

Heavy Diesel Specialists Pty Ltd – Terms & Conditions of Trade

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| <p>1. Definitions</p> <p>1.1 "Mechanic" means Heavy Diesel Specialists Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Heavy Diesel Specialists Pty Ltd.</p> <p>1.2 "Client" means the person's buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by the Mechanic to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).</p> <p>1.4 "Price" means the Price payable for the Goods as agreed between the Mechanic and the Client in accordance with clause 4 below.</p> <p>2. Acceptance</p> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.</p> <p>2.2 These terms and conditions may only be amended with the Mechanic's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Mechanic.</p> <p>2.3 These terms and conditions may be meant to be read in conjunction with the Mechanic's Hire Form, and:</p> <p>(a) where the context so permits, the terms Goods or Services shall include any supply of Equipment, as defined therein; and</p> <p>(b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.</p> <p>3. Change in Control</p> <p>3.1 The Client shall give the Mechanic not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Mechanic as a result of the Client's failure to comply with this clause.</p> <p>4. Price and Payment</p> <p>4.1 At the Mechanic's sole discretion, the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Mechanic to the Client; or</p> <p>(b) the Mechanic's estimated Price (subject to clause 4.2) which shall not be deemed binding upon the Mechanic as the actual Price can only be determined upon completion of the Goods. The Mechanic undertakes to keep the Client informed should the actual Price look set to exceed the original estimate.</p> <p>(c) the Mechanic's quoted Price (subject to clause 4.2) which shall be binding upon the Mechanic provided that the Client shall accept the Mechanic's quotation in writing within thirty (30) days of issue.</p> <p>4.2 The Mechanic reserves the right to change the Price if a variation to the Mechanic's estimate/quotation is Discretion. At the Mechanic's sole discretion, a non-refundable deposit may be required.</p> <p>4.3 Time for payment for the Goods being in the essence, the Price will be payable by the Client on the date/s determined by the Mechanic, which may be:</p> <p>(a) on delivery of the Goods;</p> <p>(b) thirty (30) days following the date of invoice; or</p> <p>(c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Mechanic.</p> <p>4.5 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed between the Client and the Mechanic.</p> <p>4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Mechanic an amount equal to any GST the Mechanic must pay for any supply by the Mechanic under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.</p> <p>5. Delivery of Goods</p> <p>5.1 At the Mechanic's sole discretion delivery of the Works shall take place when:</p> <p>(a) the Mechanic provides the Works at the Mechanic's address; or</p> <p>(b) the Mechanic provides the Works at the Client's nominated address.</p> <p>5.2 Where the Mechanic is to provide any Works at the Client's nominated address then the Client shall be liable for all costs incurred by the Mechanic 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 the Mechanic's standard rates and any Parts purchased for the Works).</p> <p>5.3 Where the Mechanic is requested to store the Client's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four hours of advice to the Client that they are ready for collection, then the Mechanic (at its sole discretion) may charge a reasonable fee for storage.</p> <p>5.4 Any time or date given by the Mechanic to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Mechanic will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.</p> <p>6. Additional Charges</p> <p>6.1 The Mechanic reserves the right to change the Price:</p> <p>(a) if a variation to the Services which are to be provided is requested; or</p> <p>(b) where additional Services 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 Services; or</p> <p>(c) in the event of increases to the Mechanic in the cost of labour or Parts which are beyond the Mechanic's control.</p> <p>6.2 Where the Mechanic is requested to store the Client's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four (24) hours of advice to the Client that they are ready for collection, then the Mechanic (at its sole discretion) may charge a fee of twenty-five dollars (\$25) per day for storage.</p> <p>6.3 For roadside assistance, a minimum call-out fee shall be applicable, which shall be increased for any after-hours call-outs.</p> <p>6.4 All tow and/or salvage fees will be charged to the Client, and will be added to the Price.</p> <p>6.5 If the Mechanic has been requested by the Client to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.</p> <p>6.6 The Client agrees that the Mechanic shall be entitled to:</p> <p>(a) retain any components replaced during the provision of the Services; and</p> <p>(b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.</p> <p>7. Provision of the Services</p> <p>7.1 Where the Mechanic is to provide any Services at the Client's nominated address, then the Client shall be liable for all costs incurred by the Mechanic 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 the Mechanic's standard rates and any Parts purchased for the Services).</p> <p>7.2 Any time specified by the Mechanic for provision of the Services is an estimate only and the Mechanic will not be liable for any loss or damage incurred by the Client as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Mechanic is unable to provide the Services as agreed solely due to any action or inaction of the Client then the Mechanic shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.</p> <p>8. Risk</p> <p>8.1 If the Mechanic retains ownership of the Materials under clause 9.1 then, where the Mechanic is supplying Parts only, all risk for the Parts shall immediately pass to the Client on delivery and the Client must insure the Parts on or before delivery. At the Mechanic's sole discretion, the costs of delivery shall be in addition to the Price. Delivery of the Parts shall be deemed to have taken place immediately at the time that either:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Parts at the Mechanic's address; or</p> <p>(b) the Parts are delivered by the Mechanic or the Mechanic's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).</p> <p>8.