

Retro Auto Parts Ltd

Terms and Conditions of Trade

1 INTRODUCTION

- 1.1 These terms and conditions apply to all goods sold or supplied by RETRO AUTO PARTS LTD or any subsidiary of it ("the Seller") to the purchaser or recipient of such goods. ("The Buyer") unless the company has agreed to vary them at the time of order.
- 1.2 These terms and conditions constitute the entire agreement between the parties and prevails over all other communications between the parties be they oral or written, previous or contemporaneous unless otherwise expressly agreed in writing and signed by or on behalf of the Seller.

2 QUOTATION

- 2.1 All quotations remain valid for 30 days from the quotation date unless otherwise specified and are subject to confirmation at the time of receipt. Acceptance, in writing howsoever delivered is deemed to constitute acceptance of these terms and conditions.
- 2.2 Quotations costed from sketches, drawings, schedules, or specifications provided by the Buyer are subject to the accuracy of the information provided. The Seller will not be held liable for inaccuracies of quantity, dimension, material or position actually required or used exceeding the quotation.
- 2.3 An extra beyond that specified, or any reduction may be re-quoted. In the event of a price not being agreed upon for extra variations prior to the execution the same shall be to the Buyer at the normal rates in force by the Seller at the time of performance of the work.

3 DEPOSIT

- 3.1 The Seller of the goods may require a deposit of the Contract Price to be paid by the Buyer prior to commencement. The Seller at its sole discretion will determine the sum of the deposit required.

4 PRICE AND PAYMENT

- 4.1 The price of goods shall be that prevailing to the date of quotation but are subject to variations, extras, deletions, increase or decrease in material costs, supply, production, delivery and applicable taxes incurred arising between the date of quotation and the date of delivery.
- 4.2 All prices are current at the time of printing but are subject to alteration without notice. Any variation in price will be to the Buyers account and the contract price will be adjusted according to the amount of the variation.
- 4.3 Payment from the Buyer for all goods shall be made without deduction on the 20th of the month following the date of installation/delivery of the goods. An account is not deemed paid until funds from any bill of exchange has been irrevocably cleared into the Sellers bank account.
- 4.4 All prices quoted exclude Goods and Services Tax.
- 4.5 If full payment is not made by the due date, then:
- The Buyer shall pay penalty interest charged at a rate of 2% per month, calculated daily, until payment is received in full.
- a) The Seller may limit and/or withdraw any credit facility at any time while any overdue amount owing remains unpaid.
- b) Overdue accounts may be passed to a credit control company for credit control incurring their fees. There will be an administrative fee charged.
- c) The Seller reserves the right to add all costs of collection and expenses we may incur in recovering from the Buyer on overdue accounts.

5 DELIVERY

- 5.1 The Seller takes no liability for delays or faults in delivery or transportation costs incurred, except where agreed to in writing. Any delayed delivery shall not invalidate the contract or subject the Seller to any penalty.
- 5.2 The Buyer shall provide suitable access for unloading and appropriate labour or mechanical means to unload the goods. All costs and charges shall be to the Buyer therein.
- 5.3 Risk of any loss, shortage, damage, theft or deterioration to the goods shall be borne by the Buyer from the time of delivery of the goods.

6 RETURNS

- 6.1 Unsuitable, faulty or wrongly supplied goods must be returned within 7 days of the date of invoice in an unmarked "as new" condition, for replacement, repair or credit, stating the invoice number.
- 6.2 All items correctly supplied as ordered returned for credit unmarked and undamaged will be subject to a 10% handling charge to cover administration costs plus freight, tolls etc. The Buyer will be responsible for the costs of returning the product, including but not limited to disassembly, alteration and transport to the Seller or from such depot as were originally obtained.

7 RETENTION OF TITLE

- 7.1 Legal and beneficial ownership of any and all goods shall remain with the Seller until such time as the account has been paid in full.
- 7.2 Notwithstanding the retention of ownership, the Buyer may sell the goods under a bona fide transaction in the ordinary course of business subject to the following provisions:
- (a) The Buyer shall enable the goods to be readily identifiable as the property of the Seller.
- (b) The Buyer shall account to the Seller for all proceeds derived from such sale a bailee in a fiduciary relationship with the Seller clearly identifying them as the property of the Seller.
- 7.3 The Seller may, without prejudice to any other right or remedy, suspend or terminate the contract, and all other monies payable by the Buyer to the Seller, shall immediately become due and payable if the Buyer;
- (a) Fails to pay for the goods on the due date for payment; or
- (b) Breaches any term of these Terms and Conditions; or
- (c) Commits any act of bankruptcy, enters into any composition or arrangement with creditors, commences to be wound up, has a receiver or statutory manager appointed, is insolvent or is in any adverse financial status in respect of any or of its assets.
- 7.4 The Buyer irrevocably authorises the Seller without prejudice to any of its other rights, unimpeded access to enter upon any premises where the goods may be located in order to retake possession without liability arising from any act of trespass. Any diminution in value shall be payable following subsequent sale.
- 7.5 Where the goods are incorporated with or fixed to any property owned by the Buyer or other third party, such incorporation shall be deemed owned in common by the Buyer and Seller in such shares as the value of the goods, and the value of the property into which such goods have been incorporated. Accordingly, this contract shall create an equitable interest entitling the Seller to protect such interest by way of any legal mechanism including caveat of title.

