



DCH Automotive Limited

General Terms and Conditions of Trade

Effective 25 November 2019

1. Definitions

- 1.1. **Customer** means the person(s) purchasing the Works as specified in any invoice, document or order, and if there is more than one Customer, is a reference to each Customer jointly and severally.
- 1.2. **DCH** means DCH Automotive Limited, its successors and assigns or any person acting on behalf and with the authority of DCH Automotive Limited.
- 1.3. **Loan Vehicle** means any vehicle supplied on loan or for hire by DCH to the Customer from time to time.
- 1.4. **Parts** means any mechanical parts supplied by DCH to the Customer either separately or as part of the Works.
- 1.5. **Price** means the price payable by the Customer to DCH in respect of the Works provided by DCH from time to time as advised to the Customer in writing by DCH as determined in accordance with clause 3.1.
- 1.6. **Works** means all services and works provided by DCH to the Customer from time to time as set out in writing to the Customer or as otherwise agreed by DCH and the Customer (and shall include any supply of Parts).

2. Offer and Acceptance

- 2.1. The Customer is taken to have accepted and is immediately bound by these terms and conditions when the Customer places an order for Works or accepts the provision of Works.
- 2.2. If there is any inconsistency with any other document or agreement between the Customer and DCH, these terms and conditions shall prevail.
- 2.3. In consideration of the Customer paying the Price, DCH agrees to provide the Customer with the Works on these terms and conditions.

3. Price and Payment

- 3.1. The Price shall be:
- the price set out in any invoice provided by DCH to the Customer; or
 - the price as at the date of provision of the Works according to DCH's current price list; or
 - DCH's estimated price (subject to clause 3.7) which shall not be deemed binding upon DCH as the actual price can only be determined upon completion of the Works. DCH agrees to keep the Customer informed if the actual price is likely to exceed the original estimate.
- 3.2. DCH may, in its sole discretion, require a deposit to be paid by the Customer prior to the commencement of the Works.
- 3.3. The Customer must pay the Price in full and without setoff, counterclaim or deduction on delivery of the Parts or completion of the Works and prior to the collection or delivery of the Parts or vehicle subject to the Works.
- 3.4. The parties acknowledge and agree that, unless expressly stated otherwise, the Price does not include GST. In addition to the Price the Customer must pay to DCH, at the same time and on the same terms and conditions as the Customer pays the Price, an amount equal to any GST that DCH must pay for the provision of Works.
- 3.5. In addition to the Price, all expenses actually incurred by DCH in connection with the Works will be payable by the Customer to DCH on the same terms and conditions as the Customer pays the Price.
- 3.6. Without prejudice to any other rights or remedies, interest at 2% per month will be payable by the Customer on any amount that is overdue for payment (including any default interest) by the Customer

to DCH, calculated on a daily basis from the date payment is due until the date payment is received by DCH in full.

- 3.7. DCH reserves the right to amend the Price where:
- The Customer requests a variation to the Works to be provided.
 - Additional Works are required as a result of the discovery of hidden faults after commencing the Works.
 - The Customer requests DCH to store the Customer's Parts or vehicles, or the Customer does not collect their Parts or vehicles within 24 hours of notice to the Customer that they are ready for collection. In these circumstances a storage charge of \$30 per day may be added to the Price.
- 3.8. The Customer acknowledges and agrees that DCH is entitled to retain any components replaced during the provision of Works and may retail all proceeds obtained from the sale of such components.

4. Title and Risk

- 4.1. Title to any Parts remain with DCH and do not pass to the Customer until the Price together with all other money payable to DCH by the Customer has been paid to DCH in full.
- 4.2. Where the Customer is in possession of any Parts, until such time as DCH has received payment in full for the Parts then the Customer is only a bailee of the Parts and holds any Parts or proceeds from the sale or disposal of the Parts up to and including the amount the Customer owed to DCH on trust for DCH.
- 4.3. Risk of any loss of, damage or deterioration to the Parts will be borne by the Customer from the time that such Parts are collected by the Customer or delivered to the Customer and the Customer must insure the parts on or before delivery.
- 4.4. If any Parts are damaged or destroyed prior to title passing to the Customer, DCH is entitled to receive all insurance proceeds payable for the parts. The production of these terms and conditions by DCH is sufficient evidence of DCH's rights to receive the insurance proceeds without the need for any person dealing with DCH to make further enquiries.
- 4.5. The Customer acknowledges that DCH is only responsible for Parts that are replaced by DCH and that in the event that other components subsequently fail, the Customer agrees to indemnify DCH against any loss or damage to the vehicle, Parts, or caused by the components, or any part thereof howsoever arising.
- 4.6. DCH shall not be liable for the loss of or damage to the vehicle, its accessories or contents while being serviced or being driven in connection with the Works (including test driving and in the event of a call-out where it shall be the Customer's responsibility to remain with the vehicle to ensure security of the same), unless caused by the negligence of DCH.
- 4.7. It is the Customer's responsibility to ensure that the vehicle is insured against all possible damage whilst stored at DCH's premises. The vehicle is at all times stored and repaired at the Customer's sole risk.

