



Terms of trade for Autospark Tauranga 2018

1. Definitions

- a. 'we', 'us', 'our' refer to the Supplier
- b. 'you', 'your', 'yourself' refer to the Customer
- c. 'Agreement' and 'This Agreement', or 'Terms of Trade' 'Terms and Conditions' or 'Terms of Supply' mean these terms and conditions along with any job sheet, quotation or estimate, as well as any further correspondence between us
- d. 'the product' or 'the service' refers to any work or any good that we make or obtain and provide to you (the Customer) under this agreement
- e. "MTA Warranty" refers to the Repairer Warranty offered by MTA attached at the end of these terms of trade.

1. GST

- a. All prices are shown excluding GST.

2. Quotations and Estimates

- a. Any estimate of price we may give is simply an opinion as to what we expect the price is likely to be. Vehicles are complicated machines and many operational components are hidden from view or access. We use reasonable efforts to provide a reasonably accurate estimate, but in many cases we cannot properly assess exactly what is required (both in terms of parts and labour) until we are doing the work, and so we cannot (and do not) give any assurance that the final price will correspond to the estimate given.
- b. In some cases we will be able to give a quotation (which might include some options or parameters), which will be marked as such, in which case our quotation will be binding on us unless other issues/work outside the scope of works quoted are identified. Unless our price indication is clearly identified as a quotation, it is just an estimate.
- c. If during our work programme we identify reasonably significant additional issues/work that are outside the scope of works covered by the original estimate or quotation then we will endeavour to identify any additional costs in a further and/or revised estimate or quotation and to seek your agreement as to how we proceed before we incur significant additional costs.

3. Price and payment terms



- a. We do not offer credit under any circumstance. All accounts must be settled in their entirety on cash terms, by a means of payment acceptable to you, on invoice following completion of the works and before the vehicle will be released.

4. Credit card fees

- a. We only accept Visa and Mastercard credit cards
- b. We reserve the right to recover reasonable costs incurred in processing transactions

5. Guarantees, warranties and MTA Warranty

- a. As MTA members, we offer the MTA Repairer Warranty. This is attached at the end of these terms of trade.

6. Importing goods

- a. To the extent that we may be considered (as a result of importing goods or otherwise) to be a manufacturer for the purposes of the Consumer Guarantees Act 1993 ("CGA") of goods which we import specifically for the work we are doing for you then, pursuant to section 42 of the CGA, we notify you (as the customer first acquiring the goods from us as a supplier in New Zealand) that:
 - i. We cannot and not undertake that repair facilities and parts will be available for those goods which we have advised you we will be importing; and
 - ii. Section 12 of the CGA does not apply in respect of those goods.

7. Contracting out of Contract & Commercial Law Act 2007

- a. The parties agree that all warranties and implied terms under Part 3 of the Contract & Commercial Law Act 2017 ("Sales of Goods" provisions) do not apply, and are expressly excluded (and negated) by these Terms of Trade to the maximum extent permissible by law, and so do not apply to this agreement between you and us.

8. Consumer Guarantees Act 1993

- a. Except to the extent that this record (including these terms and conditions, any job sheet, quotation or other document) shows that we have expressly contracted out of or excluded obligations pursuant to the Consumer Guarantees Act 1993 ("CGA"), nothing in this agreement limits any right that you may have as a consumer under the CGA. The rights that you may have under the CGA may be in addition to your rights and obligations you would otherwise have under this agreement.

9. Passing of risk and liability for loss



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- a. We are not responsible, to the maximum extent permissible by law, for risks relating to your vehicle while it is in our possession
- b. We are not liable, to the maximum extent permissible by law, for indirect or consequential loss to you regardless of how that loss arises

10. Customer supplied parts

- a. We do not accept any liability with respect to parts that have been supplied by you/ the customer, for us to fit or use when working on a vehicle (maintenance, repair or improvements). In particular and without limitation, we do not accept any responsibility for the quality, suitability or fitness for purpose of parts which you (and not we) have selected, sourced and supplied. Any warranty that we are providing with respect to goods and services provided by us will not apply to parts supplied by you.
- b. We accept that this does not alter our liability, including our liability under any warranty that we provide, in respect of goods and services that we supply to you, including the services we provide in fitting parts supplied by you (but not in respect of the parts themselves).
- c. Without assuming any responsibility for checking parts supplied by you, we reserve the right to decline to fit or use parts supplied by you which in our reasonable opinion are not suitable or fit for purpose. If we decline to use parts supplied by you we will seek to offer alternative options and agree terms with you to complete the work on that basis, but if parts cannot be sourced or terms cannot be agreed, we shall be entitled to be paid based on our usual hourly or agreed rates for the parts and services already provided and for any work necessary to put the vehicle back together to be returned to you.

