

1. General

1. You have asked us to provide you with Parts or Services or both.
2. This is an Agreement between us.
3. This Agreement is made up of several parts. You need to read them together to understand the whole Agreement and how it applies to you. We will give you a summary of some of the terms that apply to you as our customer. The rest of the Agreement is made up of the Terms and Conditions of Business set out in this document..
4. This Agreement starts when we issue a Quote or Estimate, and you accept it or we Confirm an Order or start work because you provided us your vehicle or equipment, whichever is first. Unless it is terminated earlier, this Agreement ends when we have provided all Parts and Services to you and you have paid us our Fees.

2. Orders

1. You can place an Order for Parts or Services with us verbally or in writing. An Order will only be accepted when it is Confirmed by us. We may refuse to Confirm an Order if we cannot provide you with the Parts or Services or you or your Associates owe us money.
2. We may include an indication in a Confirmation of when the Parts will be available, when we will provide the Services and our likely Fees. These are estimates only and may change. We will tell you if we cannot meet these dates or provide the Services for the Fee or time estimate and agree new dates and Fees with you, as appropriate.
3. Once we have Confirmed an Order you may only cancel it with our Consent. If we do consent, you agree to pay any fees and expenses that we have legitimately incurred as a result of you cancelling the Order.

3. Quotes

1. You can ask us to provide you with a Quote for Parts or Services or both.
2. A Quote is an offer by us to provide you with the Parts or Services or both, subject to this Agreement for a specific price. The Quote is provided subject to any assumptions included in it. Unless stated, a Quote does not include the cost of delivering or installing the Parts.
3. You must accept the Quote before the Expiry Date. You can accept the Quote by signing the Quote and returning it to us, emailing us your acceptance. or providing us with your vehicle to work on or giving us any instructions to proceed.
4. If you do not accept the Quote before the Expiry Date we will treat the Quote as lapsed and no longer capable of being accepted.
5. We are not obliged to start work until the Quote has been accepted in writing by you.
6. Any estimate in a Quote of the time frame for the provision of the Parts or Services or the Fees is an estimate only. We will tell you if the time frame of the Fee changes and agree new dates and Fees with you, as appropriate.
7. We may, where appropriate, provide you with an estimate of our costs of providing the Services or Parts to you and is subject to any assumptions included in it.

4. When you buy Parts from us

1. When you buy Parts from us, we have the right to supply the Parts to you and agree to sell to you and you agree to buy the Parts in accordance with this Agreement in exchange for payment of the Price.
2. Unless stated otherwise, the Price is exclusive of GST. Unless you we agree otherwise with you, you must pay the Price, plus any GST on or before you collect or take delivery of the Parts.
3. We will use reasonable endeavours to prepare the Parts for collection from us prior to any delivery date we agree with you. You agree to remove the Parts within a reasonable time.

5. Title to and risk in the Parts

1. Title in the Parts passes to you free of encumbrances and all other adverse interests when you pay the Price in full to us. Until title in the Parts passes to you, we hold a security interest in the Parts and all proceeds from the sale of the Parts as contemplated under the PPSA.
2. The risk in the Parts passes to you on delivery to, or collection by you as applicable.

6. Rights in relation to the Parts

1. Until you pay for the Parts in full, and title in the Parts passes to you, you acknowledge and agree that:
  - (a) ownership of and title in the Parts remains with us;
  - (b) we have the right to:
    - i. enter your premises (or the premises of any Associate or Representative where the Parts are located) without liability for trespass or any resulting damage and retake possession of the Parts; and
    - ii. keep or resell any Parts repossessed under clause 6 1(b)(i) in accordance with the PPSA.
  - (c) if you resell the Parts or products manufactured using the Parts, you must keep the proceeds of any such sale, being an amount equal to the Price of the Parts, in a separate identifiable account as our beneficial property. You must pay this amount to us on request. Despite this clause 6 (c) we are entitled to maintain an action against you for the Price.
  - (d) you have no right or claim to any interest in the Parts to secure any liquidated or unliquidated debt or obligation we owe to you;
  - (e) you cannot claim any lien over the Parts;
  - (f) you will not create any absolute or defeasible interest in the Parts in relation to any third party except as authorised by us;
  - (g) where you are in actual or constructive possession of the Parts:
    - i. you will not deliver them or any document of title to the Parts to anyone else except as directed by us; and

