

Hydraulic Ram Overhaul Australia Pty Ltd – Terms & Conditions of Trade

1.	<p>Definitions</p> <p>"Seller" means Hydraulic Ram Overhaul Australia Pty Ltd (as Trustee for HROA Trust) T/A Hydraulic Ram Overhaul Australia Pty Ltd. Its successors and assigns or any person acting on behalf of and with the authority of Hydraulic Ram Overhaul Australia Pty Ltd (as Trustee for HROA Trust) T/A Hydraulic Ram Overhaul Australia Pty Ltd.</p> <p>"Customer" means the person(s) acquiring the Services as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.</p> <p>"Services" shall mean all Services provided by the Seller to the Customer at the Customer's request from time to time.</p> <p>"Parts" shall mean Parts provided by the Seller to the Customer incidentally in the course of the Seller conducting or providing to the Customer, the Services.</p> <p>"Price" means the Price payable for the Services as agreed between the Seller and the Customer in accordance with clause 4 below.</p> <p>Where the context so permits the terms 'Parts' or 'Services' shall be interchangeable for the other, for the purposes of this agreement.</p>	7.	<p>Title</p> <p>The Customer acknowledges and agrees that the Customer's obligations to the Seller for the provision of the Services shall not cease, and ownership of the Parts shall not pass, until:</p> <p>(a) the Customer has paid the Seller all amounts owing for the particular Services; and</p> <p>(b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.</p> <p>Receipt by the Seller 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 and until then the Seller ownership or rights in respect of the Services, and this agreement, shall continue.</p> <p>It is further agreed that:</p> <p>(a) until ownership of the Services passes to the Customer in accordance with clause 7.1, that the Customer is only a bailee of the Parts, and unless those Parts have become fixtures must return them to the Seller on request;</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Parts on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed;</p> <p>(c) the Customer must not sell, dispose of or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Parts then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;</p> <p>(d) the Customer should not convert or process the Parts or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;</p> <p>(e) the Customer 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 the Seller;</p> <p>(f) unless the Parts have become fixtures, the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Parts are kept and recover possession thereof; and</p> <p>(g) the Seller may commence proceedings to recover the Price, notwithstanding that ownership of the Services has not passed to the Customer.</p>	11.3	<p>against an action taken by a third party against the Seller in respect of any such matter.</p> <p>The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Parts which the Seller has created for the Customer.</p>
1.2	<p>"Customer" means the person(s) acquiring the Services as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.</p>	7.2	<p>Receipt by the Seller 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 and until then the Seller ownership or rights in respect of the Services, and this agreement, shall continue.</p>	12.	<p>Default and Consequences of Default</p>
1.3	<p>"Services" shall mean all Services provided by the Seller to the Customer at the Customer's request from time to time.</p>	7.3	<p>It is further agreed that:</p> <p>(a) until ownership of the Services passes to the Customer in accordance with clause 7.1, that the Customer is only a bailee of the Parts, and unless those Parts have become fixtures must return them to the Seller on request;</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Parts on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed;</p> <p>(c) the Customer must not sell, dispose of or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Parts then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;</p> <p>(d) the Customer should not convert or process the Parts or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;</p> <p>(e) the Customer 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 the Seller;</p> <p>(f) unless the Parts have become fixtures, the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Parts are kept and recover possession thereof; and</p> <p>(g) the Seller may commence proceedings to recover the Price, notwithstanding that ownership of the Services has not passed to the Customer.</p>	12.1	<p>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 the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p>
1.4	<p>"Parts" shall mean Parts provided by the Seller to the Customer incidentally in the course of the Seller conducting or providing to the Customer, the Services.</p>	8.	<p>Personal Property Securities Act 2009 ("PPSA")</p> <p>In this clause financing statement, financing change statement, security agreement, and security interest shall have the meaning given to it by the PPSA.</p> <p>Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Parts and collateral (accounts) – being a monetary obligations of the Customer to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Customer.</p> <p>The Customer undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Parts and/or collateral (accounts) in favour of a third party without the prior written consent of the Seller;</p> <p>(e) immediately advise the Seller of any material change in its business practices.</p>	12.2	<p>If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to, internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).</p> <p>Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the provision of Services to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.</p>
1.5	<p>"Price" means the Price payable for the Services as agreed between the Seller and the Customer in accordance with clause 4 below.</p>	8.1	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	12.3	<p>Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer 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</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p>
1.6	<p>Where the context so permits the terms 'Parts' or 'Services' shall be interchangeable for the other, for the purposes of this agreement.</p>	8.2	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	12.4	<p>Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer 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</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p>