11. Passing of ownership

- a. Until payment in full is received by us for all goods supplied by us to you:
 - i. Ownership in any goods supplied by us to you remains with us;
 - ii. The relationship between us and you is a fiduciary relationship, requiring you to look after the goods, which you will hold as bailee for us;
 - iii. You must not sell or otherwise dispose of or deal with the goods or do any act that may affect or defeat our title to the goods provided that you may with our prior consent, as fiduciary, deal or otherwise dispose of the goods in the normal course of trade on the understanding that the proceeds of disposition shall at all times be our property. You must account directly to us for the proceeds of such disposition, all proceeds to be held on trust for us in a separate account;
 - iv. Until ownership of the goods passes from us to you, we may give notice in writing to you to return the goods or any of them to us. Upon such notice



the rights of you to obtain ownership or any other interest in the goods ceases;

- v. You will not charge the goods in any way nor give any interest in the goods while they remain the property of us;
- vi. You will insure and keep insured the goods to the full price against all risks until the price is received by us;
- vii. We may require payment of the total or balance owing for the goods and services supplied in this job sheet/invoice together with any other amounts owing by you to us, and we may take any lawful steps to require payment of all amounts owing by you to us;
- viii. You will meet the costs of any repossession (including the cost of any damage caused necessarily to repossess) and will indemnify us against any claim or costs we may incur arising out of the repossession
- ix. The foregoing provisions do not entitle you to return the goods without demand from us;
- x. We may repossess those goods supplied (and if they are attached to any other equipment or product, detach and remove the goods from that equipment or product) and you authorise us to enter onto any premises to carry out that repossession (and will, if necessary, obtain any third party approval to our entering onto those premises).

12. Personal Property Securities Act/Register (PPSA)

- a. If you wish to seek to establish a form of security interest over the goods that you supply, we recommend seeking legal advice in relation to:
 - i. Relevant appropriate terms and conditions,
 - ii. Steps required to perfect a security interest, and
 - iii. Any steps you wish to take to secure a security interest

13. Delivery arrangements

- a. Where we deliver goods or a repaired vehicle to you, you will pay the reasonable costs of delivery.
- b. During the delivery period, you bear the risk for damage to the vehicle that is out of our control, and as such should ensure you have adequate insurance during this time.

14. Courtesy vehicle



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- a. If one is available, you may use a courtesy vehicle supplied by us for the duration of the repairs on your vehicle.
- b. We will not charge you a fee for use of this vehicle, but you will be required to bring it back with a full tank of fuel at your own cost.

15. Worker's lien

- a. Unless otherwise agreed in writing with you, we require prompt/immediate payment in full on completion of the work you have instructed us to complete, prior to delivery/collection. We will invoice you accordingly, and will dispatch our invoice to you to the address details you provide, and/or we will make the invoice available at our premises and/or in your vehicle when you attend during ordinary business hours to pay the amount due and then collect the vehicle. Our usual payment terms in respect of payment in cash, by direct debit and/or credit card will apply, and (except by prior agreement) that will involve payment in full or confirmation that payment has been received in full, to our sole satisfaction, during our usual business hours.
- b. We reserve the right to exercise our common law right to a worker's lien over your vehicle, if applicable.

16. Interest and storage charges

- a. We may, in addition to and separate from any other rights and remedies available to us (including any right to claim a lawful common law worker's lien), at our option:
 - i. Charge reasonable market rate storage costs of \$25.00 per day for your vehicle or property which has not been uplifted within one week of our notifying you (or making a reasonable attempt to notify you) that the vehicle or property is available for uplifting.
 - ii. Charge reasonable market rate interest at current ANZ bank charges for your vehicle or property which has not been uplifted within one week of our notifying you (or making a reasonable attempt to notify you) that the vehicle or property is available for uplifting

17. Privacy Act 1993

- a. We may collect personal information from you. Before we do this, you must agree that:
 - i. We may use your personal information to send you details of any of our goods or services;
 - ii. We may make enquiries from any person or company concerning your credit or employment to enable us to access any application you may make for credit, goods or services;



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- iii. You authorise and direct us to seek and obtain from and supply any information concerning the credit or business standing of you to any other person whether trader, merchant, firm, organisation, company or any agency or source whatever including any credit agency or association or the like and you direct any such person to supply or receive and record such information to and from us;
- iv. This authorisation applies for all goods and services currently used by you and for any future dealings you may have with us;
- v. You have the right of access to, and correction of, all personal information that relates to you, and we are entitled to disclose, on request, account information to any person you may specify from time to time.

