

# Customer benefits of dealing with an MTA Member

*All MTA members subscribe to a code of ethics and are bound to observe MTA's policies and rules.*

*This business is a current financial member of the Motor Trade Association Inc. of New Zealand and observes all of MTA's policies, rules and ethics.*

## TERMS OF SUPPLY

1. In these Terms of Supply and accompanying Warranty the expressions:
  - 1.1 'we', 'us', 'our' refer to the Supplier;
  - 1.2 'you', 'your', 'yourself' refer to the Customer.
2. Unless otherwise notified in advance by written quotation, our charges applying to the supply of any goods or services will be our usual charges for the same, details of which can be provided on request.
3. Unless we agree otherwise in writing with you, payment for all goods or services supplied must be paid for by you in cash in full at the time of supply.
  - 3.1 We reserve the right to recover reasonable costs incurred in processing Visa or Mastercard transactions.
4. We may recover from you all costs we incur in attempting to enforce payment of any overdue account including, but not limited to, all debt collection, solicitor-client and court related costs.
5. If we state in our charges the GST exclusive price for any goods or services supplied (despite the charges, as a result of a reasonable mistake, being described or indicated on the job sheet or our invoice as GST inclusive) then we may add GST to the charges payable by you.
6. If we overlook charging you for any goods or services supplied, as a result of a reasonable mistake on our part and whether or not our earlier invoice appears to include the goods or services in question, we may invoice you for those items overlooked.
7. We may, at our option:
  - 7.1 if claiming a worker's lien over your vehicle, retain possession of your vehicle, and despite any non mandatory law to the contrary retain possession until all costs incurred by us in respect of retaining possession of your vehicle or enforcing the lien, together with our bill for repair charges and storage charges for your vehicle (and penalty interest we are entitled to) are paid in full;
  - 7.2 charge storage costs for and/or remove from our premises your vehicle or property which has not been uplifted within one week of our notifying you (or making a reasonable attempt to notify you) that the vehicle or property is available for uplifting.
8. Where we have given an 'estimate' as opposed to a 'quotation' for any goods or services for supply to you, we will not be bound to charge a price which corresponds to that estimate where the cost of any purchases we have made for the purposes of the supply to you are in excess of our earlier understanding for the purposes of providing you with an estimate. Similarly; if any work undertaken by us is more than originally estimated, and this was not reasonably foreseeable or could not be more exactly determined without further investigation, then we are not bound to charge a price which corresponds to our estimate.

An estimate of price we may give is simply an opinion as to what the price may be. We cannot give any assurance that the final price will correspond to an estimate given. We will in some cases give a quotation, which will be marked as such, in which case our quotation will be binding on us.

9. Until payment in full is received by us for all goods supplied by us to you:
  - 9.1 ownership in any goods supplied by us to you remains with us;
  - 9.2 the relationship between us and you is a fiduciary one and you will hold those goods as bailee for us;
  - 9.3 you must not sell or otherwise dispose of or deal with the goods or do any act that may affect or defeat our title to the goods provided that you may with our prior consent, as fiduciary, deal or otherwise dispose of the goods in the normal course of trade on the understanding that the proceeds of disposition shall at all times be our property. You must account directly to us for the proceeds of such disposition, all such proceeds to be held on trust for us in a separate account;
  - 9.4 until ownership of the goods passes from us to you, we may give notice in writing to you to return the goods or any of them to us. Upon such notice the rights of you to obtain ownership or any other interest in the goods ceases;
  - 9.5 you will not charge the goods in any way nor give any interest in the goods while they remain the property of us;
  - 9.6 you will insure and keep insured the goods to the full price against all risks until the price is received by us;
  - 9.7 we may require payment of the total or balance owing for the goods and services supplied in this job sheet /invoice together with any other amounts owing by you to us, and we may take any lawful steps to require payment of all amounts owing by you to us;
  - 9.8 you will meet the costs of any repossession (including the cost of any damage caused necessarily to repossess) and will indemnify us against any claim or costs we may incur arising out of the repossession.
  - 9.9 the foregoing provisions do not entitle you to return the goods without demand from us;
  - 9.10 we may repossess those goods supplied (and if they are attached to any other equipment or product, detach and remove the goods from that equipment or product) and you authorise us to enter onto any premises to carry out that repossession (and will, if necessary, obtain any third party approval to our entering onto those premises);
10. Any job we undertake to do for you is conditional on our being able to source and purchase all parts and other products necessary to complete the job. If we cannot source and purchase the necessary parts and products then we may terminate the job contract by giving notice of termination to you, in which case we will not be liable to you in any respect. However, you must pay us the reasonable value of any supplies we have made or for work that we have undertaken to the point of termination.
11. The time for completion of any job undertaken by us for you will be the time of completion that we notify to you but this time may be altered by us by giving notice to you (or making a reasonable attempt to give notice to you) where our ability to complete the job or work has been restricted by factors or events beyond or partly beyond our control. The time for completion of the job or work may be extended on more than one occasion.

