

# Terms & Conditions of Trade

<b>1. Definitions</b>			
1.1 "Pit Stop" means Pit Stop Limited, its successors, assigns, authorised franchisee of Pit Stop, or any person acting on behalf and with the authority of Pit Stop Limited.		(a) The Customer has paid Pit Stop all amounts owing for the Works; and	14.4
1.2 "Customer" means the person's purchasing the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.	8.2	(b) The Customer has met all other obligations due by the Customer to Pit Stop in respect of all contracts between Pit Stop and the Customer.	
1.3 "Works" means all Works provided by Pit Stop to the Customer at the Customer's request from time to time (and where the context so permits shall include any supply of Parts as hereinafter defined).	8.3	Receipt by Pit Stop of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.	15.
1.4 "Parts" shall mean Parts supplied by Pit Stop to the Customer either separately, or as part of the Works (and where the context so permits shall include the provision of Works as defined above).		It is further agreed that:	15.1
1.5 "Price" means the Price payable for the Works as agreed between Pit Stop and the Customer in accordance with clause 4 below.		(a) until ownership of the Parts passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Parts and must return the Parts to Pit Stop on request.	16.
<b>2. Acceptance</b>		(b) the Customer holds the benefit of the Customer's insurance of the Parts on trust for Pit Stop and must pay to Pit Stop the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed.	16.1
2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts provision of the Works.		(c) the Customer must not sell, dispose, or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Parts then the Customer must hold the proceeds of any such act on trust for Pit Stop and must pay or deliver the proceeds to Pit Stop on demand.	16.2
2.2 These terms and conditions may only be amended with Pit Stop's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Pit Stop.		(d) the Customer should not convert or process the Parts or intermix them with other Parts but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Pit Stop and must sell, dispose of or return the resulting product to Pit Stop as it so directs.	16.3
<b>3. Change in Control</b>		(e) the Customer irrevocably authorises Pit Stop to enter any premises where Pit Stop believes the Parts are kept and recover possession of the Parts.	16.4
3.1 The Customer shall give Pit Stop not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number(s), or business practice). The Customer shall be liable for any loss incurred by Pit Stop as a result of the Customer's failure to comply with this clause.		(f) Pit Stop may recover possession of any Parts in transit whether or not delivery has occurred.	16.4
		(g) the Customer shall not charge or grant an encumbrance over the Parts nor grant nor otherwise give away any interest in the Parts while they remain the property of Pit Stop.	16.4
		(h) Pit Stop may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Customer.	16.4
<b>4. Price and Payment</b>			
4.1 At Pit Stop's sole discretion the Price shall be either:	9.	<b>Personal Property Securities Act 1999 ("PPSA")</b>	16.5
(a) as indicated on any invoice provided by Pit Stop to the Customer; or	9.1	Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:	
(b) the Price as at the date of provision of the Works according to Pit Stop's current price list; or		(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and	16.6
(c) Pit Stop's estimated Price (subject to clause 5) which shall not be deemed binding upon Pit Stop as the actual Price can only be determined upon completion of the Works. Pit Stop undertakes to keep the Customer informed should the actual Price look likely to exceed the original estimate; or	9.2	(b) a security interest is taken in all Parts previously supplied by Pit Stop to the Customer (if any) and all Parts that will be supplied in the future by Pit Stop to the Customer.	
(d) Pit Stop's quoted Price (subject to clause 5) which shall be binding upon Pit Stop provided that the Customer shall accept Pit Stop's quotation in writing within fourteen (14) days of issue.		The Customer undertakes to:	16.7
4.2 At Pit Stop's sole discretion, a deposit may be required.		(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Pit Stop may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;	17.
4.3 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by Pit Stop, which may be:		(b) indemnify, and upon demand reimburse, Pit Stop for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Parts charged thereby;	17.1
(a) on completion of the Works;		(c) not register a financing charge statement or a charge demand without the prior written consent of Pit Stop; and	17.2
(b) by way of instalments/progress payments in accordance with Pit Stop's payment schedule;		(d) immediately advise Pit Stop of any material change in its business practices of selling the Parts which would result in a change in the nature of proceeds derived from such sales.	17.2
(c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;		Pit Stop and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.	17.3
(d) the date specified on any invoice or other form as being the date for payment; or	9.3	The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.	
(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Pit Stop.		Unless otherwise agreed to in writing by Pit Stop, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.	17.4
4.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed between the Customer and Pit Stop.	9.4	The Customer shall unconditionally ratify any actions taken by Pit Stop under clauses 9.1 to 9.5.	
4.5 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Pit Stop an amount equal to any GST Pit Stop must pay for any provision of Works by Pit Stop under this or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	9.5		
	9.6		
	9.6		
	10.	<b>Security and Charge</b>	
	10.1	In consideration of Pit Stop agreeing to provide the Works, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).	
<b>5. Additional Charges</b>		The Customer indemnifies Pit Stop from and against all Pit Stop's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Pit Stop's rights under this clause.	18.
5.1 Pit Stop reserves the right to change the Price:	10.2	The Customer irrevocably appoints Pit Stop and each director of Pit Stop as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.	18.1
(a) if a variation to the Works which are to be provided is requested; or			18.2
(b) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, further faults which are found upon disassembly and/or further inspection) which are only discovered upon commencement of the Works; or	10.3		
(c) in the event of increases to Pit Stop in the cost of labour or Parts which are beyond Pit Stop's control.			