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- ii. you are in possession of the Parts as a bailee and you owe us the duties and liabilities of a bailee.
- (h) you are a bailee and this bailment continues until we have been paid in full for the Parts;
- (i) you appoint us as your attorney to do everything necessary to ensure the retention of title to the Parts including the registration of any security interest in our favour;
- (j) you must not supply any of the Parts to anyone outside of your ordinary or usual course of business;
- (k) on request by us you must be able to identify to us the Parts that we have supplied to you that belong to us, separate to any other parts or goods and materials that you hold;
- (l) you must not allow anyone to have or acquire any security interest in the Parts;
- (m) you must insure the Parts for their full insurable or replacement value (whichever is the higher) and provide a certificate of currency to us on request;
- (n) you must not remove, deface or obliterate any identifying plate, mark or number on any of the Parts; and
- (o) if you supply any of the Parts to anyone else:
  - i. you hold the proceeds of resupply of the Parts on trust for and as our agent;
  - ii. you must either pay the proceeds of resupply to us immediately when they are received, or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for us;
  - iii. any accessory or item which accedes to any of the Parts by your acts, or of any person at your direction or request, becomes and remains our property until we are paid as contemplated by clause 6 (o)(ii); and
  - iv. we may recover possession of the Parts at any site you own, possess or control and we have an irrevocable licence to do so.

**7. Personal Properties Securities Act**

1. You acknowledge and agree that:
  - (a) this Agreement is a Security Agreement;
  - (b) our interest in the Parts and the proceeds from the sale of the Parts to a third party is a security interest;
  - (c) you consent to us registering one or more Security Interests in the Parts and their proceeds on the Personal Property Securities Register, at your expense and you agree to provide us with all reasonable assistance that we require to register that Security Interest;
  - (d) until title in the Parts has passed to you as contemplated by clause 5, you agree not to assign,

- charge, lease or otherwise deal with the Parts by creating a security interest over the Parts in favour of you or anyone else. Each of us agrees that this clause will not prevent you from selling the Parts in the ordinary course of business;
- (e) except to the extent that notice is required by the PPSA and cannot be excluded, you waive your rights to receive any notice that is required under the PPSA;
- (f) this Agreement and all related information and documents are Confidential Information and will not be disclosed to unauthorised Representatives or third parties, except to the extent disclosure is permitted by this Agreement or required by law;
- (g) we will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA;
- (h) unless the Parts are used predominantly for personal, domestic or household purposes, each of the following requirements or rights under the PPSA do not apply to the enforcement of our security interest in the Parts or of this Agreement:
  - i. any requirement for us to:
    - A. give you a notice of removal of accession or our proposed disposal of the Parts;
    - B. include in a statement of account, after disposal of the Parts, the details of any amounts paid to other secured parties;
    - C. give you a statement of account if we do not dispose of the Parts;
  - ii. any right you have to redeem the Parts before we exercise a right of disposal; and
  - iii. any right you have to reinstate this Agreement before we exercise a right of disposal of the Parts.
- (i) Expressions in this clause which are defined in the PPSA have the same meaning when used in this Agreement.

**8. When we provide you with Services**

1. We will provide the Services to you in accordance with this Agreement in exchange for payment by you of the Fees.
2. We will provide the Services with the degree of care and skill expected of a professional providing same or similar services.
3. Either of us may ask for a change to the Services. Each of us agrees to work together to assess the impact of any requested changes on the cost, timing or any other aspect of the Services. Any change will be documented in an additional Confirmation.
4. Unless otherwise agreed in writing, any Services that we provide to you which are not described in an Order or a Confirmation are provided by us in accordance with this Agreement.
5. We will use reasonable endeavours to complete the Services within any agreed time frame.

