
Hydraulic Services & Repairs Limited – Terms & Conditions of Trade

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 **“Seller”** shall mean Hydraulic Services & Repairs Limited, its successors and assigns or any person acting on behalf of and with the authority of Hydraulic Services & Repairs Limited.
- 1.3 **“Customer”** shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Seller to the Customer.
- 1.4 **“Services”** shall mean all Services supplied by the Seller to the Customer (and where the context so permits shall include any supply of Parts as hereinafter defined) all such Services shall be as described on the invoices, quotation, work authorisation or any other forms provided by the Seller to the Customer and shall include any advice or recommendations.
- 1.5 **“Parts”** shall mean Parts (including oils, fuels, etc.) supplied by the Seller to the Customer either separately, or as part of the Services (and where the context so permits shall include the supply of Services as defined above).
- 1.6 **“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.
- 1.7 **“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 using the Seller’s 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.**
- 1.8 **“Price”** shall mean the price payable for the Services as agreed between the Seller and the Customer in accordance with clause 6 of this contract.

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 Parts.
- 2.2 These terms and conditions may only be amended with the Seller’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.
- 2.3 The Customer acknowledges and understands that (subject to Clause 6.2):
- (a) onsite repairs shall incur the Seller’s current labour rates plus kilometres travelled; and
 - (b) in the event the vehicle requires towing, then any fees incurred for such towing shall be for the Customer’s account.
- 2.4 In the event that the Seller is required to provide the Services urgently, that may require the Seller’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Seller reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between the Seller and the Customer.

3. Electronic Transactions Act 2002

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that the Seller 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 the Seller 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 the Seller in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Seller; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

- 5.1 The Customer shall give the Seller 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, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer’s failure to comply with this clause.

6. Price And Payment

- 6.1 At the Seller’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Seller to the Customer in respect of the Services supplied; or
 - (b) the Seller’s estimated Price (subject to clause 6.2). The final price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than 10% will be subject to Customer approval before proceeding with the Services; or
 - (c) the Seller’s quoted Price (subject to clause 6.2) which shall be binding upon the Seller provided that the Customer shall accept the Seller’s quotation in writing within fourteen (14) days of issue.
- 6.2 The Seller reserves the right to change the Price if a variation to the Seller’s quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as obscured or other defect found on closer inspection, prerequisite work by any third party not being completed or as a result of any increase to the Seller’s in the cost of materials (including but not limited to overseas transactions that may increase as a

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consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

- 6.3 At the Seller's sole discretion a deposit may be required.
- 6.4 Where the Seller is requested to store the Customer's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four hours of advice to the Customer that they are ready for collection, then the Seller (at its sole discretion) may charge a reasonable fee for storage.
- 6.5 If any part of an invoice is in dispute then the Customer shall notify the Seller in writing within fourteen (14) days once in receipt of the invoice, then the Customer may only withhold payment for that part of the invoice that is in dispute and shall pay the balance of the invoice when due.
- 6.6 At the Seller's sole discretion:
- (a) payment shall be due on completion of the Services; or
 - (b) payment shall be due before undertaking the Services; or
 - (c) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 6.7 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 6.8 Payment will be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Customer and the Seller.
- 6.9 The Seller may in its discretion allocate any payment received from the Customer towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Seller may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Seller, payment will be deemed to be allocated in such manner as preserves the maximum value of the Seller's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Parts. 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. 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.

7. Delivery Of Services

- 7.1 At the Seller's sole discretion delivery of the Services shall take place when:
- (a) the Seller provides the Services at the Seller's address; or
 - (b) the Seller provides the Services at the Customer's nominated address.
- 7.2 Delivery of any Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 7.3 At the Seller's sole discretion, the cost of delivery is in addition to the Price.
- 7.4 The Customer must take delivery by receipt or collection of the Parts whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Parts as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.5 The Seller may deliver the Services in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time or date given by the Seller to the Customer is an estimate only. The Customer must still accept delivery of the Services even if late and the Seller will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

8. Risk

- 8.1 If the Seller retains ownership of any Parts nonetheless, all risk for the Parts passes to the Customer on delivery.
- 8.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 8.3 If the Customer requests the Seller to leave Parts outside the Seller's premises for collection or to deliver the Parts to an unattended location then such Parts shall be left at the Customer's sole risk.
- 8.4 In the event the Customer requests the Seller to work on a vehicle, and leaves the vehicle and/or the keys at the Seller's premises whilst the site is unattended, then the Seller 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.
- 8.5 The Customer acknowledges and agree that where the Seller has performed temporary repairs on the vehicle that:
- (a) the Seller offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) the Seller will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
- 8.6 The Customer acknowledges that the Seller is only responsible for parts that are replaced by the Seller and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify the Seller against any loss or damage to the Parts, or caused by the Parts, or any part thereof howsoever arising.
- 8.7 The Customer acknowledges that it is their sole responsibility to ensure the vehicle is insured adequately or at all.
- 8.8 Any third party certification that may be required can be arranged by the Seller on the Customer's behalf and at the Customer's expense.
- 8.9 The Seller shall not be held responsible or liable for any loss, damage or injury where the Customer or any other third party engaged by the Customer fits, installs or operate any Parts incorrectly.

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9. Specifications

- 9.1 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in the Seller'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 the Seller.
- 9.2 The Customer shall be responsible for ensuring that the Parts ordered are suitable for their intended use.

10. Testing of Vehicles

- 10.1 The Seller or its employees may test drive or carry out tests on the vehicle at the Seller's discretion. The Seller will not be liable for (and the Customer indemnifies the Seller against) any damages caused to, or by, the vehicle during such tests, collecting or delivery unless it arises from the recklessness or wilful misconduct of the Seller or its employees.