18. Disputes

- a. As a valued customer you are important to us.
- b. If you are not satisfied with the goods supplied and/or services delivered, please first discuss this with the Manager/Service Manager.
- c. Alternatively, you can put your complaint in writing to the Manager of the business.
- d. If your issue, complaint or concern is not satisfactorily resolved by discussion or written reply you are entitled to contact the MTA Mediation/Helpline service, toll free on **0508 682 633**. As an MTA member we are committed to taking reasonable steps to seek to address any concerns and resolve any issues or complaints through the Mediation/Helpline service if we reasonably can.
- e. The Helpline/Mediation service is available in addition to any other dispute resolution options available to you, which may (depending on the issue, complaint or concern) include the Disputes Tribunal, the Motor Vehicle Disputes Tribunal, The District Court or the High Court.



MTA Repairer Warranty

1. What does the MTA Repairer Warranty mean?

The MTA Repairer Warranty:

- gives customers confidence in the soundness of repairs carried out by MTA repairers
- is given at no extra cost to customer
- means that the MTA repairer will remedy any defects (subject to the exclusions set out below) that arise in a repair during the period that the MTA Repairer Warranty is valid (this may involve the MTA repairer covering the reasonable cost of parts and labour to remedy any defects)
- is valid for a qualifying repair, for the earlier of six months or 10,000km from the date of repair.

2. Exclusions

- Where the customer has requested a temporary repair, or where second-hand parts are used – whether supplied by the repairer or customer, limitations may be placed on the warranty. These will be advised by the repairer at the time the repair is carried out.
- The MTA Repairer Warranty does not apply if the:
 - motor vehicle to which the repair is made is used in an inappropriate manner that is considered not to be a normal use for that motor vehicle
 - vehicle has been modified so it no longer complies with the manufacturer's original specifications, after the repair has been completed
 - customer has further work carried out to the initial repair by another repairer without first obtaining the MTA repairer's approval.
- If the vehicle is used in any form of racing competition, the MTA Repairer Warranty no longer applies.
- If any of the exclusions apply, then the MTA Repairer Warranty does not apply and is invalid.

3. Defining customer responsibilities

The customer must:



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- ensure that the motor vehicle that has been repaired is not used in an inappropriate manner or used in any way that is considered 'not normal' use for that qualifying motor vehicle
- comply with the manufacturer's recommendations as to safety, maintenance and the operation of the motor vehicle that has been repaired
- contact the MTA repairer immediately should a defect arise.

4. Process for remedying defects

- In the event that the MTA Repairer Warranty is valid and applicable and none of the exclusions apply so as to invalidate the warranty, the MTA repairer may either carry out the remedial work themselves or nominate an MTA repairer to carry it out.
- If a defect arises in the motor vehicle that has been repaired the customer must immediately contact the MTA repairer. The customer cannot have the qualifying motor vehicle repaired elsewhere without prior consent of the original repairer. Failure to seek approval before the repairs commence will invalidate the MTA Repairer Warranty
- If the MTA repairer is located in excess of 50 kilometres from the customer's home the original MTA repairer will meet reasonable costs of transporting the vehicle.
- If dismantling is required to assess whether the MTA Repairer Warranty applies, the customer will be reimbursed if the claim is valid. This means that the customer must initially authorise and pay for any dismantling and fault diagnosis.
- Where work is carried out by any MTA repairer, other than the original MTA repairer, the customer, having obtained approval of the original MTA repairer, must submit complete invoices to the original MTA repairer which detail repairs, parts and labour together with any outwork.

5. If the warranty is disputed?

- In the event that the applicability of the MTA Repairer Warranty is disputed or the customer is not satisfied with a repair, either party can contact the MTA Mediation Centre to outline the nature of the dispute.
- If it is not clear whether the MTA Repairer Warranty applies, or a customer is not satisfied with the repair, or the matter is complicated, the complaint will be considered by a panel appointed by MTA's CEO. The panel will consider all legislation relating to the dispute.
- If the panel concludes that the MTA Repairer Warranty applies, then the repairer must honour the MTA Repairer Warranty. If the repairer fails to do so then their MTA membership will be reviewed by the Board of Directors.

Note – the MTA Repairer Warranty in no way removes the customer's rights in terms of the Consumer Guarantees Act 1993.