

CONDITIONS

1. INTERPRETATION

Definitions

1.1 In this agreement:

Authorised Representative means a director of the Supplier;

Completion Date means the date specified for completion in the Quotation or if no Quotation is provided, any other date nominated for completion by the Supplier;

Conditions means the terms and conditions of this agreement;

Consequential Loss means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; punitive or exemplary damages; in each case arising from or in connection with the performance of this agreement and whether or not foreseeable at the time of entering into this agreement;

Customer means the customer specified in the Table at the end of this agreement;

Goods means the Goods supplied by the Supplier to the Customer pursuant to this agreement including all parts fitted in connection with the Services provided to the Customer;

GST Act means the *New Tax System (Goods and Services Tax) Act 1999* (Cth);

GST has the same meaning as in the GST Act;

Invoice means a tax invoice for Goods supplied or Services provided by the Supplier to the Customer including expenses incurred by the Supplier in connection with the provision of the Goods or Services;

Price means the price charged by the Supplier to provide Goods or Services to the Customer;

Quotation means a quotation supplied by the Supplier to the Customer pursuant to clause 2;

Services means the services supplied to the Customer pursuant to this agreement;

Supplier means Heavy Vehicle Workshop Pty Ltd (ACN 603 390 898) trading under its own name or any other business name including its officers, servants, agents and subcontractors;

Supplier's Address: 20 Anton Street Hemmant or such other address as notified by the Supplier from time to time

Supplier's Premises means the addresses at which the Supplier carries on business or performs Work in connection with the Supplier's business;

Vehicle means the Vehicle the Customer delivers to the Supplier and includes the Vehicle after the Work has been performed; and

Work means the provision of Services or supply of Goods in relation to the Vehicle

Construction

1.2 In this agreement:

- (a) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (b) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations;
- (c) words in the singular include the plural and vice versa; and
- (d) headings are included for convenience only and do not affect the interpretation of this agreement.

2. CONDITIONS, COST AND COMMENCEMENT OF WORK

- 2.1 These Conditions apply to and form part of any agreement between the Supplier and the Customer for Work to be performed on a Vehicle.
- 2.2 The Work to be performed by the Supplier is as outlined in the Quotation, in any repair order and any additional Work notified by the Supplier in accordance with clause 2.5.
- 2.3 The Supplier may provide the Customer with a Quotation before performing Work on the Vehicle.
- 2.4 The Customer agrees that any Quotation:
 - (a) is an estimate of the Price of the Work based upon the information provided by the Customer; and
 - (b) is subject to change throughout the course of the Work.
- 2.5 If the nature or extent of the Work to be performed by the Supplier changes from the Work covered by the Quotation, the Supplier will take all reasonable steps to contact the Customer to notify the Customer of the additional Work required.
- 2.6 If the additional Work will increase the Price set out in the Quotation by more than 25%, the Supplier will not continue to carry out the Work until the Customer has been notified and agrees to the Supplier carrying out the additional Work.
- 2.7 If the additional Work will not increase the Price set out in the Quotation by more than 25%, the Customer authorises the Supplier to carry out the additional Work.
- 2.8 The Supplier may at its option decline to commence Work on a Vehicle until one of the following events occurs:
 - (a) the Customer accepts the Quotation provided by the Supplier pursuant to this clause 2;
 - (b) the Customer signs a document in a form acceptable to the Supplier authorising or requesting commencement of Work; or
 - (c) the Customer pays an advance payment requested by the Supplier in accordance with clause 3.4.
- 2.9 Any variation or purported variation of these Conditions (including any special terms and conditions) will not apply unless agreed to by the Supplier in writing and signed by a director or secretary of the Supplier.
- 2.10 The Customer will notify the Supplier of any changes to the Customer's information contained in the Table.

3. INVOICES AND PAYMENT

- 3.1 The Supplier will provide the Customer with an Invoice on completion of the Work. The Invoice may be provided to the Customer by e-mail, facsimile, hand delivery or for collection at the Supplier's Address.
- 3.2 Unless the Customer has a credit account with the Supplier, the Customer agrees to pay any Invoice prior to collection of the Vehicle.
- 3.3 Notwithstanding any other provision of this agreement, all money owed by the Customer to the Supplier will immediately become due and payable if the Customer becomes bankrupt or insolvent or proceedings are instituted against the Customer that may render the Customer bankrupt or insolvent as those terms are defined in the *Bankruptcy Act 1996* (Cth) and the *Corporations Act 2001* (Cth).
- 3.4 The Supplier may require the Customer to pay for all or part of the Work in advance.