11. Title

- 11.1 The Seller and Customer agree that the ownership of any Parts shall not pass until:
- (a) the Customer has paid the Seller all amounts owing for the particular Parts; and
 - (b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.
- 11.2 Receipt by the Seller 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 and until then the Seller's ownership or rights in respect of the Parts shall continue.
- 11.3 It is further agreed that:
- (a) where practicable the Parts shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Parts shall pass from the Seller to the Customer the Seller may give notice in writing to the Customer to return the Parts or any of them to the Seller. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Parts shall cease; and
 - (c) the Customer is only a bailee of the Parts and until such time as the Seller has received payment in full for the Parts then the Customer shall hold any proceeds from the sale or disposal of the Parts, up to and including the amount the Customer owes to the Seller for the Parts, on trust for the Seller; and
 - (d) until such time that ownership in the Parts passes to the Customer, if the Parts are converted into other products, the parties agree that the Seller will be the owner of the end products; and
 - (e) if the Customer fails to return the Parts to the Seller then the Seller or the Seller's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Parts are situated and take possession of the Parts, and the Seller will not be liable for any reasonable loss or damage suffered as a result of any action by the Seller under this clause.

12. Personal Property Securities Act 1999 ("PPSA")

- 12.1 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 Parts previously supplied by the Seller to the Customer (if any) and all Parts that will be supplied in the future by the Seller to the Customer.
- 12.2 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 the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Parts charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Seller; and
 - (d) immediately advise the Seller of any material change in its business practices of selling the Parts which would result in a change in the nature of proceeds derived from such sales.
- 12.3 The Seller and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 12.1 to 12.5.

13. Customer's Disclaimer

- 13.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Services are bought relying solely upon the Customer's skill and judgement.

14. Defects

- 14.1 The Customer shall inspect the Services/Parts on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Services/Parts within a reasonable time following delivery if the Customer believes the Services/Parts are defective in any way. If the Customer shall fail to comply with these provisions the Services/Parts shall be presumed to be free from any

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defect or damage. For defective Services/Parts, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Services/Parts or repairing the Services/Parts.

15. Returns Of Parts

- 15.1 Returns of Parts will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 14.1; and
 - (b) the Seller has agreed in writing to accept the return of the Parts; and
 - (c) the Parts are returned at the Customer's cost within fourteen (14) days of the delivery date; and
 - (d) the Seller will not be liable for Parts which have not been stored or used in a proper manner; and
 - (e) the Parts 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.
- 15.2 The Seller may (at their sole discretion) accept the return of Parts but this may incur a handling fee of up to fifteen percent (15%) of the value of the returned Parts plus any freight costs.
- 15.3 Non-stocklist items or Parts made to the Customer's specifications are under no circumstances acceptable for credit or return.

16. Warranty

- 16.1 Subject to the conditions of warranty set out in clause 16.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within the earlier of seven (7) days of the date of delivery (time being of the essence) then the Seller will either (at the Seller'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 or other third party engaged by the Customer to install, fit or operate the Parts in a correct and proper manner; or
 - (ii) failure on the part of the Customer to properly maintain any Services; or
 - (iii) failure on the part of the Customer to follow any instructions or guidelines provided by the Seller; or
 - (iv) any use of any Services otherwise than for any application specified on a quote or order form; or
 - (v) the continued use of any Services 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 the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
 - (c) In respect of all claims the Seller 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 Parts not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Parts. The Seller 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 Parts.

17. Consumer Guarantees Act 1993

- 17.1 If the Customer is acquiring Parts 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 Parts by the Seller to the Customer.

18. Intellectual Property

- 18.1 Where the Seller has designed, drawn or created specific items for the Customer, then the copyright in those designs and drawings and items shall remain vested in the Seller, and shall only be used by the Customer at the Seller's discretion.
- 18.2 The Customer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 18.3 The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Parts which the Seller has created for the Customer.

19. Default & 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 the Seller'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 the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies the Seller may have under this contract, if a Customer has made payment to the Seller, 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 the Seller 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 agreement.
- 19.4 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Parts to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 19.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:

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- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

20. Security And Charge

20.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- (a) where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer agrees that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer agrees to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 20.1.

21. Cancellation

21.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage howsoever arising from such cancellation.

21.2 In the event that the Customer cancels the delivery of Services the Customer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

21.3 Cancellation of orders for Parts 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.

22. Privacy Policy

22.1 All emails, documents, images or other recorded information held or used by the Seller is Personal Information as defined and referred to in clause 22.3 and therefore considered confidential. The Seller acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A 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"). The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Seller that may result in serious harm to the Customer, the Seller 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.

22.2 Notwithstanding clause 22.1, privacy limitations will extend to the Seller in respect of Cookies where the Customer utilises the Seller's website to make enquiries. The Seller 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 the Seller when the Seller sends an email to the Customer, so the Seller may collect and review that information ("collectively Personal Information")

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

22.3 The Customer authorises the Seller or the Seller's agent to:

- (a) access, collect, retain and use any information about the Customer;
 - (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 the Seller from the Customer directly or obtained by the Seller 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.

22.4 Where the Customer is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 1993.

22.5 The Customer shall have the right to request the Seller for a copy of the Personal Information about the Customer retained by the Seller and the right to request the Seller to correct any incorrect Personal Information about the Customer held by the Seller.

23. Unpaid Seller's Rights

23.1 Where the Customer has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any monies owing to it by the Customer, the Seller shall have, until all monies owing to the Seller are paid:

- (a) a lien on the item; and

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- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 23.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any monies owing to the Seller having been obtained against the Customer.
- 24. General**
- 24.1 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.
- 24.2 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 courts of New Zealand.
- 24.3 The Seller 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 the Seller of these terms and conditions.
- 24.4 In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Parts.
- 24.5 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 the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 24.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 24.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 24.9 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.