

# Ultimate Mechanical & Machinery Limited

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## TERMS OF TRADE

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### PART A: OVERVIEW OF THESE TERMS

These Terms of Trade apply to all Products and Services that we supply to you. At Ultimate Mechanical & Machinery Limited ensuring our Terms are transparent and easy to understand is important to us. If you have any questions or are unsure about anything, please contact us.

To make these Terms easy to use, we:

- have set out a '**Dictionary**' in Part H, which explains the specific meaning, for the purposes of these Terms, of the capitalised words used in these Terms; and
- have included **summaries / outlines** for each Part in blue boxes – these are intended for guidance only and do not replace any of the terms in these Terms.

#### 1. Introduction

- These Terms set out all of the terms and conditions that apply to Products and Services that we supply to you.
- Any other terms and conditions will not apply unless expressly approved in writing by us for a particular Order.
- We may update these Terms on notice to you in writing. Our updated Terms will apply to all Services you order after we have notified you that we have updated our Terms.

### PART B: PRODUCTS AND SERVICES

Part B sets out details about placing Orders. It also sets out the process that applies if there are any issues with an Order or if an Order is cancelled.

#### 2. Order process

- You may order Products and Services from us in accordance with our order processes that we advise to you at any time.
- All Orders are subject to acceptance by us. We may accept an Order (in whole or in part) by issuing an invoice for the applicable Products and Services, delivering the Products and Services or otherwise confirming the Order in writing.
- We are under no obligation to enquire as to the authority of any person placing an Order on your behalf.
- You may request variations to Orders. However, acceptance is at our discretion and is subject to our approval in writing, in accordance with our process for variations that we advise to you.
- We may require variations to the Order as a result of unforeseen circumstances discovered before or during the provision of the Services which are beyond our control. These variations will be submitted to you for approval, and you shall be required to respond to any variation submitted by us within 10 Business Days. Failure to do so will entitle us to add the cost of the variation to the Order. Payment for all variations must be made in full at the time of their completion.
- Delivery of Products and Supply of Services**
  - We will use reasonable efforts to deliver Products and provide Services on the Delivery Date specified in the relevant Order. However, unless expressly agreed otherwise, the Delivery Date is indicative only.
  - You may collect the Products at our premises or we will deliver the Products and provide the Services at the delivery location set out in the relevant Order or any other location agreed with you in writing.
  - If you request that we leave the Products outside our premises for collection or to deliver the Products to an unattended location, then the Products shall be left at your sole risk. In the event that the Products are lost, damaged or destroyed then replacement of the Products shall be at your expense.
  - Subject to clause 16, if the delivery location is at your premises, you must provide our Representatives with suitable access to your premises during normal business hours, together with any assistance reasonably required by our Representatives to deliver the Products and perform the Services.

#### 4. Supply of Products

- Clauses 4 and 5 applies if your Order relates to Products.
- We may deliver Orders in instalments (unless agreed otherwise).
- If you delay, fail or refuse to accept delivery of Products, the Products will be treated as delivered when we were willing and able to deliver the Products. Without affecting any other rights we may have, we may charge you for any reasonable expenses or additional costs incurred by us as a result of the delay, failure or refusal to accept delivery (including storage).
- Risk in the Products passes to you on delivery.
- You are responsible for ensuring that any instructions, recommended uses, applications and installation methods are followed for Products and any cautions and/or warnings are observed.

#### 5. Defects

- You must inspect the Products on the date of delivery and notify us of any alleged defect or damage or incorrect products or quantity (**Defects**). Upon request, you must allow us to inspect, or return to us, any defective or damaged Products. You should notify us of any alleged Defects as soon as possible if any to enable us to confirm that any Defects occurred before delivery to you.
- If there are any Defects in an order, the remedies set out in clause 24.1 will apply.

#### 6. Second-hand goods

- For second hand goods agreed by you, you accept the goods with all faults and agree that no warranty is given by us as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. We shall not be responsible for any loss or damage to the goods, or caused by the goods, or any part thereof however arising.

#### 7. Cancellation

- Either party may cancel an Order by written notice if the other party:
  - commits a material breach of these Terms which is not remedied within 20 Business Days of written notice of the breach from the other party; or
  - suffers an Insolvency Event.
- If we are unable to deliver any Products or Services to you, due to reasons beyond our reasonable control, we may cancel the Order (in whole or in respect of any instalment) by giving written notice to you. We will repay you any amount you have paid to us in advance for the relevant Products and/or Services. We will not be liable for any loss or damage arising from such cancellation.
- We will not accept cancellation any Order for Products made to your specifications, or for non-stocklist items after the Order has been accepted by us.

