

# MMT MINING SERVICES

## Terms & Conditions

### 1. Interpretation

In these terms and conditions:

Customer includes the person, firm or body corporate (or their agent) who requests the Repairer to carry out Works for it or on its behalf as named on the front of these terms and conditions. Part means any part or component installed, modified or repaired by the Repairer as part of the Works.

Prescribed Terms means the conditions and warranties implied by law into contracts for the supply of goods and services by the Australian Consumer Law which cannot be excluded, restricted or modified by agreement. Repairer means the entity operating the Autospark outlet named on the front of these terms and conditions. Warranty Period means in respect of:

- a) Parts - As prescribed by the manufacturer of any Part (6 months for commercial vehicles);
- (b) labour - 12 months (6 months commercial vehicles).

Works means all works carried out by the Repairer for and on behalf of the Customer including the supply and fitting of all Parts, repairs, maintenance, improvements, supply of labour and specialised tools.

### 2. Purpose

This document sets out the entire terms and conditions relating to the provision of Works and the supply of Parts by the Repairer to the Customer.

### 3. Works Authorisation

(1) By requesting the Repairer to carry out the Works, the Customer authorises the Repairer to do all acts and things that are in the opinion of the Repairer necessary or desirable to carry out and complete the Works including:

- (a) to install or remove from the vehicle any Part, component device; and
- (b) to move, drive and test the vehicle, any Part or any component of the vehicle.
- (c) repair any component or to fit new component to vehicle.

(2) Where the Customer is acting as an agent in requesting the Works, then the Customer is jointly and severally liable with its principal for all amounts payable to the Repairer.

(3) Quotes for any Works by the Repairer are valid for the period stated in that quote unless otherwise advised by the Repairer in writing.

(4) Prices are inclusive of GST.

(5) The Customer cannot withdraw a request for the Works to be done or call for the Works

to cease before completion unless the Repairer otherwise agrees.

#### **4. Payment**

(1) The Customer must pay the full invoiced price, plus all other amounts payable to the Repairer under these terms and conditions, arising out of the Works for the Customer, after which (but not before) the vehicle or other goods upon which the Works have been carried out will be available for collection by the Customer.

(2) If the Customer fails to pay the full invoiced price of the Works within 30 days, the Customer must pay interest on that amount at a rate equal to the benchmark rate quoted by National Australia Bank Limited from time to time plus 2% calculated on a daily basis from its due date for payment until the amount outstanding (plus interest) has been paid in full.

(3) Before making payment, the Customer must inspect the works and satisfy itself that the Works have been carried out in a proper and satisfactory manner. By making payment, the Customer accepts that the Works have been carried out in a proper and satisfactory manner.

(4) Vehicles or other goods upon which Works have been carried out must be collected from the Repairer's premises within 7 days after the invoice date.

(5) If the vehicle or goods are not collected in accordance with clause 4(5) the Repairer may:

(a) charge the Customer for storage costs at \$25.00 for each day or part thereof that the vehicle or goods remains uncollected; or

(b) remove from the vehicle any Parts or components installed by the Repairer without notice to the Customer, without prejudice to any other rights and remedies of the Repairer.

(6) Any works completion date quoted by the Repairer is an estimate only and the Repairer is not liable for any failure to complete the Works by that date.

(7) All parts or components not held in stock by the Repairer are subject to price and exchange rate variations at the time of payment.

#### **5. Lien and Title**

(1) In addition to any workman's or repairer's lien which the Repairer may have over the vehicle, the Parts or other goods on which the Works have been carried out, the Repairer has a general lien over that vehicle, the Parts or other goods and all other property of the Customer that comes into the possession of the Repairer for any reason until all amounts owing by the Customer on any account whatsoever have been paid to the Repairer.

(2) Title to any Parts installed by the Repairer remains with the Repairer until payment in full has been received.

#### **6. Limitation of Liability**

(1) Subject to clause 6(2) and to the extent permitted by the Australian Consumer Law and relevant state legislation, the sole obligation of the Repairer is to provide any part of the Works or to repair or replace the Parts (at the Repairer's discretion) which is found to be

defective during the Warranty Period. The Repairer is not responsible for towing costs or other costs of moving any vehicle or Part to from the Repairer's premises whether before or after the conduct of the Works. The Customer bears the cost of bringing any vehicle to the Repairer's premises for any Work.

(2) The Repairer is not liable for any:

- (a) other claims or damages including, claims for faulty design, negligent or misleading advice, damages arising from loss or use of the vehicle or Parts and any indirect, special or consequential damages or injury to any person, corporation or other entity; or
- (b) costs incurred in remedying defective Work or replacing defective Parts supplied by the Repairer unless the Repairer has been given the opportunity of remedying or replacing such Work or Parts or the Repairer has approved in writing as such work being undertaken by a third party.

(3) If any Works or Parts supplied pursuant to this agreement are supplied to the Customer as a 'consumer' of goods or services within the meaning of that term in the Australian Consumer Law or relevant state legislation the Customer has the benefit of certain non-excludable rights and remedies in respect of the Works or Parts and nothing in this Document excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the Australian Consumer Law or similar legislation is so conferred.

If the vehicle or Works is a product not ordinarily acquired for personal, domestic or household use or consumption pursuant to s 64A of the Australian Consumer Law and similar provisions of relevant state legislation the Repairer's liability is limited to payment of an amount equal to the lowest of:

- (a) the cost of replacing the Parts or supplying equivalent Parts;
  - (b) the cost of repair of the Parts;
  - (c) the cost of having the Parts repaired or replaced.
- (4) No warranty is provided in respect of second-hand Parts.

## **7. Sub-Contracting and Indemnity**

The Repairer may sub-contract on any terms the whole or any part of the Works and any and all acts or things that are in the opinion of the Repairer necessary or desirable to carry out and complete the Works.

## **8. Liability of Employees, Agents and Contractors**

Every exemption from liability and every right, defence and immunity applicable to the Repairer is available to and extends to protect every employee or agent of the Repairer (including any independent contractor employed by the Repairer) while acting in the course of or in connection with his employment or engagement.

## **9. General**

- (1) No variation of these Terms and Conditions (including any Customer purchase order) is effective, even if the Repairer subsequently issues an invoice or carries out the works.
- (2) A failure by the Repairer to exercise any rights or remedies under these Terms and

Conditions is not a waiver of those rights or remedies unless the Repairer gives clear and express written notification of such waiver.

(3) No employee, agent or sub-contractor or other associated person of the Repairer has authority to vary these Terms and Conditions.

(4) These terms and conditions are governed by and construed in accordance with the law of Western Australia.