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## M Developments Limited – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "M.D.L" means M Developments Limited, its successors and assigns or any person acting on behalf of and with the authority of M Developments Limited.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting M.D.L to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods (including but not limited to any parts, oils or consumables used during the course of the Services) or Services supplied by M.D.L to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.7 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between M.D.L and the Customer in accordance with clause 7 below.

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods and/or Services.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods and/or Services on credit shall not take effect until the Customer has completed a credit application with M.D.L and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods and/or Services request exceeds the Customers credit limit and/or the account exceeds the payment terms, M.D.L reserves the right to refuse Delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by M.D.L in relation to Goods or Services supplied is given in good faith, is based on M.D.L's own knowledge and experience and shall be accepted without liability on the part of M.D.L and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.
- 2.7 The Customer acknowledges and accepts that:
- (a) the supply of Goods and/or Services for accepted orders may be subject to availability and if, for any reason, Goods and Services are not or cease to be available, M.D.L reserves the right to substitute comparable Goods and/or Services (or components of the Goods and/or Services) and vary the Price as per clause 8.1. In all such cases M.D.L will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Services on hold until such time as M.D.L and the Customer agree to such changes; and
  - (b) where M.D.L is required to provide the Goods and/or Services urgently which may require M.D.L's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then M.D.L reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between M.D.L and the Customer; and
  - (c) in the event that the Goods and/or Services provided by M.D.L are the subject of an insurance claim that the Customer has made, then the Customer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by M.D.L and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to M.D.L as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods or Services on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies M.D.L in writing that said person is no longer the Customer's duly authorised representative).
- 3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise M.D.L in writing of the parameters of the limited authority granted to their representative.

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- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to M.D.L for all additional costs incurred by M.D.L (including M.D.L' profit margin) in providing any Services, Goods or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
- 4. Specifications**
- 4.1 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in M.D.L's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by M.D.L.
- 4.2 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use. Where the Customer has requested M.D.L to order a part on the Customer's behalf and it is later deemed to be the incorrect part, M.D.L reserves the right to charge a restocking fee.
- 4.3 Whilst M.D.L shall endeavour to modify the vehicle to the exact specifications or instructions of the Customer, M.D.L can offer no guarantee that any technique used will provide the exact effect desired by the Customer.
- 4.4 If in the opinion of M.D.L the Customers' requests for modifications are deemed to be unsuitable and unsafe to proceed with, then M.D.L reserves the right to halt the Services until such time as the Customer authorises M.D.L in writing to proceed with the modifications and accepts that M.D.L shall not be responsible for any defects in the Services, any loss or damage to the vehicle (or any part thereof), howsoever arising from the modifications instructions supplied by the Customer.
- 4.5 The Customer acknowledges and accepts that any modifications carried out by M.D.L to the Customer's vehicle is done so based on M.D.L's knowledge and experience and shall comply with the provisions of all statutes, regulations and any other relevant safety standards or legislation. Any additional certifications required outside the scope of M.D.L's Services shall be the responsibility of the Customer and M.D.L does not accept any liability in the event of any damage caused as a direct result of the Customer's failure to comply with such requirements.
- 5. Errors and Omissions**
- 5.1 The Customer acknowledges and accepts that M.D.L shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by M.D.L in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by M.D.L in respect of the Services.
- 5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of M.D.L; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 6. Change in Control**
- 6.1 The Customer shall give M.D.L not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by M.D.L as a result of the Customer's failure to comply with this clause.
- 7. Price and Payment**
- 7.1 At M.D.L's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by M.D.L to the Customer; or
  - (b) M.D.L's estimated Price (subject to clause 8) which shall not be deemed binding upon M.D.L as the actual Price can only be determined upon completion of the Services. M.D.L undertakes to keep the Customer informed should the actual Price look likely to exceed the original estimate; or
  - (c) M.D.L's quoted price (subject to clause 8.1) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 At M.D.L's sole discretion a non-refundable deposit may be required.
- 7.3 Customised orders are to be paid for at the time of order.
- 7.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by M.D.L, which may be:
- (a) on or before Delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with M.D.L's payment schedule;
  - (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is emailed to the Customer's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by M.D.L.
- 7.5 Payment may be made by cash, EFTPOS, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and M.D.L.
- 7.6 M.D.L may in its discretion allocate any payment received from the Customer towards any invoice that M.D.L determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer M.D.L may re-allocate any payments previously received and allocated. In the absence of any payment allocation by M.D.L, payment will be deemed to be allocated in such manner as preserves the maximum value of M.D.L's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by M.D.L nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to M.D.L an amount equal to any GST M.D.L must pay for any supply by M.D.L under this or any other contract for the sale of the Goods and/or Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price.

