

## STILLWELL MOTOR GROUP. SERVICE INVOICE TERMS & CONDITIONS.

### DEFINITIONS

**ACL** means The Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);

**Act of Default** occurs if either party:

- a. commits a material breach of these Conditions;
- b. commits an act of bankruptcy, enters into any composition or arrangement with its creditors or does anything which would make it liable to be put into liquidation;
- c. is subject to a resolution or an application for liquidation;
- d. has a receiver, other form of insolvency administrator or statutory or official manager appointed over any of its assets; or
- e. anything analogous to or having similar effect to any of the other events above arises.

**Conditions** means the terms and conditions of trade as set out in this document;

**Customer** means the person or entity named as the customer in page titled Job Card/Tax Invoice, or any person or entity acting on their behalf;

**Customer's Premises** means any site owned, possessed, used or controlled by the Customer;

**Electrical Goods** means components such as modules, solenoids, relays, airbags and switches;

**Law** means any relevant federal, state or local statute, ordinance, rule, regulation or standard, and includes the ACL, as amended from time to time;

**Parts** means such goods as are necessary for the Repairer to supply to the Customer in order for the Repairer to supply the Services;

**PPSA** means the Personal Property Securities Act 2009 (Cth);

**Price** means the price payable for the Services and Parts specified in a tax invoice for the purposes of A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended) upon completion of the Services;

**Privacy Act** has the meaning provided for in clause 15.1;

**Purchase Money Security Interest** has the meaning provided in the PPSA;

**Repairer** means the entity named as the repairer on the Job Card/Tax Invoice and/or any related corporations, including any assignee or transferee;

**Security Interest** has the meaning provided in the PPSA;

**Services** has the meaning set out under the heading "SERVICES" in these Conditions;

**Service Vehicle** means the motor vehicle specified in the page titled Job Card/Tax Invoice;

**Warranty Document** means any document referred to or provided with the Services or Parts in which the Repairer gives a warranty in relation to the Services or Parts.

### SERVICES

Please execute at my expense, unless otherwise agreed prior to commencement, the repairs and Services, and any other work considered to be necessary to complete those repairs and render the Service Vehicle roadworthy (**Services**). Further, I agree to the Conditions as presented below.

### REPAIR AND STORAGE CONDITIONS

#### 1. Application

- 1.1. These Conditions apply to all transactions between the Repairer and the Customer and are incorporated into all agreements with the Customer.
- 1.2. If more than one person is the Customer those persons contract jointly and severally for themselves and each other.

#### 2. Best Endeavors

The Repairer will make every endeavor to complete the Services by the prescribed time, subject to circumstances beyond their control.

#### 3. Price

- 3.1. The Customer acknowledges that the nature of the Services means that the Price cannot be accurately provided by the Repairer to the Customer until the Services are completed and that any quotation the Repairer gives the Customer is an estimate only and not binding on the parties.
- 3.2. The Repairer acknowledges and agrees that it will use all endeavors to update the Customer of any changes to the Price.
- 3.3. Prices are exclusive of delivery costs, GST and all other taxes, duties or government charges levied in respect of the Services and the Parts except to the extent that they are expressly included in the Price.
- 3.4. There is no right of set-off in respect of any claims against the Repairer.

#### 4. Repairer's Authorisation

The Customer hereby grants the Repairer and/or its authorised employees permission to operate the Service Vehicle on streets, highways or elsewhere for the purpose of testing and/or inspection.

#### 5. Risk

- 5.1. Subject to clause 5.3 the Customer acknowledges that all risk of loss and / or damage to the Service Vehicle will remain with the Customer at all times.
- 5.2. The Customer acknowledges it is the Customers responsibility to protect the contents of the Service Vehicle at all times.
- 5.3. The Repairer acknowledges that any loss and / or damage to the Service Vehicle caused by the Repairer or an authorised employee or contractor of the Repairer while the Service Vehicle is in possession of the Repairer will be rectified to the extent possible by the Repairer and at the cost of the Repairer.
- 5.4. Risk of loss and damage to the Parts passes to the Customer upon installation of the Parts in the Service Vehicle.

