

1. DEFINITIONS

- 1.1. If applicable, capitalised terms have the meaning given to them in this Agreement. In addition, the following definitions apply in this Agreement:
- 1.2. 'Supplier,' 'we', or 'us' means Mighty Kiwi Limited trading as Mighty Kiwi Commercial (our successors and assigns) or any person acting with the authority of Mighty Kiwi Limited.
- 1.3. 'Client,' 'you', or 'your' means the Client purchasing Goods or Services from us or any person acting on your behalf (including authorised agents).
- 1.4. 'Goods' means any motor vehicle parts or Goods (including any components, accessories, consumables or documentation) supplied to you either separately or as part of the Services and, where the context permits, shall include the provision of any Services.
- 1.5. 'Services' means all Services provided to you (including, without limitation, any Parts supplied, check, disassembling, diagnostics, inspections, key cutting, maintenance, repair, replacement, service, tune-up, transmission flushing, certificate or warrant of fitness or wheel alignment) as set out on the quotation, invoice, job sheet, Estimate or any other documentation provided to you or as otherwise agreed between both parties (in accordance with clause 8).
- 1.6. 'Price' means the Price of the Services (in accordance with clause 6).
- 1.7. 'Estimate' means the anticipated cost (subject to variations and increases) to complete the Services, which is only an approximate figure and is not legally binding upon us.
- 1.8. 'Charge Work' means the Price for any Goods or Services supplied to you that do not form part of any written quotation (in accordance with clause 6).
- 1.9. 'Agreement' means these terms & conditions of trade, as may be amended from time to time (including our privacy policy and any orders, purchases or schedules as applicable).
- 1.10. 'Amounts Owing' means any amount you owe to us, from time to time, including the Price, any interest payable, any of your liability under this Agreement and any enforcement expenses incurred by us in seeking payment of any Amounts Owing by you.
- 1.11. 'Vehicle' means the Vehicle (including any components or accessories) we are to provide the Services.
- 1.12. 'Courtesy Vehicle' means any vehicle supplied on loan to you whilst we undertake the Services on your Vehicle (including any accessories or consumables supplied with the Courtesy Vehicle) and shall be described on the quotation, invoices, authority to hire, or any documentation provided to you (in accordance with clause 23).
- 1.13. 'Workshop' means the address and premises where we operate and will provide the Services (our primary trading location).
- 1.14. 'Business Day' means Monday to Friday, excluding public holidays in New Zealand.
- 1.15. 'Confidential Information' means all information that could be reasonably regarded in the circumstances as confidential, including information that relates to the business, interests or affairs of a party, this Agreement, the Goods or Services (as applicable), and intellectual property rights, but excludes information which is:
 - (a) in the public domain, other than as a result of a breach of this Agreement;
 - (b) in the possession of a party prior to the commencement of this Agreement without any obligation of confidentiality; and
 - (c) is independently developed or acquired by a party prior to the commencement of this Agreement without relying on information that would itself be Confidential Information.
- 1.16. 'Event of Default' means failure to comply with this Agreement (including your obligations in clause 6).
- 1.17. 'Insolvency Event' means an event of insolvency or bankruptcy, including: (i) the appointment of an insolvency administrator, manager, receiver or liquidator; (ii) any action related to winding up or making a material arrangement in relation to creditors; (iii) applying for any type of protection against creditors; (iv) being unable to pay your debts as they fall due; or (v) taking or suffering any similar or analogous action in any jurisdiction as a consequence of debt.
- 1.18. 'Personnel' means directors, officers, employees, agents and contractors.
- 1.19. 'CCLA' means the Contract and Commercial Law Act 2017.
- 1.20. 'PPSA' means the Personal Property Securities Act 1999.
- 1.20. 'Debt Free Limited 2021-2023'

- 1.21. 'CCA' means the Construction Contracts Act 2002.
- 1.22. 'Security Agreement' and 'Security Interest' have the meanings given to them in Part 2, sections 16 and 17 of the PPSA.
- 1.23. 'Regulator' means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or Services.
- 1.24. 'Related Company' has the meaning given to it in Part 1, section 2(3) of the Companies Act 1993.

2. INTERPRETATION

- 2.1. In this Agreement, unless the context otherwise requires:
 - (a) headings are for convenience only and do not affect interpretation;
 - (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - (c) a reference to 'in writing' includes by email;
 - (d) the words 'include' or 'including' or similar expressions are to be construed without limitation;
 - (e) a reference to a party shall include that party's successors, permitted assigns and substitutes; and
 - (f) a word importing the singular includes the plural and vice versa.

