

1. DEFINITIONS

- 1.1 "KAAR Mitsubishi" shall mean Kelvin Armstrong Auto Repairs Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from KAAR Mitsubishi.
- 1.3 "Goods" shall mean:
 - 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by KAAR Mitsubishi to the Customer; and
 - 1.3.2 all Goods supplied by KAAR Mitsubishi to the Customer; and
 - 1.3.3 all inventory of the Customer that is supplied by KAAR Mitsubishi; and
 - 1.3.4 all Goods supplied by KAAR Mitsubishi and further identified in any invoice issued by KAAR Mitsubishi to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Goods that are marked as having been supplied by KAAR Mitsubishi or that are stored by the Customer in a manner that enables them to be identified as having been supplied by KAAR Mitsubishi; and
 - 1.3.6 all of the Customer's present and after-acquired Goods that KAAR Mitsubishi has performed work on or to or in which goods or materials supplied or financed by KAAR Mitsubishi have been attached or incorporated.
- 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods and Services" shall mean all goods, products, services and advice provided by KAAR Mitsubishi to the Customer and shall include without limitation all general automotive, mechanical and electrical repairs and motor vehicle servicing including engine rebuilds, reconditioning, and restorations, warrant of fitness checks and the supply and fitting of all associated parts and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services by KAAR Mitsubishi to the Customer.
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between KAAR Mitsubishi and the Customer and includes all disbursements eg charges KAAR Mitsubishi pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by KAAR Mitsubishi from the Customer for the supply of Goods and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises KAAR Mitsubishi to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by KAAR Mitsubishi to any other party.
- 3.2 The Customer authorises KAAR Mitsubishi to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by KAAR Mitsubishi at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of KAAR Mitsubishi between the date of the contract and delivery of the Goods and Services.

5. PAYMENT

- 5.1 Payment for Goods and Services provided to commercial customers shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Payment for Goods and Services provided to other customers shall be made in full on or before seven (7) days following the date of the invoice ("the due date")
- 5.3 A storage fee of fifteen dollars (\$15) per day may be charged to the Customer in addition to the price on any vehicles which are not uplifted from KAAR Mitsubishi premises within 48 hours of the customer being notified of the completion of Goods and Services.
- 5.4 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.5 Any expenses, disbursements and legal costs incurred by Kelvin Armstrong Auto Repairs in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.6 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.7 A deposit of between 10% and 50% may be required.

6. QUOTATION

- 6.1 Where a quotation is given by KAAR Mitsubishi for Goods and Services:

- 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 KAAR Mitsubishi reserve the right to alter the quotation because of circumstances beyond its control.
 - 6.2 Where Goods and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods and Services.
7. RISK
- 7.1 The Goods and Services remain at Repair's risk until delivery to the Customer.
 - 7.2 Delivery of Goods and Services shall be deemed complete when KAAR Mitsubishi gives possession of the Goods and Services directly to the Customer or possession of the Goods and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
 - 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to KAAR Mitsubishi making time of the essence.
8. AGENCY
- 8.1 The Customer authorises KAAR Mitsubishi to contract either as principal or agent for the provision of Goods and Services that are the matter of this contract.
 - 8.2 Where KAAR Mitsubishi enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.
9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)
- 9.1 Title in any Goods and Services supplied by KAAR Mitsubishi passes to the Customer only when the Customer has made payment in full for all Goods and Services provided by Kelvin Armstrong Auto Repairs and of all other sums due to KAAR Mitsubishi by the Customer on any account whatsoever. Until all sums due to KAAR Mitsubishi by the Customer have been paid in full, KAAR Mitsubishi has a security interest in all Goods and Services.
 - 9.2 If the Goods and Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods and Services shall remain with KAAR Mitsubishi until the Customer has made payment for all Goods and Services, and where those Goods and Services are mixed with other property so as to be part of or a constituent of any new Goods and Services, title to these new Goods and Services shall be deemed to be assigned to KAAR Mitsubishi as security for the full satisfaction by the Customer of the full amount owing between KAAR Mitsubishi and Customer.
 - 9.3 The Customer gives irrevocable authority to KAAR Mitsubishi to enter any premises occupied by the Customer or on which Goods and Services are situated at any reasonable time after default by the Customer or before default if KAAR Mitsubishi believes a default is likely and to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated. KAAR Mitsubishi shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. KAAR Mitsubishi may either resell any repossessed Goods and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and Services and credit the Customer's account with the invoice value thereof less such sum as KAAR Mitsubishi reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
 - 9.4 Where Goods and Services are retained by KAAR Mitsubishi pursuant to clause 9.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
 - 9.5 The following shall constitute defaults by the Customer:
 - 9.5.1 Non payment of any sum by the due date.
 - 9.5.2 The Customer intimates that it will not pay any sum by the due date.
 - 9.5.3 Any Goods and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods and Services.
 - 9.5.4 Any Goods and Services in the possession of the Customer are materially damaged while any sum due from the Customer to KAAR Mitsubishi remains unpaid.
 - 9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
 - 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
 - 9.5.7 Any material adverse change in the financial position of the Customer.
 - 9.6 If the Credit Repossession Act applies to any transaction between the Customer and KAAR Mitsubishi, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.
10. SECURITY INTEREST FOR SERVICE PROVIDERS
- 10.1 The Customer gives KAAR Mitsubishi a security interest in all of the Customer's present and after-acquired property that KAAR Mitsubishi has performed services on or to or in which goods or materials supplied or financed by KAAR Mitsubishi have been attached or incorporated.