#### 6. Indemnity

The Customer hereby agrees to indemnify the Repairer against any liability incurred by the Repairer if the vehicle

is found to be unregistered or unroadworthy in accordance with the Road Safety Act 1986 (Vic).

verification statement) unless the notice is required by the PPSA and cannot be excluded.

## 7. Title to Parts

- 7.1. Ownership of and title to the Parts remains with the Repairer until the Customer has paid the Repairer the Price in full and any other money that the Customer may owe to the Repairer at any time on any account.
- 7.2. Until ownership of and title to the Parts passes to the Customer the Customer will not, without the Repairer's consent:
  - 7.2.1 make any alterations to the Parts or do or allow anything to happen to the Parts that might contribute to the deterioration in their value or otherwise adversely affect the interests of the Repairer;
  - 7.2.2 purport or attempt to sell or dispose of the Parts except in the ordinary course of its business; or
  - 7.2.3 charge, encumber or create a Security Interest in the Parts.
- 7.3. If the Customer supplies the Parts to any person before ownership of and title to the Parts passes to it, whether or not with the Repairer's consent, the Customer holds the proceeds of the resupply of the Parts on trust for the Repairer and will pay the proceeds of sale to the Repairer upon receipt.
- 7.4. If the Customer breaches clauses 7.2 or 7.3, the Repairer may enter upon the Customer's Premises, or any other site, to repossess the Parts without incurring liability to the Customer or any other person, and the Customer grants the Repairer an irrevocable licence to do so.
- 7.5. Displaced Parts will only be returned to the owner if requested.

## 8. Personal Property Securities Act 2009

- 8.1. The Customer acknowledges and agrees that:
  - 8.1.1 this Agreement constitutes a Security Agreement for the purposes of the PPSA which creates a Security Interest in favour of the Repairer in the Parts (including Commingled Goods) and in all present and after acquired property supplied by the Repairer to the Customer (or for the Customer's account) until the Price has been paid for in full;
  - 8.1.2 The Repairer may, without notice to the Customer, register its Security Interest in the Parts (including Commingled Goods), in all present and after acquired property and in their proceeds as a Purchase Money Security Interest on the Register; and
  - 8.1.3 the Security Interest is not discharged nor the Customer's obligations affected by the administration of the Customer.
- 8.2. The Customer waives its rights to receive any notices under the PPSA (including notice of a

## 9. Storage

The Repairer will be entitled to reasonable storage charges if It fails to take delivery of the Service Vehicle within two (2) days of receipt of notification from the Repairer that the Services have been completed.

## 10. Payment Terms

- 10.1. The Customer must pay the Price on or before the Service Vehicle is returned to the Customer unless otherwise arranged prior to the commencement of the Service.
- 10.2. For the avoidance of doubt, where the Repairer supplies the Services and Parts gratuitously for any reason, including where the Service Vehicle under warranty, these Conditions still apply in respect to the Services and Parts supplied.

## 11. Default in payment

- 11.1. The Repairer may charge interest on overdue amounts at the rate provided for by section 2 of the Penalty Interests Rate Act 1983 (Vic), plus 2% compounded daily from the date of due payment until the date of payment in full of the overdue amount, plus interest.
- 11.2. The Customer will pay to the Repairer upon demand all costs and expenses incurred by the Repairer as a result of the delay in payment.

## 12. Cancellation

- 12.1. If the Customer cancels the Services prior to the delivery of the Service Vehicle, the Customer will pay the Repairer on demand all reasonable out of pocket expenses the Repairer incurs as a consequence of the cancellation.
- 12.2. If the Repairer has reason to believe that it will be unable to supply the Services to the Customer within a reasonable time or at all due to circumstances beyond its reasonable control, the Repairer may, without penalty, cancel the Services, in which case, the Repairer will refund the Customer any amount of the Price already paid in respect of those Services.
- 12.3. If the Customer commits an Act of Default which is not remedied within 7 days of the Repairer giving written notice of the Act of Default, the Repairer may cancel the supply of the Services to be provided to the Customer and the Customer will pay the Repairer on demand all reasonable out of pocket expenses the Repairer incurs as a consequence of the cancellation.
- 12.4. If the Repairer commits an Act of Default which is not remedied within seven (7) days of the Repairer giving written notice of the Act of Default, the Customer may cancel the Order and obtain a refund of any amount of the Price already paid by the Customer for Services not supplied, less any amount due and payable to the Repairer under these Conditions.

