

## Terms and Conditions of Repair Agreement

### 1. Definitions

"ACL" means the Australian Consumer Law 2011 as amended from time to time.

"Agreement" means this Repair Agreement.

"Customer" means the person/s or entity named in the Repair Order and includes their personal representatives, successors, administrators and assigns.

"Repairer" means the company named as such in the Repair Order and includes where relevant any contractor engaged by the Repairer to effect any part of the Works.

"Repair Order" means the form overleaf detailing the Works to be effected in respect of the Vehicle.

"Total Price" means the full amount payable by the Customer to the Repairer for effecting the Works calculated as specified in clause 5.

"Vehicle" means the vehicle owned or in the possession of the Customer as detailed in the Repair Order.

"Works" means the labour, parts and material to be supplied by the Repairer to effect the service or repairs to the Vehicle listed in the Repair Order.

### 2. Customer's Obligations

- 2.1. (a) By signing the Repair Order or verbally authorising the Repairer to carry out the Works, the Customer warrants that they own the Vehicle or, if the Vehicle is under finance, that they have the sole right to possession and use of the Vehicle.
- (b) If clause 2.1(a) does not apply to the Customer, the Customer must provide the Repairer with evidence satisfactory to the Repairer that the Customer has the owner's authority to contract with the Repairer to carry out the Works to the Vehicle.
- 2.2. The Customer warrants the accuracy of the service and use history of the Vehicle related to the Repairer at the time the Repair Order was signed or the Works authorised by the Customer.
- 2.3. The Customer will be readily available while the Repairer is effecting the Works to provide further instructions and authorisation if the Repairer determines that different or additional Works to those listed in the Repair Order will be required.
- 2.4. The Customer will promptly pay the Repairer any amount/s the Repairer requires by way of deposit or payment on account of work-in-progress for the Works.
- 2.5. The Customer is responsible to make backup copies of all data stored in the Vehicle's devices including, but not limited to, integrated multi-media devices, satellite navigation systems, trip computers, blue tooth settings, electronic address books, telephone numbers, radio codes and SMS. By signing the Repair Order or authorising the Works, the Customer acknowledges having been given the repair notice that appears on the Repair Order. To the full extent permitted by law, the Customer releases the Repairer from any loss or damage to stored data.
- 2.6. If the Customer does not comply with their obligations under this Agreement, the Repairer may cancel or suspend the Works and retain possession of the Vehicle until the Customer complies with its obligations. The Repairer will not be liable for any loss or damage suffered by the Customer as a result of any such cancellation, suspension or retention.

### 3. Customer's Authorisations

- 3.1. The Customer gives the Repairer the following authorisation to enable the Repairer to effect the Works:
  - (a) to purchase the parts and materials it requires to effect the Works in accordance with the Repair Order;
  - (b) to allow the Repairer's staff to operate the Vehicle anywhere and at any time for the purpose of effecting the Works;

- (c) to effect the Works in accordance with the Repair Order once the Customer signs the Repair Order or verbally authorises the Works;
- (d) to sublet some or all of the Works and to deliver and collect the Vehicle from the premises of any contractor to whom the Works are sublet; and
- (e) where the Repair Order was compiled by the Repairer without the opportunity to fully inspect or test the Vehicle, the Customer authorises the Repairer to effect such other Works as the Repairer deems necessary once full inspection or testing is possible; this authority extends to the Repairer effecting such different or additional Works that it deems necessary to return the Vehicle to the Customer in roadworthy condition.