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In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 8. Additional Charges

- 8.1 M.D.L reserves the right to change the Price:
- (a) if a variation to the Services (including any applicable plans or specifications) which are to be provided is requested; or
  - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, further faults which are found upon disassembly and/or further inspection) which are only discovered upon commencement of the Services; or
  - (c) in the event of increases to M.D.L in the cost of labour or Goods, or fluctuations in currency exchange rates, which are beyond M.D.L's control.
- 8.2 Variations will be charged for on the basis of M.D.L's quotation, and will be detailed in writing, and shown as variations on M.D.L's invoice. The Customer shall be required to respond to any variation submitted by M.D.L within ten (10) working days. Failure to do so will entitle M.D.L to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 8.3 Where M.D.L is requested to store the Customer's vehicle, or where the vehicle is not collected within twenty-four (24) hours of advice to the Customer that it is ready for collection, then M.D.L (at its sole discretion) may charge a fee of (\$15.00 per day) for storage.
- 8.4 All tow and/or salvage fees will be charged to the Customer, and will be added to the Price unless otherwise agreed.
- 8.5 If M.D.L has been requested by the Customer to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
- 8.6 The Customer acknowledges and agrees that M.D.L shall be entitled to:
- (a) retain any components replaced during the provision of the Services; and
  - (b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.

### 9. Provision of the Services

- 9.1 At M.D.L's sole discretion Delivery ("**Delivery**") of the Services shall take place when:
- (a) M.D.L provides the Services at M.D.L's address; or
  - (b) M.D.L provides the Services at the Customer's nominated address.
- 9.2 Where M.D.L is to provide any Services at the Customer's nominated address then the Customer shall be liable for all costs incurred by M.D.L from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at M.D.L's standard rates and any Goods purchased for the Services).
- 9.3 Any time or date given by M.D.L to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and M.D.L will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 9.4 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at M.D.L's address; or
  - (b) M.D.L (or M.D.L's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 9.5 At M.D.L's sole discretion the cost of Delivery is included in the Price.
- 9.6 M.D.L will not be liable whatsoever where the Goods have not been stored correctly, not used other than the intended purpose or not installed as properly by the Customer or a third party installer as per M.D.L or the manufacturer's recommendations.
- 9.7 Any time specified by M.D.L for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. M.D.L will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then M.D.L shall be entitled to charge a reasonable fee for redelivery and/or storage.

### 10. Risk

- 10.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, M.D.L is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by M.D.L is sufficient evidence of M.D.L's rights to receive the insurance proceeds without the need for any person dealing with M.D.L to make further enquiries.
- 10.3 If the Customer requests M.D.L to leave Goods outside M.D.L's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 10.4 Where M.D.L gives advice or recommendations to the Customer, or the Customer's agent, regarding the suitability of the Goods and/or the performance of the Goods and such advice or recommendations are not acted upon then M.D.L shall require the Customer or their agent to authorise commencement of the Services in writing. M.D.L shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 10.5 Where the Customer has:
- (a) supplied parts or products for M.D.L to complete the Services, the Customer acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the parts or products. M.D.L shall not be liable for any defects in the Services or performance of the Goods, any loss or damage to the Goods and/or Services (or any part thereof), howsoever arising from the use of parts or products supplied by the Customer and will be void of any warranty; and
  - (b) provided instructions or specifications for M.D.L to complete the Services (including, but not limited to, any requested variation to the original design), then M.D.L shall accept no liability whatsoever for the finished Services being deemed as unsatisfactory to the Customer.
- 10.6 The Customer acknowledges and accepts that:
- (a) M.D.L is only responsible for Goods that are replaced by M.D.L, and that in the event that other components subsequently fail, the Customer agrees to indemnify M.D.L against any loss or damage to the Goods or the Customer's vehicle, or caused by the components, or any part thereof howsoever arising; and

