

Nationwide Diesel Services General Terms and Conditions

NDS Association Pty Ltd ABN 59 609 819 525 ACN 609 819 525 trading as Nationwide Diesel Services and Nationwide Diesel Trade Centre

These revised terms retain the existing NDS agreement structure and apply to workshop, field service, parts, account, warranty and approved trade work.

1. Definitions

"Account" means your account with Us and if an Account is held by You, You are the Account Holder;

"Administration Costs" means costs incurred by us as a result of your Account being unpaid by the due date and include the Default Fee;

"Agreement" means these terms and conditions as amended from time to time;

"Australian Standards" means the standards applicable to the Products and / or Services, as well as any other standards noted in the Estimate;

"Authorised Persons" means You and any persons authorised by You to liaise with Us on Your behalf and includes your employees, contractors, sub-contractors, executors and / or administrators;

"Commencement Date" means the date of this Agreement or the date any Product, Service or Estimate is provided to You, whichever is earlier;

"Costs" means the charges payable for the Products and / or Services, including authorised labour, Parts, diagnosis, dismantling, reassembly, consumables, freight, travel, subcontractor charges and other amounts disclosed in an Estimate or otherwise authorised;

"ACL" means Schedule 2 to the Competition and Consumer Act 2010 (Cth), known as the Australian Consumer Law;

"Item" means a Vehicle, truck, trailer, machine, engine, component, attachment or other property delivered or made available to Us;

"Product" / "Products" means any parts, assemblies, components, fluids, lubricants, consumables, materials or other goods supplied by or through Us;

"Trade Customer" means a registered repairer or other automotive business approved by Us to receive trade services or trade pricing;

"Credit Application" means a credit application completed by You and accepted by Us (the terms of which do not form part of this Agreement);

"Customer" means the ultimate recipient of the Products and / or Services and includes the Third Party Customer as the context requires;

"Default Fee" means the sum of \$55.00 (inc GST) being the fee payable if your Account shall be in arrears for greater than 14 days and we issue any reminder notices to You;

"Delivery" means the delivery of the Products or Services, whether by delivery to the Worksite or collection from Us;

"Demand Costs" means the legal costs incurred by Us to issue a letter of demand to You if your Account remains unpaid for a period of 28 days from the due date, being \$250.00 plus GST as at the date of this Agreement;

"Deposit" means the deposit payable by You in accordance with this Agreement;

"Force Majeure" means any event outside of Our control which will have an impact on Our ability to provide the Products or Services to You including acts of terrorism, acts of war, acts of God, tempest, heavy rain, equipment issues, strike or other industrial action and such other events reasonably determined by Us as being outside of Our control;

"Invoice" means a tax invoice issued by Us to You for the supply of the Products and / or Services, as required from time to time;

"Job" means any individual Products or Service provided by Us to You pursuant to each Estimate or purchase order raised by You;

"Owner" means the owner of the Worksite where the Products and / or Services will be provided;

"Estimate" means Our good-faith indication of the likely scope and Costs of the Products and / or Services based on information reasonably available at the time. An Estimate is not a fixed quotation unless We expressly state in writing that it is fixed;

"Reports" means any reports issued by Us to You following the completion of the Products and / or Services as may be required by You;

"Service" means any service utilised or requested by You in accordance with this Agreement, including inspection, diagnosis, mechanical repair, servicing, auto electrical work, emissions work, programming, cleaning, testing, field service, road testing, transport and any other service provided by Us to You from time to time (including any Reports) and in accordance with this Agreement;

"Sub-Contractors" means any person contracted by Us to provide the Products and / or Services to You;

"Term" means the term of this Agreement as noted in clause 2;

"Third Party Customer" means the ultimate recipient of the Products and / or Services, who does not contract directly with Us and includes any head contractors or Owners;

"Us" / "Our" / "We" means NDS ASSOCIATION PTY LTD (ABN 59 609 819 525, ACN 609 819 525) trading as Nationwide Diesel Services and Nationwide Diesel Trade Centre, and includes its employees, authorised representatives and permitted assigns;

"Vehicles" means Your vehicle which we have been engaged to provide Products or Services for;

"Worksite" means the location where the Products and / or Services will be provided, including our workshop(s) where appropriate and also includes any premises where We or our agents are delivering Products;

"You" means the person who contracts with Us or engages Us to estimate or provide any Products and / or Services.