### 3.2. In relation to the authorisations contained in clause 3.1:

- (a) As regards clause 3.1(a), if for any reason the Customer cancels the Repair Order, the Customer will be liable to pay for any parts or materials especially ordered to effect the Works which the Repairer determines cannot readily be used for other customers' works.
- (b) In relation to clause 3.1(b), the Customer agrees that the Vehicle is operated by the Repairer's staff as agent for and on behalf of the Customer and without being liable to the Customer or the owner of the Vehicle for any loss or damage to the Vehicle while in the possession of the Repairer or any contractor of the Repairer.
- (c) In relation to clause 3.1(c), the Repairer will use its reasonable endeavours to complete the Works within the time estimated in the Repair Order, however the Repairer will not be liable for any loss or damage sustained by the Customer by reason of any delay beyond the reasonable control of the Repairer. If different or additional Works become necessary, then those Works will be completed within a reasonable time of the original estimate.
- (d) In relation to clause 3.1(d), the Repairer will use its reasonable endeavours to contact the Customer to obtain express authority to conduct the different or additional Works however, if contact is not made for this purpose, the Customer still authorises the Repairer to carry out these Works.

### 4. Standard of Works

- 4.1. The Repairer will effect the Works as detailed in the Repair Order with due care and skill and otherwise in accordance with the guarantees given to the Customer as a consumer under the provisions of the ACL.
- 4.2. The Customer is entitled to a replacement or refund for a major failure of consumer guarantee and for compensation for any other reasonably foreseeable loss or damage. The Customer will be entitled to have the parts and materials supplied, repaired or replaced and for the services performed again if the goods or services fail to be of acceptable quality and the failure does not amount to a major failure.
- 4.3. If permitted by the ACL, the Customer agrees to the Repairer limiting the Repairer's liability for failure to comply with a guarantee given under the ACL to the following:
  - (a) In the case of goods sold:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; and
  - (b) In the case of services provided:
    - (i) the payment of the cost of having the goods repaired;
    - (ii) the supplying of the services again; or
    - (iii) the payment of the cost of having the services supplied again.

