

TRADING TERMS AND CONDITIONS

NEW BELGRAVE MOTORS PTY LTD ACN 078 249 108

1. DEFINITIONS

1.1. In these Terms:

- (a) **Additional Charge** means:
 - (i) fees or charges for additional Goods and/or Services at the Customer's request or reasonably required due to the Customer's conduct, calculated in accordance with the Supplier's then current prices;
 - (ii) costs or expenses incurred by the Supplier, at the Customer's request or reasonably required due to the Customer's conduct; and
 - (iii) any surcharges, credit charges, interest payable and/or other amount payable by the Customer under these Terms.
- (b) **Australian Consumer Law** means the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- (c) **Claim** means any claim including any action, complaint, debt, demand, due, proceeding, suit or other legal recourse (whether in contract or tort (including negligence), at law or in equity) and including any cause of action or right to bring or make any such claim.
- (d) **Consequential Loss** includes any loss or damage suffered by the Customer or any other third party which is special, indirect or consequential or which is by way of loss of income, revenue or profit, loss of business, good will, credit or reputation, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity.
- (e) **Contract** means the agreement between the parties for the provision of Goods and/or Services, including each Order and these Terms.
- (f) **Customer** means the person whose Order is accepted by the Supplier.
- (g) **Estimate** means the description of the Goods and/or Services to be provided and any estimate of the costs or time frame for the supply of the Goods and/or Services, whether written or verbal.
- (h) **Goods** means any goods supplied or to be supplied by the Supplier in accordance with the Order and these Terms.
- (i) **Interest Rate** means 10% per annum calculated daily.
- (j) **Invoice** means any invoice for or relating to any Goods and/or Services.
- (k) **Loss** means any loss, damage, debt, deficiency, diminution in value, charge, cost, expense, fine, outgoing, penalty or other liability of any kind or character (including legal fees, other professional fees, debt recovery fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for, including all amounts paid in settlement for any claim, complaint, demand, proceeding, litigation, action, or other legal recourse whether under statute, contract, tort or otherwise, but does not include Consequential Loss unless otherwise specified in these Terms.
- (l) **Order** means any offer to purchase Goods and/or Services from the Supplier, whether written or verbal.
- (m) **Price** means the amount for the Goods and/or Services as set out in the Estimate (or the Supplier's usual charges for the Goods and/or Services where no Estimate has been provided) and any Additional Charge.
- (n) **Services** means the services supplied or to be supplied by the Supplier in accordance with the Order and these Terms.
- (o) **Special Buy-In** means any Good not stocked by the Supplier that is required to be purchased from a third party.
- (p) **Storage Fee** means \$20.00 each day (or part thereof).
- (q) **Supplier** means New Belgrave Motors Pty Ltd ACN 078 249 108 (ABN 18 078 249 108).
- (r) **Terms** means these trading terms and conditions.

1.2. In these Terms, unless the context requires otherwise:

- (a) reference to writing includes post, text message and electronic mail, including email and communication via the Supplier's website (if any);
- (b) the words "includes", "including" or words of similar effect are not words of limitation;
- (c) words importing the singular number include the plural number and vice versa;
- (d) any reference to a party includes the party's executors, administrators, successors and permitted assigns;
- (e) the word "person" means a natural person, company, firm or other legal entity;
- (f) defined expressions retain their meaning across different grammatical forms;
- (g) a reference to "business day" means a day (other than a Saturday, Sunday or public holiday) when banks in Melbourne, Victoria, are open for business; and
- (h) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms.

2. GENERAL

- 2.1. The Customer accepts these Terms on the earlier of the Customer signing or accepting these Terms, placing an Order or receiving delivery of the Goods and/or Services.
- 2.2. These Terms apply to all transactions between the Customer and the Supplier relating to the provision of Goods and/or Services.
- 2.3. These Terms prevail over terms of trade contained in any document of the Customer or elsewhere.

3. ESTIMATE

3.1. Any Estimate issued by the Supplier:

- (a) is valid for fourteen (14) days from the date of issue;
- (b) is an estimate only and subject to the availability of, and changes to, the Goods and/or Services, costs or time frame; and
- (c) may be amended by the Supplier verbally or in writing to reflect any changes before the Order has been completed.

4. ORDER

- 4.1. The Supplier may accept or reject an Order in its absolute discretion.
- 4.2. An Order is accepted when the Supplier gives written or verbal acceptance or the Customer receives delivery of the Goods and/or Services, whichever occurs first.

5. INVOICING AND PAYMENT

- 5.1. All Invoices issued will include the Price and charges payable by the Customer in accordance with these Terms.

