

Wilkinson Transport Engineers – Terms of Trade

1. What is the purpose of this agreement?

1.1 This agreement sets out the terms that apply to the relationship between you and your agent(s) and/or principal(s) (“you” and “your”) and Wilkinson Motors Limited trading as Wilkinson Transport Engineers and our agent(s) (“we”, “us” and “our”).

1.2 This agreement will bind you and your principal(s) and agent(s). In entering into this agreement as an agent you declare that you are authorised to:

- act for the owner of the property subject to our products and services; and
- enter into this agreement and contract for our products and services on the owner(s’) behalf.

2. What information about you can we collect?

2.1 You agree to provide us with and allow us to use all information necessary to give effect to this agreement and the provision of our products and performance of our services.

2.2 Unless your consent is withdrawn in writing, you agree to the disclosure of information:

- a. to give effect to the provision of our products and services;
- b. to enforce our obligations under this agreement or any additional agreement;
- c. when authorised by you or required by law;
- d. to assess creditworthiness; and
- e. to market any of our products and services.

2.3 We will comply with the Privacy Act 1993. We will not use your information unless we have reasonably ensured it is accurate, complete, relevant and not misleading. If we give your information to another entity we will do everything reasonably within our power to prevent unauthorised use or disclosure of your information. You may access your information and ask us to correct any mistakes.

3. What are our products and services?

3.1 “Product(s)” and “service(s)” means and includes without limitation:

- a. components, units, fixtures, fittings, accessories and materials (whether separate, attached to something or the subject of our services) supplied by us;
- b. engineering, designing, manufacturing, welding, fabrication, modification, importing, exporting, supplying, labour, delivery and installation; and
- c. agency fees, charges and out of pocket expenses incurred by us, that are identifiable in any document or electronic record issued by either party (all of which are deemed to be incorporated into and form part of this agreement) or as ours by marking or manner of storage.

4. What is the price?

4.1 Subject to clause 5, the price is the cost of the products and services as agreed between you and us from time to time subject to GST and out of pocket expenses. If no price is stated, the price will be the standard amount at which we provide the products and services at the time of your order. The price is subject to reasonable

change due to variations to the products and services to be provided or circumstances beyond our control.

5. What if we give you a quote?

5.1 All quotes will be exclusive of GST and remain valid for thirty (30) days from the date of the quote unless agreed or stated otherwise.

5.2 You will be responsible for increased costs resulting from any subsequent changes to a quote due to any inadequate or inaccurate information, request/requirement for additional products and services, variations or delays caused by you or any other party beyond our control.

5.3 We may withdraw a quote at any time prior to your written acceptance of the same.

5.4 We may alter the quote due to circumstances beyond our control or clerical or computer error.

5.5 We may alter the quote and the price payable for the products and services where the cost of parts or labour varies by more than 10% from the costs applicable at the date of our quote.

6. When and how do you pay us?

6.1 You agree to pay us in full and without set-off, deduction, counterclaim or retention:

- a. for credit account holders – on or before the 20th day of the month following the date of our invoice, unless agreed otherwise;
- b. for those without credit accounts – cash on delivery/pick up, unless agreed otherwise;
- c. interest on any amount you owe after the due date at 1.5% per month/part month;
- d. storage fees at reasonable market rates which may be charged for any product stored by us after the agreed date of delivery/pick up;
- e. expenses incurred as a result of enforcing any of our rights contained in this agreement including PPSR registration, debt collection and legal fees; and
- f. a deposit as required.

6.2 You agree to us allocating or reallocating any payment received from you towards any invoice. If no allocation is made then it is deemed to be in such a way that preserves the maximum value of our purchase money security interest in the products.

6.3 You will be responsible for payment for our products and services if a third party that you expect to pay you or us fails to pay.

7. What warranties and limitations apply?

7.1 Manufacturers' and third party warranties (where applicable) and any written warranty provided by us. Unless otherwise stated in writing, we will warrant the products and services against defects in workmanship or parts supplied by us, for a maximum period of 12 months or 100,000 kilometres, whichever first occurs.

7.2 If you are in trade and/or are a business, you agree that the products and services are acquired for the purposes of a business (Sections 2 and 43(2) of the Consumer Guarantees Act) and in trade and the parties contract out of the Fair

Trading Act 1986 (including Sections 9, 12A and 13) the Consumer Guarantees Act 1993 and the Contract and Commercial Law Act 2017 to the extent permissible by law.

7.3 Samples shown to you may differ from products provided to you.

7.4 We are not liable for delay or failure to perform our obligations if the cause is beyond our reasonable control such as supplier or importation delays.

7.5 In all the circumstances our liability in relation to the products and services whether for breach of contract (including the warranty in clause 7.1) tort (including negligence) or otherwise is limited to the repair or replacement of any defective parts provided by us, and where applicable, the reperformance of any defective services.