### 5. Total Price

- 5.1. The Customer acknowledges that the quoted price for the Works stated in the Repair Order is an estimate only and is subject to variation due to either:
- (a) an increase in the cost of supplying labour, parts and materials after the quoted price was given;
  - (b) the need to effect different or additional Works to render the Vehicle roadworthy.
- 5.2. The Customer agrees to pay for different or additional Works at the Repairer's then customary rate charged for labour and for the landed invoice cost of parts and materials marked up by the Repairer's customary margin.
- 5.3. The Total Price will be the amount stated in the Repairer's service tax invoice being the sum of the Repairer's labour, parts and materials charges, together with any applicable taxes, levies, interest on late payments and/or storage charges that may have been incurred and credit card surcharge payable under clause 5.5(c).
- 5.4. The Customer will pay the Total Price to the Repairer as follows:
- (a) if a cash Customer, within two (2) business days of being notified by the Repairer that the Works have been completed and the Vehicle is ready for collection by the Customer;
  - (b) if an account Customer, within the time stated in the signed credit agreement between the parties.
- 5.5. (a) The Customer must pay the Total Price in cleared funds, whether by cash, bank cheque or credit card.
- (b) If the Customer elects to pay by eftpos or direct deposit to the Repairer's bank account, the Repairer is entitled to sight satisfactory evidence of the deposit of cleared funds to its bank account before releasing the Vehicle to the Customer.
  - (c) If the Customer pays by credit card, the Customer agrees to pay the credit card surcharge notified by the Repairer the amount of which the Repairer will determine in accordance with applicable legislation.
- 5.6. The Total Price payable will include any GST payable by the Repairer on any taxable supplies detailed in the service tax invoice.
6. Repairer's Rights
- 6.1. If the Customer fails to pay some or all of the Total Price in accordance with clause 5, the Customer will pay the Repairer the following additional amounts:
- (a) interest on the unpaid amount charged at the rate of 8% per annum from the date the service tax invoice is issued until the date of actual payment; and
  - (b) a charge to store the Vehicle at the Repairer's premises at the rate of \$25.00 per day from the date the Repairer notified the Customer that the Vehicle was ready for collection to the date of actual payment.
- 6.2. (a) The Customer agrees to the creation of a Repairer's lien over the Vehicle.
- (b) The Repairer has the right to retain possession of the Vehicle until all amounts owing to the Repairer by the Customer have been paid.
  - (c) The Customer has no claim against the Repairer for any loss or damage arising from the exercise of the lien over the Vehicle by the Repairer.
  - (c) If the Vehicle is in the possession of another contractor to whom repair work was sublet, then the Customer agrees that the Repairer's lien may be effected upon the Vehicle by the Repairer's contractor as if the Repairer was exercising its rights of lien direct against the Customer.
- 6.3. The Repairer's rights in clauses 6 and 7 are in addition to and do not limit the rights given to the Repairer under the *Disposal of Uncollected Goods Act 1967 (NT)*.
7. Security Interest
- 7.1. The Customer grants the Repairer a security interest in the Vehicle to secure payment of all amounts owing by the Customer to the Repairer in respect of the Works effected, including the Total Price stated in the tax invoice, interest, storage charges and all costs incurred by the Repairer for the recovery of any such moneys unpaid.
- 7.2. The Customer agrees that the security interest over the Vehicle gives the Repairer the right to retain and/or seize and dispose of the Vehicle if the Customer fails to pay any such amount stated in clause 5 within seven (7) days of a formal written demand for the payment of all such amounts being sent to the Customer at the address (including any email address) shown in the Repair Order.
- 7.3. The Customer as the grantor of the security created in this clause 7 waives the requirement for notices under the *Personal Property Securities Act 2009 (Cth)*. The Customer will provide the Repairer with the names and addresses of any grantor of any existing security interest over the Vehicle.
- 7.4. The creation of the security interest over the Vehicle under this clause 7 is additional to and does not derogate from the Repairer's other rights under this Agreement, including the Repairer's lien.
- 7.5. Upon disposal of the Vehicle the Repairer as the right to apply the net sale proceeds in full or partial discharge of all amounts then owing to the Repairer and will account to and pay the Customer the balance of the sale proceeds (if any) within a reasonable time of disposal of the Vehicle.
- 7.6. The Customer, either as the owner of the Vehicle or as the agent of the owner of the Vehicle, consents to the registration of the security interest created in this clause 7 on the Personal Property Securities Register.
8. Parts
- 8.1. The Repairer will wherever possible use only genuine parts supplied or recommended by the manufacturer of the Vehicle, however the Repairer will solely determine the parts to be used unless specifically directed otherwise by the Customer before the commencement of the Works.
- 8.2. If the Repairer is directed to or elects to use any parts other than a new genuine part to effect the Works, the Repairer for the purposes of section 54(4)(b) of the ACL specifically draws to the Customer's attention the possibility that these parts are not of acceptable quality by reason of the fact that they are used or are non-genuine parts.
9. Risk
- 9.1. The Repairer will effect the Works taking all necessary steps to avoid loss or damage to the Vehicle.
- 9.2. If despite taking such steps, the Vehicle is lost or damaged while in the possession of the Repairer, the Customer releases the Repairer from all liability for such loss or damage to the Vehicle.
- 9.3. The Repairer will not necessarily effect insurance over the Customer's Vehicle while it is in the Repairer's possession. Insuring the Vehicle for loss or damage while in the possession of the Repairer will be the sole responsibility of the Customer.
10. Personal Information
- 10.1. The personal information provided by or for the Customer in this Repair Order ("Information") is collected by the Repairer to provide the Customer with products and services. The Information may be disclosed to the Vehicle's manufacturer, other members of the Pickerings Group of Companies and third party service providers acting on behalf of the Repairer under conditions of confidentiality specifically in relation to the provision of products and services to the Customer.
- 10.2. The Customer agrees that the Repairer may also use the Information to send the Customer material or contact the Customer about products or services.
- 10.3. The Repairer will take all reasonable steps to ensure that the Information is kept safe from misuse, loss, unauthorised access, modification and/or disclosure. A full copy of the Repairer's privacy statement can be viewed at [www.darwinmotorgroup.com.au](http://www.darwinmotorgroup.com.au).

10.4. If the Customer no longer wishes the Repairer and the other parties mentioned to have access to the private information then the Customer must notify the Repairer of this requirement in writing. The Repairer will within a reasonable time of notification cease all access to the information.