### PART C: PRICE

Part C sets out terms relating to the Price for the Products and Services.

#### 8. Price

- The Price for Products and Services will be:
  - calculated in accordance with our current price list as at the date you submit the relevant Order; or
  - calculated based on our standard hourly rate as at the date of the Services are provided; or
  - the Price that we have quoted for the Products and Services (subject to clause 8.5).
- We may update our price list and standard hourly rates at any time on notice to you in advance. Any such updates will only apply to Orders placed after the effective date of the update.
- Unless otherwise stated, the Price does not include GST.
- We may charge you for freight, insurance, installation, disbursements and any applicable taxes, duties and levies, in addition to the Price.
- Where we provide a quotation, proposal or estimate:
  - unless otherwise specified, the quotation, proposal or estimate is valid for 30 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing;
  - we may withdraw the quotation, proposal or estimate at any time before you accept it or we accept an Order by notice in writing to you; and
  - the quotation, proposal or estimate will be exclusive of any applicable additional amounts referred to in clause 8.4.

### PART D: PAYMENT TERMS

Under these Terms, we may supply Products and Services to you on credit. It is very important to us that you pay us in full by the due date for payment. The following clauses provide additional protections for us to reflect that arrangement, including terms that will apply if there are any delays or disputes relating to payments.

#### 9. Payment

- You must pay us all Amounts Owing to our bank account (notified to you and updated at any time) or any other payment method that we agree with you.
- Payment shall be:
  - before delivery of the Products; or
  - on delivery of the Products; or
  - on completion of the Services; or
  - by way of instalments/progress payments in accordance with the Order; or
  - as indicated on our invoice; or
  - 20<sup>th</sup> of the month following; or
  - no later than 7 days from the date of the invoice (unless otherwise stated on the invoice), and
  - in full without deduction, withholding, set-off or counterclaim.
- If you have any dispute relating to an invoice issued by us, you:
  - must notify us of that dispute in writing within 10 days from the date of invoice (after that period, unless there is a manifest error, you will be deemed to have accepted the invoice); and
  - will only withhold payment of the amount in dispute and will, upon resolution of any dispute, immediately pay the balance (if any) due to us.
- We and you each agree to promptly deal with any disputed invoices and, where possible, to resolve disputes before the due date for payment.

#### 10. Credit terms and repayment obligations

- The supply of Products and Services to you on credit is subject to our prior approval. We may use the services of credit reporters and debt collection agencies (in accordance with clause 17.2).
- You must notify us immediately:
  - if you suffer an Insolvency Event. Any Amount Owing will, whether or not due for payment, immediately become due and payable if an Insolvency Event occurs; or
  - if you are a company and there is a material change in your effective management or ownership.

#### 11. Deposit and guarantee

- We may require that you pay us in advance, or pay a deposit, or provide a guarantee, before we supply Products or Services, as security for any Amount Owing.
- If we cancel an Order (for reasons other than your breach of these Terms), we will refund any deposit that you have paid to us in full. Otherwise, any deposit that you pay to us is non-refundable, unless we expressly agree otherwise in writing.

#### 12. Rights to recover Products

- We retain ownership of all Products that we supply you until we have received payment in full of the Amount Owing.
- You may resell or use any Products in the ordinary course of your business before ownership of the Products has passed to you. However, you will be deemed to hold the proceeds of sale or use (in whatever form) on trust for us to the extent of the Amount Owing.

- 12.3 If any Amount Owing is overdue or if an Insolvency Event occurs, you must return Products to us on request, or permit us to enter any premises where Products may be stored to repossess those Products.
- 13. Late payments**
- 13.1 If payment in full of any Amount Owing (which is not subject to a genuine dispute) is not made to us on the due date, we may:
- suspend, or cancel (in accordance with clause 7.1(a)), the provision of any or all Products and Services to you;
  - cancel any rebates or discounts (whether or not previously credited); and
  - charge you interest at a rate of 2.5% per month on the balance of the outstanding amount from the due date of payment until the date the outstanding amount is paid, accruing daily and charged monthly.
- 14. Costs of recovering Amounts Owing**
- 14.1 You must reimburse us for any costs and expenses we incur to recover any Amount Owing, or exercise our rights to recover Products, including any debt collection fees or commission and full legal expenses.
- 15. Security interests**
- 15.1 You acknowledge that these Terms create, in our favour, a security interest (as defined in the PPSA) in all Products and the proceeds of any Products (in accordance with clause 12) (**Security Interest**), to secure the payment by you to us of the Amount Owing.
- 15.2 You undertake to promptly sign any further documents which you may reasonably require to enable us to perfect and maintain the perfection of the Security Interest (including by registration of a financing statement).
- 15.3 The parties agree to contract out of the provisions of the PPSA as set out in section 107 of the PPSA to the extent permitted by law and you waive your rights to receive a verification statement relating to any Security Interest. Where you have rights in addition to Part 9 of the PPSA, those rights will continue to apply.
- 15.4 We reserve the right to require a guarantee, or any other additional security (at your cost), as security for payment, before we provide Products or Services to you.

