

1. Definitions

- 1.1 "TAR" means Truck Alignment & Repair Ltd, its successors and assigns or any person acting on behalf of and with the authority of Truck Alignment & Repair Ltd.
- 1.2 "Client" means the person/s buying the Parts 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.
- 1.3 "Parts" means all Parts or Services supplied by TAR to the Client at the Client's request from time to time (where the context so permits the terms 'Parts' or 'Services' shall be interchangeable for the other).
- 1.4 "Vehicle" shall mean any vehicle or machinery that is described in any documentation supplied by TAR to the Client.
- 1.5 "Price" means the Price payable for the Parts as agreed between TAR and the Client in accordance with clause 5 below.

2. Acceptance

- 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 Parts.
- 2.2 These terms and conditions may only be amended with TAR's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and TAR.

3. Electronic Transactions Act 2002

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Client shall give TAR 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 TAR as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At TAR's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by TAR to the Client; or
 - (b) the Price as at the date of delivery of the Parts according to TAR's current price list; or
 - (c) TAR's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 TAR reserves the right to change the Price if a variation to TAR's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as an obscured or other defect found on closer inspection, prerequisite work by any third party not being completed or as a result of any increase to TAR in the cost of materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) and labour) will be charged for on the basis of TAR's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 At TAR's sole discretion a deposit may be required.
- 5.4 Time for payment for the Parts being of the essence, the Price will be payable by the Client on the date/s determined by TAR, which may be:
 - (a) by way of instalments/progress payments in accordance with TAR's payment schedule;
 - (b) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by TAR.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Client and TAR.

- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to TAR an amount equal to any GST TAR must pay for any supply by TAR under this or any other agreement for the sale of the Parts. 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.

6. Delivery of Parts

- 6.1 Delivery ("Delivery") of the Parts is taken to occur at the time that the Client or the Client's nominated carrier takes possession of the Parts at TAR's address.
- 6.2 The Client must take delivery by receipt or collection of the Parts whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Parts as arranged then TAR shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.3 Delivery of the Parts to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.4 TAR may deliver the Parts in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time or date given by TAR to the Client is an estimate only. The Client must still accept delivery of the Parts even if late and TAR will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

7. Risk

- 7.1 Risk of damage to or loss of the Parts passes to the Client on Delivery and the Client must insure the Parts on or before Delivery.
- 7.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Client, TAR is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by TAR is sufficient evidence of TAR's rights to receive the insurance proceeds without the need for any person dealing with TAR to make further enquiries.
- 7.3 In the event the Client requests TAR to work on a Vehicle, and leaves the Vehicle and/or the keys at TAR's premises whilst the site is unattended, then TAR shall not be responsible for the security of the machine or the keys, and shall not be held liable for any loss, damages or costs howsoever resulting.
- 7.4 The Client acknowledges and agree that where TAR has performed temporary repairs on the machine that:
 - (a) TAR offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) TAR will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
- 7.5 The Client acknowledges that TAR is only responsible for Parts that are replaced by TAR and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure. The Client agrees to indemnify TAR against any loss or damage to the Parts, or caused by the Parts, or any part thereof howsoever arising.
- 7.6 The Client acknowledges that it is their sole responsibility to ensure the Vehicle is insured adequately or at all.
- 7.7 TAR shall not be liable for the loss of or damage to the Vehicle, its accessories or contents while garaged or being driven in connection with the work authorised unless caused by the negligence of TAR or TAR's employees.

8. Specifications

- 8.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in TAR's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client 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 TAR.
- 8.2 The Client shall be responsible for ensuring that the Parts ordered are suitable for their intended use.
- 8.3 TAR reserves the right to substitute comparable Parts (or components of the Parts), and in all such cases TAR will notify the Client in advance of any such substitution.

9. Testing of Vehicles

- 9.1 TAR or its employees may test drive or carry out tests on the Vehicle at TAR's discretion. TAR will not be liable for (and the Client indemnifies TAR against) any damages caused to, or by, the Vehicle during such tests unless it arises from the recklessness or wilful misconduct of TAR or its employees.

10. Title

- 10.1 TAR and the Client agree that ownership of the Parts shall not pass until:
- the Client has paid TAR all amounts owing to TAR; and
 - the Client has met all of its other obligations to TAR.
- 10.2 Receipt by TAR 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.
- 10.3 It is further agreed that:
- until ownership of the Parts passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Parts and must return the Parts to TAR on request.
 - the Client holds the benefit of the Client's insurance of the Parts on trust for TAR and must pay to TAR the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed.
 - the Client must not sell, dispose, or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Parts then the Client must hold the proceeds of any such act on trust for TAR and must pay or deliver the proceeds to TAR on demand.
 - the Client should not convert or process the Parts 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 TAR and must sell, dispose of or return the resulting product to TAR as it so directs.
 - the Client irrevocably authorises TAR to enter any premises where TAR believes the Parts are kept and recover possession of the Parts.
 - TAR may recover possession of any Parts in transit whether or not delivery has occurred.
 - the Client shall not charge or grant an encumbrance over the Parts nor grant nor otherwise give away any interest in the Parts while they remain the property of TAR.
 - TAR may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Client.

11. Personal Property Securities Act 1999 ("PPSA")

- 11.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - a security interest is taken in all Parts and/or collateral (account) – being a monetary obligation of the Client to TAR for Services – that have previously been supplied and that will be supplied in the future by TAR to the Client.
- 11.2 The Client undertakes to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which TAR may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - indemnify, and upon demand reimburse, TAR for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Parts charged thereby;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Parts and/or collateral (account) in favour of a third party without the prior written consent of TAR; and
 - immediately advise TAR of any material change in its business practices of selling the Parts which would result in a change in the nature of proceeds derived from such sales.
- 11.3 TAR and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

- 11.5 Unless otherwise agreed to in writing by TAR, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Client shall unconditionally ratify any actions taken by TAR under clauses 11.1 to 11.5.