3. ACCEPTANCE

- 3.1. All orders are subject to our acceptance, and we may (at our sole discretion) accept any order in whole or in part by issuing an invoice in respect of the applicable Services, delivering the Goods or Services or otherwise confirming the order in writing.
- 3.2. You acknowledge and accept that:
 - (a) the supply of Goods on credit shall not take effect until you have completed a credit application with us and it has been approved with a credit limit established for the account;
 - (b) if the supply of Goods requested exceeds your credit limit or the account exceeds the payment terms, we reserve the right to refuse further delivery;
 - (c) where necessary, this Agreement will be modified or amended to the extent required to comply with any applicable legislation (with written consent from both parties); and
 - (d) this Agreement shall supersede any other document or agreement.
- 3.3. We are not obligated to inquire about the authority of any person placing an order on your behalf.
- 3.4. You confirm you are the registered owner of the Vehicle or are authorised by the registered owner to accept this Agreement. If you place an order for or accept any provision of Services from us, you are taken to accept this Agreement and are immediately bound jointly and severally (including if you are part of a trust, in which case you shall be bound in your capacity as a trustee).
- 3.5. Your acceptance of this Agreement shall continue to all future orders, purchases or schedules (as applicable), and this Agreement will be, or is deemed to be incorporated into, and form part of, each order, purchase or schedule as if this Agreement was set out or implied therein in full.
- 3.6. Both parties shall accept electronic signatures (provided both parties have complied with sections in Part 4, subpart 3 and all other relevant sections in Part 4 of the CCLA).

4. AUTHORISED AGENTS

- 4.1. We are not obligated to inquire about the authority of any person placing an order on your behalf.
- 4.2. If you introduce any third party to us as your authorised agent, you agree that the agent shall have your full authority to order any Services on your behalf, and such authority shall continue until the Services have been completed or you notify us in writing that the third party is no longer your authorised agent.
- 4.3. Where your authorised agent is to have only limited authority to act on your behalf, you must explain the parameters of the limited authority to us in writing.

5. CHANGES TO DETAILS

- 5.1. You agree that you will give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any

proposed change to your name or any other changes to your details (including changes to the ownership of the company, address, email, contact phone or business structure).

5.2. You acknowledge and accept that if you fail to comply with clause 5.1, you will breach this Agreement and shall be liable for any expense or loss of profit suffered by us (including any Related Company).

6. PRICE AND PAYMENT

6.1. You will pay us the Price set out in any quotation or documentation that we provide to you under this Agreement, plus any 'Goods and Services Tax' (as defined and imposed in Part 2, section 8(1) of the Goods and Services Tax Act 1985 (GST)).

6.2. Unless otherwise agreed by us in writing, the Price shall be:

- (a) indicated on invoices provided to you in respect of the Services;
- (b) our Estimated Price (subject to clause 7), with the final Price being ascertained upon completion of the Services (and any variances in the Estimated Price of more than ten percent (10%) will be subject to your approval before we proceed with any further Services); or
- (c) our quoted Price, which will be binding, subject to your acceptance of our quotation in writing within seven (7) days.

6.3. In the event any extra Services are required or requested (which are not described in the quotation) after the quotation has been accepted, we will advise you in writing of the additional cost to perform such Services, which will be treated as a variation (in accordance with clause 7).

6.4. If during the Services, we identify reasonably significant additional issues or required Services that are outside the scope of the Services specified on the original Estimate or quotation, we will endeavour to identify any additional costs in a revised Estimate or quote and provide this to you as soon as reasonably possible. We shall require your authorisation to proceed with any work not included in the initial Estimate or quotation.

6.5. Unless stated otherwise, any Estimate we give you before providing a written quotation or commencing any Services is an Estimate of the anticipated cost for us to complete the Services and is not legally binding upon us. Vehicles are complicated machines, and many operational components are hidden from view or access. We use reasonable efforts to provide a reasonably accurate Estimate, but in many cases, we cannot correctly assess exactly what is required (both in terms of Goods and Services) until we are doing the work and, as such, cannot (and expressly do not) give any assurance that the final price will correspond to the Estimate given. We shall notify you as soon as reasonably practicable if the Price is likely to exceed the Estimated cost.

6.6. If the Price is not set out in quotations or other documentation, the Price for the relevant Goods or Services will be at our standard rate according to our current Price list or at a rate notified to you.

6.7. The Price will be payable by you on the dates determined by us (at our sole discretion), which may be:

- (a) on delivery of the Goods or completion of the Services;
- (b) due twenty (20) days following the end of the month in which a statement or invoice is sent to your address or address for notices; or
- (c) seven (7) days following the date of any invoice given to you by us if there is no notice to the contrary.

6.8. Any time spent travelling to and from the Workshop will be charged at our regular hourly rate (including arranging any towing or transportation of your Vehicle and the time taken to procure any Goods required for the Services).

6.9. We reserve the right at any time to alter any Price lists. Any alterations to any Price list will be effective from the date specified by us and apply to all orders or purchases we accept on or after that date.