5. Delivery and Installation

- 5.1. DCH will make available or deliver and install the Parts or Works to the Customer at DCH's primary trading location by the delivery date(s) as advised to the Customer in writing.
- 5.2. Notwithstanding clause 5.1, any delivery date specified is an estimate only and the Customer must still accept provision of the Works even if late, and DCH will not be liable for any loss or damage incurred by the Customer as a result of this.

5.3. Works to be provided to the Customer are subject to availability. Should any Parts not be available, DCH may at its direction suspend all performance of its obligations under these terms and conditions until such time as the Parts become available or until such time as DCH and the Customer agree to vary the Parts or Works. DCH reserves the right to vary the Price or supply alternative Parts of similar description.

5.4. Without prejudice to any other rights or remedies DCH may have, if the Customer refuses to collect, accept or unduly delays delivery and/or installation of the Works upon or after the date that it first becomes available for collection, delivery and/or installation, the Customer will pay to DCH all additional costs incurred by DCH as a result of such refusal or delay including (without limitation) any storage charges and insurance costs. Delay or default in delivery does not entitle the Customer to cancel any order for Works.

6. Personal Property Securities Act 1999 ("PPSA")

6.1. The Customer acknowledges that upon assenting to these terms and conditions in writing, that they constitute a security agreement for the purposes of the PPSA, which provides for a security interest in DCH's favour in respect of any Parts (other than in respect of any Parts paid for in full by Customer) provided by DCH to the Customer, and all the Customer's present and future rights in relation to such Parts, to secure the payment by the Customer to DCH of the Price payable in respect of such Parts and all other amounts payable under these terms and conditions.

6.2. On request by DCH, the Customer will promptly do all things (including signing any documents) and provide all information necessary to enable DCH to perfect and maintain the perfection of any security interest the Customer grants to DCH (including by registration of a financing statement).

6.3. To the maximum extent permitted by law, the Customer agrees that nothing in sections 114(1)(a) (to receive notice of sale of goods), 116 (to receive a statement of account), 117(1)(c) (to receive any surplus), 119 (to recover any surplus), 120(2) (to receive notice of proposal to take goods), 133 (to reinstate security agreement) and 134 (limit on reinstatement) of the PPSA will apply to these terms and conditions or the security under this terms and conditions. The Customer waives all its rights under sections 121 (to object to proposal), 125 (damage to goods on removing accession), 129 (notice of removal of accession), 131 (court order preventing removal or accession) and 132 (redemption of collateral) of the PPSA and its right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest created by these terms and conditions.

7. Defects

7.1. DCH accepts no responsibility for the workmanship and quality of any third party parts or works to any vehicle provided or undertaken prior to the supply of Works by DCH.

7.2. The Customer will inspect the Works on completion and will notify DCH of any alleged defect with the Works within 14 days. The Customer shall allow DCH to inspect the Works within a reasonable time of such notification. If the Customer fails to advise DCH of any defect in accordance with this clause or allow DCH to inspect any alleged defects, the Works will be deemed to have been provided in accordance with these terms and conditions. For defective works which DCH has agreed in writing that the Customer is entitled to reject, DCH's liability shall be limited to either (at DCH's sole discretion) replacing the Works or repairing the Works.

8. Warranty

8.1. Subject to clauses 8.2 to 8.7, DCH warrants that any defect in any Works provided by DCH that becomes apparent and is reported to DCH within 30 days of the date of delivery, time being of the essence, then DCH will either (at DCH's sole discretion) replace or remedy the Works ("Warranty").

8.2. The Warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

- (a) failure on the part of the Customer to provide proper maintenance; or
- (b) failure on the part of the Customer to follow any instructions provided by DCH; or
- (c) any use other than for any application specified on a quote or order form; or
- (d) any use in competitive motor sport and/or for off-road use; or
- (e) the continued use after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user, or
- (f) fair wear and tear, any accident or any event beyond the control of DCH (including natural disasters).

8.3. If the Works are repaired, altered or overhauled by the Customer or a third party without DCH's consent, the Warranty shall immediately cease and DCH shall thereafter in no circumstances be liable under the terms of the Warranty.

8.4. In respect of any warranty claims, DCH shall not be liable to compensate the Customer for any delay in either replacing or remedying the Works or in properly assessing the Customer's claim.

8.5. The Warranty expressly excludes fluids, belts, gaskets, or other consumables.

8.6. In relation to Parts, the Warranty shall be limited to the current warranty provided by the manufacturer of the Parts. DCH shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Parts, unless specifically stated otherwise by DCH.

8.7. If the Customer is acquiring the Works for the purposes of a trade or business, the Customer acknowledges that the Consumer Guarantees Act 1993 does not apply to the provision of Works by DCH to the Customer.

9. Liability

9.1. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

9.2. To the maximum extent permitted by law, the liability of DCH (whether in contract, equity, tort or otherwise) for any defect in or non-compliance of the Works is limited, at the option of DCH, to either replacement or repair of such defective or non-complying items or in accordance with any express provisions of any manufacturer's warranties, to damages not exceeding the Price paid by Customer to DCH for such defective or non-complying items.