## PART E: COMPLIANCE AND INFORMATION

Part E sets out the provisions relating to health and safety, privacy, confidentiality and intellectual property rights. Unless we agree otherwise, we own all intellectual property rights in the Products and Services.

### 16. Health and safety

- 16.1 Each party will comply with the Health and Safety at Work Act 2015 (**HSW Act**), including all applicable regulations under the HSW Act, as well as all applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 16.2 You must notify us of any known hazards arising from your premises to which a work or any person may be exposed while on the premises and ensure that your workplace is without risks to the health and safety of any person.
- 16.3 Each party must consult, co-operate with and co-ordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Products and/or Services (including in connection with the delivery of the Products and/or Services).
- 17. Privacy**
- 17.1 We may collect, use and share Personal Information:
- for the purposes of the performance of our obligations or exercise of our rights under these Terms; and
- in accordance with the Privacy Act 2020. This may include sharing Personal Information with our Related Companies.
- 17.2 We may use the services of credit reporters and debt collection agencies. We may provide your Personal Information to those agencies in order to use their services. Information disclosed to credit reporters (including default information) will be held by them and used to provide credit reporting services.
- 17.3 If you provide us with any information about a third party (including a Representative), or authorise us to collect that information, you confirm that you are authorised by the individual concerned to provide their Personal Information to us or authorise the collection of information about them in accordance with this clause 17. You also confirm that you have informed the individual of their rights to access and request correction of Personal Information.
- 17.4 You (if you are an individual) and your Representatives have the right to access, and request correction of, any of your Personal Information held by us.

### 18. Confidentiality

- 18.1 Each party must keep confidential all Confidential Information.
- 18.2 Nothing in clause 18.1 prevents a party from disclosing Confidential Information if disclosure is:
- required by law, or Regulator (but only to the extent required);
  - is reasonably required to enable a party to perform its obligations or exercise its rights under these Terms; or
  - to a Related Company or Representatives on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with these Terms.
- 18.3 We may also use any information that we collect in connection with the Products and Services, in accordance with applicable law, to improve our Products and Services, for statistical and research purposes, and for general information purposes including to provide industry and market insights. You grant us a non-exclusive, perpetual, irrevocable, royalty-free licence to use and sub-licence information for this purpose. Any information that we disclose or publish will be in a fully aggregated and de-identified form (to ensure that it does not identify any individuals and your information remains confidential).
- 19. Intellectual property**
- 19.1 We own all rights, title and interest in the intellectual property rights in the Products and Services at all times.
- 19.2 Any new intellectual property which is created by us or on our behalf, including as a result of, or in connection with, the provision of our Products and Services, will be owned by us, unless otherwise agreed in writing.
- 19.3 You assign all intellectual property rights to us with effect from creation, to the extent required to give effect to clause 19.1 and 19.2, and agree to do all things reasonably required by us to give effect to such assignment.
- 19.4 You warrant that the use by us of any designs, instructions or specifications supplied to us by you will not infringe the intellectual property rights of any other person and indemnify us against any losses, damages, liabilities or costs (including full legal costs) that we may suffer or incur in the event of any such infringement.

## PART F: DISPUTE RESOLUTION AND LIABILITY

If a dispute arises under these Terms, we must follow the process in this part F to resolve the matter. If a claim arises under these Terms, any amount payable by you or us will be limited by the maximum liability and exclusions set out in this Part F.