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Client, the Mechanic is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by the Mechanic is sufficient evidence of the Mechanic's rights to receive the insurance proceeds without the need for any person dealing with the Mechanic to make further enquiries.</p> <p>8.3 If the Client requests the Mechanic to leave Parts outside the Mechanic's premises for collection or to deliver the Parts to an unattended location, then such Parts shall be left at the Client's sole risk.</p> <p>8.4 The Client acknowledges that the Mechanic is only responsible for Parts that are replaced by the Mechanic and that in the event that other components subsequently fail, the Client agrees to indemnify the Mechanic against any loss or damage to the vehicle, Parts, or caused by the components, or any part thereof howsoever arising.</p> <p>8.5 The Mechanic 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 Services (including in the event of a call-out: it shall be the Client's responsibility to remain with the vehicle to ensure security of the same), unless caused by the negligence of the Mechanic or the Mechanic's employees.</p> <p>8.6 It is the Client'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 the Mechanic's premises. The vehicle is at all times stored and repaired at the Client's sole risk.</p> <p>9. Title</p> <p>9.1 The Mechanic and the Client agree that ownership of the Goods shall not pass until:</p> | <p>(a) the Client has paid the Mechanic all amounts owing to the Mechanic; and</p> <p>(b) the Client has met all of its other obligations to the Mechanic.</p> <p>9.2 Receipt by the Mechanic 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.</p> <p>9.3 It is further agreed:</p> <p>(a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to the Mechanic on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Mechanic and must pay to the Mechanic the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;</p> <p>(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Mechanic and must pay or deliver the proceeds to the Mechanic on demand;</p> <p>(d) the Client should not convert or press the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Mechanic and must sell, dispose of or return the resulting product to the Mechanic as it so directs;</p> <p>(e) the Client irrevocably authorises the Mechanic to enter any premises where the Mechanic believes the Goods are kept and recover possession of the Goods;</p> <p>(f) the Mechanic may recover possession of any Goods in transit whether or not delivery has occurred;</p> <p>(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Mechanic;</p> <p>(h) the Mechanic may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> <p>10. Personal Property Securities Act 2009 ("PPSA")</p> <p>10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that the Client and the Client agree to constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Mechanic to the Client. The Client undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Mechanic may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, the Mechanic for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of the Mechanic;</p> <p>(d) not register or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Mechanic;</p> <p>(e) immediately advise the Mechanic of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>10.4 The Mechanic and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>10.7 Unless otherwise agreed to in writing by the Mechanic, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>10.8 The Client must unconditionally ratify any actions taken by the Mechanic under clauses 10.3 to 10.5.</p> <p>10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>11. Security and Charge</p> <p>11.1 In consideration of the Mechanic agreeing to supply the Goods, the Client agrees that 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>11.2 The Client indemnifies the Mechanic from and against all the Mechanic's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Mechanic's rights under this clause.</p> <p>11.3 The Client irrevocably appoints the Mechanic and each director of the Mechanic as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.</p> <p>12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>12.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify the Mechanic in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Mechanic to inspect the Goods.</p> <p>12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied warranties and warranties (including, without limitation, any warranty to comply with the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>12.3 The Mechanic acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Mechanic makes no warranties, either representations or otherwise, in relation to the Goods, including but not limited to the quality or suitability of the Goods. The Mechanic's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>12.5 If the Client is a consumer within the meaning of the CCA, the Mechanic's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>12.6 If the Mechanic is required to replace the Goods under this clause or the CCA, but is unable to do so, the Mechanic may refund any money the Client has paid for the Goods.</p> <p>12.7 If the Mechanic is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then the Mechanic may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Goods which have been provided to the Client which were not defective.</p> <p>12.8 If the Client is not a consumer within the meaning of the CCA, the Mechanic's liability for any defect or damage in the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Client by the Mechanic at the Mechanic's sole discretion;</p> <p>(b) limited to any warranty to which the Mechanic is entitled, if the Mechanic did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>12.9 Subject to this clause 12, returns will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 12.1; and</p> <p>(b) the Mechanic has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>12.10 Notwithstanding clauses 12.1 to 12.9 but subject to the CCA, the Mechanic shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Client failing to properly maintain or store any Goods;</p> <p>(b) the Client using the Goods for any purpose other than that for which they were designed;</p> <p>(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Client failing to follow any instructions or guidelines provided by the Mechanic; or</p> <p>(e) fair wear and tear, any accident, or act of God.