8 GUARANTEE

- 8.1 In the event the Buyer is a company, the signatory personally guarantees payment owing and acknowledges that no indulgence, granting of time, waiver or forbearance to sue, winding-up or bankruptcy whereby the guarantor would be released as a surety in any way, releases the guarantor from liability hereafter.

9 LIABILITY

- 9.1 The provisions of the Consumer Guarantees Act 1993 shall NOT apply to the supply of goods and/or services by the Seller to the Buyer who acquires, or holds himself or herself out as acquiring the goods or services for the purpose of a business. Nothing in these terms is intended to have the effect of contracting out of the provision of the Consumer Guarantees Act 1993 except to the extent permitted by that Act.
- 9.2 The Seller takes no liability for any costs, damage or loss, including consequential, proceedings, claim or demand caused from the provision of any services, recommendations, acts or omissions of the Seller or its agent or servants, howsoever arising pursuant to these general terms and conditions.
- 9.3 The total liability of the Seller in contract, tort or otherwise arising from any defect, breach, negligence under this contract howsoever arising is expressly limited to the contract price.

10 COMPLIANCE

- 10.1 The Buyer shall at all times comply with all legal enactments, statutory and regulatory requirements and all recognised codes of practice in respect of the continued installation and site safety.

11 WARRANTY

- 11.1 No warranty expressed or implied is given in connection with these services or extended to materials, measurements or specifications supplied by the Buyer. The Seller will repair or replace, at its option, free of cost to the Buyer any defective materials or workmanship attributable to the Seller if reported in writing within 24 hours giving reasonable particulars of the event-giving rise to such claim, alleged damage or loss.
- 11.2 Where the goods are subject to an express manufacturers warranty the terms of such shall be deemed to be incorporated herein without creating any privity of contract between the Buyer and such manufacturer to the Seller. Judgement of claim under such warranty shall be final and binding upon the Seller and Buyer.

12 EXCLUSIONS

- 12.1 The indemnities or warranties referred to above shall not apply where the damage, injury or loss arises when;
- (a) Service is required as a result of misuse, abuse, neglect, operator error, use of improper supplies or installation or;
- (b) If any goods are tampered, interfered, adjusted or worked on by a third party.

13 FORCE MAJEURE

- 13.1 The Seller shall not be liable for failure to perform any term of this contract, occasioned directly or indirectly, by any act of God, labour dispute, difficulty in procuring materials, accidents, legislative restrictions or other causes whatsoever (whether similar or not to the forgoing) beyond the Seller's reasonable control.

14 JURISDICTION

- 14.1 This agreement shall be construed under New Zealand Law and will be subject to exclusive jurisdiction of the New Zealand courts herewith.

15 DISPUTES

- 15.1 If the event of any dispute, the undisputed portion of the account shall be payable forthwith without any deduction by way of set off, counterclaim or other legal or equitable claim without the prior written consent of the Seller.
- 15.2 Disputes unresolved by discussion or alternative medium shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Act 1908 and its amendments or statutory modifications. Before arbitration the arbitrating party is to:
- a) Supply and deliver to the other party specific matters of issue and detailed particulars of dispute and such list shall be binding and final as to the matters to be put to arbitration and;
- b) Continue to perform their respective obligations and duties under this contract, despite any matter referred to negotiation, mediation or arbitration.

16 PRIVACY ACT (1993)

- 16.1 The Buyer authorises any person or company to provide the Seller with such information as may be required in response to credit assessment, debt collection or direct marketing activities. The Buyer further authorises the Seller to furnish to any third party details of any application and any subsequent dealings as a result of any application being actioned by the Seller or by way of payment default.

17 CANCELLATION

- 17.1 If the Buyer wishes to cancel its order and the Seller accepts such cancellation, the Buyer shall be liable to pay the Seller upon demand, the value of all work done, and materials used to the date of cancellation.

18 ASSIGNMENT

- 18.1 The Buyer may not assign, sub-let or transfer any rights or obligations implied in this contract without the prior written consent of the Seller.

19 SEVERABILITY

- 19.1 If any part, term or provision of these terms and conditions is found to be unenforceable or rendered to be ineffective by virtue of non-registration, illegality or otherwise, then such provision shall be severed without effecting the validity or enforceability of the rest of the agreement.