### 20. Dispute Resolution

- 20.1 If a dispute arises out of or in connection with these Terms, either party may give a notice to the other setting out the details of the dispute (**Dispute Notice**).
- 20.2 Following receipt of a Dispute Notice:

- a Representative of each of us (with authority to settle the dispute) will meet, within 10 Business Days, to try to resolve the dispute;
  - if the dispute is not resolved within 10 Business Days of our Representatives meeting (or if the meeting does not take place, for any reason, within 10 Business Days of the date of a Dispute Notice), the dispute will be referred to the senior manager of each party (if applicable), who will try to resolve the dispute within a further 10 Business Days; and
  - if the dispute is not resolved by our respective Representatives in accordance with clause 20.2(b), then either party may commence court proceedings.
- 20.3 This clause 20 does not restrict either party from applying to a court for interim measures or any other form of urgent relief at any time. However, neither party may commence any other form of court proceeding without first following the procedure set out in this clause 20.
- 20.4 Each party must continue to perform its obligations in these Terms, despite the existence of a dispute, subject to the termination rights set out in these Terms.
- 21. Consumer Guarantees Act and Fair Trading Act**
- 21.1 If the Products and Services include any Consumer goods or services, nothing in these Terms will affect any rights you may have as a consumer under the Consumers Guarantees Act 1993 (**CGA**) and the Fair Trading Act 1986 (**FTA**).
- 21.2 If you are acquiring, or hold yourself out as acquiring, the Products and Services in trade, to the extent permitted by law:
- for the purposes of section 5D of the FTA, the parties are contracting out of sections 9, 12A, 13 and 14(1) of the FTA;
  - you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by these Terms); and
  - it is fair and reasonable for the parties to be bound by this clause 21.2.
- 21.3 If you are acquiring any Products for the purpose of resupply in trade, you undertake that you will:
- contract out of the CGA to the maximum extent permitted by law in your contracts with your own customers; and
  - procure that your customers, and each other person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with customers.
- You will indemnify us against any liability or cost incurred by us as a result of your breach of this clause 21.3.

### 22. Warranties

- 22.1 We warrant that all Products and Services are free from material defects in materials and workmanship. However, this warranty will not cover any defect or damage to the extent that it is caused by:
- any fault or defect in our Products or Services resulting from any of your (or your Representatives) act or omissions (outside of the ordinary use of the Products or Services); or
  - minor deviations in specification, measurements, colour, weight, size or strength of the Products.
- 22.2 To the fullest extent permitted by law (including as set out in clause 22.1), except as expressly set out in these Terms, we expressly exclude all warranties, representations, descriptions, statements, terms or conditions (whether express or implied) whether under statute, law, trade, custom or otherwise that would apply to the Products and Services including all warranties relating to the suitability for resale, quality, or fitness for any particular purpose, of our Products or Services. Notwithstanding the provisions of this clause 22, if it is deemed that the Products and Services supplied by us are defective, then the provisions of clause 24 would apply.

### 23. Third party suppliers

- 23.1 If you request and authorise us to arrange the provision of Products or Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, these Terms will apply to our Services in arranging such supply, provided that we exclude all liability in connection with the supply of Products and Services to you directly by a third party supplier. You agree to pay any commission or other payments due to us in accordance with these Terms.

### 24. Limitation of liability

- 24.1 To the extent permitted by law, our total liability under or in connection with these Terms and the Products and Services is limited to, at our option:
- in the case of Products, any one or more of the following:
    - the replacement of the Products or the supply of equivalent products;
    - the repair of the Products;
    - the payment of the cost of replacing the Products or of acquiring equivalent products; or
    - the payment of the cost of having the Products repaired.
  - in the case of Services:
    - supplying the Services again; or
    - the payment of the cost of having the Services supplied again.
- 24.2 If we have any liability under or in connection with these Terms, to the maximum extent permitted by law:
- our total aggregate liability to you for any loss, damage or liability arising out of or in connection with these Terms will be limited to the Price paid by you to us for the applicable Products and/or Services; and
  - we will not be liable for any:
    - indirect, special or consequential loss or damage whatsoever; or
    - loss of profits, revenue, data, goodwill, customers or opportunity or loss of or damage to reputation.
- 24.3 The limitations and exclusions on liability in this clause 24 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort (including negligence) or statute.
- 24.4 In no circumstances will we have any liability whatsoever under or in connection with these Terms:
- for the acts or omissions of your Representatives or any third party;
  - for any act or omissions of performance in accordance with your instructions (or instructions from your Representatives); or
  - to any third party.

## PART G: GENERAL

Part G describes miscellaneous provisions necessary for the proper operation of these Terms.