6.10. Payment may be made by cash, electronic/online banking, or any other method we agree to in writing.

6.11. Payment in any form other than cash shall not be taken to be payment for the Amounts Owing, and all ownership rights of the Goods or Services remain with us until that form of payment has been cleared and received (in accordance with clause 17.1).

6.12. We may require that you pay a deposit or provide a guarantee as security for paying any Amounts Owing. All Services that are Estimated or quoted in excess of one thousand dollars \$1,000.00 (including GST) are subject to a deposit of fifty percent (50%) of the Estimate or Price (or any other amount we request).

6.13. You agree to pay the full cost of any part necessary to be imported from overseas, the purchase Price of any part that is non-refundable, and the costs of and incidental to shipping (in addition to the deposit required in accordance with clause 6.12). The Services will only commence once payment is received and cleared (in accordance with clause 18.1).

6.14. Where we are requested to store your Goods or Vehicle, we (at our sole discretion) may charge a reasonable fee for storage (where the Goods or Vehicle are not collected within twenty-four (24) hours after we provide you notice that we have completed the Services).

6.15. We may (at our sole discretion) allocate any payment received from you towards any invoice that we determine and may do so at the time of receipt or at any time afterwards. On any default by you, we may reallocate any payments previously received and allocated. In the absence of any payment allocation by us, payment will be deemed to be allocated in a manner that preserves the maximum value of our Security Interests.

6.16. You shall not withhold payment of any Amounts Owing because part of the Services are disputed, and if part of the Services are disputed, you agree that you will:

- (a) perform all of your obligations to us under this Agreement and pay in full any Amounts Owing except for the amount that is in dispute; and
- (b) provide a specific and detailed explanation of the dispute in writing within seven (7) days from delivery.

6.17. If an Insolvency Event occurs, all Amounts Owing will (whether or not due for payment) immediately become due and payable.

7. VARIATIONS

7.1. The Price will be adjusted to reflect any extra cost or expense incurred by us because of any instruction received from you (or your authorised representative) or any action or inaction on your part.

7.2. We reserve the right to change the quoted Price if:

- (a) any information supplied by you is inaccurate;
- (b) you request any change to plans, specifications or the Services that were initially quoted;
- (c) during the course of the Services, the Goods are not or cease to be available from any supplier;
- (d) during the course of the Services, the Goods are not or cease to be available from any supplier or if the Goods you supply are not compliant in any way; or
- (e) the cost of labour or Goods increases due to changes beyond our control (including any taxes imposed by any Regulator, overseas transactions that may increase due to variations in foreign currency rates of exchange or international freight and insurance charges).

7.3. Where you request us to Estimate the quantity of the Goods to be supplied from sketches, plans, schedules, specifications or otherwise, you agree to pay for any variation between the Estimate and the actual quantities provided, and this Agreement shall be deemed to be adjusted accordingly to reflect the increased Price.

8. PROVISION OF SERVICES

8.1. At our sole discretion, delivery of the Services shall take place when:

- (a) we provide the Goods or Services at our address; or
- (b) we deliver the Goods or Services to your nominated address.

8.2. Where we are to provide any Services at your nominated address, you shall be liable for all costs incurred by us from the time we depart from and until we return to our Workshop (including the mileage and time calculated at our regular rates and any Goods purchased to complete the Services).

8.3. You accept that the supply of Goods for accepted orders may be subject to availability, and in the event, the Goods are not or cease to be available, we reserve the right (at our sole discretion) to suspend the Services until the Goods become available or until both parties agree to alternative Goods. If Goods become obsolete or unavailable for an extended period, we shall be entitled to supply alternative Goods of similar description (or components of the Goods) and adjust the Price to allow for any increase (in accordance with clause 7).

8.4. Where requested, we will deliver the Goods or Services to the delivery location that we each agree to in writing, and if the delivery location is at your premises (subject to clause 21), you will provide us (and our Personnel) with suitable access to the premises, together with any

amenities reasonably required by us (or our Personnel) to perform delivery of the Goods or Services.

- 8.5. You accept that the supply of Goods for accepted orders may be subject to availability, and if, for any reason, Goods are not or cease to be available, we reserve the right to substitute comparable Goods (or components of the Goods) and vary the Price (in accordance with clause 7). In all such cases, we will notify you in advance of any such substitution and reserve the right to place your order on hold until both parties agree to such changes.
- 8.6. If we are unable to supply the Services as agreed solely due to any action or inaction of you, then we shall be entitled to charge a reasonable fee for the re-supplying of Services at a later time and date (including storage of the Goods if applicable).
- 8.7. If we are required to provide the Services urgently, which may require us to work outside regular business hours (including working through lunch breaks, weekends or public holidays), we reserve the right to charge additional costs unless otherwise agreed between the parties.
- 8.8. Any time specified by us for delivery of the Goods is an Estimate only, and we will not be liable for any expenses or losses incurred due to your reliance on our Estimated time for delivery, nor can you cancel any order for any delay in delivery that is less than fourteen (14) days after our Estimated time for delivery (or any delay in delivery due to any event beyond our control).
- 8.9. We may deliver the Goods in separate instalments, which will be invoiced and paid as individual transactions.