2. Term and Termination of Agreement

1. This Agreement will commence once accepted by You.
2. You will be deemed to have accepted this Agreement if You:
 1. request or accept an Estimate from Us;
 2. sign or electronically accept a work authority;
 3. pay a Deposit to Us;
 4. instruct Us to commence or continue a Job; and / or
 5. otherwise communicate acceptance after being provided with these terms and conditions.
3. This Agreement will continue in full force and effect until terminated by either party and will apply to each Job accepted while it remains in force.
4. Either party may terminate this Agreement on 2 business days written notice. Termination will not prevent Us from completing steps reasonably necessary to make an Item safe, protect it from damage or prepare it for collection.
5. Your obligation to pay monies properly owing to Us will survive termination.
6. If a Job is cancelled or remains unfulfilled at termination, You must pay for authorised Products and / or Services supplied, diagnostic and dismantling time, non-returnable Parts, freight, subcontractor charges and other reasonable Costs already incurred. You are not required to pay for unperformed work except to the extent a non-refundable commitment was properly incurred on Your authority.

3. Costs and Charges

3.1 Deposit

1. Deposits may be payable in accordance with clause 7.2 and may be applied to Parts, equipment hire, subcontractors, freight or other Costs required for the Job.
2. If You cancel a Job, We may apply the Deposit against authorised work performed and reasonable Costs actually incurred, including non-returnable Parts, freight and supplier cancellation or restocking charges. We will account to You for any balance, subject to Our rights at law.

3.2 Costs

1. The Costs are payable by You and will be detailed in the Estimate.
2. The actual Costs may not be known until We or the Sub-Contractors have an opportunity to view the Worksite and ascertain the condition of the Worksite.
3. You acknowledge that Costs are estimated. If the condition of the Item or Worksite, dismantling, testing or information subsequently obtained shows that additional Products and / or Services are required, We will seek further authority before materially exceeding the authorised scope or spending limit.
4. You must pay all Costs properly authorised under this Agreement. We may reasonably require prepayment before ordering Parts, engaging Sub-Contractors, commencing substantial work or releasing an Item.

3.3 Administration Costs, Default Fees & Demand Costs

We may charge you Administration Costs, Demand Costs and / or Default Fees in accordance with this Agreement if You do not pay Your Invoices as required. These costs may also include reasonable debt recovery and legal costs actually incurred by Us as a result of Your default, to the extent permitted by law.

3.4 Interest on Arrears

We reserve Our right to charge You interest on any accounts in arrears for more than 14 days at a rate of 15% per annum. The interest charged will form part of the Arrears and must be paid in full before the provision of any Products and / or Services or Reports to You.

3.5 Credit Card Fees

You may be liable for additional fees if You wish to pay an Invoice by credit card. Any card surcharge will be disclosed before payment and will not exceed Our reasonable cost of accepting that payment method.

4. GST

All Costs and charges are exclusive of GST and are in Australian dollars unless otherwise stated.

5. Billing

1. We will provide an Invoice upon finalisation of the Job or in instalments as We reasonably determine, or as otherwise agreed in the Estimate.
2. We may charge you Administration Costs, Demand Costs and / or Default Fees in accordance with this Agreement if You do not pay Your Invoices as required.
3. Should you fail to remedy any failures to pay, We may (acting reasonably):
 1. stop issuing You credit (if You are an Account Holder);
 2. suspend any Products and / or Services being provided by Us to You;
 3. Withhold any Reports;
 4. refuse to supply any further Products or Services to You; and / or

5. place reasonable conditions on Your agreement with Us (including, but not limited to, all Orders being paid in full in advance and / or bank guarantees or other security for payment).

