

## Terms and Conditions of Trade

### 1. DEFINITIONS AND INTERPRETATIONS

- 1.1 "Agreement" means this agreement incorporating these terms and conditions, any schedule to this agreement and includes any written variation to this agreement
- 1.2 "Charges" means the charges payable to the Supplier as specified on the particular quote, order, invoice or other documentation
- 1.3 "Supplier" means Kewmoore Pty Ltd T/A R Moore & Sons, its successors and assigns or any person acting on behalf of and with the authority of Kewmoore Pty Ltd T/A R Moore & Sons.
- 1.4 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Supplier 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 part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.5 "Goods" means all Goods (including but not limited to, any supplementary aftermarket accessories and/or consumables) or Services supplied by the Supplier 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).
- 1.6 "Dispute" means any dispute or issue arising between the Customer and Supplier pursuant to which the Customer considers that they should not pay the Supplier or pursuant to which either the Customer or Supplier considers they have a claim against the other party
- 1.7 "Due Date for Payment" means, unless otherwise stated on the front of this agreement, thirty (30) days from either the date of the invoice or the provision of the services as the case may be.
- 1.8 "Vehicle/Vessel" shall mean any Vehicle and/or Vessel described on any accompanying documentation supplied by the Supplier to the Customer.
- 1.9 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Supplier and the Customer in accordance with clause 4 below.
- 1.10 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.11 "Insurance" includes any policy of insurance effected by the Customer under this agreement

### 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 Services provided by the Supplier.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.
- 2.3 Electronic signatures shall be deemed to be accepted by either party.

### 3. CHANGE IN CONTROL

- 3.1 The Customer shall give the Supplier 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, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.

### 4. PRICE AND PAYMENT

- 4.1 At the Supplier's sole discretion, the Price shall be either:
  - (a) as indicated on invoices provided by the Supplier to the Customer in respect of the Services supplied; or
  - (b) the Supplier's estimated Price (subject to clause 5) which shall not be deemed binding upon the Supplier as the actual Price can only be determined upon completion of the Services. The Supplier undertakes to keep the Customer informed should the actual Price look likely to exceed the original estimate.
  - (c) the Supplier's quoted Price (subject to clause 5 which shall be binding upon the Supplier provided that the Customer shall accept the Supplier's quotation in writing within thirty (30) days of issue.
- 4.2 At the Supplier's sole discretion, a deposit may be required, the amount or percentage of which will be stipulated at the time of the Customer's order and shall become immediately due and payable.
- 4.3 Where the Supplier is requested to store the Customer's Goods or vehicle, or where Goods or vehicles are not collected within twenty-four hours of advice to the Customer that they are ready for collection, then the Supplier (at its sole discretion) may charge a reasonable fee for storage.
- 4.4 At the Supplier'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 made by instalments in accordance with the Supplier's payment schedule; or
  - (d) payment for approved Customers shall be due thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 4.5 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.
- 4.6 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

- 4.7 Payment will be made by cash, or by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction) of the Price), or by any other method as agreed to between the Customer and the Supplier.
- 4.8 Unless otherwise stated expressly, all prices are exclusive of GST and the customer must on demand pay to the Supplier all GST payable in respect of the supply of the Goods and the Services to the Customer.
- 5. ADDITIONAL CHARGES – VARIATIONS AND EXTRAS**
- 5.1 The Supplier reserves the right to change the Price:
- (a) if a variation to the Services 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 the Supplier in the cost of labour or Goods, or fluctuations in currency exchange rates, which are beyond the Supplier's control.
- 5.2 If the Supplier 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.
- 5.3 The Customer acknowledges and agrees that the Supplier 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.
- 6. PROVISION OF THE SERVICES**
- 6.1 At the Supplier's sole discretion delivery of the Services shall take place when:
- (a) the Supplier provides the Services at the Supplier's address; or
  - (b) the Supplier provides the Services at the Customer's nominated address.
- 6.2 Where the Supplier is to provide any Services at the Customer's nominated address then the Customer shall be liable for all costs incurred by the Supplier 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 the Suppliers standard rates and any Goods purchased for the Services).
- 6.3 Where the Supplier is requested to store the Customer's Goods or vehicle, or where Goods or vehicles are not collected within twenty-four (24) hours of advice to the Customer that they are ready for collection, then the Supplier (at its sole discretion) may charge a reasonable fee for storage.
- 6.4 Any time specified by the Supplier for delivery of the Goods is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. RISK**
- 7.1 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.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 7.3 The Customer acknowledges and agrees that where the Supplier has performed temporary repairs on the component / equipment / part that:
- (a) the Supplier offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - (b) the Supplier will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair of the component / equipment / part
- 8. TITLE**
- 8.1 The Supplier and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Supplier all amounts owing to the Supplier; and
  - (b) the Customer has met all of its other obligations to the Supplier.
- 8.2 Receipt by the Supplier 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.

- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
  - (d) 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 the Supplier.
  - (e) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 9. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")**
- 9.1 For the purposes of this clause PPSA means the *Personal Property Securities Act 2009* (Cth), including any amendments, replacement and successor legislation, and all terms used herein have the same meaning as set out in that Act unless otherwise defined.
- 9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.
- 9.3 Subject to any express provisions to the contrary (including those contained in this clause 9) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 10. DEFECTS, WARRANTIES AND RETURNS, COMPETITION AND CONSUMER ACT 2010 (CCA)**
- 10.1 The Customer must inspect the Goods on delivery and must within thirty (30) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow the Supplier to inspect the Goods.
- 10.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 10.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Goods.
- 10.7 If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty documentation provided to the Customer by the Supplier at the Supplier's sole discretion;
  - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 10.8 Subject to this clause 10, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 10.1; and
  - (b) the Supplier has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 10.9 Notwithstanding clauses 10.1 to 10.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by the Supplier;
  - (e) fair wear and tear, any accident, or act of God.
- 10.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second-hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Supplier has agreed to provide the Customer with the second-hand Goods and calculated the Price of the second-hand Goods in reliance of this clause 10.10.

- 10.11 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.
- 10.12 The Customer acknowledges, accepts and agrees:
- (a) to the Supplier's warranty policy statement available from <http://www.moorediesel.com> and;
  - (b) that the separate "Warranty Conditions" document available from <http://www.moorediesel.com> forms part of these terms and conditions and should be read in conjunction with this agreement
- 11. DEFAULT AND CONSEQUENCES OF DEFAULT**
- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of eighteen percent (18.0%) per annum (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Supplier's collection agency costs, and bank dishonour fees).
- 11.3 Further to any other rights or remedies the Supplier may have under this contract, if a Customer has made payment to the Supplier by credit card, 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 Supplier under this clause 9, 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.
- 11.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier'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.
- 12. CANCELLATION**
- 12.1 Without prejudice to any other remedies the Supplier 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 Supplier may suspend or terminate the supply of Goods to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.
- 12.2 The Supplier 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 Supplier shall repay to the Customer any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage howsoever arising from such cancellation.
- 12.3 In the event that the Customer cancels the delivery of Services the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
- 13. CONFIDENTIALITY AND PRIVACY ACT 1988**
- 13.1 The Supplier respects the privacy of personal information (**Personal Information**) including personal and contact information, such as an individual's name, street, postal and email addresses and telephone and fax numbers, professional information, financial and bank account details and consumer credit information
- 13.2 The Customer agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B., occupation, previous credit applications, credit history)
- 13.3 The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 13.4 The Customer acknowledges, accepts and agrees:
- (a) to the Supplier's privacy policy statement available from <http://www.moorediesel.com> and that
  - (b) the Supplier may use Personal Information of the Customer in accordance with its privacy policy statement and
  - (c) that without using such information, the Supplier may not be able to properly provide the Goods or the Services.

- 13.5 The Supplier and the Customer agree that neither party may disclose, or allow any person to disclose, confidential information to third parties including:
- (a) the subject matter, correspondence in respect of, and contents of this agreement (but not its actual existence);
  - (b) information regarding a customer's machine;
  - (c) the subject matter and the existence of any dispute or difference; and
  - (d) the Price and any discounts, rebates or cost saving measures.
- 13.6 The obligations to maintain confidentiality under clause 13.5 apply except for a disclosure:
- (a) permitted with the prior written consent of the other party;
  - (b) required by law, any stock exchange or court order; or
  - (c) as is reasonably necessary for professional advisers.
- 14. UNPAID SELLER'S RIGHTS**
- 14.1 Where the Customer has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any monies owing to it by the Customer, the Supplier shall have, until all monies owing to the Supplier are paid:
- (a) a lien on the item; and
  - (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.
- 14.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any monies owing to the Supplier having been obtained against the Customer.
- 15. GENERAL**
- 15.1 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.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 15.3 The Supplier 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 Supplier of these terms and conditions.
- 15.4 In the event of any breach of this contract by the Supplier the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 15.5 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 15.6 The Customer cannot licence or assign without the written approval of the Supplier.
- 15.7 The Supplier 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 the Supplier's sub-contractors without the authority of the Supplier.
- 15.8 The Customer agrees that the Supplier may amend these terms and conditions by notifying 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 the Supplier to provide Goods to the Customer.
- 15.9 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.
- 15.10 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.