7.6 In no circumstances will we be liable whether in contract (including breach of the warranty in clause 7.1) tort, (including negligence) or otherwise for any indirect or consequential loss or damage suffered by you, including but not limited to, loss of business, loss of profits, or any additional cost, loss or expense incurred or suffered by you as a result of the unavailability of any vehicles that are subject to defective products or services.

8. What if you wish to make a claim in relation to our products and services or return a product?

8.1 Special orders cannot be returned unless due to fault/defect.

8.2 Subject to 8.1, claims in relation to our products and services are subject to the following:

- a. for claims relating to faulty/defective products and services, you notify us within the applicable warranty period;
- b. for claims not relating to faulty/defective products such as short or incorrect supply, you notify us within seventy-two (72) hours of pick up/delivery;
- c. the products having been used in accordance with the manufacturer's/our instructions and not having been subject to abuse, neglect, lack of maintenance, misuse, accident or modification of work by an unauthorised third party;
- d. the costs of return of a product being your sole responsibility;
- e. us repairing or replacing defective products or performing further services at our discretion; and
- f. a restocking fee equal to 25% of the invoice value of the returned product will apply.

8.3 Any products the subject of a claim under 8.2 cannot be destroyed or removed from the premises until we have inspected the same or waived our right to do so in writing.

9. When will the products and services be provided?

9.1 We will use our best endeavours to deliver the products and services at the time agreed between you and us; however, the time of delivery is not an essential term of this agreement and if you fail to accept delivery then the products will be deemed to be delivered at the agreed time. We may partially deliver products listed in one order and if we fail to deliver an instalment that failure will not give rise to a right of cancellation.

9.2 Delivery is complete when we give the products to you, give the products to a third party carrier, or leave the products at the delivery site or your premises.

9.3 We are responsible and assume the risk for the products until delivery in accordance with 9.2, pick up by you or the passing of ownership under 12.1, whichever comes first. For the avoidance of doubt, all products are at your risk while on your premises or premises under your control.

9.4 We are not liable for any delay to perform our obligations under this agreement if the cause is beyond our reasonable control, including but not limited to, delays in the supply of products or parts required to carry out the services.

10. Force Majeure?

10.1 Notwithstanding any other provision of this Agreement, non-performance by us of any of our obligations under this Agreement will be excused, without liability for non-performance, during the time and to the extent that performance is prevented, wholly or substantially, by a Force Majeure Event. Performance of any obligation affected by a Force Majeure Event will be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure Event.

10.2 Nothing in this clause shall excuse payment of the Amount Owing as it becomes due under these Terms.

11. What are your responsibilities?

11.1 You are responsible for and warrant that all information, plans and drawings on which we base our products and/or services are accurate and complete. You will be responsible for the cost of additional products and services required as a result of inaccuracy or incompleteness. If you do not meet your obligations adequately, any and all loss, damage and/or costs will be your sole responsibility.

12. What ownership and security rights do we have?

12.1 We retain ownership of and hold a security interest in all products until you have paid us in full for all products and services provided to you. While we retain ownership, you will store all products in such a way that our interests are protected and they can be identified as provided by us.

12.2 You agree that we may hold a security interest in all of your present and after-acquired property connected with all products and services provided to you, and:

- a. authorise us to register a financing statement and charge on the Personal Property Securities Register, and provide all information and signatures necessary to effect the same;
- b. will not register a financing charge or statement or charge demand in respect of products without our prior written consent;
- c. waive your entitlement under s 148 of the Personal Property Securities Act 1999 (PPSA) to receive a copy of a verification statement where we have registered our interest;
- d. that both parties contract out of s 114(1)(a), 133 and 134 of the PPSA;
- e. waive your rights as listed under s 107(2) of the PPSA; and
- f. give us seven (7) days prior written notice of any proposed change in your name or details such as contact information.

12.3 In circumstances where you make an advance payment of some or all of the price in relation to particular vehicles (Advance Payment) for the purpose of funding our purchase of certain parts, goods or equipment (Parts), we grant you a security interest over the Parts relating to those vehicles for the purpose of securing delivery of the product or refund of the Advance Payment, and:

- a. we authorise you to register a financing statement and charge on the Personal Property Securities Register in respect of the Parts, and we will provide all information and signatures necessary to ensure that the security interest constitutes a “perfected security interest” (as that term is defined in the PPSA) and which will in respect of the specified Parts, have priority over all other security interests in those Parts;
- b. we waive our entitlement under s 148 of the PPSA to receive a copy of a verification statement where you have registered your interest;
- c. both parties hereby contract out of s 114(1)(a), 133 and 134 of the PPSA;
- d. we waive all of our rights as the debtor listed under s 107(2) of the PPSA;
- e. we agree that where you have rights in addition to those under Part 9 of the PPSA, those rights will continue to apply; and
- f. we will give you seven (7) days prior written notice of any proposed change in our name or details such as contact information;

12.4 Where applicable, we own all existing and new intellectual property rights connected to the products and services.

13. What if you want to vary the products and services to be provided?

13.1 All requests and orders are subject to these terms and no products or services may be varied unless both parties agree to the variation in writing. If we have reasonably relied on your original instructions then you will be responsible for payment of the original price of the products and services. Any price provided in a quote will be voided by a variation to the products and services.