4. CUSTOMER'S WARRANTIES AND INDEMNITY

- 4.1 The Customer warrants that:
 - (a) the Customer is the owner of the Vehicle and has the authority and consent of all persons owning or having any interest in the Vehicle to enter into this agreement on their behalf;
 - (b) the Customer has informed the Supplier to the best of its knowledge of the Services or Goods required for the Vehicle;
 - (c) the Vehicle is in a roadworthy condition and is registered with the relevant government authority for driving on Australian roads.
 - (d) the Vehicle is covered by:
 - (i) a policy of third party property damage insurance that extends to indemnify the Supplier its servants or agents for loss or damage arising out of the use or operation of the Vehicle during the period the Vehicle is in the possession or under the control of the Supplier;

- (ii) a CTP insurance policy as that term is defined in the *Motor Accident Insurance Act 1994* (Qld).

4.2 The Customer indemnifies and agrees to keep the Supplier indemnified in respect of:

- (i) any loss or damage suffered by the Supplier or for which the Supplier may be liable including loss or damage to the Supplier's Premises caused by or arising out of the delivery of the Customer's Vehicle to the Supplier's Premises;
- (ii) liability or alleged liability to any person (other than the Customer) who claims to have an interest in the Vehicle or any part of the Vehicle; and
- (iii) liability arising from the performance of Work or the exercise by the Supplier of any right under this agreement.

5. GENERAL LIEN

- 5.1 The Vehicle is accepted for Work subject to a general lien over the Vehicle and any other of the Customer's Vehicles including all equipment, accessories and contents, for all charges due or that may become due to the Supplier by the Customer, in respect of any Work under this agreement or any other Work that the Supplier provides or has provided in respect of any other of the Customer's Vehicles (**Charges**).
- 5.2 If the Charges are not paid when due, or the Vehicle is not collected when so required or requested, the Supplier may, without notice, and immediately:
- (a) remove the Vehicle or the Goods or both and store them as the Supplier thinks fit at the Customer's risk and expense; and
 - (b) sell the Vehicle or the Goods or both, whether by private sale or public auction, and apply the proceeds to discharge the lien and costs of sale without being liable to any person or the Customer for any loss or damage caused.

6. DELIVERY

- 6.1 The Supplier will use reasonable efforts to complete the Work on or before the Completion Date. However, the Customer agrees the Supplier will not be liable for any loss, damage or expense including any Consequential Loss, however caused, arising from delay in completion of the Work or delivery of the Vehicle to the Customer on a date later than the Completion Date.
- 6.2 The Supplier will notify the Customer (which notice may be given by telephone or e-mail) of the date on which the Vehicle or Goods will be available for collection.

7. STORAGE

If the Customer fails to collect the Vehicle or Goods from the Supplier within 2 days of notification by the Supplier under clause 6.2 the Supplier reserves the right to charge for storage until such time as the Vehicle or Goods are delivered or collected.

8. REMOVED AND REPLACED PARTS

Unless otherwise agreed in advance by the Supplier in writing, any parts of the Vehicle removed and replaced during the performance of Work will become the property of the Supplier and may be disposed of by the Supplier.

9. ACCEPTANCE AND CANCELLATION

- 9.1 Unless otherwise agreed in writing by the Supplier, an agreement between the Customer and Supplier for the provision of Goods or Services may not be cancelled by the Customer.
- 9.2 If the Supplier agrees to a request by the Customer to cancel an agreement (**Cancelled Agreement**), the Customer will be liable to the Supplier for the value of Work performed and Goods acquired by the Supplier to perform the Work together with all other costs and expenses incurred by the Supplier in connection with the Cancelled Agreement.

10. WARRANTIES

- 10.1 All implied warranties, guarantees and conditions whether implied by statute or otherwise, are excluded to the extent permitted at law.
- 10.2 If the Customer is a consumer within the meaning of that term in the *Competition and Consumer Act 2010* (Cth) and the *Australian Consumer Law*, the Supplier makes each guarantee required of a supplier to a consumer under Part 3-2 of the *Australian Consumer Law* but only to the extent required by the nature of the Goods provided or Services supplied and the nature of the Customer and subject to clauses 10.3 and 10.4.

- 10.3 If the Goods are intended to be used by, or the Services are intended to be acquired by the Customer for a specific purpose, the Customer must advise the Supplier of that specific purpose in writing before the agreement is entered into. If the Customer does not disclose the specific purpose, the Customer agrees it would be unreasonable for the Customer to rely on the skill or judgment of the Supplier to ensure the Goods or Services are fit for the specific purpose.
- 10.4 The Supplier limits its liability to the Customer for breach of any term or guarantee incorporated into this agreement between the Supplier and the Customer by the *Competition and Consumer Act 2010 (Cth)* or the *Australian Consumer Law* to the lowest of the following amounts:
- (a) the cost of replacing the Goods or supplying the Services again;
 - (b) the cost of obtaining equivalent Goods or Services; or
 - (c) the cost of having the Goods repaired.

