

Humphrey Motors Terms and Conditions for the Supply of Goods and Services ("Terms")

1. Definitions

- 1.1 "Customer" means the person/s or company or any person acting on behalf of and with the authority of the Customer, who engages HM to supply Goods and/or Services in accordance with the Terms.
- 1.2 "HM" means Starfleet Pty Ltd ACN 164 182 816 trading as Humphrey Motors ABN 20 164 182 816.
- 1.3 "Goods" means all accessories, automotive parts, products and workshop consumables supplied by HM to the Customer in accordance with the Terms as well as any other goods supplied to the Customer by HM which are incidental to HM's supply of Goods and Services.
- 1.4 "Services" means all services supplied by HM to the Customer in accordance with the Terms and includes but is not limited to all automotive services and repairs, technical advice, breakdown salvage, towing and all charges for labour, hire charges, insurance charges, freight or any fee or charge associated with the supply of the Services.
- 1.5 "Vehicle" means the automobile, plant or equipment in respect of which HM supplies Goods and/or Services to the Customer.

2. Acceptance

- 2.1 Any instructions or authorisation in writing received by HM from the Customer for the supply of Goods and/or Services constitutes a binding agreement and the Customer is deemed to have accepted the Terms.
- 2.2 Any agent, director or employee of a Customer who instructs HM to supply Goods and/or Services or signs an agreement authorising HM to supply Goods and/or Services is deemed to have full authority to provide the instructions or sign the agreement.
- 2.3 HM is authorised, at its discretion, to accept verbal and/or written instructions in relation to the supply of Goods and/or Services from any agent or employee of the Customer.

3. Supply of Goods and Services

- 3.1 The Customer authorises HM to dispose of any parts removed from the Vehicle and replaced by HM. HM will hold the removed parts for collection by the Customer within seven (7) days of the delivery of the Vehicle where the Customer provides written notice to HM prior to HM commencing the supply of Goods and/or Services.
- 3.2 Unless otherwise stated or negotiated the supply of Goods and/or Services by HM to the Customer will take place during HM's ordinary business hours. If the Customer requests HM supply Goods and/or Services outside of HM's ordinary business hours, HM reserves the right to charge the Customer an overtime surcharge for the supply of those Goods and/or Services.

4. Payment Terms

- 4.1 Where no price is stated in writing or agreed to orally the Goods and/or Services are deemed to be supplied at HM's prevailing Goods price(s) and hourly labour/service charges at the time HM is engaged to supply Goods and Service to the Customer.
- 4.2 Where a price has been agreed, it may be increased by the amount of any reasonable increase in the cost of supply of the Goods and/or Services that is beyond the control of HM between the date HM is engaged to supply Goods and/or Services and when Goods and/or Services are supplied by HM to the Customer.
- 4.3 Unless otherwise agreed, the Customer must pay the price in full upon presentation of the tax invoice for the supply of Goods and/or Services, and prior to collection of the Vehicle.
- 4.4 Unless stated otherwise, the price excludes any GST. Any applicable GST, other tax or duty will be payable in addition to the price.
- 4.5 Receipt of a cheque or other negotiable instrument does not constitute payment until such negotiable instrument is paid in full.
- 4.6 Interest on overdue invoices accrues daily from the date when payment becomes due until the date of payment, at a rate of 2% per month, calculated daily.
- 4.7 If any tax invoice becomes overdue HM reserves the right to charge an administration fee of \$500.00 per month.
- 4.8 The Customer will pay HM's costs and disbursements incurred in pursuing any recovery action or any other claim or remedy against the Customer including collection costs, debt recovery fees and legal costs, resulting from the Customer's failure to make due payment.

5. Time for Completion

HM gives no warranties in relation to the following:

- (a) when Goods and/or Services are to be supplied;
- (b) the length of time that the supply of Goods and/or Services is to take, whether or not specified; or
- (c) any completion date for supply of Goods and/or Services.

6. Title and Security

- 6.1 HM retains title in all Goods provided to the Customer until such time as the Goods have been paid for in full. The Customer must not seek to transfer, charge or otherwise deal with the Goods until such time as the Goods have been paid for in full.
- 6.2 HM may retake possession of the Goods in which title is held by HM at any time upon notice to the Customer. The Customer grants to HM the right to enter any property occupied by the Customer for the purpose of exercising any rights granted to HM under these Terms.
- 6.3 The Customer charges with payment of the monies and compliance with all obligations owed by the customer to HM under these Terms all beneficial interest (freehold and leasehold) in any real property held now or in the future by the Customer.
- 6.4 The Customer grants a security interest (as defined in the Personal Property Securities Act 2009 (Cth) (thePPSA)) to HM in:
 - (a) the Customer's Vehicle(s) in respect of which HM has supplied Goods and/or Services; and
 - (b) all the Customer's present and after-acquired property,as security for the performance of the Customer's obligations under the Terms.
- 6.4 The Customer acknowledges that HM may do anything reasonably necessary in order to perfect the security interest and comply with the requirements of the PPSA. The Customer agrees to provide, without charge, all information and do all things reasonably necessary to assist HM to undertake these matters.
- 6.5 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPSA.
- 6.6 The Customer and HM agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA.

7. Limitation of liability and warranties

- 7.1 Any Vehicle provided to HM by the Customer is held by HM at the Customer's risk. The Customer releases HM from any claim including any claim arising in negligence in respect of any damage to the Vehicle or loss suffered by the Customer whilst the Vehicle is held by HM.
- 7.2 Risk in the Goods passes to the Customer upon delivery.
- 7.3 HM, its agents and employees will not be liable to the Customer in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Customer which results from any delay in supply of the Goods and/or Services or any failure of HM to supply part of the Services.
- 7.4 To the extent allowable by law (including the *Competition and Consumer Act 2010*) HM excludes liability for any loss or damage, including consequential loss, however caused (including by the negligence of HM) suffered by the Customer in connection with HM's supply of Goods and/or Services.
- 7.5 So far as the law permits, the liability of HM for a breach of a condition or warranty that cannot be excluded by law is limited, at the discretion of HM, to;
 - (a) the replacement or repair of the Goods;
 - (b) the supply of equivalent Goods and/or Services; or
 - (c) the cost of replacing or repairing the Goods or acquiring or providing equivalent Goods and/or Services.
- 7.6 The Customer must inspect the Vehicle immediately on delivery and notify HM of any alleged defect, damage or failure to supply Goods and/or Services in accordance with the instructions received by HM. The Customer must allow HM an opportunity to inspect the Goods and/or Services supplied within a reasonable time following notification of an issue if the Customer believes the supply of Goods and/or Services is defective in any way. If the Customer fails to comply with these provisions the Goods and/or Services supplied are presumed to be free from any defect or damage.
- 7.7 All Goods supplied by HM are supplied subject only to the manufacturer's warranty. HM does not provide any additional warranty in relation to Goods supplied to the Customer.

8. Termination

Where HM is no longer able to supply Goods and/or Services or some part of the Goods and/or Services, HM may provide notice to the Customer terminating HM's supply of Goods and/or Services.

9. General

- 9.1 HM may license or sub-contract all or any part of its rights and obligations under the Terms without the Customer's consent.
- 9.2 The Customer agrees that HM may review these Terms at any time. If, following any such review, there is to be any change to these Terms during the period in which Goods and/or Services are supplied, then HM will notify the Customer of any proposed changes.
- 9.3 Any provision of these Terms which is unenforceable or partly unenforceable is, where possible, to be read down so as to be enforceable, and if it cannot be read down, severed to the extent necessary to make these Terms enforceable.