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- (b) if during the course of the Services M.D.L identifies associated faults, M.D.L will communicate these faults to the Customer prior to continuing with the Services. Where the Customer chooses not to have the faults rectified M.D.L will not be held liable for any further damage caused; and
  - (c) where M.D.L has performed temporary repairs on the vehicle that:
    - (i) M.D.L offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
    - (ii) M.D.L will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair of the vehicle; and
  - (d) M.D.L, its employees, agents or contractors may test drive or carry out tests of the vehicle at M.D.L's discretion and may, if requested by the Customer, collect or re-deliver the vehicle where nominated by the Customer. M.D.L will not be liable to the Customer for any damage which occurs to or is caused by the vehicle during such driving, testing, collection or delivery unless it arises from the reckless or wilful conduct of M.D.L, its employees, agents, or contractors; and
  - (e) Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. M.D.L shall endeavour to match old for new however the Customer accepts and acknowledges that colours may not match due to differences in colour matching/mixing technologies, fading and/or weathering of the sample provided to colour match from. Therefore, M.D.L shall not be held responsible or liable for any differences that may result.
- 10.7 M.D.L will accept no responsibility for valuables or other items left in the Customer's vehicle. It is the Customer's responsibility to remove any valuables from the Customer's vehicle prior to servicing/repair.
- 10.8 In the event the Customer requests M.D.L to work on a vehicle, and leaves the vehicle and/or the keys at M.D.L's premises whilst the site is unattended, then M.D.L shall not be responsible for the security of the vehicle or the keys, and shall not be held liable for any loss, damages or costs howsoever resulting.
- 10.9 M.D.L shall not be liable whatsoever for:
- (a) the loss of or damage to the Customer's vehicle, its accessories or contents while being repaired or operated in connection with the authorised Services (including in the event of a call-out: it shall be the Customer's responsibility to remain with the vehicle to ensure security of the same), unless caused by the negligence of M.D.L, or M.D.L's employees; and
  - (b) any loss or damage to the Services that is caused by any other tradesmen after the completion of the Services; or
  - (c) delays caused by any other third party suppliers and/or contractors that impacts on the provision of the Services by M.D.L;
  - (d) any defect or damage resulting from incorrect or faulty installation carried out by any other third party; and
  - (e) delays, damages or cost incurred by M.D.L through the Customer's failure to comply with clause 9.11.
- 10.10 If the Customer instructs M.D.L to rectify any damage caused by any other tradesman, this will become a variation to the original quotation and will be charged at M.D.L's normal hourly rate
- 10.11 It is the Customer's responsibility to ensure that the Customer's vehicle is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at M.D.L's premises. The vehicle is at all times stored and repaired at the Customer's sole risk.

### 11. Compliance with Laws

- 11.1 The Customer and M.D.L shall comply with the provisions of all statutes, regulations and any other relevant safety standards or legislation that may be applicable to the Services.

### 12. Title

- 12.1 M.D.L and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid M.D.L all amounts owing to M.D.L; and
  - (b) the Customer has met all of its other obligations to M.D.L.
- 12.2 Receipt by M.D.L of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 12.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 12.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to M.D.L on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for M.D.L and must pay to M.D.L the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for M.D.L and must pay or deliver the proceeds to M.D.L on demand;
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of M.D.L and must sell, dispose of or return the resulting product to M.D.L as it so directs;
  - (e) the Customer irrevocably authorises M.D.L to enter any premises where M.D.L believes the Goods are kept and recover possession of the Goods;
  - (f) M.D.L may recover possession of any Goods in transit whether or not Delivery has occurred;
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of M.D.L;
  - (h) M.D.L may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 13. Personal Property Securities Act 1999 ("PPSA")

- 13.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to M.D.L for Services – that have previously been supplied and that will be supplied in the future by M.D.L to the Customer.

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- 13.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which M.D.L may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, M.D.L for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of M.D.L; and
  - (d) immediately advise M.D.L of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3 M.D.L and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by M.D.L, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by M.D.L under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 14. Security and Charge

- 14.1 In consideration of M.D.L agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Customer indemnifies M.D.L from and against all M.D.L's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising M.D.L's rights under this clause.
- 14.3 The Customer irrevocably appoints M.D.L and each director of M.D.L as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.

### 15. Defects

- 15.1 The Customer shall inspect the Goods on Delivery and shall within three (3) days of Delivery (time being of the essence) notify M.D.L of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford M.D.L an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which M.D.L has agreed in writing that the Customer is entitled to reject, M.D.L's liability is limited to either (at M.D.L's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:
- (a) M.D.L has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Customer's cost within seven (7) days of the Delivery date; and
  - (c) M.D.L will not be liable for Goods which have not been stored or used in a proper manner; and
  - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 15.3 M.D.L may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 15.4 Subject to clause 15.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.