6. Estimates and Variations

1. We may provide an Estimate for Products and / or Services to You or on Your behalf for a Third Party Customer.
2. An Estimate will identify the anticipated Products and / or Services, Costs, assumptions and material exclusions. It is based on the visible condition of the Item, the information You provide and what can reasonably be determined before diagnosis or dismantling.
3. Worksite access and full Job particulars must be supplied by the date specified in the Estimate.
4. An Estimate remains current for 30 days unless otherwise stated, errors and omissions excepted. Parts prices, availability, freight and third-party charges may change before acceptance.
5. A change to the requested scope, timing or information on which the Estimate was based is a variation and may require an amended Estimate.
6. If additional faults, damage, seized or broken components, unsafe conditions or further work are discovered, We may stop and seek further authority. Additional Costs will be explained and an updated Estimate provided where reasonably practicable.
7. We will not proceed with additional chargeable repairs outside Your existing authority without express authority from You or an Authorised Person, except for urgent minor action legally required or reasonably necessary to prevent immediate damage or make the Item safe.
8. Authority may be recorded by signature, email, text message, customer portal, recorded telephone call or a contemporaneous file note.
9. If further work is declined, You remain liable for authorised diagnosis, dismantling, reassembly, Parts, freight and work already completed. We are not responsible merely because a concern remains unresolved where recommended work or testing was declined.

7. Jobs

7.1 Requesting a Job

Should You request We proceed with a Job as per the Estimate, We will advise you of the estimated completion / supply date for the Products and / or Services. This estimated date may vary (including being cancelled and rescheduled) based on weather conditions at the date the Products and / or Services are to be provided, access restrictions at the Worksite, Force Majeure, scheduling issues and / or such other reasons which may restrict our ability to provide the Products and / or Services at the time anticipated.

7.2 Deposits

1. On confirming a Job, you may be required to pay a Deposit, as reasonably determined by Us and stated in the Estimate.
2. Deposits will be dealt with in accordance with clause 3.1.
3. We may reasonably vary a Deposit requirement before further Costs are incurred and will explain the requirement to You.

7.3 Payment of Account

1. The Invoice will be payable in full immediately upon the finalisation of the Products and / or Services / provision of the Products, unless You are an Account Holder in which case You must pay the Invoice in accordance with your Account conditions.
2. If You are an Account Holder and Your Account is in arrears or default, We will not complete any further Products and / or Services for You and may suspend further work and, to the extent permitted by law, retain possession of an

Item on which authorised work was performed until amounts properly due for that Item are paid. Nothing in this Agreement creates a broader lien where one does not exist at law.

7.4 Ownership of Intellectual Property in the Reports

Upon full payment of the Invoice, ownership of the Report will vest in You (or the Third Party Customer if applicable). Unless and until the Invoice has been paid in full, We retain ownership of the Report and reserve Our rights to take action as We see fit to enforce Our rights.

7.5 Finalisation Time Frames

We will make Our best endeavours to provide the Products and / or Services and Reports to You within the time frames detailed in the Estimate, as may be amended from time to time if required by Us. We take no responsibility for any delays which have been caused by Your breach of this Agreement or Force Majeure.

7.6 Diagnosis and Testing

1. Diagnostic work is chargeable time and is a process of testing and elimination. An initial diagnostic allocation does not guarantee that every fault will be identified or repaired within that allocation.
2. Fault codes and symptoms do not necessarily identify a failed Product. Further testing, dismantling, cleaning, programming, specialist assessment or component substitution may require further authority.
3. Intermittent faults may not occur while the Item is with Us. Unless We expressly agree to achieve a specified result, We warrant that diagnosis and repair will be performed with due care and skill rather than guaranteeing a particular outcome.

7.7 Dismantling and Existing Condition

1. You authorise reasonable dismantling required for authorised diagnosis or repair. Dismantling may reveal faults or damage that could not reasonably be identified beforehand.
2. Aged, heat-affected, corroded, seized, brittle, contaminated, previously repaired or modified components may fail during careful removal or testing. We are not responsible for unavoidable failure caused by their pre-existing condition where We used due care and skill.
3. If further work is declined after dismantling, You must pay reasonable assessment and reassembly Costs. We do not guarantee that a failed, unsafe or incomplete component can be economically reassembled or returned to service.