### 25. General

- 25.1 **Governing Law:** These Terms are governed by and to be construed in accordance with the laws of New Zealand and each party submits to the exclusive jurisdiction of the courts of Hamilton, New Zealand.
- 25.2 **Previous Agreements:** These Terms constitute the entire agreement of the parties about its subject matter and supersedes any previous written agreements and written representations.
- 25.3 **Sub-contracting:** We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.
- 25.4 **Assignment:** You must not assign, novate or transfer your rights or obligations under these Terms without our prior written consent (which may be withheld in our sole discretion). We may assign these Terms to any other person on notice to you (provided that we will request your prior approval (not to be unreasonably withheld or delayed) if the assignment could have any material adverse effect on you). Without

- limiting the foregoing, we may assign to any other person all or part of the Amount Owed by you to us.
- 25.5 **Amendments:** Any amendment to these Terms must be in writing signed by each party, except where stated otherwise in these Terms or where we are required to make changes to ensure compliance with applicable laws (in which case we notify you of the changes in writing).
- 25.6 **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under these Terms where such failure or delay is caused by events or circumstances beyond our reasonable control, including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of God.
- 25.7 **Waiver:** A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.
- 25.8 **Survival:** Any provision of these Terms, which is by its nature a continuing obligation, will survive termination.
- 25.9 **Rights of Third Parties:** These Terms are not intended to confer a benefit on any person other than the parties to these Terms.
- 25.10 **Relationship:** We will provide Products and Services to you as an independent service provider. Nothing in these Terms creates any partnership, joint venture or employment relationship between the parties.
- 25.11 **Non-exclusive:** These Terms are not exclusive and do not impose any restriction on us providing Products and Services to, or you purchasing any product or services from, any other person.
- 25.12 **Counterparts:** These Terms may be executed in any number of counterparts (including by electronic signature or by email exchange of .pdf copies) which together will constitute the one instrument.

#### PART H: DICTIONARY

Part H sets out a Dictionary, to define the capitalised terms used in these Terms.

#### 26. Definitions

**Amount Owed** means any amount owed by you to us, from time to time, including the Price, any applicable amounts referred to in clause 8.4, any interest payable by you, your liability under these Terms and any enforcement costs incurred by us in seeking payment of any Amounts Owed by you.

**Business Day** means Monday to Friday, excluding public holidays in New Zealand.

**Confidential Information** means all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, the terms of use, the Products and Services (as applicable), and intellectual property rights, but excludes information which is:

- in the public domain, other than as a result of a breach of these Terms;
- in the possession of a party prior to the commencement of these Terms without any obligation of confidentiality; and
- is independently developed or acquired by a party prior to the commencement of these Terms without relying on information which would itself be Confidential Information.

**Consumer** has the meaning given to that term in the Consumers Guarantees Act 1993.

**Delivery Date** means the date for delivery of the Products and/or Services, as specified in the Order.

**Insolvency Event** means, in relation to a party, any step is taken toward any of the following steps, or any of the following steps has occurred:

- the primary, or all, of its business activities being suspended or ceasing;
- the presentation of an application for its liquidation;
- the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- the appointment of a liquidator, receiver, statutory manager, or similar official;
- the suspension or threatened suspension of the payment of its debts;
- the enforcement of any security against the whole or a substantial part of its assets;
- if you are an individual, anything having a similar effect to any of the events specified above happens in relation to you; or
- any other insolvency event or proceedings analogous to any of the foregoing occurs in any relevant jurisdiction,

in each case, unless it takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.

**Order** means an Order for Products or Services that you submit to us, and we approve, in accordance with clause 2.

**Personal Information** has the meaning given to that term in the Privacy Act 2020.

**PPSA** means the Personal Property Securities Act 1999.

**Price** means the Price payable, in accordance with clause 8.1.

**Products** means any Products (and associated Services) supplied by us to you at any time, including the Products specified in an Order.

**Regulator** means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or any of the Products and/or Services.

**Related Company** has the meaning given to it in the Companies Act 1993, read as if a reference to company was a reference to any body corporate of any jurisdiction.

**Representatives** means directors, officers, employees, agents and contractors of the relevant party.

**Services** means any Services supplied by us to you at any time, including the Services specified in an Order.

**Specific Terms** means the terms (if any) that are included in Part I to these Terms.

**Terms** means these Terms of Trade (including any Specific Terms outlined in Part I), as may be amended from time to time, each Order and any additional terms expressly agreed in accordance with clause 1.2 (if applicable).