9. ERRORS AND OMISSIONS

- 9.1. You agree that we have no liability in respect of any errors or omissions:
- (a) resulting from an inadvertent mistake made by us in the formation or administration of this Agreement; or
 - (b) contained in any documentation supplied to you by us regarding the Services.
- 9.2. If such an error or omission occurs and is not attributable to our negligence or wilful misconduct, all obligations or rights under or in connection with this Agreement shall continue in full force and effect.

10. DEFECTS

- 10.1. You shall inspect all Goods or Services immediately on delivery and shall notify us of any alleged defect, shortage in quantity, damage or any other issue within ten (10) days from the date of delivery.
- 10.2. If you do not notify us within the ten (10) day timeframe (in accordance with clause 10.1), then the Goods or Services shall be presumed to be free from any defect, and we will consider all Goods or Services to be supplied free from any defect or other issue (subject to clause 14.1).
- 10.3. You shall allow us to inspect the Goods or Services within fourteen (14) days (from the date of delivery) if you believe the Goods or Services are defective.

11. RETURNS AND WARRANTIES

- 11.1. Return of the Goods will only be accepted (at our sole discretion) provided that:
- (a) the Goods are returned to us within seven (7) days of the delivery date;
 - (b) we have agreed in writing to accept the return of the Goods;
 - (c) the Goods are returned in the condition in which they were received (including all packaging material, brochures and any instructions in as new condition as is reasonably possible);
 - (d) we will not accept the return of Goods that have not been stored or used correctly; and
 - (e) the return of any Goods for credit may incur a restocking fee of twenty-five percent (25%) of the value of the Goods (and any additional freight costs we incur).
- 11.2. Subject to the conditions of the warranty set out in clause 11.3, we warrant that if any defect in any workmanship of ours becomes apparent and is reported to us within six (6) months from the date of delivery or 5,000 kilometres (time being of the essence), we will either (at our sole discretion) replace or remedy the workmanship.
- 11.3. The conditions applicable to the warranty given by clause 11.2 are:
- (a) the warranty shall not cover any defect or damage which may be caused by or arise through: (i) failure on your part to properly maintain

any Goods or Services; (ii) failure on your part to follow any instructions or guidelines we provide; (iii) any use of the Goods or Services for any purpose other than the appropriate applications specified on the quote, invoice or any other documentation supplied to you; (iv) the continued use of any Goods or Services after any defect becomes apparent (or would have become apparent to a reasonably prudent operator); (v) fair wear and tear; or (vi) any accident or act of God;

- (b) we shall not be liable to compensate you for any delay in remedying the workmanship or in properly assessing your claim; and
 - (c) the warranty shall cease, and we shall in no circumstances be liable (including the warranty set out in clause 11.2) if the workmanship is repaired, altered or overhauled by any third party without our consent.
- 11.4. For any Goods not manufactured by us, the warranty shall be the current warranty provided by the manufacturer. We shall not be bound by any condition, representation, or warranty other than what the manufacturer offers.

12. PRIVACY ACT 2020

- 12.1. You authorise us (and our agents) to collect, use, retain and disclose 'personal information' (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your Personnel that you or they provide to us for the following purposes:
- (a) exercising our rights or performing our obligations under this Agreement;
 - (b) using the services of credit reporting and debt collection agencies, and you consent to us disclosing personal information (including any information about an Event of Default or repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
 - (c) registering any Security Interest under this Agreement;
 - (d) direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us; and
 - (e) the use or transfer of personal information to a Related Company in connection with the performance of our obligations or exercise of our rights under this Agreement.
- 12.2. Clause 12.1 is authority and consent from you in accordance with sections in Part 3 and all other relevant sections in the Privacy Act 2020.
- 12.3. You (if you are an individual) have the right under information privacy principles 6 and 7, and sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access, and request correction of, any of your personal information held by us and if you provide any personal information about a third party (including your Personnel) to us, you confirm that you are authorised to do so by the relevant individual, and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.
- 12.4. If the Services are expected to involve the sharing of any data sets, or other personal information, to you by us or us to you, we will enter into a separate data protection agreement with you.
- 12.5. If you do not provide the personal information requested, we may be unable to perform our obligations under this Agreement.

13. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

- 13.1. Each party must keep confidential all Confidential Information, however, nothing in clause 13 prevents a party from disclosing Confidential Information:
- (a) in the circumstances expressly provided for in this Agreement;
 - (b) if the disclosure is required by law or Regulator (but only to the extent necessary); or
 - (c) if the disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement.
- 13.2. We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Agreement.
- 13.3. We own all right, title and interest (including all intellectual property rights) in the Goods or Services at all times.

- 13.4. Any new intellectual property created as a result of, or in connection with, the provision of our Goods or Services will be owned by us (unless otherwise agreed in writing).
- 13.5. If, notwithstanding clauses 13.3 and 13.4, any intellectual property rights in any of our Goods or Services vests in you, you assign those intellectual property rights to us with effect from creation and agree to do all things reasonably required by us to give effect to such assignment.
- 13.6. You warrant that the use by us of any designs, instructions, plans, specifications or other technical information provided by you will not infringe the intellectual property rights of any other person and indemnify us against any expenses or losses (including full legal costs on a solicitor-client basis) that we may incur or suffer in the event of any such infringement.

14. CONSUMER GUARANTEES ACT 1993 & FAIR TRADING ACT 1986

- 14.1. Subject to clause 14.2, nothing in this Agreement will affect any rights you may have as a 'consumer' (as defined under the Consumer Guarantees Act 1993 (CGA)) under the CGA.
- 14.2. For the purposes of section 2 and Part 5, section 43(2) of the CGA, the parties acknowledge and agree that, if you are acquiring, or hold yourself out as acquiring, the Goods or Services in trade:
- (a) to the extent permitted by law, you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by this Agreement); and
- (b) it is fair and reasonable for the parties to be bound by clause 14.2.
- 14.3. If you are acquiring the Goods or Services to resupply the Goods or Services in trade, you undertake that you will:
- (a) contract out of the CGA to the maximum extent permitted by law in your contracts with your clients; and
- (b) procure that your clients, and each person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with clients.
- 14.4. For the purposes of section 5D of the Fair Trading Act 1986 (FTA), the parties acknowledge and agree that, if you are acquiring, or hold yourself out as acquiring, the Goods or Services in trade:
- (a) to the extent permitted by law, you are contracting out of sections 9, 12A and 13 of the FTA; and
- (b) it is fair and reasonable for the parties to be bound by clause 14.4.
- 14.5. You will indemnify us against any expenses or losses incurred by us due to your breach of clause 14.

15. CANCELLATION

- 15.1. We may cancel any Services provided under this Agreement before the Services are delivered by giving you written notice. On giving such notice, we shall repay you any sums paid in respect of the Price, and we shall not be liable for any loss or damage arising from such cancellation. If you cancel the delivery of the Services, you shall be responsible for any loss incurred by us (including, without limitation, any loss of profits) up to the time of cancellation.
- 15.2. Should you wish to reschedule or cancel any Services, you agree to provide us with at least twenty-four (24) hour's notice. Any cancellation with less than twenty-four (24) hours notice (including instances where you fail to attend the Services) may be charged the full Price of the Services. If the Services are rescheduled more than two (2) times, you will be asked for a fifty percent (50%) non-refundable deposit to secure the booking.
- 15.3. We shall be entitled to cancel all or part of any order of yours which remains unperformed, and all Amounts Owing to us shall (whether or not due) become immediately payable if:
- (a) any Amounts Owing to us become overdue, or in our opinion, you will be unable to meet your payments as they fall due; or
- (b) an Insolvency Event occurs, and you become insolvent or bankrupt, convene a meeting with your creditors or a liquidator or similar person is appointed in respect of you or any of your assets.
- 15.4. Orders made to your specifications or non-stock-list items cannot be cancelled once production has commenced.

16. EVENT OF DEFAULT

- 16.1. Unless waived by us in writing, we may charge interest at a rate of two and a half percent (2.5%) per calendar month on any outstanding

Amounts Owing from the due date of payment until the date the outstanding amount is paid (and interest shall compound monthly at such a rate).

- 16.2. You agree to reimburse us for any fees or expenses we incur in recovering any Amounts Owing (including, without limitation, administration fees, debt collection agency fees, disbursements and full legal costs on a solicitor-client basis).
- 16.3. Should you fail to pay any account, we may withhold the release of any producer statement, certification, or documentation relating to the Services provided until all Amounts Owing are paid in full.