7.8 Parts and Sub-Contractors

1. We may supply suitable genuine, original equipment equivalent, aftermarket, reconditioned, remanufactured, exchange or used Products. We will identify a material departure from new Products where applicable.
2. We do not install customer-supplied parts, fluids or materials.
3. Special-order, programmed, electrical, opened, fitted, imported, custom, exchange or non-returnable Products may require prepayment and may not be cancellable or refundable once ordered, except where required by law.
4. We may use suitably qualified Sub-Contractors or specialist suppliers where reasonably required.
5. Removed Products may be disposed of unless You request their return before completion and they are not exchange cores, contaminated, prohibited from release or required for a supplier warranty assessment. Core charges may apply.

7.9 Operation Road Testing and Transport

You authorise Us and Our Sub-Contractors to start, operate, move, road-test and transport the Item as reasonably required for the Job, including movement between Our premises and specialist providers. Reasonable disclosed or authorised fuel, toll, permit, freight, towing, travel and call-out Costs are payable by You.

7.10 Collection Storage and Unsafe Items

1. Cleared payment is required before release unless written Account terms apply. To the extent permitted by law, We may retain an Item on which authorised work was performed until amounts properly due for that Item are paid.
2. You must not remove an Item without Our authority, including by using a spare key.
3. You must collect the Item promptly after notice. If it is not collected within a reasonable notified period, We may charge a reasonable disclosed storage fee and deal with an uncollected Item only in accordance with applicable law.
4. We may decline to perform, continue or road-test work that is unsafe, unlawful or outside Our licensing or capability. If You decline recommended safety work, We may require the Item to be towed or require written acknowledgement where lawful release is permitted.

8. Pricelist

Our price list may vary from time to time and the price payable by You will be in accordance with the accepted Estimate, authorised variation or rate disclosed when the relevant work is authorised.

9. Product and Service Liability

9.1 Quality and Timing of the Product or Service

1. We will endeavour at all times and wherever reasonably practicable to ensure that the Products and / or Services provided to You are as described and as requested and provided within time frames as agreed.
2. We will endeavour to notify You as soon as possible if We expect that the Products and / or Services and / or the finalisation of the Reports may be delayed for any period of time, in so far as we are able to monitor the same.

9.2 Force Majeure

We are not liable for delay or resulting loss to the extent caused by a Third Party, utility failure, Force Majeure or other event outside Our reasonable control. We will take reasonable steps to reduce the effect of the event and this clause is subject to rights that cannot lawfully be excluded.

9.3 Third Parties

Should Our ability to supply the Products and / or Services to You be impacted by third parties (including, but not limited to, if there are other tradespersons within the Worksite who are impacting on Our ability to provide any Products and / or Services in a timely or safe manner), We will not be liable for resulting delay or loss to the extent caused by that third party and outside Our reasonable control, subject to any non-excludable rights.

9.4 Warranty and Liability Exclusions

Subject to any rights that cannot lawfully be excluded, Our express warranty and liability do not apply to a failure or loss to the extent caused or contributed to by:

1. improper installation or incorrect application of a Product by any persons not directly employed by Us;
2. a Product being fitted by a person who is not a licensed repairer or mechanic;
3. overheating or overloading of a vehicle;
4. insufficient use or incorrect use of oil or lubricants;
5. failure to carry out correct maintenance in a timely manner;
6. any unauthorized repairs, alterations or dismantling;
7. misuse, neglect or accidents on the part of the Customer or any third party;
8. timing belt and or chain and seals not being changed or repaired in a timely manner;
9. the continued use of any Product after a defect becomes apparent or would have become apparent to a reasonably prudent operator of a Vehicle;

10. fair wear and tear or any act of God (including but not limited to, storm, fire, tempest and earthquake);
11. damage to a Product by the Customer or a third party;
12. a failure on the part of the Customer to follow any instructions or guidelines provided by Us; or
13. any action or inaction on the part of the Customer or a third party;
14. an unrelated or pre-existing fault, undisclosed modification, tuning, contamination or prior repair;
15. a recommended repair, test, maintenance item or supporting component being declined or delayed; or
16. operation outside manufacturer specifications or contrary to Our clear warning.

An exclusion applies only to the extent relevant to the claimed failure and does not exclude liability for Our own failure to exercise due care and skill.