11. PAYMENT ALLOCATION

- 11.1 KAAR Mitsubishi may in its discretion allocate any payment received from the Customer towards any invoice that KAAR Mitsubishi determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by KAAR Mitsubishi, payment shall be deemed to be allocated in such manner as preserves the maximum value of KAAR Mitsubishi's purchase money security interest in products.

12. GENERAL LIEN

- 12.1 The Customer agrees that KAAR Mitsubishi may exercise a general lien against any Goods and Services or property belonging to the Customer that is in the possession of KAAR Mitsubishi for all sums outstanding under this contract and any other contract to which the Customer and KAAR Mitsubishi are parties.
- 12.2 If the lien is not satisfied within seven (7) days of the due date KAAR Mitsubishi may, having given notice of the lien at its option either:
- 12.2.1 Remove such Goods and Services and store them in such a place and in such a manner as KAAR Mitsubishi shall think fit and proper and at the risk and expense of the Customer; or
- 12.2.2 Sell such Goods and Services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

13. DISPUTES AND RETURN OF GOODS

- 13.1 The Customer shall be deemed to have accepted the Goods and Services provided unless the Customer notifies KAAR Mitsubishi otherwise within 72 hours of delivery of the Goods and Services to the Customer.
- 13.2 No Goods and Services will be accepted for return by KAAR Mitsubishi without prior approval
- 13.3 Any Goods and Services accepted for return must be in the same resalable quality.
- 13.4 Return freight and insurance costs must be prepaid by the Customer.
- 13.5 A restocking fee of 15 % will apply to all returned parts.

14. LIABILITY

- 14.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon KAAR Mitsubishi which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on KAAR Mitsubishi, Repair's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 14.2 Except as otherwise provided by clause 14.1 KAAR Mitsubishi shall not be liable for:
- 14.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by KAAR Mitsubishi to the Customer; and
- 14.2.2 The Customer shall indemnify KAAR Mitsubishi against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of KAAR Mitsubishi or otherwise, brought by any person in connection with any matter, act, omission, or error by KAAR Mitsubishi its agents or employees in connection with the Goods and Services.

15. WARRANTY

- 15.1 Manufacturer's warranty applies where applicable.
- 15.2 Except where expressly stated by KAAR Mitsubishi no representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Goods and Services.
- 15.3 KAAR Mitsubishi does not provide any warranty that the Goods and Services are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.

16. CONSUMER GUARANTEES ACT

- 16.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and Services from KAAR Mitsubishi for the purposes of a business in terms of section 2 and 43 of that Act.

17. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 17.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for KAAR Mitsubishi agreeing to supply Goods and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to KAAR Mitsubishi the payment of any and all monies now or hereafter owed by the Customer to KAAR Mitsubishi and indemnify KAAR Mitsubishi against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

18. CANCELLATION

- 18.1 KAAR Mitsubishi shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of Goods and Services to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 18.2 Any cancellation or suspension of this agreement shall not affect Repair's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to KAAR Mitsubishi under this contract.

19. MISCELLANEOUS

- 19.1 KAAR Mitsubishi shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 19.2 Failure by KAAR Mitsubishi to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Kelvin Armstrong Auto Repairs has under this contract.
- 19.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.4 The client shall not assign all or any of its rights or obligations under this contract without the written consent of KAAR Mitsubishi.
- 19.5 Where these terms and conditions of trade are at variance with the order or instructions from the Customer these terms and conditions of trade shall prevail.
- 19.6 Unless KAAR Mitsubishi elects otherwise, any dispute between the parties is to be dealt with in accordance with the Arbitration Act 1996