**We or us** means the supplier of Products and Services, Ultimate Mechanical & Machinery Limited.

**You or your** means the customer purchasing Products and Services from us.

#### 27. Interpretation

27.1 In these Terms, unless the context otherwise requires:

- headings are for convenience only and do not affect interpretation;
- a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
- a reference to "in writing" includes by email;
- the words "include" or "including", or similar expressions, are to be construed without limitation;
- a reference to a party to includes that party's successors and permitted assigns and substitutes; and
- a word importing the singular includes the plural and vice versa.

#### PART I: SPECIFIC TERMS

Part I details additional specific terms that apply to your order of the Products and Services.

#### 28. Insurance claims

28.1 In the event that the Products and/or Services provided by us are the subject of an insurance claim that you have made, then you shall be responsible for the payment

of any monies payable to the insurance company and agrees to honour your obligation for payment for such transactions invoiced by us and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.

28.2 You acknowledge and agree that:

- if machinery or components is submitted for repair under a warranty or insurance claim, and the claim is declined or payment is delayed, that you shall be liable for payment for any such repair; and
- Services completed under warranty or insurance claims will not cover consumables. Any consumables used during the Services shall be charged for as a variation.

#### 29. Payment by third parties

29.1 Where you are the person requesting or organising us to supply the Services is/ or are acting on behalf of any third parties you acknowledge and agree that:

- 1 person shall be appointed by the third parties to represent them for the purposes of this contract as so identified and notified to us in writing; and
- if those third parties are intended to be responsible for the payment of the Price, then it shall be your responsibility to collect the contributions from each party. In the event that any third-party does not pay for the Services when due, then you shall be liable for that portion of the Price as if you had contracted the Services on your own behalf.

#### 30. Additional charges

30.1 You acknowledge and agree that:

- in the event that you request us to provide the Services urgently, that may require our staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then we reserve the right to charge you additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between both parties;
  - if we have been requested by you to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to you irrespective of whether or not the repair goes ahead.
- 30.2 We reserve the right to vary the Price in the event of:
- increases to us in the cost of labour or Products which are beyond our control; or
  - where additional Services are required as result of unforeseen circumstances including, but not limited to:
    - parts availability; or
    - changes to the Products and/or Services which are to be supplied; or
    - further faults found upon disassembly and/or further inspection, misdiagnosis whilst undertaking repairs.

30.3 Any variations to the Price will be dealt with in accordance with the provisions of clause 2.5.

30.4 Where we are requested to store your machinery, or where the machinery is not collected within 24 hours of advice to you that it is ready for collection, then we may (at our sole discretion) charge a reasonable fee per day for storage.

30.5 For on-site assistance, a minimum call-out fee shall be applicable, which shall be increased for any after-hours call-outs. Additionally, all Services provided shall be charged for at an hourly-basis unless agreed upon by the parties.

#### 31. Availability of Products

31.1 You acknowledge and accept that Products for accepted Orders may be subject to availability and if, for any reason, the Products are not or cease to be available, we reserve the right to substitute comparable Products (or components of the Products) and vary the Price. In all such cases we will notify you in advance of any such substitution, and also reserves the right to place your Order and/or Services on hold until such time as both parties agree to such changes.

#### 32. Specifications

32.1 You acknowledge and agree that:

- all descriptive specifications, illustrations, dimensions and weights stated in our or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. You shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by us; and
- Products supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. We will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

#### 33. Your responsibilities

33.1 You acknowledge and agree that it is your responsibility to:

- ensure that the machinery 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 on our premises. The machinery is at all times stored and repaired at your sole risk; and
- remove any personal/valuable/perishable items from the machine prior to us carrying out the Services. We shall not be liable in the event of any apparent loss or damage to personal/valuable/perishable items left or stored.

#### 34. Your acknowledgements

34.1 You acknowledge and agree that we:

- are only responsible for the parts that are replaced by us and we do not at any stage accept any liability in respect of previous services and/or parts supplied by any other third-party that subsequently fail and found to be the source of the failure, you agree to indemnify us against any loss or damage to the parts, or caused by the parts, or any part thereof howsoever arising; and shall not be responsible for any defect, deterioration and/or damage to the Products if the you do not follow our recommendations.

34.2 You acknowledge and accept that:

- where we have performed temporary repairs on the vehicle that we:
  - offer no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - will immediately advise you of the fault and shall provide you with an estimate for the full repair required.
- we shall be entitled to:
  - retain any components replaced during the provision of the Services; and
  - the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.