- 5.2. The Customer must pay the amount specified on the Invoice, without deduction, on or before delivery of the Goods and/or Services. Payment is not regarded as received until funds are cleared.
- 5.3. Unless otherwise agreed to by the Supplier, the only accepted means of payment will be set out in the Invoice. The Supplier does not accept cheques as payment. If the Customer makes payment by electronic funds transfer at point of sale (**Eftpos**) or credit card, the Customer is liable to pay to the Supplier the surcharge notified at the time of payment.
- 5.4. Despite clause 5.1:
- if the Estimate indicates that the Customer is required to pay a deposit (**Deposit**), the Deposit must be paid by the date specified on the Estimate before the Supplier will commence any work; and/or
 - if the Order includes a Special Buy-In, the Price for the Special Buy-In must be paid by the date specified on the Invoice before the Supplier can order the Special Buy-In.
- 5.5. The Supplier may require the Customer to pay Additional Charges where:
- the Customer does not provide clear, timely, adequate or correct information or materials including about the Customer's vehicle and/or any Customer Supplied Parts;
 - any Customer Supplied Parts are not of acceptable quality or fit for purpose;
 - there are changes to the Goods and/or Services;
 - the Order (or any part of the Order) is cancelled;
 - the Customer fails to pay their debts when they fall due and/or does not collect their vehicle when it is ready to be collected; or
 - the Supplier incurs Loss.
- 5.6. Unless otherwise expressly stated, all amounts are exclusive of goods and services tax (**GST**), sales tax, excise, duty, or any future taxes (**Taxes**). If any Taxes are imposed on any supply or transaction under this Contract, the Customer must pay the Supplier an additional amount on account of such Taxes, subject to the provision of an Invoice.
- 5.7. All representations made in the Invoice are made on the basis that errors and omissions are excepted.
- 5.8. The Customer must pay all amounts due to the Supplier on time, even if there is a dispute or query about the Order, Price, or any matter connected with the Contract.
- 5.9. The Supplier may, in its absolute discretion, apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- 6. FAILURE TO PAY, STORAGE AND LIEN**
- 6.1. On and from the day after the Customer is notified that the vehicle is ready for collection, the Supplier can charge a daily Storage Fee until the vehicle is collected and all payments owed to the Supplier (including any storage charges and interest) are settled in full.
- 6.2. In the event of the Customer's default due to non-payment of debts to the Supplier as they fall due, the Customer must, on demand, pay interest on all overdue amounts at the Interest Rate.
- 6.3. All costs and expenses incurred in the recovery of overdue amounts (for example, where the collection of the debt is referred to a debt collector or a law firm, or in respect of legal proceedings), including legal fees, interest, commission, storage charges and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these Terms.
- 6.4. In addition to any common law rights of lien, the Customer agrees the Supplier can exercise a lien on the Customer's vehicle until the Supplier has received payment for all amounts owing by the Customer to the Supplier.
- 7. SUPPLY OF GOODS**
- 7.1. The Supplier does not warrant that it will be capable of providing the Goods at specific times requested by the Customer.
- 7.2. The Supplier does not accept Customer supplied goods, including vehicle parts or accessories, for the Supplier to use in supplying the Services.
- 7.3. Except as required by law, the Supplier will be under no obligation to accept Goods returned for any reason.
- 7.4. Without limiting any rights that may be available under the Australian Consumer Law that are not lawfully excluded under these Terms, if the Customer is seeking to make a claim pursuant to a third-party manufacturer warranty, the Good may be sent back to the manufacturer for inspection and the remedy in relation to that claim will depend on the decision of the third party manufacturer.
- 8. SUPPLY OF SERVICES**
- 8.1. The Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Customer.
- 8.2. Subject to otherwise complying with its obligations under the Contract, the Supplier will exercise its absolute discretion as to the most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.
- 8.3. The Customer agrees that the Supplier may at any time appoint or engage an agent to perform any obligation or right of the Supplier arising out of or pursuant to these Terms, an Estimate or Order.
- 8.4. The Customer authorises the Supplier and the Supplier's employees, contractors and agents (**Supplier's Agents**), to test drive the vehicle and the Customer:
- warrants the vehicle is registered (except in circumstances where the vehicle is unregistered and being inspected by the Supplier to be registered or for a safety certificate) and insured; and
 - agrees, to the extent permitted by law, and except for the negligent act or omission of the Supplier or the Supplier's Agents, that the Supplier is not liable for any Loss which occurs to the vehicle in the connection with the test drive.
- 9. DEFAULT**
- 9.1. The Customer will be in default if:
- the Customer breaches the Contract;
 - payment for the Goods and/or Services has not been received by the Supplier in full by the due date for payment;
 - the Customer becomes insolvent or unable to pay the Customer's debts as and when they are due and payable;
 - the Customer, being an individual, commits an act of bankruptcy or becomes an insolvent under administration; and/or
 - the Customer, being a body corporate, becomes an externally-administered body corporate or any proceedings are filed or steps taken that may result in the Customer becoming an externally-administered body corporate.
- 9.2. Without limitation to any other rights of the Supplier, if the Customer defaults and the default is not capable of remedy, or if the default is capable of remedy and the Customer fails to remedy the default within a reasonable time specified by the Supplier, the