11. DEFECTS

- 11.1 The Customer agrees to:
- (a) inspect the Vehicle and Goods on collection;
 - (b) notify the Supplier within seven days of any alleged defect, damage or loss to the Vehicle or Goods or failure to comply with any description, Quotation or Invoice for Work;
 - (c) afford the Supplier a reasonable opportunity to inspect the Vehicle or the Goods or both if notification is made in accordance with clause 11.1(b).
- 11.2 If the Customer does not notify the Supplier within seven days in accordance with clause 11.1(b):
- (a) the Vehicle and any Goods will be deemed to be free from any defects; and
 - (b) the Work will be deemed to have been performed in a good and workmanlike manner.

12. LIABILITY

- 12.1 The Supplier will be under no liability for any Consequential Loss suffered by the Customer or for any liability the Customer has or may have to any third party and indemnifies and agrees to keep the Supplier indemnified therefor.
- 12.2 The Supplier will not be liable for any direct or indirect loss of or damage to, any articles, property or items left or said to have been left with the Supplier or left in the Vehicle.

13. VEHICLE AUTHORITY

- 13.1 The Customer authorises the Supplier to complete any action the Supplier considers desirable or necessary to complete the Work including, but not limited to:
- (a) entering the Vehicle; and
 - (b) testing or driving the Vehicle, including driving the Vehicle outside of the Supplier's Premises.
- 13.2 The Supplier will not be liable to the Customer for any loss or damage, including, but not limited to, personal injury, Consequential Loss and property damage that occurs to, or is caused by, the Vehicle during driving or testing pursuant to clause 13.1.

14. DEFAULT

If the Customer breaches any of these Conditions, the Supplier may refuse to supply the Goods or Services, retain the Customer's Vehicle and may take whatever action against the Customer it considers appropriate to recover any direct, indirect or Consequential Loss, damages or expenses that the Supplier has incurred or suffered as a result of that breach.

15. FORCE MAJEURE

The Supplier will not be liable for any breach of these Conditions arising from any act, event or omission or cause beyond the Supplier's control including but not limited to an act of God, insurrection or civil disorder or disturbance, strikes, lockouts, war or military operations, national or local emergency, acts or omissions of government, highway authorities or other competent authorities, industrial disputes of any kind (whether or not involving the Supplier's employees), fire, lightning, explosion, flood, subsidence, inclement weather, acts or omissions of persons or bodies for whom neither the Supplier nor its employees, officers, contractors or sub-contractors are responsible, or from any other cause outside the control of the Supplier.

16. NOTICES

Notices under this agreement may be sent to:

- (a) the Supplier at the Supplier's Address; and
- (b) to the Customer at the Customer's street, postal or email address specified in the Table.

17. GENERAL

- 17.1 This agreement will be construed in accordance with the laws in force in Queensland and the parties submit to the jurisdiction of the courts of Queensland.
- 17.2 This agreement represents the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings between the parties.
- 17.3 No right of the Supplier under this agreement will be deemed to be waived except by notice in writing signed by an Authorised Representative of the Supplier and any such waiver will not prejudice the Supplier's rights in respect of any other or subsequent breach of these Conditions by the Customer. Any failure by the Supplier to enforce any clause of this agreement, or any forbearance, delay or indulgence granted by the Supplier to the Customer will not be construed as a waiver of the Supplier's rights under these Conditions.
- 17.4 In the event of any inconsistency between this agreement and any terms or conditions as may be set out in the Quotation, an order or other document supplied by the Customer, these Conditions prevail to the extent of any such inconsistency.
- 17.5 If any part of this agreement is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted and this agreement will remain otherwise in full force.

18. GST

Unless specified otherwise, the consideration payable by the Customer has been fixed without regard to the impact of GST and is exclusive of GST. If GST is or becomes payable under or in connection with these Conditions, the Customer must pay an additional amount equal to the GST payable.

TABLE

Customer name	
ACN	
ABN	
Street and postal address	
Principal business address (if different to address above)	
Telephone number	
Mobile number	
Email address	

The signatory acknowledges and agrees that by signing this document, the Customer:

- confirms it has received and understood these Conditions; and
- has expressly authorised the person signing this document to do so, and the signatory declares and warrants to the Supplier that he or she is fully authorised to sign this acknowledgement on behalf of the Customer.

Individual/Director

Print Full Name

Date