9.5 Limitation of Liability

1. Nothing in this Agreement excludes, restricts or modifies a guarantee, right or remedy that cannot lawfully be excluded, restricted or modified.
2. For Products or Services acquired for business purposes, and only to the extent permitted by law, We are not liable for indirect or consequential loss, loss of profit, production, contract or opportunity, hire costs or downtime that was not reasonably foreseeable or that You could reasonably have avoided or reduced.
3. Where the ACL permits liability for breach of a consumer guarantee to be limited, Our liability is limited, at Our option, to supplying the Services again or paying the reasonable cost of having them supplied again and, for Products, repair, replacement, equivalent supply or payment of the reasonable cost of those remedies. This limitation does not apply where it would not be fair or reasonable or is otherwise prohibited.

10. Worksite

10.1 Access

You will provide Us or our agents and Sub-Contractors safe and prompt access to the Worksite to inspect the Worksite and / or complete the Products and / or Services or deliver the Products, including if we reasonably require access following termination of this Agreement.

10.2 Owner's Permission

If You are not the Owner, You agree that You have obtained the consent of the Owner to allow Us to supply the Products and / or Services or deliver the Products within the Worksite.

10.3 Safety

You are responsible for ensuring the Worksite is safe and free of any obstacles.

10.4 Worksite Assumptions

We make assumptions about the Worksite based on information provided by You for the Job and as detailed in the Estimate. Should these assumptions be incorrect (which We only know with certainty when the Job has commenced), We will contact You or Your Authorised Person to obtain a verbal confirmation We are authorised to proceed with the Products and / or Services for the Job and confirm any additional Costs if We proceed. We reserve Our rights to cease works if We reasonably determine authority from You or the Authorised Person is required to proceed, and cannot be obtained.

11. Account Holders

We may offer You the privilege of being an Account Holder with Us, subject to a Credit Application being completed by You and accepted by Us, in accordance with our applicable terms and conditions at the time of application. We may refuse, suspend or revoke an Account acting reasonably, including where the Account Holder is in breach of this

Agreement, is in arrears or presents an unacceptable credit risk. It is a condition of any Account being granted to You that any guarantees required from You are provided as required. The terms and conditions of an Account do not form part of this Agreement, however this Agreement will remain applicable to any Account Holders.

12. Authorised Persons

1. An Authorised Person, as noted by You and amended from time to time in writing, may contract with Us on Your behalf and may instruct Us as to the supply of the Products and / or Services as required from time to time for a Job (whether an existing Job or a new Job including a Estimate).
2. An Authorised Person may incur authorised expenses on Your Account and on Your behalf, and You are responsible for Costs reasonably incurred by Us in reliance on that authority.
3. You may revoke the authority of an Authorised Person by providing us notice in writing, by email, by fax or by post, noting that the authority of the Authorised Person has been revoked. Revocation takes effect when We receive and have a reasonable opportunity to process the notice. You remain responsible for Costs properly authorised before the revocation took effect.
4. We will take reasonable steps to record and enforce a revocation promptly after receiving it. We are not responsible for instructions accepted before the revocation took effect where We reasonably relied on the person's apparent authority.
5. If a person falsely holds themselves out as an Authorised Person, responsibility for resulting Costs will depend on the authority represented, the verification reasonably available to Us and the conduct of each party. Nothing in this clause excludes liability that cannot lawfully be excluded.
6. We will make best endeavours to identify any Authorised Persons at the time of any charges to Your Account and You will ensure any Authorised Person will provide photographic identification (any Australian issued driver's license, passport or proof of age card) upon request.

13. Warranty

13.1 Australian Standards and Due Care

We warrant that We will provide the Products and / or Services in accordance with applicable Australian Standards, applicable law and with due care and skill.

13.2 Code of Practice

We will at all times, acting reasonably, comply with any Code of Practice applicable to Our business and the Service type.

13.3 NDS Express Warranty

Subject to this clause, We warrant Our workmanship and Products supplied and installed by Us for 12 months or 20,000 kilometres from the original Invoice date and recorded odometer reading, whichever occurs first. For an Item without a reliable distance meter, the period is 12 months from the original Invoice date unless a different warranty is stated in writing.