14. When can a party cancel this agreement?

14.1 Subject to 14.2-14.5, either party may cancel this agreement at any time by giving twenty-one (21) days prior written notice.

14.2 We have the right by seven (7) days written notice to suspend or cancel wholly or in part this or any agreement for the provision of products and services and/or close your credit account if you default by:

- a. failing to pay or indicating you will not pay any sum owing by the due date;
- b. any of your creditors seizing or indicating they will seize any products;
- c. products in your possession becoming materially damaged while any amount remains unpaid;
- d. being bankrupted, insolvent, under statutory management or put into liquidation;
- e. a receiver being appointed over or a landlord possessing any of your assets;
- f. a court judgment entered against you remaining unsatisfied for seven (7) days;
- g. breaching the terms of this agreement; and
- h. an adverse material change in your financial position.

14.3 If you default we may exercise a lien against any of your vehicles or other assets

or any products in our possession.

14.4 You agree that if you default and the default is not remedied within seven (7) days, we may enter any premises occupied by you to inspect or repossess any products. You will provide reasonable access to such premises and do all things necessary to give effect to our rights and obligations. We may re-sell any products and credit the net sale proceeds to your account for the invoice value less adjustment for the condition of the products.

14.5 Cancellation under 14.1 or cancellation or suspension under 14.2 will not affect either party's claim for any amount due at the time of cancellation or suspension, damages for any breach of obligations under this agreement and any other legal rights either party may have. Upon cancellation of this agreement, any amount owed by you for products and services provided up to and including the date of cancellation will become immediately payable and current orders and services will terminate.

15. Who is responsible for Insurance?

15.1 You agree to hold comprehensive insurance over all products, goods and vehicles owned by you, or supplied by you, whilst at our premises or in transit to or from our premises.

15.2 We will only be liable for damage to your property (products, goods and vehicles) as a result of gross negligence or wilful misconduct whilst in our care, custody or control.

16. What else is agreed?

16.1 We may outsource (contract out) part of the work required to perform our services and you agree to pay for all amounts due in connection with the same.

16.2 A failure by either party to enforce any of the terms of this agreement will not be deemed to be a waiver of any of the rights or obligations under this agreement.

16.3 Neither party may assign or transfer their rights or obligations under this agreement to any other party without our prior written consent.

16.4 If any of these terms are determined to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining terms will not be affected.

16.5 This agreement supersedes all prior agreements, representations and warranties. Any instructions we receive from you and all arrangements between the parties are subject to these terms.

16.6 Neither party will be liable for any act, omission or failure by that party under this agreement if that act, omission or failure results directly from an event or circumstances beyond the reasonable control of that party, provided that whenever that party becomes aware that such a result has occurred or is likely to occur, that party will notify the other party in writing. Should such an event occur, each party will continue to use its best endeavours to perform its obligations as required under this agreement and take all reasonable steps to abate the event.

16.7 If a dispute arises between the parties either party must notify the other in writing within seven (7) days of the dispute arising. The parties will endeavour to

resolve the dispute by negotiation within seven (7) days of receiving notice. If the parties cannot resolve the dispute then each party will have the right to refer the dispute for mediation or arbitration at any time. The arbitration will be undertaken in accordance with the Arbitration Act 1996. The presence of a dispute will not affect either party's claim for any amount due, damages for any breach of obligations under this agreement and any other legal rights either party may have.

16.8 Documentation related to this agreement may be served on you by email.

16.9 We will notify you of any changes to these terms and publish the same on our website – continued provision of products and services will be subject to your signed or written acceptance of the same. All other variations must be mutually agreed in writing.

17. Proprietary and Intellectual Property Rights

17.1 You acknowledge and agree that all rights, title and interest in and to all Equipment and all Intellectual Property rights embodied in, relating to, in connection with or arising from the provision of the Purchased Services (including any Equipment, product, documents or other material provided in connection with any Purchased Services) shall vest solely and exclusively at all times in us, and belong solely and exclusively to us.

17.2 You shall not acquire any right, licence, benefit or interest in any such Equipment or Intellectual Property rights by virtue of anything done by or sums paid pursuant to these Terms and Conditions.

17.3 To the extent that any right, title or interest in such Equipment or Intellectual Property or any part thereof may remain or become vested in you notwithstanding Clause 17.2 above, you shall and you hereby irrevocably assign, transfer and convey, absolutely and unconditionally, to us, the said rights, title and interests by way of such form of agreement or deed as may be required by us.

17.4 You shall not, and shall not attempt or assist another person to, reproduce, modify, transfer, distribute, republish, download, post or transmit in any form or by any means (including electronic or mechanical photocopying or recording) any Intellectual Property in or relating to any Services unless authorised in writing by us.