12. Security and Charge

- 12.1 In consideration of TAR agreeing to supply the Parts, the Client charges 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).
- 12.2 The Client indemnifies TAR from and against all TAR's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TAR's rights under this clause.
- 12.3 The Client irrevocably appoints TAR and each director of TAR as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

13. Client's Disclaimer

- 13.1 The Client hereby disclaims any right to rescind, or cancel any contract with TAR or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by TAR and the Client acknowledges that the Parts are bought relying solely upon the Client's skill and judgment.

14. Defects

- 14.1 The Client shall inspect the Parts on delivery and shall within seven (7) days of delivery (time being of the essence) notify TAR of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford TAR an opportunity to inspect the Parts within a reasonable time following delivery if the Client believes the Parts are defective in any way. If the Client shall fail to comply with these provisions the Parts shall be presumed to be free from any defect or damage. For defective Parts, which TAR has agreed in writing that the Client is entitled to reject, TAR's liability is limited to either (at TAR's discretion) replacing the Parts or repairing the Parts.
- 14.2 Parts will not be accepted for return other than in accordance with 14.1 above.

15. Warranty

- 15.1 Subject to the conditions of warranty set out in clause 15.2 TAR warrants that if any defect in any workmanship of TAR becomes apparent and is reported to TAR within twelve (12) months of the date of delivery (time being of the essence) then TAR will either (at TAR's sole discretion) replace or remedy the workmanship.
- 15.2 The conditions applicable to the warranty given by clause 15.1 are:
- the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - failure on the part of the Client to properly maintain any Parts; or
 - failure on the part of the Client to follow any instructions or guidelines provided by TAR; or
 - any use of any Parts otherwise than for any application specified on a quote or order form; or
 - the continued use of any Parts after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - fair wear and tear, any accident or act of God.
 - the warranty shall cease and TAR shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without TAR's consent.
 - in respect of all claims TAR shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 15.3 For Parts not manufactured by TAR, the warranty shall be the current warranty provided by the manufacturer of the Parts. TAR shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Parts.

15.4 In the case of second hand Parts, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by TAR as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. TAR shall not be responsible for any loss or damage to the Parts, or caused by the Parts, or any part thereof however arising.

16. Consumer Guarantees Act 1993

16.1 If the Client is acquiring Parts for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Parts by TAR to the Client.

17. Intellectual Property

17.1 Where TAR has designed, drawn or developed Parts for the Client, then the copyright in any designs and drawings and documents shall remain the property of TAR.

17.2 The Client warrants that all designs, specifications or instructions given to TAR will not cause TAR to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify TAR against any action taken by a third party against TAR in respect of any such infringement.

17.3 The Client agrees that TAR may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Parts which TAR has created for the Client.

18. Default and Consequences of Default

18.1 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 TAR's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

18.2 If the Client owes TAR any money the Client shall indemnify TAR from and against all costs and disbursements incurred by TAR in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, TAR's collection agency costs, and bank dishonour fees).

18.3 Further to any other rights or remedies TAR may have under this contract, if a Client has made payment to TAR by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by TAR under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

18.4 Without prejudice to any other remedies TAR may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions TAR may suspend or terminate the supply of Parts to the Client. TAR will not be liable to the Client for any loss or damage the Client suffers because TAR has exercised its rights under this clause.

18.5 Without prejudice to TAR's other remedies at law TAR shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to TAR shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to TAR becomes overdue, or in TAR's opinion the Client will be unable to make a payment when it falls due;
- (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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

19. Cancellation

19.1 TAR may cancel any contract to which these terms and conditions apply or cancel delivery of Parts at any time before the Parts are delivered by giving written notice to the Client. On giving such notice TAR shall repay to the Client any money paid by the Client for the Parts. TAR shall not be liable for any loss or damage whatsoever arising from such cancellation.

19.2 In the event that the Client cancels delivery of Parts the Client shall be liable for any and all loss incurred (whether direct or indirect) by TAR as a direct result of the cancellation (including, but not limited to, any loss of profits).

19.3 Cancellation of orders for Parts 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.

20. Privacy Act 1993

20.1 The Client authorises TAR or TAR's agent to:

- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by TAR from the Client directly or obtained by TAR from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

20.2 Where the Client is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.

20.3 The Client shall have the right to request TAR for a copy of the information about the Client retained by TAR and the right to request TAR to correct any incorrect information about the Client held by TAR.

21. Unpaid Seller's Rights

21.1 Where the Client has left any item with TAR for repair, modification, exchange or for TAR to perform any other service in relation to the item and TAR has not received or been tendered the whole of any monies owing to it by the Client, TAR shall have, until all monies owing to TAR are paid:

- (a) a lien on the item; and
- (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.

21.2 The lien of TAR shall continue despite the commencement of proceedings, or judgment for any monies owing to TAR having been obtained against the Client.

22. General

22.1 The failure by TAR to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect TAR'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.

22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

22.3 TAR 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 TAR of these terms and conditions (alternatively TAR's liability shall be limited to damages which under no circumstances shall exceed the Price of the Parts).

22.4 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 TAR nor to withhold payment of any invoice because part of that invoice is in dispute.

22.5 TAR may license or sub-contract all or any part of its rights and obligations without the Client's consent.

22.6 The Client agrees that TAR may amend these terms and conditions at any time. If TAR makes a change to these terms and conditions, then that change will take effect from the date on which TAR notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for TAR to provide Parts to the Client.

22.7 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.

22.8 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.