

AV TRUCK SERVICES PTY LTD - TERMS OF TRADE

A.C.N. 009 090 466

Dealer Licence No. 9861

Motor Vehicle Repair Business Licence No. 1361

By ordering Goods or Services from AV Truck Services Pty Ltd (ACN 009 090 466) (**Supplier**) the Customer agrees that the following standard terms of trade will apply.

1 Definitions and interpretation

1.1 Definitions

Additional Charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices; and
- (b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods are provided.

Customer means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

Consequential Loss means means any indirect, economic loss or damage arising out of or in connection howsoever with the performance or breach of the Agreement, including any act, neglect, default, breach of duty or express or implied warranty or any other legal fault (including strict liability), including but not limited to loss or deferment of profits, sales, revenue or savings (including anticipated profits, sales, revenue or savings); loss of time, goodwill or reputation; loss of use, shut-in; loss or deferral of production or product; loss of or damage to business brand or reputation or business interruption; additional borrowing costs; loss of opportunity, contract or chance; wasted management time; costs of claim handling services provided by insurers; insurance premiums or excesses; special or punitive damages; special indirect, punitive or exemplary loss or damages.

Damage means any loss of, damage to, deterioration of, or mis delivery of, or non-delivery of, or delay in delivery of the Goods and any other loss or damage arising therefrom or in relation to the performance or non-performance of the Services, including but not limited to personal injury or death.

Goods means any goods supplied by the Supplier including those supplied in the course of providing Services.

Order means a purchase order for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

Quote means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

Services means the services to be provided by the Supplier to the Customer in accordance with a Quote and these terms of trade.

Supplier means the entity specified as the supplier of Goods or Services on the Quote and includes the Supplier's agents and permitted assigns.

1.2 Interpretations

In these terms of trade, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms of trade;
- (d) a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (ii) in all other cases, must be done on the next Business Day.

2 General

- (a) These terms of trade apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services. This includes all quotations, contracts and variations.
- (b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- (c) The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.

3 Quotes

- (a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for seven (7) days from the date of issue.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include delivery or installation of the Goods.
- (c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier.
- (d) Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Quote has been accepted by the Customer. This occurs by the Customer confirming an Order to the Supplier.
- (e) The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote to these terms of trade.
- (f) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law (ACL), this estimate is not binding upon the Supplier.

4 Orders

- (a) Every Order by the Customer for the provision of Goods or Services must be submitted in writing (unless otherwise agreed).
- (b) An Order will only be deemed to be placed by the Customer if the Order clearly identifies the Goods or Services ordered and the

Supplier's Quote (if applicable). Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.

- (c) Placement of an Order by the Customer signifies acceptance by the Customer of these terms of trade and the most recent Quote provided by the Supplier relating to that Order.
- (d) The Supplier may in its absolute discretion refuse to provide Goods or Services where:
 - (i) Goods are unavailable for any reason whatsoever;
 - (ii) credit limits cannot be agreed upon or have been exceeded; or
 - (iii) payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.
- (e) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Damage incurred by the Supplier as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

5 Variations

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or Services or both.
- (c) The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

6 Invoicing and payment

- (a) The Supplier may, in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
 - (i) at the end of each week before the Order is completed, the Supplier may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at the Supplier's discretion either for work done to that point, work in the future or both) and require that proportion of the Quote be paid in advance of any further Goods or Services being provided; or
 - (ii) upon completion of the provision of the Goods or Services or any time after such completion, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.

- (b) The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as:
 - (i) the amount for the Goods or Services (or both) as set out in the Quote and any Additional Charges; or
 - (ii) where no Quote has been provided by the Supplier, the Supplier's usual charges for the Goods or Services (or both) as described in the Order.
- (c) The Customer must pay an invoice issued by the Supplier to the Supplier in accordance with the number of days specified on the invoice.
- (d) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (e) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- (f) The Customer is not entitled to retain any money owing to the Supplier regardless of any default or alleged default by the Supplier of these terms of trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the ACL.
- (g) The Customer is to pay the Supplier on demand interest at the rate of 10% per year on all overdue amounts owed by the Customer to the Supplier, calculated daily.
- (h) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these terms of trade.
- (i) The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

7 Additional Charges

- (a) The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).
- (b) The imposition of Additional Charges may also occur as a result of:
 - (i) cancellation by the Customer of an Order where cancellation results in Loss to the Supplier;
 - (ii) photocopying, courier, packing or handling charges not included in the Quote;
 - (iii) Government or council taxes or charges not included in the Quote;
 - (iv) additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost or
 - (v) bank fees associated with card payment methods.

