

Heavy Diesel Specialists Pty Ltd – Terms & Conditions of Trade

1.	Definitions		
1.1	"Mechanic" means Heavy Diesel Specialists Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Heavy Diesel Specialists Pty Ltd.		(a) the Client has paid the Mechanic all amounts owing to the Mechanic; and
1.2	"Client" means the person buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.	9.2	(b) the Client has met all of its other obligations to the Mechanic.
1.3	"Goods" means all Goods or Services supplied by the Mechanic to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).	9.3	Receipt by the Mechanic 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.
1.4	"Price" means the Price payable for the Goods as agreed between the Mechanic and the Client in accordance with clause 4 below.		It is further agreed:
2.	Acceptance		(a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to the Mechanic on request.
2.1	The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.		(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Mechanic and must pay to the Mechanic the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
2.2	These terms and conditions may only be amended with the Mechanic's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Mechanic.		(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Mechanic and must pay or deliver the proceeds to the Mechanic on demand.
2.3	These terms and conditions may be meant to be read in conjunction with the Mechanic's Hire Form, and:		(d) the Client should not convert or press the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Mechanic and must sell, dispose of or return the resulting product to the Mechanic as it so directs.
	(a) where the context so permits, the terms Goods or Services shall include any supply of Equipment, as defined therein; and		(e) the Client irrevocably authorises the Mechanic to enter any premises where the Mechanic believes the Goods are kept and recover possession of the Goods.
	(b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.		(f) the Mechanic may recover possession of any Goods in transit whether or not delivery has occurred.
3.	Change in Control		(g) the Client shall not charge or grant an encumbrance over the Goods nor grant otherwise give away any interest in the Goods while they remain the property of the Mechanic.
3.1	The Client shall give the Mechanic not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Mechanic as a result of the Client's failure to comply with this clause.	10.	Personal Property Securities Act 2009 ("PPSA")
4.	Price and Payment	10.1	In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
4.1	At the Mechanic's sole discretion, the Price shall be either:	10.2	Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that the Client and the Client agrees to constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Mechanic to the Client. The Client undertakes to:
	(a) as indicated on any invoice provided by the Mechanic to the Client; or	10.3	(a) promptly 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 Mechanic may reasonably require to:
	(b) the Mechanic's estimated Price (subject to clause 4.2) which shall not be deemed binding upon the Mechanic as the actual Price can only be determined upon completion of the Works. The Mechanic undertakes to keep the Client informed should the actual Price look to exceed the original estimate.		(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
	(c) the Mechanic's quoted Price (subject to clause 4.2) which shall be binding upon the Mechanic provided that the Client shall accept the Mechanic's quotation in writing within thirty (30) days of issue.		(ii) register any document required to be registered by the PPSA or (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
4.2	The Mechanic reserves the right to change the Price if a variation to the Mechanic's estimate/quotation is required.		(b) indemnify, and upon demand reimburse, the Mechanic for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
4.3	At the Mechanic's sole discretion, a non-refundable deposit may be required.		(c) not register a financing change statement in respect of a security interest without the prior written consent of the Mechanic;
4.4	Time for payment for the Goods being in the essence, the Price will be payable by the Client on the date/s determined by the Mechanic, which may be:		(d) not register or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Mechanic;
	(a) on delivery of the Goods;		(e) immediately advise the Mechanic of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
	(b) thirty (30) days following the date of invoice; or	10.4	The Mechanic and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
	(c) failing any notice to the contrary, on the date which is seven (7) days following the date of any invoice given to the Client by the Mechanic.	10.5	The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
4.5	Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Mechanic.	10.6	The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
4.6	Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Mechanic an amount equal to any GST the Mechanic must pay for any supply by the Mechanic under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.	10.7	Unless otherwise agreed to in writing by the Mechanic, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
5.	Delivery of Goods	10.8	The Client must unconditionally ratify any actions taken by the Mechanic under clauses 10.3 to 10.5.
5.1	At the Mechanic's sole discretion delivery of the Works shall take place when:	10.9	Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
	(a) the Mechanic provides the Works at the Mechanic's address; or	11.	Security and Charge
	(b) the Mechanic provides the Works at the Client's nominated address.	11.1	In consideration of the Mechanic agreeing to supply the Goods, the Client agrees all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
5.2	Where the Mechanic is to provide any Works at the Client's nominated address then the Client shall be liable for all costs incurred by the Mechanic 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 Mechanic's standard rates and any Parts purchased for the Works).	11.2	The Client indemnifies the Mechanic from and against all the Mechanic's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Mechanic's rights under this clause.
5.3	Where the Mechanic is requested to store the Client's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four hours of advice to the Client that they are ready for collection, then the Mechanic (at its sole discretion) may charge a reasonable fee for storage.	11.3	The Client irrevocably appoints the Mechanic and each director of the Mechanic as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.
5.4	Any time or date given by the Mechanic to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Mechanic will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.	12.	Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)
6.	Additional Charges	12.1	The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify the Mechanic in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Mechanic to inspect the Goods.
6.1	The Mechanic reserves the right to change the Price:	12.2	Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied warranties and warranties (including, without limitation, any warranty to which the Motor Vehicle Guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
