment of the cost of doing so.
- 10.3 You acknowledge and agree that:
- (a) goods (including goods comprised in any Vehicles) presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods; and
 - (b) during repairs, some, or all of Your stored data, if any, may be lost. You must ensure that any data is saved elsewhere prior to repairs.

11. Variation and Cancellation

- 11.1 We may cancel Your order for goods or services at any time by giving you written notice.
- 11.2 You may not cancel an accepted order without Our prior written consent. If We accept Your cancellation request, You must reimburse Us for Our reasonable direct costs arising from the cancellation, including payment for any goods ordered by Us from our suppliers relating to the order.
- ## 12. Miscellaneous
- 12.1 The law of Victoria (where goods and services are being provided in Victoria) or the law of Tasmania (where the goods and services are being provided in Tasmania) govern these Terms.
- 12.2 A reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it.
- 12.3 A waiver of any right arising under this Contract must be in writing and signed by the party granting the waiver. Any variation of this Contract must be in writing and signed by the parties.
- 12.4 Neither party may assign its rights under this Contract without the prior written consent of the other party.
- 12.5 If any provision of these Terms is invalid, illegal, or unenforceable, then the provision is, as far as possible, to be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be read down in this manner, the provision or part of it is deemed to be void and severable, and the remaining provisions of the Contract are not in any way affected or impaired.