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### 9. Our Fees

1. Our Fees and the basis on which they are calculated are set out in a Quote or a Confirmation. If we provide you with an estimate only of our Fees that estimate is subject to any assumptions in it. Unless we agree otherwise, we may adjust our Fees if the Services prove to be more complex or time consuming than expected. If this happens we will tell you and agree the updated Fees with you.
2. We may review our Fees where:
  - (a) an Unexpected Delay occurs;
  - (b) there is a change in the scope of the Services or the Parts to be provided that we have agreed with you;
  - (c) you do not accept our Quote before it Expires; or
  - (d) we have provided you with an estimate of our Fees.
3. You agree to pay our Fees in accordance with this Agreement.
4. Unless we state otherwise our Fees exclude GST. You agree to pay any GST imposed on us now or in the future in relation to this Agreement. Where GST is payable on a taxable supply made under this Agreement you agree that the payment for this supply will be increased by an amount equivalent to the GST payable by us in respect of that supply.
5. We may charge you for any expenses we incur in providing the Services to you; for example, any costs for travel associated with the Services.
6. We will invoice you on completion of the Services or monthly for time incurred in performing the Services during the previous month.
7. If we have not worked with you before, we may ask you to pay us some of the Fees before we start work.
8. You agree to pay our invoices on the date specified for payment on the invoice.
9. You agree to pay us any undisputed portion of an invoice even if there is a dispute between us about that invoice or another invoice. Any unresolved fee dispute will be addressed in accordance with clause 18.
10. Where amounts remain due and unpaid, we may charge you related collection costs (including legal fees) and interest at an annual rate of 12%, calculated daily until all outstanding amounts are paid in full.
11. If you do not pay our invoices on time we may (without limiting any other rights we may have):
  - (a) suspend or terminate the Services in whole or part;
  - (b) withhold the output from the Services we have provided to you; or
  - (c) ask you to sign a Guarantee to secure payment of our fees.
12. We may apply any payment received from you to any amount owed by you.

### 10. What you agree to do

1. You agree to co-operate with us and provide us with all reasonable and necessary assistance so that we can

provide the Services to you. This includes providing us with timely and reasonable access as relevant to your premises, facilities, machinery, vehicles, Information and Representatives.

2. You are responsible for:
  - (a) the performance of your Representatives;
  - (b) making timely decisions in connection with the Services;
  - (c) providing us with complete and accurate Information and ensuring we are provided with all relevant Information;
  - (d) updating Information if there is a change; and
  - (e) inspecting any Parts or Services that we provide to you and telling us if there is an issue with them.
3. You acknowledge that:
  - (a) Our ability to provide the Services depends on you meeting your responsibilities under this Agreement and responding to us and providing us with any materials or access to any facilities or vehicles in a timely and effective manner; and
  - (b) We are entitled to rely on the Information and material that you provide to us.
  - (c) You and your Representatives use the Parts and Services at your own risk.

### 11. Intellectual Property Rights

1. We retain ownership of all Intellectual Property Rights in our Work. Subject to the payment of all Fees due to us we grant to you a perpetual, non-exclusive, royalty free licence to use the Work for the purposes for which they were performed and any related, incidental purposes.
2. You warrant that you own all Intellectual Property Rights relating to any materials that you supply to us in connection with the Services and you grant us a licence to reproduce or use those Intellectual Property Rights for the purposes of the Work.
3. You indemnify us against all Loss we may suffer or incur in connection with any breach of any third party Intellectual Property Rights in relation to any material you supply to us.
4. You acknowledge that we have Moral Rights in the Work. You agree not to commit any acts or omissions, before or after this Agreement, that infringe any or all of our Moral Rights in relation to the Work.

### 12. Confidential Information

1. Each of us agrees to protect and keep confidential any Confidential Information given to us by the other.
2. We will only use or disclose your Confidential Information to provide the Parts and Services to you. We may disclose your Confidential Information as required by law, to our own advisers and insurers on a confidential basis, or where you Consent to us doing so.

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3. Each of us agrees immediately on request by the other or on termination of this Agreement to return or destroy the Confidential Information. However, we are entitled to retain one copy of your Confidential Information as part of our records of the Work provided that we continue to keep this information confidential in accordance with this Agreement.

**13. Personal Information and Privacy**

1. We may collect Personal Information about you or your Representatives for the purpose of providing the Parts and Services to you. We agree to handle any Personal Information in accordance with the Privacy Act.
2. Where you provide us with any Personal Information which relates to someone else you confirm that you have collected this information in accordance with the Privacy Act and you are entitled to disclose this information to us and we may use and disclose it for the purpose of providing the Services or the Parts.

**14. Subcontracting**

1. You agree that we may subcontract some of the Services that we provide to you.
2. Neither of us may transfer, assign or novate this Agreement without the Consent of the other.