5.2 Where Pit Stop is requested to store the Customer's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four (24) hours of advice to the Customer that they are ready for collection, then Pit Stop (at its sole discretion) may charge a fee of twenty-five dollars (\$25) per day for storage.	11.	<b>Customer's Disclaimer</b>	
5.3 For roadside assistance, a minimum call-out fee shall be applicable, which shall be increased for any after-hours call-outs.	11.1	The Customer hereby disclaims any right to rescind, or cancel any contract with Pit Stop or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Pit Stop and the Customer acknowledges that the Works are acquired relying solely upon the Customer's skill and judgment.	18.3
5.4 All tow and/or salvage fees will be charged to the Customer, and will be added to the Price.			
5.5 If Pit Stop has been requested by the Customer to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.	12.	<b>Defects</b>	
5.6 The Customer acknowledges and agrees that Pit Stop shall be entitled to:	12.1	The Customer shall inspect the Works on provision and shall within the earlier of twenty (20) days of such time (being of the essence) notify Pit Stop of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Pit Stop an opportunity to inspect the Works within a reasonable time following such notification if the Customer believes the Works are defective in any way. If the Customer shall fail to comply with these provisions the Works shall be presumed to be free from any defect or damage. For defective Works, which Pit Stop has agreed in writing that the Customer is entitled to reject, Pit Stop's liability is limited to either (at Pit Stop's discretion) replacing the Works or repairing/rectifying the Works.	
(a) retain any components replaced during the provision of the Works; and			
(b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.			
<b>6. Provision of the Works</b>			
6.1 Where Pit Stop is to provide any Works at the Customer's nominated address, then the Customer shall be liable for all costs incurred by Pit Stop from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at Pit Stop's standard rates and any Parts purchased for the Works).	13.	<b>Returns</b>	
6.2 Pit Stop may provide the Works in separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.	13.1	Returns will only be accepted provided that:	
6.3 Any time or date given by Pit Stop to the Customer is an estimate only. The Customer must still accept provision of the Works even if late, and Pit Stop will not be liable for any loss or damage incurred by the Customer as a result of this.		(a) the Customer has complied with the provisions of clause 12.1; and	
		(b) Pit Stop has agreed in writing to accept the return of the Parts; and	20.
		(c) the Parts are returned at the Customer's cost within twenty (20) days of the delivery date; and	20.1
		(d) Pit Stop will not be liable for Parts which have not been stored or used in a proper manner; and	
		(e) the Parts are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.	20.1
<b>7. Risk</b>		Pit Stop may (in its discretion) accept the return of Parts for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Parts plus any freight.	20.2
7.1 If Pit Stop retains ownership of the Materials under clause 8.1 then, where Pit Stop is supplying Parts only, all risk for the Parts shall immediately pass to the Customer on delivery and the Customer must insure the Parts on or before delivery. At Pit Stop's sole discretion, any costs of delivery (or redelivery where the Customer is unable to take delivery of the Parts as arranged) shall be in addition to the Price. Delivery of the Parts shall be deemed to have taken place immediately at the time that either:	13.2	Non-stocklist items or Parts made to the Customer's specifications are under no circumstances acceptable for credit or return.	
(a) the Customer or the Customer's nominated carrier takes possession of the Parts at Pit Stop's address; or	13.3		
(b) the Parts are delivered by Pit Stop or Pit Stop's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).			
7.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Customer, Pit Stop is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by Pit Stop is sufficient evidence of Pit Stop's rights to receive the insurance proceeds without the need for any person dealing with Pit Stop to make further enquiries.	14.	<b>Warranty</b>	
7.3 If the Customer requests Pit Stop to leave Parts outside Pit Stop's premises for collection or to deliver the Parts to an unattended location then such Parts shall be left at the Customer's sole risk.	14.1	Subject to the conditions of warranty set out in clause 14.2, Pit Stop warrants that if any defect in any workmanship of Pit Stop becomes apparent and is reported to Pit Stop within either two (2) months of the date of delivery or five hundred kilometres (500km), time being of the essence, then Pit Stop will either (at Pit Stop's sole discretion) replace or remedy the workmanship.	21.
7.4 The Customer acknowledges that Pit Stop is only responsible for Parts that are replaced by Pit Stop and that in the event that other components subsequently fail, the Customer agrees to indemnify Pit Stop against any loss or damage to the vehicle, Parts, or caused by the components, or any part thereof howsoever arising.	14.2	The conditions applicable to the warranty given by clause 14.1 are:	21.1
7.5 Pit Stop shall not be liable for the loss of or damage to the vehicle, its accessories or contents while being serviced or being driven in connection with the authorised Works (including in the event of a call-out: it shall be the Customer's responsibility to remain with the vehicle to ensure security of the same), unless caused by the negligence of Pit Stop or Pit Stop's employees.		(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:	21.2
7.6 It is the Customer's responsibility to ensure that the vehicle is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at Pit Stop's premises. The vehicle is at all times stored and repaired at the Customer's sole risk.		(i) failure on the part of the Customer provide proper maintenance; or	21.3
		(ii) failure on the part of the Customer to follow any instructions or guidelines provided by Pit Stop; or	21.4
		(iii) any use in any application specified on a quote or order form; or	21.5
		(iv) any use in competitive motor sport and/or off-road use; or	21.5
		(v) the continued use after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or	21.6
		(vi) fair wear and tear, any accident or act of God.	21.6
		(b) the warranty shall cease and Pit Stop shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Pit Stop's consent.	21.6
		(c) in respect of all claims Pit Stop shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim;	21.7
		(d) warranty repairs exclude fluids, belts, gaskets, or other consumables (unless expressly covered by warranty).	21.8
<b>8. Title</b>	14.3	The warranty shall be the current warranty provided by the manufacturer of the Parts. Pit Stop shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Parts, unless specifically stated otherwise by Pit Stop.	
8.1 The Customer acknowledges and agrees that the Customer's obligations to Pit Stop for the provision of Works shall not cease, and subsequent ownership of the Parts shall not pass, until:			