2.	<p>Acceptance</p> <p>The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts provision of the Services.</p>	8.3	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	13.	<p>Cancellation</p> <p>The Seller may cancel any contract to which these terms and conditions apply or cancel provision of the Services at any time before the Services have commenced by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any money paid by the Customer for the Services. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>In the event that the Customer cancels provision of the Services, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>Cancellation of orders for Parts made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p>
2.1	<p>The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts provision of the Services.</p>	8.4	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	13.1	<p>The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.</p>
2.2	<p>These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.</p>	8.5	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	13.2	<p>Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer 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</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p>
3.	<p>Change in Control</p> <p>The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.</p>	8.6	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	13.3	<p>Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer 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</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p>
4.	<p>Price and Payment</p> <p>At the Seller's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Seller to the Customer; or</p> <p>(b) the Seller's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation, or otherwise for a period of thirty (30) days.</p> <p>The Seller reserves the right to change the Price to:</p> <p>(a) if a variation to the Parts which are to be supplied is requested; or</p> <p>(b) if a variation to the Services originally scheduled (including any applicable plans or specifications, or the provision of Services outside normal working hours as per clause 5.7) is requested; or</p> <p>(c) where additional Services are required due to insufficient or incorrect information being supplied by the Customer, or the discovery of hidden or unidentifiable difficulties (including, but not limited to, towing services, obscured or hidden faults, etc.), which are only discovered on provision of the Services; or</p> <p>(d) in the event of increases to the Seller in the cost of labour or Parts, which are beyond the Seller's control.</p>	8.7	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	13.4	<p>Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer 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</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p>
4.1	<p>At the Seller's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Seller to the Customer; or</p> <p>(b) the Seller's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation, or otherwise for a period of thirty (30) days.</p>	8.8	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	14.	<p>Privacy Act 1988</p> <p>The Customer agrees for the Seller to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Seller.</p> <p>The Customer agrees that the Seller may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.</p>
4.2	<p>The Seller reserves the right to change the Price to:</p> <p>(a) if a variation to the Parts which are to be supplied is requested; or</p> <p>(b) if a variation to the Services originally scheduled (including any applicable plans or specifications, or the provision of Services outside normal working hours as per clause 5.7) is requested; or</p> <p>(c) where additional Services are required due to insufficient or incorrect information being supplied by the Customer, or the discovery of hidden or unidentifiable difficulties (including, but not limited to, towing services, obscured or hidden faults, etc.), which are only discovered on provision of the Services; or</p> <p>(d) in the event of increases to the Seller in the cost of labour or Parts, which are beyond the Seller's control.</p>	8.9	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	14.1	<p>The Customer agrees that the Seller may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.</p>
4.3	<p>Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:</p> <p>(a) on completion of the Services;</p> <p>(b) by way of instalments/progress payments in accordance with the Seller's payment schedule;</p> <p>(c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Seller.</p>	8.10	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	14.2	<p>The Customer agrees that the Seller may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.</p>
4.4	<p>Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card – Visa and MasterCard only (plus a surcharge of two and a half percent (2.5% of the Price), or by any other method as agreed to between the Customer and the Seller.</p> <p>Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any provision of Services by the Seller under this or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer 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.</p>	8.11	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	14.3	<p>The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other agreed purposes or required by):</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.</p>
4.5	<p>Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any provision of Services by the Seller under this or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer 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.</p>	8.12	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	14.4	<p>The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other agreed purposes or required by):</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.</p>
5.	<p>Provision of the Services</p> <p>Subject to clause 5.2, it is the Seller's responsibility to ensure that the Services are provided to the Customer as soon as it is reasonably possible.</p>	8.13	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	14.5	<p>The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other agreed purposes or required by):</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.</p>