Supplier may do one or more of the following:

- (a) treat the whole of the Contract, any part of the Contract and/or any other contract with the Customer as repudiated and sue for breach of contract;
- (b) make a Claim for Loss, in connection with the Customer's default;
- (c) refuse to supply any further Goods and/or Services to the Customer;
- (d) without notice to Customer, commence taking steps to collect the overdue amount, including debt collection action and any associated legal proceedings;
- (e) cancel all or any part of any Order that remains unfilled (and make all amounts owing, whether or not due for payment, immediately payable); and/or
- (f) charge interest on all overdue amounts at the Interest Rate.

10. RISK AND TITLE

10.1. Legal and equitable title to the Goods will remain with the Supplier and will not pass to the Customer until such time as full payment in cleared funds is made to the Supplier for the Goods and for any and all monies owed by the Customer to the Supplier in respect of the Goods and related Services. Until title to such Goods passes, the Customer holds the Goods as bailee for the Supplier and that a fiduciary relationship exists between the Customer and the Supplier in respect of those Goods.

10.2. Risk in the Goods passes to the Customer on the Customer making payment in accordance with these Terms, on the Goods leaving the Supplier's premises or on the Customer collecting the Goods, whichever is the earlier.

11. LIMITATION OF LIABILITY

11.1. Any limitation of liability in this clause and/or in this Contract does not apply if it would restrict, modify or exclude the Customer's rights in a way that is not permitted under Australian Consumer Law or any other applicable law.

11.2. To the extent permitted by law:

- (a) all express and implied warranties, guarantees and conditions under statute or general law as to merchantable quality, description, quality, suitability or fitness of the Goods and/or Services for any purpose or as to design, assembly, installation, materials or workmanship or otherwise is expressly excluded;
- (b) the Customer will ensure it provides sufficient, correct and accurate information to the Supplier to execute the Order (including quantity and information that the Goods and/or Services are for a particular purpose or required to possess special characteristics) and, if the Customer fails to provide sufficient, correct and accurate information, the Supplier is not liable for costs and expenses incurred for any work to rectify and/or resupply the Order; and
- (c) for Goods and/or Services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability in relation to the sale of Goods and/or Services to the Customer is limited as follows:
 - (i) the Supplier's liability for any Claim is limited at the Supplier's option to:
 - (A) replacing the Goods with equivalent goods, repairing the Goods (or payment for the repair of goods) or providing a refund for the Goods; and/or
 - (B) providing a remedy to the Customer for the Services, which may include, re-supplying the Services or providing a refund for the Services;
 - (ii) the Supplier is not liable for any other Loss or Consequential Loss.

12. CANCELLATION

12.1. The Supplier may cancel or postpone Services (and any Goods in respect of the Services), if it is reasonable for the Supplier to do so or it is in the Supplier's legitimate business interests to cancel or postpone (for example, due to non-delivery of a required part, unavailability of a part or labour shortage) and, to the extent permitted by law, the Supplier will not be liable for any Loss or Consequential Loss.

12.2. Unless expressly agreed to in writing by the Supplier:

- (a) an Order for Goods, including any Special Buy-In in connection with Services, cannot be cancelled by the Customer; and
- (b) an Order for Services cannot be cancelled by the Customer unless notice is provided to the Supplier not later than 4:59pm the business day before the date of the Service.

12.3. If the Customer fails to comply with clause 12.2(a) and cancels an Order for a Special Buy-In, then:

- (a) the Customer will be liable for the Price for the Special Buy-In if the Supplier is unable to cancel the order with the third party; or
- (b) any Loss suffered by the Supplier in cancelling the order with the third party, as a debt due and payable under these Terms

12.4. If the Customer fails to comply with clause 12.2(b), then:

- (a) the Customer will be liable for any Loss incurred by the Supplier to be paid by the Customer as a debt due and payable under these Terms; and
- (b) if there is a Deposit, the Supplier may retain an amount equal to the Loss from the Deposit.