17. RETENTION OF TITLE

- 17.1. Ownership (including all right, title and interest) of the Goods and Services remains with us until:
- (a) we have received all Amounts Owing; and
- (b) you have performed all of your obligations under this Agreement.
- 17.2. If any Amounts Owing is overdue, or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere Goods may be stored, to remove any Goods. We shall not be liable in contract, tort or otherwise for any damages, expenses, or losses incurred by you or any third party, and you indemnify us against any liability we may have to any third party (including full legal costs on a solicitor-client basis), as a result of us exercising our rights under clause 17.2 (except where damages, costs or losses are due to our negligence or fraud).
- 17.3. If you resell or use any Goods before ownership of the Goods has passed to you (including combining or processing the Goods), the proceeds of such sale or use will be received and held by you (in whatever form) in trust for us to the extent of the Amounts Owing (where our interest as beneficiary under that trust will be that portion of the proceeds which is equivalent to the Amounts Owing to us and the balance of the proceeds (if any) will be your beneficial interest under that trust).
- 17.4. It is further agreed that:
- (a) where possible, the Goods shall be kept separate and identifiable until we have received full payment and you have fulfilled all of your obligations under this Agreement; and
- (b) until ownership of the Goods passes to you, we may give notice in writing to return the Goods (or any accessories or components), and your rights to obtain ownership or any other interest in the Goods shall cease.
- 17.5. If any Goods are damaged where full payment has not been received, you agree that we are entitled to:
- (a) receive all insurance proceeds paid for the Goods; and
- (b) deal directly with the insurance company to receive all insurance proceeds paid for the Goods we own (in accordance with clause 17.1).
- 17.6. We may commence proceedings to recover the Price of the Services provided, notwithstanding that ownership of the Goods or Services has not passed to you.

18. SECURITY AND LIEN

- 18.1. Subject to us providing any Goods or Services, you charge all of your right, title and interest (whether joint or several) in any land, real estate or other assets capable of being legally charged with a lien, owned by you either now or in the future, to secure the performance of all obligations (including full payment of all Amounts Owing) under this Agreement.
- 18.2. You irrevocably appoint all directors of our companies (including any Related Company) as your true and lawful attorney(s) and agree that the appointed attorney(s) may perform all necessary acts to enforce our rights provided in clause 18.1 of this Agreement (including signing any document on your behalf).
- 18.3. You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 18 to secure the performance of your obligations under this Agreement.
- 18.4. In accordance with Part 5, subpart 5 of the CCLA, we hold a lien for work done and may sell at public auction any property that has been left by you for Services if any Amounts Owing are outstanding.
- 18.5. It is fair and reasonable for the parties to be bound by clause 18.

19. PERSONAL PROPERTY SECURITIES ACT 1999

- 19.1. You acknowledge and agree that:
- (a) this Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Goods or Services or the proceeds of such Goods or Services; and
 - (b) the Security Interest granted to us secures the payment of all Amounts Owing (all present and after-acquired property) you may owe us from time to time and at any time.
- 19.2. You agree that you will sign any further documentation and provide any information which we may reasonably require to ensure we are paid all Amounts Owing due to us and otherwise to protect our interests under this Agreement, including by registration of a financing statement and to ensure that we have a first ranking perfected Security Interest in the Goods or Services, or a Security Interest in the proceeds of any Goods or Services (a Security Interest taken in all collateral and any proceeds of any collateral).
- 19.3. To the extent permitted by law, we each contract out of:
- (a) sections 114(1)(a), 133 and 134 of the PPSA; and
 - (b) your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.
- 19.4. You waive your right to receive a verification statement under section 148 of the PPSA regarding any financing statement relating to a Security Interest.
- 19.5. Nothing in this Agreement is to be construed as an agreement that: (i) a Security Interest in Goods (collateral) attaches at a later time than the time specified in Part 3, section 40(1) of the PPSA; (ii) a Security Interest is perfected in accordance with Part 3, section 41(1) of the PPSA; (iii) a Security Interest in all after-acquired property attaches at the time specified in Part 4, section 44(1) of the PPSA; and (iv) a Security Interest in collateral shall extend to the proceeds as specified in Part 4, section 45(1) of the PPSA.
- 19.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.
- 19.7. You must provide us with information and any associated documentation reasonably requested by us from time to time relating to your financial status.
- 19.8. If at any time we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interests as security for the Amounts Owing, and we may suspend or cancel further supply of Goods or Services until you have provided such Security Interests.
- 19.9. You shall unconditionally ratify any actions taken by us under clause 19.