5.1	<p>Subject to clause 5.2, it is the Seller's responsibility to ensure that the Services are provided to the Customer as soon as it is reasonably possible.</p>	8.14	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	14.6	<p>The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other agreed purposes or required by):</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.</p>
5.2	<p>The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Seller's control, including but not limited to any failure by the Customer to:</p> <p>(a) make a selection; or</p> <p>(b) have the site ready for the Services; or</p> <p>(c) notify the Seller that the site is ready.</p>	8.15	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	14.7	<p>The information given to the CRB may include:</p> <p>(a) personal information as outlined in 14.1 above;</p> <p>(b) name of the credit provider and that the Seller is a current credit provider to the Customer;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Seller has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of the Seller, the Customer has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p>
5.3	<p>Where the Seller is to provide any Services at the Customer's nominated address then the Customer shall be liable for all costs incurred by the Seller from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at the Seller's standard rates and any Parts purchased for the Services).</p>	8.16	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	14.8	<p>The information given to the CRB may include:</p> <p>(a) personal information as outlined in 14.1 above;</p> <p>(b) name of the credit provider and that the Seller is a current credit provider to the Customer;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Seller has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of the Seller, the Customer has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p>
5.4	<p>The Seller may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p>	8.17	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	14.9	<p>The Seller will destroy personal information upon the Customer's request (by e-mail or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.</p> <p>The Customer can make a privacy complaint by contacting the Seller via e-mail. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.</p>
5.5	<p>The Customer acknowledges and accepts that the provision of Parts may be subject to availability and if, for any reason, the Parts are not or cease to be available, the Seller reserves the right to vary the Price with alternative Parts as per clause 4.2. The Seller also reserves the right to halt all Services until such time as the Seller and the Customer agree to such change.</p>	8.18	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	15.	<p>Unpaid Seller's Rights</p> <p>Where the Customer has left any vehicle/equipment/machinery with the Seller for repair, modification, exchange or for the Seller to perform any other services in relation thereto, and the Seller has not received or been tendered the whole of any moneys owing to it by the Customer, the Seller shall have, until all moneys owing to the Seller are paid:</p> <p>(a) a lien on the vehicle/equipment/machinery; and</p> <p>(b) the right to retain or sell the vehicle/equipment/machinery, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.</p>
5.6	<p>Where the Seller is to provide the Services at the Customer's nominated address:</p> <p>(a) the Customer shall ensure that the Seller has clear and free access to at all times to enable them to provide the Services. The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Seller;</p> <p>(b) and if it discovered upon arrival that the Customer has not provided the correct information pertaining to the vehicle/equipment/machinery for repair, which then causes delay in the Services and the need for the Seller to revisit the site with the appropriate Parts to complete the Services, then the Seller reserves the right to charge an additional fee for travel in accordance with clause 4.2.</p>	8.19	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	15.1	<p>The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Seller having been obtained against the Customer.</p>
5.7	<p>In the event that the Seller is required to provide the Services urgently, that may require the Seller's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Seller reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between the Seller and the Customer.</p>	8.20	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	15.2	<p>The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller'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.</p> <p>These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which the Seller has its principal place of business, and are subject to the jurisdiction of the courts in that state.</p>
5.8	<p>Where the Seller is requested to store the Parts or the Customer's vehicle/equipment/machinery, or where these are not collected within twenty-four (24) hours of advice to the Customer that they are ready for collection, then the Seller (at its sole discretion) may charge a reasonable fee for storage.</p>	8.21	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	15.3	<p>Subject to clause 10, the Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price).</p> <p>The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.</p>
5.9	<p>Any time specified by the Seller for provision of the Services is an estimate only and the Seller will not be liable for any loss or damage incurred by the Customer as a result of any delay thereof. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Seller is unable to provide the Services as agreed solely due to any action or inaction of the Customer, the Seller shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.</p>	8.22	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p>	15.4	<p>The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.</p> <p>If the Seller makes any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Seller to provide Services to the Customer.</p> <p>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.</p>
6.	<p>Risk</p> <p>The Customer acknowledges that it is the Customer's responsibility to remove all personal/valuable items from the vehicle/equipment/machinery prior to the Seller providing the Services. The Seller shall not be liable in the event of any apparent loss or damage to personal/valuable items left in the vehicle/equipment/machinery.</p>	8.23	<p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or </p>		