12. Except for the 'Business Use' and 'Manufacturer or Other Supplier' clauses below, nothing in this job sheet/invoice, Terms of Supply or Warranty limits any right that you may have as a consumer under the Consumer Guarantees Act 1993. The rights that you have under that Act may be in addition to your rights and obligations under this job invoice, Terms of Supply or Warranty.
13. Business Use – Where you have the acquired goods and services from us for the purposes of a business or held yourself out as acquiring goods or services from us for the purposes of a business, the Consumer Guarantees Act 1993 does not apply to the supply of such goods and services and our liability under that Act is excluded.
14. Manufacturer or Other Supplier – To the extent that we may be a manufacturer under the Consumer Guarantees Act 1993 then the guarantee in Section 12 of the Act relating to the provision of repair facilities and spare parts does not apply to any supply of goods made by us. We also contract out of the Consumer Guarantees Act 1993 and any other legal requirement to the extent that we are liable to and can lawfully do so on behalf of any manufacturer or other supplier.
15. Where, in terms of clauses 13 or 14 of these Terms of Supply, we have contracted out of the Consumer Guarantees Act 1993 or any other legal requirement, you will ensure that you and each subsequent supplier of any goods supplied by us to you contracts out with each purchaser or recipient of those goods supplied and does so:
  - 15.1 for us and for each party we have contracted out for under clauses 13 and/or 14; and
  - 15.2 to the extent that we have in clauses 13 or 14, as if we were you or the subsequent supplier contracting out directly with the purchaser or recipient of those goods supplied.
16. To ensure better compliance with health and safety requirements customers must report to our reception and not enter workshop areas unless escorted by one of our staff or expressly authorised.
17. All warranties and implied terms under the Sale of Goods Act 1908 do not apply and are excluded from these Terms of Supply and so do not apply to any contract between you and us.
18. We are not liable to you for indirect or consequential loss, damage or costs however that loss, damage or those costs arise whether contemplated by our contract for the supply of goods or services or not. This exclusion of liability includes, but is not limited to, the exclusion of indirect or consequential loss, damage or costs caused by or arising from any breach of contract or negligence.
19. We are not responsible nor liable in any way to you for delay or default in delivery or completion of an order, service or job (or any part thereof) nor for any direct, indirect or consequential loss or damage arising therefrom.
20. Any remedy sought by you against us, in respect of goods or services supplied by us, is limited to damages. Under no circumstances will the liability of us exceed the total sum of the invoice for the goods or services supplied by us.
21. All claims by you or your agent must be notified to us with full details of the claim within 7 days of you becoming aware of or believing you may be entitled to a claim against us. We need not consider any claim and will not be liable for any claim notified to us after this 7 day period.

22. If you fail to make any payment due to us on the due date then, without prejudice to any of our other rights, we may:
  - 22.1 suspend or cancel delivery of any other goods or services due to you; and/or
  - 22.2 appropriate any payment made by you to such of the goods or services (or goods or services supplied under any other agreement with you) as we may in our sole discretion think fit.
23. No credits or refunds of goods or services supplied by us will be given unless we agree in writing or we are, despite these Terms of Supply, lawfully required to do so.
24. Risk in any goods supplied by us to you passes:
  - 24.1 as soon as they leave our premises where we or our agent is responsible for delivering the same to you or your agent, or if you do not collect them after we request you to (or we make a reasonable attempt to notify you of our request) then 48 hours after that request or notification, provided that risk will not pass through the temporary removal of the goods from our premises for non-delivery purposes, e.g. a test drive;
  - 24.2 as soon as you or your agent take(s) possession or control of the goods if you or your agent are uplifting the same.
25. You agree as follows:
  - 25.1 we may use your personal information to send you details of any of our goods or services;
  - 25.2 we may make enquiries from any person or company concerning your credit or employment to enable us to access any application you may make for credit, goods or services;
  - 25.3 you authorise and direct us to seek and obtain from and supply any information concerning the credit or business standing of you to any to any other person whether trader, merchant, firm, organisation, company or any agency or source whatever including any credit agency or association or the like and you direct any such person to supply or receive and record such information to and from us;
  - 25.4 this authorisation applies for all goods and services currently used by you and for any future dealings you may have with us;
  - 25.5 you understand that you have the right of access to, and correction of, all personal information held that relates to you, and we are entitled to disclose, on request, account information to any person you may specify from time to time.