13.4 Warranty Coverage

The express warranty covers a defect in Our workmanship or a defect in a Product supplied and installed by Us where We assess and accept that the defect falls within this warranty. Depending on the nature of the failure and Your non-excludable rights, We may repair, replace or reperform the affected Products and / or Services.

13.5 Reporting and Assessment

1. You must notify Us as soon as reasonably practicable after becoming aware of a concern and provide the Invoice number, Item details, current odometer or hours and a description of the symptoms.

2. You must stop operating the Item if continued use may be unsafe or cause further damage.
3. A reported concern is not automatically accepted as warranty. Warranty assessment is initially treated as retail or customer-pay work until We have inspected the Item and accepted the claim. You must authorise the assessment Costs. If accepted, covered assessment Costs will not be charged or will be credited.
4. If the concern is not covered, You must pay the authorised assessment, transport and repair Costs. We will seek authority before further chargeable repair work.

13.6 First Opportunity to Rectify

We must be given the first reasonable opportunity to inspect, diagnose and rectify the claimed concern. You must not authorise another party to dismantle, alter or repair the claimed defect before We have that opportunity unless urgent action is reasonably required for safety or to prevent further damage.

We are not required to reimburse third-party repairs, towing, accommodation, downtime, loss of use or other Costs unless We approved them in writing beforehand or You are legally entitled to recover them. Where a valid claim is confirmed, We will bear reasonable claim expenses to the extent required by law.

13.7 Warranty Rectification and Warranty on Warranty

Rectification performed under this express warranty does not restart or extend the original 12 month or 20,000 kilometre period. The warranty continues for the remaining balance measured from the original Invoice date and odometer reading. Additional work separately authorised and paid for receives the warranty applicable to that new work. A replacement Product may also carry manufacturer or supplier warranty rights.

Warranty rectification must itself be performed with due care and skill. Nothing in this clause limits rights arising from repeated failure, failure to rectify within a reasonable time or another non-excludable legal guarantee.

13.8 Warranty Exclusions

The exclusions in clause 9.4 apply to this express warranty only to the extent the excluded circumstance caused or contributed to the claimed failure. This express warranty also does not cover normal wear, routine maintenance or a service-life expiry. It does not cover recurrence of an emissions or other fault caused by an underlying condition that You declined to diagnose or repair.

13.9 Supplier Warranties

Products may carry a manufacturer or supplier warranty and a failed Product may need to be retained for assessment. Supplier assessment does not replace any obligation that the law places directly on Us.

13.10 Australian Consumer Law

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

1. to cancel your service contract with us; and
2. to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods.

If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

The benefits provided by this express warranty are in addition to other rights and remedies available under law.

13.11 Making a Claim

Claims may be made to Nationwide Diesel Services at Unit 14, 37 Warman Street, Neerabup WA 6031, by telephone on 08 9206 4588 or through nationwidediesel.com.au. We may request written confirmation and reasonable supporting information, but failure to use a particular form does not remove a right that cannot lawfully be excluded.

14. Tolerances and Limitations

You agree and acknowledge that there are limits to the Products and / or Services. When We are providing the Products and / or Services to You, You acknowledge that mechanical diagnosis and repair may be subject to applicable manufacturer specifications, measurable tolerances, component condition and the limitations stated in an Estimate or Report. This clause does not reduce Our obligation to exercise due care and skill.

15. Suspension of the Service

We may suspend the Products and / or Services and supply of any Reports to You if:

1. required by law;
2. there is a Force Majeure;
3. there is a threat or risk to security to Us, Our employees, agents and / or Sub-Contractors;
4. You are in default of this Agreement;
5. any Account held by You is in arrears;
6. there is suspected fraud by You or Customer (including in relation to Your Account);
7. acting reasonably, We consider You to be an unacceptably high credit risk;
8. An insolvency event occurs;
9. You die; and / or
10. You cease trading.

16. Agreement Prevails

If documents are inconsistent, a specifically negotiated written agreement prevails, followed by the accepted Estimate or work authority, applicable Account terms and then this Agreement, but only to the extent of the inconsistency.