</p> <p>12.11 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Mechanic as to the quality or suitability for any purpose and any implied warranty (statutory or otherwise) is expressly excluded. The Client acknowledges and agrees that the Mechanic has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 12.11.</p> <p>12.12 Notwithstanding anything contained in this clause if the Mechanic is required by a law to accept a return then the Mechanic will only accept a return on the conditions imposed by that law.</p> <p>13. Intellectual Property</p> <p>13.1 Where the Mechanic has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Mechanic.</p> <p>13.2 The Client warrants that all designs, specifications or instructions given to the Mechanic will not cause the Mechanic to infringe any patent, registered design or trademark in</p> | <p>the execution of the Client's order and the Client agrees to indemnify the Mechanic against any action taken by a third party against the Mechanic in respect of any such infringement.</p> <p>14. Default and Consequences of Default</p> <p>14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Mechanic's sole discretion such interest shall compound monthly at such rate) after as well as before any judgment.</p> <p>14.2 If the Client owes the Mechanic any money the Client shall indemnify the Mechanic from and against all costs and disbursements incurred by the Mechanic in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Mechanic's contract default fee, and bank dishonour fees).</p> <p>14.3 Without prejudice to any other remedies the Mechanic may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Mechanic may suspend or terminate the supply of Goods to the Client. The Mechanic will not be liable to the Client for any loss or damage the Client suffers because the Mechanic has exercised its rights under this clause.</p> <p>14.4 Without prejudice to the Mechanic's other remedies at law the Mechanic shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Mechanic shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Mechanic becomes overdue, or in the Mechanic's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>15. Cancellation</p> <p>15.1 The Mechanic may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Mechanic shall repay to the Client any money paid by the Client for the Goods. The Mechanic shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>15.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Mechanic as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>15.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>16. Privacy Act 1988</p> <p>16.1 The Client agrees for the Mechanic to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Mechanic.</p> <p>16.2 The Client agrees that the Mechanic may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:</p> <p>(a) to assess an application by the Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Client.</p> <p>16.3 The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.</p> <p>16.4 The Client consents to the Mechanic being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).</p> <p>16.5 The Client agrees that personal credit information provided may be used and retained by the Mechanic for the following purposes (and for other purposes as shall be agreed between the Client and Mechanic or required by law from time to time):</p> <p>(a) the provision of Goods; and/or</p> <p>(b) the marketing of Goods by the Mechanic, its agents or distributors; and/or</p> <p>(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or</p> <p>(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or</p> <p>(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.</p> <p>16.6 The Mechanic may give information about the Client to a credit reporting agency for the following purposes:</p> <p>(a) to obtain a consumer credit report about the Client;</p> <p>(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.</p> <p>16.7 The information given to the credit reporting agency may include:</p> <p>(a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);</p> <p>(b) details concerning the Client's application for credit or commercial credit and the amount requested;</p> <p>(c) advice that the Mechanic is a current credit provider to the Client;</p> <p>(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;</p> <p>(e) that the Client's overdue accounts, loan repayments and/or any outstanding monies owing are no longer overdue; and</p> <p>(f) information that, in the opinion of the Mechanic, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);</p> <p>(g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;</p> <p>(h) that credit provided to the Client by the Mechanic has been paid or otherwise discharged.</p> <p>17. Unpaid Seller's Rights</p> <p>17.1 Where the Client has left any item with the Mechanic for repair, modification, exchange or for the Mechanic to perform any other service in relation to the item and the Mechanic has not received or been paid for the whole or any moneys owing to it by the Client, the Mechanic shall have, until all moneys owing to the Mechanic are paid:</p> <p>(a) a lien on the item; and</p> <p>(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.</p> <p>17.2 The lien of the Mechanic shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Mechanic having been obtained against the Client.</p> <p>18. General</p> <p>18.1 The failure by the Mechanic to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Mechanic's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which the Mechanic has its principal place of business, and are subject to the jurisdiction of the New South Wales Courts in that state.</p> <p>18.3 Subject to clause 12, the Mechanic shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Mechanic of these terms and conditions (alternatively the Mechanic's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>18.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Mechanic nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>18.5 The Mechanic may license or sub-contract all or any part of its rights and obligations without the Client's consent.</p> <p>18.6 The Client agrees that the Mechanic may amend these terms and conditions at any time. If the Mechanic makes a change to these terms and conditions, then that change will take effect from the date on which the Mechanic notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Mechanic to provide Goods to the Client.</p> <p>18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>18.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.</p> |
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Please note that a larger print version of these terms and conditions is available from the Mechanic on request.