**15. Termination**

1. Either of us may terminate this Agreement:
  - (a) at any time by providing at least 30 days written notice; or.
  - (b) immediately if one of us enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of amalgamation or reconstruction) or where you are a natural person, you commit an act of bankruptcy.
2. We may terminate this Agreement if you fail to meet your obligations under this Agreement including to pay our Fees within the time specified or to provide us with adequate Information.
3. Either of us may terminate this Agreement if:
  - (a) the other party is in material breach of any of its obligations under this Agreement; and
  - (b) the breach is capable of remedy, however there is failure to remedy the breach for a period of 14 days after receipt of a written notice by the other party requiring rectification of the breach.
4. If this Agreement is terminated:
  - (a) we may terminate your Quotes or Orders;
  - (b) we may refuse to deliver the Parts to you or provide further Services to you;
  - (c) we may repossess and re-sell any Parts we have delivered to you for which payment has not been received; or

- (d) retain (where applicable) all money paid on account of Parts or Services or otherwise.
- (e) you agree to pay us the Fees for any work we have done and any expenses we have incurred up to the date of termination;
- (f) we will return any documentation you have given to us; and
- (g) It does not affect any accrued rights.

5. Termination of this Agreement does not affect any clauses which are intended to survive termination including **Confidentiality, Intellectual Property Rights, Dispute Resolution** and **Our responsibility to you**.

**16. Our responsibility to you**

1. Subject to any rights you may have under the Consumer Law, you may reject the Parts and Services if they are defective, in which case you can serve a notice to rectify on us.
2. We agree to rectify the Parts and Services within a reasonable time following any such notice.
3. If we are unable to rectify the defect we will discuss and agree with you how the issue may be resolved.
4. Nothing in this Agreement restricts, modifies or excludes a Non-Excludable Condition. We expressly limit our liability for breach of a Non-Excludable Condition to the following remedies:
  - (a) in the case of goods, the replacement of the goods or supply of equivalent goods, the repair of the goods, the payment of the costs of replacing the goods or of acquiring equivalent goods or the payment of the costs of having the goods repaired; and
  - (b) in the case of services, the supply of the services again or the payment of the cost of having the services supplied again.
5. To the extent permitted by law:
  - (a) we are not liable to you for any Loss or Consequential Loss arising out of or related to your use of the Services or the Parts; and
  - (a) our liability to you for any Loss including Consequential Loss is limited to the amount of the Fees paid by you for the relevant Parts or Services.

**17. Unexpected Delay**

1. We will use reasonable efforts to provide the Services in accordance with any timetable we have agreed with you. Unless we agree in writing, any dates we give you for the Services are intended for planning purposes only and are not contractually binding on us.
2. We are not responsible to you or anyone else for any failure to provide the Services that is caused by an Unexpected Delay. We will tell you if there is a delay that will affect the services and the cause of the delay.

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3. You acknowledge that this Agreement will be varied to include any change to the scope of the Services, the Fee or the timeframes if any delay requires it.
4. If we are required to perform any additional Services because of an Unexpected Delay the Agreement will be varied to include those additional services and any Fees that apply.

18. Dispute Resolution

1. Either of us may raise a dispute by notice in writing to the other. Each of us agrees to settle any dispute arising out of or relating to this agreement, by negotiation in good faith with the other before having recourse to mediation or litigation.
2. If we cannot resolve a dispute by negotiation within 28 days, then either of us may refer the dispute to mediation administered by the ADC before having recourse to arbitration or litigation.
3. The mediation will be conducted in accordance with the ADC Guidelines and the terms of the Guidelines are incorporated into this Agreement.

19. General

1. This Agreement is governed by the laws of New South Wales and each of us irrevocably submits to the non-exclusive jurisdiction of the courts in that state.
2. This Agreement contains the entire agreement between us at the date of this Agreement with respect to its subject matter and supersedes all prior agreements and understandings between us in connection with it.
3. This Agreement prevails over any terms of trade or purchase order you may issue to us.
4. This Agreement may be varied if it is documented in writing and signed by both of us.
5. If any provision of this Agreement at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
6. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. A waiver is not valid or binding on the party granting that waiver unless made in writing.
7. If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
8. Each of us must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Agreement and the transactions contemplated by it.

20. Interpretation

In this Agreement:

- (a) a reference to writing includes email and other communication through our website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause is a reference to a clause of this Agreement;

- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of this Agreement;
- (g) mentioning anything after *includes, including,* or similar expressions, does not limit what else might be included;
- (h) unless otherwise stated, a reference to currency is to AUD;
- (i) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (j) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (k) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it.