	(a) if a variation to the Services which are to be provided is requested; or	12.3	The Mechanic acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
	(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	12.4	Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Mechanic makes no warranties or other representations in relation to the Goods including, but not limited to, the quality or suitability of the Goods. The Mechanic's liability in respect of these warranties is limited to the fullest extent permitted by law.
	(c) in the event of increases to the Mechanic in the cost of labour or Parts which are beyond the Mechanic's control.	12.5	If the Client is a consumer within the meaning of the CCA, the Mechanic's liability is limited to the extent permitted by section 64A of Schedule 2.
6.2	Where the Mechanic is requested to store the Client's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four (24) hours of advice to the Client that they are ready for collection, then the Mechanic (at its sole discretion) may charge a fee of twenty-five dollars (\$25) per day for storage.	12.6	If the Mechanic is required to replace the Goods under this clause or the CCA, but is unable to do so, the Mechanic may refund any money the Client has paid for the Goods.
6.3	For roadside assistance, a minimum call-out fee shall be applicable, which shall be increased for any after-hours call-outs.	12.7	If the Mechanic is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then the Mechanic may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Goods which have been provided to the Client which were not defective.
6.4	All tow and/or salvage fees will be charged to the Client, and will be added to the Price.	12.8	If the Client is not a consumer within the meaning of the CCA, the Mechanic's liability for any defect or damage in the Goods is:
6.5	If the Mechanic has been requested by the Client to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.		(a) limited to the value of any express warranty or warranty card provided to the Client by the Mechanic at the Mechanic's sole discretion;
6.6	The Client agrees that the Mechanic shall be entitled to:		(b) limited to any warranty to which the Mechanic is entitled, if the Mechanic did not manufacture the Goods;
	(a) retain any components replaced during the provision of the Services; and		(c) otherwise negated absolutely.
	(b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.	12.9	Subject to this clause 12, returns will only be accepted provided that:
7.	Provision of the Services		(a) the Client has complied with the provisions of clause 12.1; and
7.1	Where the Mechanic is to provide any Services at the Client's nominated address, then the Client shall be liable for all costs incurred by the Mechanic 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 Mechanic's standard rates and any Parts purchased for the Services).		(b) the Mechanic has agreed that the Goods are defective; and
7.2	Any time specified by the Mechanic for provision of the Services is an estimate only and the Mechanic will not be liable for any loss or damage incurred by the Client as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Mechanic is unable to provide the Services as agreed solely due to any action or inaction of the Client then the Mechanic shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.		(c) the Goods are returned within a reasonable time at which their cost (if that cost is not significant); and
8.	Risk		(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
8.1	If the Mechanic retains ownership of the Materials under clause 9.1 then, where the Mechanic is supplying Parts only, all risk for the Parts shall immediately pass to the Client on delivery and the Client must insure the Parts on or before delivery. At the Mechanic's sole discretion, the costs of delivery shall be in addition to the Price. Delivery of the Parts shall be deemed to have taken place immediately at the time that either:	12.10	Notwithstanding clauses 12.1 to 12.9 but subject to the CCA, the Mechanic 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 Client or the Client's nominated carrier takes possession of the Parts at the Mechanic's address; or		(a) the Client failing to properly maintain or store any Goods;
	(b) the Parts are delivered by the Mechanic or the Mechanic's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).		(b) the Client using the Goods for any purpose other than that for which they were designed;
8.2	If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Client, the Mechanic is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by the Mechanic is sufficient evidence of the Mechanic's rights to receive the insurance proceeds without the need for any person dealing with the Mechanic to make further enquiries.		(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
8.3	If the Client requests the Mechanic to leave Parts outside the Mechanic's premises for collection or to deliver the Parts to an unattended location, then such Parts shall be left at the Client's sole risk.		(d) the Client failing to follow any instructions or guidelines provided by the Mechanic; fair wear and tear, any accident, or act of God.
8.4	The Client acknowledges that the Mechanic is only responsible for Parts that are replaced by the Mechanic and that in the event that other components subsequently fail, the Client agrees to indemnify the Mechanic against any loss or damage to the vehicle, Parts, or caused by the components, or any part thereof howsoever arising.	12.11	In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client 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 Mechanic as to the quality or suitability for any purpose and any implied warranty (if any) is otherwise, expressly excluded. The Client acknowledges and agrees that the Mechanic has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 12.11.
8.5	The Mechanic shall not be liable for the loss of or damage to the vehicle, its accessories or contents while being serviced or being driven in connection with the authorised Services (including in the event of a call-out: it shall be the Client's responsibility to remain with the vehicle to ensure security of the same), unless caused by the negligence of the Mechanic or the Mechanic's employees.	12.12	Notwithstanding anything contained in this clause if the Mechanic is required by a law to accept a return then the Mechanic will only accept a return on the conditions imposed by that law.
8.6	It is the Client's responsibility to ensure that the vehicle is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at the Mechanic's premises. The vehicle is at all times stored and repaired at the Client's sole risk.	13.	Intellectual Property
9.	Title	13.1	Where the Mechanic has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Mechanic.
9.1	The Mechanic and the Client agree that ownership of the Goods shall not pass until:	13.2	The Client warrants that all designs, specifications or instructions given to the Mechanic will not cause the Mechanic to infringe any patent, registered design or trademark in

Please note that a larger print version of these terms and conditions is available from the Mechanic on request.