13. TERMINATION AND SURVIVAL

13.1. Either party may terminate the Contract on giving the other party a minimum of seven (7) days written notice.

13.2. If the Contract is terminated for whatever reason, any rights or liabilities of the parties that accrued prior to the termination are not affected or prejudiced, the Customer's obligations under this Contract survive termination of this Contract and clauses 5, 6, 7, 9, 10, 11, 12 and 13 together with any other clauses that by their nature survive termination, survive termination.

14. FORCE MAJEURE

14.1. Except for the Customer's obligation to pay the Supplier in accordance with this Contract, neither party is liable for any delays or failures to perform their duties under this Contract due to circumstances beyond the reasonable control of the party (including as a result of any strike, war, cyber-attack, terrorist attack, trade dispute, natural disaster, fire, flood, tempest, theft, epidemic, pandemic or breakdown of or disruption to machinery, electricity, electronic communication support system, or other utility).

14.2. The party affected by these circumstances must promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

- 14.3. If such circumstances continue for a continuous period of more than 6 months, either party may terminate this Contract by written notice to the other party.
- 14.4. If the Supplier is unable to fulfil or complete an Order placed by the Customer within the time frame required by the Customer due to any such circumstances, then the Supplier may cancel the Order without the Customer having a Claim against the Supplier for Loss or Consequential Loss, arising from such a cancellation.

15. MISCELLANEOUS

- 15.1. Where more than one Customer completes the Contract, each will be liable jointly and severally.
- 15.2. The Contract is binding on the Customer, their heirs, assignees, executors, legal representatives, trustees and where applicable, any liquidator, receiver or administrator.
- 15.3. Each party consents to conducting transactions under this Contract using electronic communications. Without limitation, this Contract and any related documents may be signed or accepted in electronic form. Each party agrees that electronic signature or acceptance is considered equally effective, valid, and binding as an original signed hard copy of this Contract.
- 15.4. This Contract may be executed in counterparts, each of which is an original and which together will constitute the same document.
- 15.5. A party's right under the Contract, may only be waived by notice in writing. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- 15.6. The failure by a party to enforce any provision of this Contract will not be treated as a waiver of that provision or affect the Supplier's right to subsequently enforce that provision.
- 15.7. If the Customer is a trustee of a trust:
- (a) the Customer warrants that the Customer as trustee has the power under the trust deed to enter into this Contract and to comply with its obligations under this Contract, including using the trust assets to meet the Customer's obligations under this Contract;
 - (b) the Customer agrees that the Contract binds the Customer in their capacity as trustee and in the Customer's own capacity; and
 - (c) the Customer agrees that the Customer is liable for the failure to meet an obligation under this Contract in its capacity as trustee and in the Customer's own capacity.
- 15.8. The Supplier may assign, license or sub-contract all or any part of its rights and obligations under the Contract, to another person without notice to the Customer. The Customer may not assign or otherwise transfer any or all of its rights and obligations under this Contract without the prior written agreement of the Supplier, such agreement not to be unreasonably withheld.
- 15.9. If a provision of the Contract would, but for this clause, be unenforceable, then the provision must be read down to the extent necessary to avoid that result and, if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.
- 15.10. Neither party has the right of set-off in any suit, Claim or proceeding brought by one party against the other. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.
- 15.11. The Contract constitutes the entire agreement between the Supplier and the Customer with respect to the Goods and/or Services supplied under the Contract. The Contract applies to the exclusion of all other terms and conditions and supersedes all terms and conditions previously issued by the Supplier.
- 15.12. The Supplier may vary these Terms at any time by providing notice to the Customer of the variation, and such variation will apply to all Orders made after such notice. Otherwise, no variation to this Contract is binding unless expressly agreed in writing by the Supplier.
- 15.13. The Contract is governed by the laws of Victoria. The parties submit to the exclusive jurisdiction of the courts of Victoria.
- 15.14. Nothing in this Contract is intended to have the effect of contravening Australian Consumer Law or any other applicable legislation.

The Customer acknowledges having read and understood these Terms and agrees to be bound by them and if the Customer is a company, the Terms are executed in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Customer Name: <i>(and ACN if a company)</i>	
--	--

Signatory details (complete as applicable):

Signed by:		Position:	<input type="checkbox"/> Director <input type="checkbox"/> Secretary <input type="checkbox"/> Partner <input type="checkbox"/> Individual
Signature:		Date:	

Signed by:		Position:	<input type="checkbox"/> Director <input type="checkbox"/> Secretary <input type="checkbox"/> Partner <input type="checkbox"/> Individual
Signature:		Date:	

Instructions: For companies, these Terms must be signed by a sole director, two directors or a director and a secretary. For partnerships, all partners should sign. For Individuals, the individual should sign.