21. Defined terms

In this Agreement:

**ADC** means the Australian Disputes Centre.

**ADC Guidelines** means the ADC Guidelines for Commercial Mediation from time to time.

**Agreement** means the terms and conditions set out in the Terms and Conditions of Business and includes any Quote, Order or Confirmation, contracts and variations relating to your transactions.

**Associate** means your related body corporate or any other party who is, in our reasonable opinion, associated with you.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where the Services or Parts are provided.

**Confidential Information** means this Agreement and all information of one of us which is disclosed to, or otherwise comes to be known by the other, whether before or after the date of this Agreement, which is in fact or which is reasonably regarded by the disclosing party as confidential. This includes information relating to technology, processes, products, specifications, inventions or designs used or developed by the Supplier, trade secrets and know-how and information of a commercially sensitive nature. Confidential information does not include any Confidential Information which the receiving party can prove:

- (a) is in, or comes into, the public domain other than by a breach of this Agreement;
- (b) was lawfully in its possession prior to disclosure by the disclosing party;

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(c) was received from a third party who is not under an obligation to the disclosing party to maintain the Confidential Information in confidence and who legitimately obtained the Confidential Information; or

(d) it is required to disclose in order to enforce this Agreement or under law or a binding order of a governmental agency or court.

**Confirmation, Confirm or Confirmed** means a confirmation in writing from us that we have accepted your Order and includes:

- (a) The quantity and description of the Parts you require and the cost of the Parts;
- (b) A description of the Services and an estimate of our Fees for any Services;
- (c) The Price for the Parts and the date for payment; and
- (d) An estimate of the date the Parts will be available for collection or delivery, or the Services will be provided to you.

**Consent** means prior written consent, such consent not to be unreasonably withheld.

**Consequential Loss** means any Loss which is indirect, consequential, special, punitive, exemplary or incidental, including any loss of profit, revenue or anticipated savings or business opportunity, loss or corruption of data or systems or damage to goodwill however caused or arising as a result of the provision of or the failure to provide the Goods or Services or otherwise in connection with this Agreement.

**Consumer Guarantee** means a guarantee that you may have under the Australian Consumer Law in schedule 2 of the Competition and Consumer Act 2010 (Cth) or any other applicable law.

**Expiry Date** means the date which is 30 days from the date of the Quote.

**Fees** means our fees for the Services as described in a Quote or Confirmation and include the Price for any Parts as the context requires.

**GB Auto means** means GB Auto Group Pty Ltd ACN 090 012 052 and includes our Representatives or the entity named in the Quote, Order or Invoice.

**Guarantee** means a guarantee and indemnity in the form we provide to you.

**GST** means a Goods and Services Tax as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other applicable legislation governing GST.

**Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

**Loss** means any reasonable liabilities, claims, damages, costs or expenses (including interest and party to party legal costs and the Supplier's legal costs), caused or arising in connection with this Agreement or the provision of Goods or Services (whether in contract, tort or otherwise) and includes any Consequential Loss.

**Order** means any request for the provision of Parts or Services by you which we have Confirmed.

**Moral Rights** means the personal legal rights of attribution and integrity, and right against false attribution, belonging to us as the creator of copyright works under the Copyright Act 1968 (Cth).

**Non Excludable Condition** means a right or remedy, guarantee, warranty or other term or condition, implied or imposed by any law including Consumer Guarantees that cannot lawfully be excluded or limited.

**Parts** means any parts, products or goods we supply to you including those specified in a Confirmation or Quote or supplied in the course of providing any Services.

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**Price** means the amount charged for any Parts plus any GST that applies to that amount.

**Quote** means a written description of the Parts and Services to be provided and an estimate of our Fees and expenses and the time frame for performing the Services.

**Related body corporate** has the meaning given to it in the Corporations Act.

**Representative** means an officer, employee, consultant, agent contractor or subcontractor of either of us that is included in the activities to which this Agreement relates.

**Services** means the services to be provided to you as described in the Quote or the Confirmation and includes any other services subsequently provided by us, unless we have agreed in writing.

**Unexpected Delay** means a delay in providing the Services or Parts that is caused or contributed to by an act or event (including the non-performance of your obligations) that is beyond our control or was not reasonably foreseeable by us at the date of this Agreement and includes pandemic, lockdowns or any other cause outside our control.

**Us** means GB Auto or both you and GB Auto, as the context requires.

**We and our** means GB Auto.

**Work** means any copyright works or other materials we create in connection with the Services.

**You and your** means the person or entity identified on a Quote, or Order as the customer and includes your Representatives.

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