17. Enforcement

Should We be required to instruct solicitors to enforce this Agreement against You, such as contacting You to demand the payment of costs and Costs in relation to this Agreement, as well as commence any proceedings against You, You must reimburse Our reasonable enforcement and legal costs actually incurred as a result of Your default, to the extent permitted by law.

18. Indemnity and Liability

1. We do not guarantee that diagnosis, repairs or Products will be uninterrupted or error-free, particularly where faults are intermittent, information is incomplete or further work is declined. We remain responsible for performing authorised Services with due care and skill.
2. To the maximum extent permitted by law, each party is responsible for loss to the extent caused or contributed to by its own acts or omissions.
3. You indemnify Us against a third-party claim arising from Your lack of authority to engage Us, Your breach of site safety duties, or materially inaccurate information supplied by You, except to the extent the claim was caused or contributed to by Us.
4. Nothing in this clause or Agreement excludes a liability or remedy that cannot lawfully be excluded.

19. Privacy

We may collect and use Your contact details, Item identifiers, diagnostic data, photographs, recordings, job history and payment information to provide the Products and / or Services, administer Accounts, manage warranty claims, obtain technical or supplier assistance, maintain safety and comply with law. We may communicate by telephone, email, text message and customer portal. Personal information will be handled in accordance with applicable privacy law and Our privacy policy.

20. Fault Reporting

We will take all possible and reasonable steps to rectify any faults that are required to be rectified by Us in accordance with this Agreement.

21. Variations to This Agreement

We may vary this Agreement by written notice. A variation applies to future Jobs only unless You expressly agree that it applies to an existing Job.

22. Jurisdiction

The proper law of this Agreement shall be the law of Western Australia and the parties to this Agreement agree to unconditionally submit to the non-exclusive jurisdiction of the courts of Western Australia.

23. Notices

All Notices must be in writing and addressed to the party at their address nominated in this Agreement, or as amended in writing from time to time.

24. Assignment of This Agreement

Neither party may assign a Job without the other party's consent, which must not be unreasonably withheld. We may assign this Agreement as part of a genuine sale or restructure of Our business by written notice, provided the assignee assumes Our obligations.

25. Electronic Communication

We will communicate with You via electronic means to the email address provided by You from time to time. For contractual purposes, You:

1. Consent to receive communications from Us in an electronic form; and
2. agree that all terms and conditions, agreements, notices, disclosures, and other communications that We provide to You electronically satisfy any legal requirement that such communications would satisfy if it were in hardcopy writing.

26. Waiver

Subject to any express consent in writing of any of the parties no waiver by any party or any default in the strict and literal performance of, or compliance with, any provision, condition, or requirement of this Agreement shall be deemed to be a waiver of strict and literal performance of, and compliance with, any other provision, condition or requirement, nor to be a waiver of, or in any manner release of, any other party from strict compliance with any provision or requirement in the future or in any manner impair the exercise of any such rights accruing to it.

27. Trade Customer Conditions

1. Trade pricing is available only to registered repairers or other automotive businesses approved by Us. Trade pricing is confidential and must not be disclosed or represented as Our retail pricing.

2. Unless We agree otherwise in writing, the Trade Customer is Our contracting customer and remains responsible for instructions, approvals, payment, delivery, collection and communication with its Third Party Customer. Payment is not conditional on the Trade Customer being paid.
3. We will not deal directly with the Third Party Customer regarding scope, price, authority, warranty or collection unless authorised by the Trade Customer or reasonably required by law, safety or an emergency.
4. If the Trade Customer prefers its customer to deal directly with Us, that customer must be referred to Us as a retail customer. Retail pricing and terms will apply and trade pricing will not be disclosed or passed on.
5. The Trade Customer warrants that it has authority to engage Us and must not alter, misrepresent or selectively present Our findings or Reports in a misleading way.
6. Warranty concerns must ordinarily be submitted through the Trade Customer and We must be given the assessment and rectification opportunity in clause 13. Rights that cannot lawfully be excluded are not affected.
7. Trade arrangements do not create an agency, partnership, employment or franchise relationship.