20. INSURANCE AND RISK

- 20.1. The Vehicle is at all times stored and repaired at your sole risk, and you release (to the full extent permitted by law) us, our employees, agents and contractors from all claims or demands of any kind and from all liability that may arise in relation to any accident or damage to the Vehicle. It is your responsibility to ensure the Vehicle is insured against all possible damage whilst stored at the Workshop (including the perils of an accident, fire, theft or burglary and all other usual risks).
- 20.2. We shall not be liable for the loss or damage to any Vehicle left with us (including its accessories or personal items) while it is being stored, transported or operated in connection with the Services, including where the Vehicle is being test driven (unless caused by our fraud, negligence or any other illegal act). In the event you believe that we have damaged or scratched the Vehicle (during the installation process of the Goods or at any other time), you shall, within twenty-four (24) hours of delivery (time being of the essence), notify us of any alleged damage.
- 20.3. Any advice, recommendation or information that we provide in relation to Goods or Services supplied by us is given in good faith, is based on our knowledge and experience and shall be accepted without liability.
- 20.4. If you have requested us to diagnose a fault that requires investigation, disassembly or testing, all costs will be charged to you, irrespective of whether or not the repair goes ahead.
- 20.5. We do not accept any liability for Goods you have supplied for us to install when providing the Services (including any responsibility for the quality or if the Goods will be fit for purpose). Any warranty we provide with the Services will not apply to the Goods supplied by you, and we reserve the right to decline to install any Goods supplied by you that are (in our professional opinion) not suitable or fit for purpose. If we refuse to

use the Goods supplied by you, we will seek to offer alternative options, but if alternative Goods cannot be sourced, we are entitled to be paid all Amounts Owing for the Goods and Services already provided and any additional Services necessary to reassemble the Vehicle to return it to you (based on our regular hourly rate).

- 20.6. Should you request us to leave Goods outside our premises for collection or deliver the Goods to an unattended location, you agree that those Goods shall be left at your sole risk.

21. HEALTH AND SAFETY AT WORK ACT 2015

- 21.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all health and safety duties specified in Part 2 of the HSW Act, as well as all other applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 21.2. You must notify us of any known hazards arising from your premises to which any person may be exposed, as well as inform us of any notifiable injury, illness, incident or event (as defined in Part 1, subpart 3 of the HSW Act) to ensure that your workplace is without risks to the health and safety of any person.
- 21.3. Each party must consult, cooperate and coordinate activities with all other persons with a health and safety duty in relation to the same matter in providing the Goods or Services (including in connection with the delivery of the Goods or Services).

22. PLANS AND SPECIFICATIONS

- 22.1. Where you supply us with any plans, specifications or other technical information (such as CAD drawings or any other electronic software that provides detailed and specific technical information), you shall be responsible for providing accurate data, and we shall be entitled to rely on the accuracy of any plans, specifications or other technical information supplied by you.
- 22.2. We are not responsible for any errors in the Goods or Services or additional expenses caused by you supplying inaccurate plans, specifications or other technical information.

23. COURTESY VEHICLE

- 23.1. If one is available, you may use a Courtesy Vehicle we supply for the duration of the Services. The Courtesy Vehicle shall at all times remain our property and is to be returned immediately when we request. The Courtesy Vehicle may only be driven by you or any other person we authorise (who holds a current driver's licence) prior to using the Courtesy Vehicle.
- 23.2. You agree that you shall:
- (a) maintain the Courtesy Vehicle as is required by us (including maintaining water, oil and fluid levels and tyre pressures);
 - (b) notify us immediately by phone explaining the full circumstances of any mechanical breakdown or accident in connection with the Courtesy Vehicle, and you are not absolved from the requirements to safeguard the Courtesy Vehicle;
 - (c) ensure that all reasonable care is taken in driving and parking the Courtesy Vehicle and that it is left securely locked when not in use;
 - (d) keep the Courtesy Vehicle in your possession and control and not allow the use of the Courtesy Vehicle by any third party;
 - (e) not alter or make any alterations to the Courtesy Vehicle (including altering, making any additions to, defacing or erasing any identifying mark, plate or number on or in the Courtesy Vehicle or in any other manner interfere with the Courtesy Vehicle;
 - (f) keep the Courtesy Vehicle (with all parts and accessories) clean and in good order as delivered, and shall comply with any maintenance schedule as advised. If the Courtesy Vehicle is not returned in clean condition, we reserve the right to charge you for all costs we incur in cleaning the Courtesy Vehicle.
- 23.3. To You acknowledge and agree that you shall not permit any form of charge to be applied in relation to the Courtesy Vehicle and further agree that you will not be entitled to any form of lien over the Courtesy Vehicle.
- 23.4. You agree to be liable for any parking or traffic infringements or related impoundment, towage, and storage fees whilst the Courtesy Vehicle is in

your possession (and agree to supply all relevant information regarding any infringement or fine when requested).

- 23.5. By signing this Agreement, you accept that you shall be liable to us for any loss of, or damage to, the Courtesy Vehicle (to the full extent of any insurance excess where applicable). If insurance is rendered invalid by your actions, you shall be liable to us for the full cost of repairing or replacing the Courtesy Vehicle (whichever is less).
- 23.6. You are not authorised to pledge our credit for any repair to the Courtesy Vehicle or to create a lien over the Courtesy Vehicle regarding any repair work.