### 13. Mechanics Lien

13.1. An express mechanics lien is hereby acknowledged by the Customer on the Service Vehicle to secure the amount of the Services and the Price.

13.2. The Customer warrants that it is the registered owner of the Service Vehicle or has the authority from the registered owner of the Service Vehicle for the Services to be completed.

### 14. Confidentiality

All information exchanged between the parties will be treated as confidential except to the extent that it becomes public knowledge, and will not be disclosed to a third party without the prior written consent of the party who originally supplied the information or unless required by law.

### 15. Privacy Policy

15.1. The Repairer is an organisation bound by the Australian Privacy Principles and the Credit Reporting Code under the Privacy Act 1988 (Cth) (**Privacy Act**). A copy of the Australian Privacy Principles and Credit Reporting Code are both available from the Office of the Australian Information Commissioner's website at [www.oaic.gov.au](http://www.oaic.gov.au).

15.2. The Repairer's Privacy Policy, as amended from time to time, is incorporated into this Agreement. A copy of the Privacy Policy can be accessed on the Repairer's website at [www.stillwellgroup.com.au](http://www.stillwellgroup.com.au).

### 16. Warranties

16.1. The Repairer warrants that the Parts and Services comply with the warranties included in any Warranty Document and any guarantees that apply compulsorily under the ACL.

16.2. To the extent permitted by law, all other guarantees, warranties, undertakings or representations expressed or implied, whether arising by statute or otherwise, which are not given in these Conditions or any Warranty Document are expressly excluded.

16.3. If the Customer is a Consumer and any Parts supplied by the Repairer are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer agrees that the Repairer's liability for a failure to comply with a consumer guarantee under the ACL in relation to those Parts (other than a guarantee under sections 51, 52 and 53 of the ACL) is limited, at the option of the Repairer, to one or more of the following:

- 16.3.1 the replacement of the Parts or the supply of equivalent goods;
- 16.3.2 the repair of the parts;
- 16.3.3 the payment of the cost of replacing the Parts or of acquiring equivalent goods; or
- 16.3.4 the payment of the cost of having the Parts repaired.
- 16.4.1 loss or damage to any property or person whatsoever resulting from the provision of the Parts;
- 16.4.2 loss arising from delay in delivery; or
- 16.4.3 consequential loss.

16.5 Nothing in these Conditions is intended to exclude, restrict or modify rights which the Customer may have under the ACL or any other Law.

16.6 If any provision of these Conditions is invalid under the ACL or any other Law, that provision is enforceable to the extent that it is not invalid, and if it is not possible to give that provision any effect at all, then it is to be severed from these Conditions and the remainder of these Conditions will continue to have full force and effect.

### 17. Return Policy & Claims

17.1. Subject to clause 16 the Customer must notify the Repairer of any workmanship it considers to be faulty within seven (7) days of the Service Vehicle being returned to the Customer. If no such notification is given, the workmanship will be deemed to be satisfactory.

17.2. The subsequent rectification liability will be limited to that applicable to the original works undertaken under the original Services, and will not include any loss consequential or otherwise

17.3. Parts and Services will only be accepted for credit up to seven (7) days from date of delivery and must be accompanied with the original invoice supplied by the Repairer.

17.4. Parts and Services WILL NOT be accepted for credit for the following reasons:

- 17.4.1 after the expiry of the period for return stated in clause 17.1;
- 17.4.2 no original invoice is provided by the Customer upon return of the Parts and Services;
- 17.4.3 the Parts are Electrical Goods;
- 17.4.4 the Parts have been altered, fitted, painted or damaged; and
- 17.4.5 the Parts have been purchased in accordance with the Customers order/specification.

### 18. Governing Law

The Law of Victoria applies to these Conditions.

### 19. Waiver

A single or partial exercise or waiver of a right relating to these Conditions will not prevent any other exercise of that right or another right.