9.3. To the maximum extent permitted by law and notwithstanding any other provision of these terms and conditions, under no circumstances will the measure of damages against DCH for any breach of these terms and conditions, equity, tort, or other action or contravention of any statute, include special, incidental, consequential or indirect loss or any consequential economic damage, nor will DCH be liable for any breach to the extent that such breach is attributable to the prior default, negligence, misconduct or breach by the Customer.

9.4. The Customer hereby indemnifies and holds harmless DCH from and against any and all claims, liabilities, loss or expenses asserted against or incurred by any or all of them arising in whole or in part, out of or by reason of the failure by the Customer to follow instructions, warnings or recommendations furnished by DCH in connection with the Works or breach of these terms and conditions by the Customer or negligence of the Customer.

10. Default and Cancellation

- 10.1. If the Customer owes DCH any money the Customer shall indemnify DCH from and against all costs and disbursements incurred by DCH in recovering the debt (including but not limited to administration fees, legal costs, DCH's collection agency costs, and bank dishonour fees).
- 10.2. Without prejudice to any other remedies DCH may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions, suspend or terminate the provision of Works to the Customer. DCH will not be liable to the Customer for any loss or damage the Customer suffers because DCH has exercised its rights under this clause.
- 10.3. Without prejudice to DCH's other remedies at law DCH shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to DCH shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to DCH becomes overdue;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 10.4. DCH may cancel any contract to which these terms and conditions apply or cancel provision of the Works at any time before the Works are commenced (or Parts delivered) by giving written notice to the Customer. On giving such notice DCH shall repay to the Customer any money paid by the Customer for the Works. DCH shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 10.5. In the event that the Customer cancels provision of the Works, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by DCH as a result of the cancellation (including, but not limited to, any loss of profits).
- 10.6. Cancellation of orders for Parts made to the Customer's specifications, or for non-stocklist items, will not be accepted once an order has been placed and the Customer will remain liable for the full costs of any such Parts.

11. Privacy Act 1993

- 11.1. The Customer authorises DCH to
- (a) access, collect, retain and use any information about the Customer including for the purpose of assessing the Customer's creditworthiness or for the purpose of marketing products and services to the Customer; and
 - (b) disclose information about the Customer, whether collected DCH from the Customer directly or obtained by DCH from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 11.2. The Customer shall have the right to request DCH for a copy of the information about the Customer retained by DCH and the right to request DCH to correct any incorrect information about the Customer held by DCH.

12. General

- 12.1. The failure by DCH to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect DCH's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 12.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand.

12.3. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by DCH nor to withhold payment of any invoice because part of that invoice is in dispute.

12.4. DCH may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

12.5. The Customer agrees that DCH may amend these terms and conditions at any time and if DCH makes a change to these terms and conditions, then that change will take effect from the date on which DCH notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for DCH to provide Works to the Customer.

12.6. The Customer warrants that it has the power to enter into these terms and conditions and has obtained all necessary authorisations to allow it to do so.

13. Loan Vehicles

13.1. DCH may from time to time, in its sole discretion, offer a Customer a Loan Vehicle. The Loan Vehicle will at all times remain the property of DCH.

13.2. Where a Loan Vehicle is supplied to the Customer, it must only be driven during the period of hire or loan as agreed in writing between DCH and the Customer and must immediately be returned to DCH on demand.

13.3. No person other than the Customer may operate the Loan Vehicle unless otherwise agreed in writing between DCH and the Customer.

13.4. The Customer and all permitted drivers must hold a valid New Zealand driver licence and must meet DCH's insurance requirements.

13.5. The Customer acknowledges that they will be liable for any loss or damage to the Loan Vehicle (including but not limited to any consequential loss and resulting insurance excess) occurring in or as a result of the time the Loan Vehicle is hired or loaned by the Customer. Should any insurance claim be rejected or held invalid, the Customer will be liable to DCH for the full cost of repairing or replacing the Loan Vehicle (whichever is less).

13.6. The Customer must:

(a) Ensure that all reasonable care is taken in handling and parking the Loan Vehicle and that it is safely locked when not in use.

(b) Not alter the Loan Vehicle in anyway.

(c) Keep the Loan Vehicle clean and in good order as delivered and shall comply with any maintenance schedule as advised by DCH to the Customer. In the event the Loan Vehicle is not returned in a clean condition, DCH reserves the right to charge the Customer for all costs incurred by DCH in cleaning the Loan Vehicle.

(d) Return the Loan Vehicle with a full tank of petrol. Where the Customer fails to refuel the Loan Vehicle, DCH reserves the right to charge the Customer for the costs of refuelling the vehicle including a minimum refuelling fee of \$20.

(e) Comply with terms of the Loan Car Agreement and Policy provided to the Customer by DCH.

13.7. The Customer will be liable for any parking or traffic infringements or related impoundment towage and storage costs.