24. LIABILITY

- 24.1. To the extent permitted by law, we shall have no liability whatsoever to you for any direct or indirect expense or loss of profit suffered by you arising out of a breach by us of this Agreement (including any unintentional misrepresentation made to you by us regarding any of the Goods or Services).
- 24.2. To the extent permitted by law, our liability shall not exceed the Price of the Services provided by us under this Agreement.
- 24.3. To the extent permitted by law, our total liability under or in connection with this Agreement and the Goods or Services is limited to, at our option:
- (a) in the case of Goods, any one or more of the following: (i) the replacement of the Good(s) or the supply of equivalent Good(s); (ii) the repair of the Good(s); (iii) the payment of the expense of replacing the Good(s) or of acquiring equivalent Good(s); or (iv) the payment of the expense of having the Good(s) repaired; or
 - (b) in the case of Services: (i) resupplying the Services; or (ii) the payment of the expense of having the Services resupplied.
- 24.4. If we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:
- (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with this Agreement will be limited to the lesser of: (i) the Price paid by you to us for the applicable Goods or Services; or (ii) the actual loss or damage suffered by you; and
 - (b) we will not be liable for any: (i) indirect, special or consequential loss or damage whatsoever; or (ii) loss of profits, revenue, data, goodwill, clients, opportunities or loss of or damage to reputation.
- 24.5. The limitations and exclusions on liability in this clause 24 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort or statute, except negligence and fraud.
- 24.6. In no circumstances will we have any liability whatsoever under or in connection with this Agreement:
- (a) for the acts or omissions of any third party;
 - (b) any act or omissions performance in accordance with your instructions (or instructions from your authorised agents); or
 - (c) to any third party.

25. GENERAL

- 25.1. **Governing law:** This Agreement is governed by and to be construed in accordance with the laws of New Zealand, and each party submits to the exclusive jurisdiction of the courts of New Zealand.
- 25.2. **Entire Agreement:** This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.
- 25.3. **Priority:** To the extent of an inconsistency between:
- (a) this Agreement;
 - (b) all other schedules to this Agreement;
 - (c) any privacy or data agreement (if applicable); and
 - (d) the order of priority above will apply (with (a) having the highest priority).
- 25.4. **Subcontracting:** We may subcontract the performance of our obligations (including to a Related Company) on the basis that we remain solely liable to you for the performance of our obligations.
- 25.5. **Assignment:** You must not assign, novate or transfer your rights or obligations under this Agreement without our prior written consent (which may be withheld at our sole discretion). We may assign this Agreement to any other person. Without limiting the foregoing, we may assign to any other person all or part of the Amounts Owing by you.

- 25.6. **Amendments:** Except where stated otherwise in this Agreement, any amendment to this Agreement must be in writing, signed by both parties, except where we are required to make changes to ensure compliance with applicable laws, in which case we can give you notice of any such amendments required, and you will be bound by the same.
- 25.7. **Notices:** Any notice, demand or other communication to be served on a party must be in writing and sent by personal delivery, pre-paid post or email to the address of the relevant party (or otherwise notified to the other party from time to time). Any notice or other communication is deemed to be received (i) if personally delivered, on receipt, (ii) if posted by pre-paid official postal service, on the fifth Business Day after posting (or seven Business Days after posting if sent from one country to another), and (iii) if sent by email on the date and time that the email was sent (as evidenced in the sender's email sent history). Notices received after 5pm on a Business Day will be deemed received on the next Business Day.
- 25.8. **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under this Agreement where such failure or delay is caused by events or circumstances beyond our reasonable control (including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of god).
- 25.9. **Severability:** If any part of this Agreement is illegal or unenforceable, you agree that part shall be amended to the extent permitted by law to allow the enforceability of any rights, and if it is not able to be modified, then it will be severed, and all remaining rights in this Agreement will continue in full force and effect.
- 25.10. **Waiver:** A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 25.11. **Termination:** Either party may terminate this Agreement immediately by written notice if the other party breaches a term of this Agreement which is not capable of remedy or, where the breach is capable of remedy, fails to remedy the breach within 20 Business Days of written notice of the breach.
- 25.12. **Survival:** Any rights or obligations under or in connection with this Agreement, which is by nature a continuing obligation, will survive termination of this Agreement by either party.
- 25.13. **Rights of third parties:** This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.
- 25.14. **Relationship:** We will provide Goods or Services to you as an independent contractor. Nothing in this Agreement creates any partnership, joint venture or employment relationship between the parties.
- 25.15. **Non-exclusive:** This Agreement is not exclusive, and you agree that there are no restrictions on us to provide any Goods or Services to any other person.
- 25.16. **Counterparts:** This Agreement may be executed in any number of counterparts (including by electronic signature or email exchange of pdf copies), constituting one instrument.