8 Acceptance of Goods and Services

If the Customer fails to advise the Supplier in writing of any fault in Goods or Services or failure of Goods or Services to accord with the Customer's Order within 24 hours of delivery, the Customer is deemed

to have accepted the Goods and Services and to have accepted that the Goods and Services are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the ACL.

9 Delivery

- (a) Delivery of Goods to the Customer is to be arranged by the Supplier. Freight charges are as follows for Goods delivered to the Customer:
 - (i) delivery charge is free for any purchases equal to or over \$500.00 exclusive of GST (all locations within Australia);
 - (ii) delivery charge of \$30.00 (exclusive of GST) for any purchase below \$500.00 exclusive of GST;
 - (iii) all deliveries are by standard road couriers. Normal lead times will apply. Express delivery may be available upon request at additional charge.
- (b) If the Customer uses its own freight carrier, the Customer is liable for its own freight and insurance. It is then the responsibility of the Customer to arrange pick up from the Supplier's warehouse or such other premises at which the Goods may be located.
- (c) The Customer is not relieved of any obligation to accept or pay for Goods because of a delay in a delivery or any part of a delivery.
- (d) If any event occurs beyond the control of the Supplier that affects the manufacture or delivery of the Goods, the Supplier is entitled to deliver part only of a purchase order, suspend delivery, extend the time for delivery or cancel the purchase order.
- (e) purchase orders cannot be cancelled by the Customer following delivery of the Goods to the Customer but before payment of the Invoice.

10 Return of Goods

- (a) Goods will only be considered for credit if they are returned in good condition in the original packaging where applicable and when the original invoice number and the date of supply are quoted. Credits may be allowed:
 - (i) if Goods are returned to the Supplier within seven (7) days from the date of the date of the invoice a full credit may be given to the Customer; and
 - (ii) if Goods are returned to the Supplier within thirty (30) days from the date of the invoice, a 95% credit may be given to the Customer.
- (b) If Goods are returned to the Supplier thirty (30) days or more from the date of the invoice no credit will be provided to the Customer.
- (c) The following Goods are not eligible for credit under any circumstances;
 - (i) Goods specially ordered for the Customer; and
 - (ii) electrical Goods.

11 Agency and assignment

- (a) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these terms of trade.
- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these terms of trade provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these terms of trade.
- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under these terms of trade without the prior written consent of the Supplier.

12 Limitation of liability

Subject to any other term of these terms of trade and to the extent that any provision of these terms of trade are held to be contrary to any provision of Section 23 of the Australian Consumer Law, the Supplier will not be liable for any loss or Damage, including Consequential Loss, whether or not any such Damage or Consequential Loss occurs in the course of performance by the Supplier of the Services or when otherwise in the possession of the Supplier pursuant to these terms of trade, for any reason whatsoever, unless and to the extent caused or contributed to by the breach of this Agreement by or negligence of the Supplier.

To the extent that any liability of the Supplier is subject to any mandatory law not able to be excluded, including the Australian Consumer Law, then the Supplier's liability shall in all events be limited to, at the Supplier's option:

- (a) In the case of any goods supplied by the Supplier:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (iii) the payment of the cost of having the goods repaired;
- (b) In the case of any Services supplied by the Supplier:
 - (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.

13 Force majeure

- (a) If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond the Supplier's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

14 Dispute resolution

- (a) If a dispute arises between the Customer and the Supplier, the following procedure applies:
 - (i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this paragraph.
 - (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.
 - (iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
- (b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within fourteen (14) Business Days (or other period as agreed).

- (c) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation (**Guidelines**) which operate at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these terms of trade. This paragraph survives termination of these terms of trade.
- (d) Despite the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms of trade.
- (e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

15 Miscellaneous

- (a) These terms of trade are governed by the laws of the state or territory where the Supplier's registered office is situated and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state or territory.
- (b) These terms of trade and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (e) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (f) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by fax to the fax number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee; or sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery.
- (g) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (h) A party may only change its postal or email address for service by giving notice of that change in writing to the other party.