26. You will immediately at your own cost do such acts and provide such information as in our opinion (acting in our absolute discretion) may be necessary or desirable to enable us to perfect under the Personal Property Securities Act 1999 ('PPSA') the security interest (as defined in the PPSA) created by this job sheet/invoice, including these Terms of Supply, as a first-priority interest, or with such other priority as we may agree to in writing. You waive any right to receive a copy of a verification statement under the PPSA and agree, in respect of this job sheet/invoice, including these Terms of Supply, to the extent permitted by law, that, as between you and us:

26.1 sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA will not apply;

26.2 you will have none of the rights referred to in paragraphs (a), (c), to (e) and (h) to (j) of section 107(2) of the PPSA or in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA; and

26.3 where we have rights in addition to those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA.

You must pay the costs, charges and expenses of and incidental to the need for, or desirability of registration of, a financing statement or financing change statement or any action taken by us to comply with the PPSA (including complying with a demand given under section 162 of the PPSA) or to protect our position under the PPSA. You must pay any costs incurred by us, including legal costs on a solicitor-own client basis, arising from each dispute or negotiation with third parties claiming an interest in any goods supplied by us to you. You will not change your name without first notifying us in writing of the proposed name change and the new name at least seven (7) days before the change takes effect.

27. You agree to grant to us such security(ies) as we may request so as to secure to us all sums due to us and in particular, where you are an unlisted company, to procure a personal guarantee from your principal shareholder or shareholders, such security(ies) and guarantee to be prepared by our solicitors and to contain such provisions as our solicitors consider necessary. Should you default in the granting of any such security or guarantee (in registrable form if required) then, by these Terms of Supply, we are irrevocably appointed your attorney in your name and on your behalf to enter into and to sign all deeds and instruments, and to do all acts and things that may be necessary or expedient for all or any of the purposes just described.

28. If you do not pay our invoice and all other amounts due to us under these Terms of Supply by the due date for payment, we may charge you interest on the unpaid amount from the date due until the day of payment. Interest will be calculated on a daily basis and will be at the rate of 5% per annum above our principal trading bank's base overdraft interest rate as amended from time to time.

## WARRANTY STATEMENT

Subject to "Your Warranty", the "Conditions" and "Exceptions", we will repair or replace without charge any part supplied by us and listed on the front page of this job card sheet that is defective as a result of faulty workmanship or materials used in its installation by us or in its manufacture.

### Your Warranty:

- is only effective for:
  - six months from the date of installation of the part by us or until your vehicle has been driven 10,000 kilometres after installation of the part by us, whichever occurs first or,
  - If an alternative period/distance is identified on the front of this job sheet/invoice, for that period or distance, whichever occurs first
- does not extend to any subsequent owner of the vehicle during the warranty period
- will only be honoured by us, and not the Motor Trade Association (Inc) or any other party
- is in addition to all rights conferred by law except as varied in the adjoining Terms of Supply
- also applies to any parts repaired or replaced under this warranty but only until expiry of the original period of warranty.

## Conditions

We will only be liable under this warranty if:

- your vehicle and its parts are maintained and operated in accordance with each manufacturer's recommendations
- your vehicle and its parts are not misused or neglected
- you notify us of the defect as soon as you become aware of it and within the warranty period
- after becoming aware of a defect you take your vehicle to us for repair as soon as possible
- you only use fuels, lubricants, fluids and parts in your vehicle the use of which in your vehicle is approved by the manufacturer of the vehicle or the manufacturer or producer of the fuel, lubricant, fluid or part
- the account for the work appearing on the front of this invoice has been paid in full
- the prior written consent of us is obtained to each subsequent repair by a third party in connection with repair work undertaken or supplies made previously by us
- you have satisfied the requirements of clause 22 of the Terms of Supply and are not in breach of any other provisions in this job sheet/invoice, Terms of Supply or Warranty.

## Exceptions

Your warranty does not cover:

- maintenance or normal service items (such as lubricants, brake linings and pads, bulbs, spark plugs, wheel alignments and wheel balancing) unless a manufacturing defect is evident
- repairs or replacements necessary as a result of wear and tear (such as but not limited to clutches, exhaust silencers, tyres) unless a manufacturing defect is evident
- losses or expenses such as loss of use, damage to property or person or expenses for tolls, travel, hire or accommodation
- vehicle or parts accessories not part of your vehicle or vehicle part at the time of installation by us or the vehicle's manufacture
- damage caused by accident, collision, fire, flood, chemicals, industrial fall-out, hail, salt, sand, stones or environmental elements.

## COMPLAINTS POLICY

- As a valued customer you are important to us.
- If you are not satisfied with the repair work done to your vehicle, please first discuss this with the Manager/Service Manager.
- Alternatively you can put your complaint in writing to the Manager of the business.
- If your complaint or concern is not satisfactorily resolved by discussion or written reply please contact the MTA Mediation Service, toll free on 0508 682 633.