

Mount Motor Works Ltd Terms of Trade

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

"**Customer**" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from MMW.

"**Goods and Services**" shall mean all goods, products, services and advice provided by MMW to the Customer and shall include without limitation the supply of motor vehicle parts and all automotive services and repairs, technical advice, breakdown salvage, towing and labour, hire, insurance, freight or any other matter associated with the supply of any other good or service by MMW to the Customer.

"**MMW**" shall mean "Mount Motor Works Ltd" or any agents or employees thereof.

"**Price**" shall mean the cost of the Goods as agreed between MMW and the Customer and includes all disbursements e.g. charges MMW pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

Any instructions received by MMW from the Customer for the supply of Goods and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

3.1 The Customer authorises MMW to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by MMW to any other party.

3.2 The Customer authorises MMW to disclose any information obtained to any person for the purposes set out in clause 3.1.

3.3 Where the Customer is a natural person, the authorisations given under clauses 3.1 and 3.2 are authorisations and consents for the purposes of the Privacy Act 1993.

4. PRICE

4.1 Where no Price is stated in writing or agreed to orally the Goods and Services shall be deemed to be sold at the current price as such Goods and Services are sold by MMW at the time of the contract.

4.2 The Price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of MMW between the date of the contract and delivery of the Goods and Services.

5. PAYMENT

5.1 Unless otherwise agreed, payment for all Goods and Services supplied by MMW to the Customer shall be made either:

- a) In full on completion of work or pick up of vehicle; or
- b) If approved by MMW, before the 20th day of the month following the date of the invoice ("**due date**").

5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.

5.3 Any expenses, disbursements and legal costs incurred by MMW in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.

5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

5.5 MMW may require a deposit.

6. QUOTATION

6.1 Where a quotation is given by MMW for Goods and Services:

- a) Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue;
- b) The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
- c) MMW reserves the right to alter the quotation if circumstances change beyond its control.

6.2 Where Goods and Services are required in addition to the quotation, the Customer agrees to pay for the additional cost of such Goods and Services.

7. RISK

7.1 The Customer's vehicle and the Goods and Services are at MMW's risk until the Customer's vehicle is delivered to the Customer or its agent in accordance with clause 7.2.

7.2 Delivery to the Customer of the Customer's vehicle and the Goods and Services shall be deemed complete when MMW gives possession of the Customer's vehicle and/or the Goods and Services directly to the Customer or its agent or possession of the Goods and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.

7.3 The Customer is responsible for keeping vehicles insured at all times.

7.4 A storage fee of \$12 per day may apply if a vehicle is not picked up or able to be delivered within 48 hours of notification to Customer that work on the vehicle is complete.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

8.1 Title in any Goods and Services supplied by MMW passes to the Customer only when the Customer has made payment in full for all Goods and Services provided by MMW and of all other sums due to MMW by the Customer on any account whatsoever. Until all sums due to MMW by the Customer have been paid in full, MMW has a security interest in all Goods and Services.

8.2 If the Goods and Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods and Services shall remain with MMW until the Customer has made payment for all Goods and Services, and where those Goods and Services are mixed with other property so as to be part of or a constituent of any new Goods and Services, title to these new Goods and Services shall be deemed to be assigned to MMW as security for the full satisfaction by the Customer of the full amount owing between MMW and Customer.

8.3 The Customer gives irrevocable authority to MMW to enter any premises occupied by the Customer or on which Goods and Services are situated at any reasonable time after default by the Customer or before default if MMW believes a default is likely and to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated. MMW shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. MMW may either resell any repossessed Goods and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and Services and credit the Customer's account with the invoice value thereof less such sum as MMW reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

8.4 Where Goods and Services are retained by MMW pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

8.5 The following shall constitute defaults by the Customer:

- a) Non payment of any sum by the due date.
- b) The Customer intimates that it will not pay any sum by the due date.
- c) Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
- d) Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to MMW remains unpaid.
- e) The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets.
- f) A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- g) Any material adverse change in the financial position of the Customer.

9. SECURITY INTEREST FOR SERVICE PROVIDERS

The Customer gives MMW a security interest in all of the Customer's present and after-acquired property that MMW has performed services on or to or in which Goods and Services supplied or financed by MMW have been attached or incorporated.

10. PAYMENT ALLOCATION

10.1 MMW may in its discretion allocate any payment received from the Customer towards any invoice that MMW determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by MMW, payment shall be deemed to be allocated in such manner as preserves the maximum value of MMW purchase money security interest in the Goods and Services.

11. GENERAL LIEN

11.1 The Customer agrees that MMW may exercise a general lien against any Goods and Services or property belonging to the Customer that is in the possession of MMW for all sums outstanding under this contract and any other contract to which the Customer and MMW are parties.

11.2 If the lien is not satisfied within seven days of the due date MMW may, having given notice of the lien at its option either:

- a) Remove such Goods and Services and store them in such a place and in such a manner as MMW shall think fit and proper and at the risk and expense of the Customer; or
- b) Sell such Goods and Services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

12. DISPUTES

No claim relating to Goods and Services will be considered unless made in writing within seven days of delivery.

13. LIABILITY

13.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon MMW which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on MMW, MMW liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

13.2 Except as otherwise provided by clause 13.1 MMW shall not be liable for:

- a) Any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by MMW to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including

negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by MMW to the Customer; and

- b) The Customer shall indemnify MMW against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of MMW or otherwise, brought by any person in connection with any matter, act, omission, or error by MMW its agents or employees in connection with the Goods and Services.

13.3 MMW's liability to the Customer is limited to the Price for the applicable Goods and Services. MMW shall not be liable to the Customer for any lost profit, lost revenue, opportunity cost, loss of anticipated savings, or any indirect or consequential losses. We

14. WARRANTY

14.1 Manufacturer's warranty applies where applicable.

15. CONSUMERS GUARANTEES ACT

15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and Services from MMW for the purposes of a business in terms of section 2 and 43 of that Act.

16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for MMW agreeing to supply Goods and Services and grant credit to the Customer at their request, is deemed to sign this contract in their personal capacity and jointly and severally personally undertakes to MMW as a principal debtor with the company or trust the payment of any and all monies now or hereafter owed by the Customer to MMW and agrees to indemnify MMW against any loss, cost or expense incurred by MMW as a result of any non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

17. MISCELLANEOUS

17.1 MMW shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its reasonable control.

17.2 Failure by MMW to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations MMW has under this contract.

17.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.