### 16. Warranty

- 16.1 Subject to the conditions of warranty set out in clause 16.2 M.D.L warrants that if any defect in any workmanship of M.D.L becomes apparent and is reported to M.D.L within the earlier of one (1) months of the date of delivery or 1,000 kilometres (time being of the essence) then M.D.L will either (at M.D.L's sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by clause 16.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain or store any Goods; or
    - (ii) faulty installation by a third party; or
    - (iii) failure on the part of the Customer to follow any instructions or guidelines provided by M.D.L; or
    - (iv) any use of any Goods otherwise than for any application specified on a quote or order form; or
    - (v) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (vi) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and M.D.L shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without M.D.L's consent.
  - (c) in respect of all claims M.D.L shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 16.3 For Goods not manufactured by M.D.L, the warranty shall be the current warranty provided by the manufacturer of the Goods. M.D.L shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

**17. Consumer Guarantees Act 1993**

17.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by M.D.L to the Customer.

**18. Intellectual Property**

18.1 Where M.D.L has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of M.D.L. Under no circumstances may such designs, drawings and documents be used without the express written approval of M.D.L.

18.2 The Customer warrants that all designs, specifications or instructions given to M.D.L will not cause M.D.L to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify M.D.L against any action taken by a third party against M.D.L in respect of any such infringement.

18.3 The Customer agrees that M.D.L may (at no cost) use for the purposes of marketing or entry into any competition, any documents, photographs of the vehicle under repair, designs, drawings or Goods which M.D.L has created for the Customer.

**19. Default and Consequences of Default**

19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at M.D.L's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

19.2 If the Customer owes M.D.L any money the Customer shall indemnify M.D.L from and against all costs and disbursements incurred by M.D.L in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, M.D.L's collection agency costs, and bank dishonour fees).

19.3 Further to any other rights or remedies M.D.L may have under this Contract, if a Customer has made payment to M.D.L, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by M.D.L under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.

19.4 Without prejudice to M.D.L's other remedies at law M.D.L shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to M.D.L shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to M.D.L becomes overdue, or in M.D.L's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by M.D.L;
- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

**20. Cancellation**

20.1 Without prejudice to any other remedies M.D.L may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions M.D.L may suspend or terminate the supply of Goods to the Customer. M.D.L will not be liable to the Customer for any loss or damage the Customer suffers because M.D.L has exercised its rights under this clause.

20.2 M.D.L may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice M.D.L shall repay to the Customer any money paid by the Customer for the Goods. M.D.L shall not be liable for any loss or damage whatsoever arising from such cancellation.

20.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by M.D.L as a direct result of the cancellation (including, but not limited to, any loss of profits).

20.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**21. Privacy Policy**

21.1 All emails, documents, images or other recorded information held or used by is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by that may result in serious harm to the Customer, will notify the Customer in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

21.2 Notwithstanding clause 21.1 privacy limitations will extend to in respect of Cookies where the Customer utilises 's website to make enquiries. agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to when sends an email to the Customer, so may collect and review that information ("collectively Personal Information")

If the Customer consents to 's use of Cookies on 's website and later wishes to withdraw that consent, the Customer may manage and control 's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

21.3 The Customer authorises or 's agent to:

- (a) access, collect, retain and use any information about the Customer;

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- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by from the Customer directly or obtained by from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 21.4 Where the Customer is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 21.5 The Customer shall have the right to request (by e-mail) from , a copy of the Personal Information about the Customer retained by and the right to request that correct any incorrect Personal Information.
- 21.6 will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.7 The Customer can make a privacy complaint by contacting via e-mail. will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at <http://www.privacy.org.nz>.

### 22. Service of Notices

- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 23. Trusts

- 23.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not M.D.L may have notice of the Trust, the Customer covenants with M.D.L as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) the Customer will not without consent in writing of M.D.L (M.D.L will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

### 24. Dispute Resolution

- 24.1 All disputes and differences between the Customer and M.D.L touching and concerning this Contract shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

### 25. General

- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Queenstown Courts of New Zealand.
- 25.3 M.D.L shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by M.D.L of these terms and conditions (alternatively M.D.L's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 M.D.L may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 25.5 The Customer cannot licence or assign without the written approval of M.D.L.
- 25.6 M.D.L may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of M.D.L's subcontractors without the authority of M.D.L.
- 25.7 The Customer agrees that M.D.L may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for M.D.L to provide Goods to the Customer.

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- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.