

TERMS AND CONDITIONS

1 TERMS AND CONDITIONS TO APPLY AND INTERPRETATION

Adams Auto Group Pty Ltd ACN 111 100 237 trading as Sunspares Parts Plus and Sunshine Coast 4wd Wreckers ("Adams Auto Group") and the Customer (being the Applicant named in any application for credit accompanying these Terms & Conditions or otherwise) ("Customer") agree that these Terms and Conditions ("Terms & Conditions") shall apply to the supply of all Goods sold and Services provided by Adams Auto Group to the Customer despite any prior agreements, prior offers, dealings or trade usage, or any terms communicated by the Customer to Adams Auto Group.

In these Terms & Conditions:

"Account" means each account of the Customer with Adams Auto Group for moneys owing in relation to the supply of Goods and/or Services;

"Applicant" means the applicant for an account named in any accompanying application for credit;

"Customer's Land" means all of the Customer's right, title and interest in land (held now or in the future, wherever located) whether owned by the Customer legally and/or beneficially or as trustee of any Trust;

"Delivery Date" means, in relation to any Goods or Services, the date agreed between Adams Auto Group and the Customer by which the Goods are to be delivered and/or the Services are to be provided.

"Goods" means goods supplied or to be supplied by Adams Auto Group to the Customer including goods manufactured or modified at the Customer's request;

"Services" means services supplied or to be supplied by Adams Auto Group to the Customer including but not limited to mechanical work, or electrical work, or panel beating work, or spray painting, or the transportation of the Customer's vehicle or vehicle's at the Customer's request;

"Moneys" means all moneys now or in the future actually or contingently owing by the Customer to Adams Auto Group on any account and includes any part of those moneys and includes all interest accruals and costs, expenses, and disbursements;

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

"Vehicle" means any type of motorised vehicles, marine vessels, airplanes, tractors or any other self-propelled machinery.

If the Customer is comprised of more than one person then "Customer" means those persons collectively and each of them individually and the obligations and liabilities on the part of the Customer in these Terms & Conditions binds all of them jointly and each of them severally.

A reference to the singular includes the plural and vice versa;

A reference to one gender denotes the relevant gender;

A person denotes an individual or corporation or other legal entity as applicable.

2 QUOTATIONS

If Adams Auto Group has provided any quotation specifically for Goods and Services ("Quotation"):

- these Terms & Conditions shall apply to the Quotation;
- the price in the Quotation shall be Adams Auto Group's current price as at the date of the Quotation and the price actually payable for the Goods and Services shall be Adams Auto Group's current price as at the date of the Customer's acceptance of the Quotation;
- the Quotation will detail any charges for delivery of the Goods and Services;
- subject to clause 23 (b), the Quotation shall remain valid for acceptance by the Customer for thirty (30) days after the date of the Quotation;
- If a deposit for Goods and Services is required details will appear in the Quotation.

3 ORDERS

If the Customer has made an order for Goods and Services without there being a Quotation provided by Adams Auto Group ("Order"):

- the Order is subject to acceptance in writing by Adams Auto Group; and
- the price actually payable for the Goods and Services is Adams Auto Group's current price as at the date of Adams Auto Group's acceptance of the Order;
- for some Goods and Services Adams Auto Group's requires a deposit to be paid by the Customer at the time of making an Order. The details of the deposit will be provided by Adams Auto Group to the Customer in writing; and
- It is the Customer's responsibility to ensure that any part Ordered from Adams Auto Group is suitable for the Customer's needs and requirements.

4 VARIATION OR CANCELLATION

After the Customer's acceptance of a Quotation or Adams Auto Group's acceptance of an Order:

- no change in the specification of Goods and Services shall bind Adams Auto Group, unless Adams Auto Group expressly agrees to the change

in writing; and

- if the Customer cancels the Order or Quotation after acceptance, the Customer will pay Adams Auto Group any loss, damage or expenses incurred by Adams Auto Group in relation to the supply or proposed supply of the Goods and Services.

5 CHARGES AND TAXES

- Unless otherwise expressly stated, the price of Goods and Services excludes all freight, transportation, shipping, insurance, packing, crating or casing, storage, handling, demurrage, delivery, export and similar charges, and all sales, GST, excise or other taxes, and the Customer shall pay and indemnify Adams Auto Group for those charges or taxes. If Adams Auto Group expressly agrees in writing that the price includes any of such charges or taxes, the price is subject to adjustment for increases in any of those charges or taxes after the date of the Quotation or acceptance of the Order.
- The Customer shall pay all taxes, levies, duties and assessments of every nature due in connection with the Goods and Services supplied and hereby indemnifies and holds harmless Adams Auto Group from any liability on account of any and all such taxes, levies, duties, assessments and deductions.
- The price for Goods and Services includes import duty. However Adams Auto Group reserves the right to charge the Customer if the amount of import duty increases.
- For the avoidance of doubt the price for Goods and Services does not include the cost of any installation, commissioning or training requested by the Customer.

6 PAYMENT

- The Customer shall pay for Goods and Services prior to the collection of the Goods or the Customer's vehicle or if the Customer's credit application was approved by Adams Auto Group, within thirty (30) days from the date of the statement being issued by Adams Auto Group for the Goods and/or Services. Time shall be of the essence in respect of payment for the Goods and Services.
- If payment is not made by the due date for payment, the Customer shall be liable to pay to Adams Auto Group interest at the rate of two percent (2%) per month until paid. This will not affect any other rights of Adams Auto Group.
- Whilst any moneys are owed by the Customer Adams Auto Group, the Customer is not entitled to set off any amounts owed by Adams Auto Group or withhold any payments to Adams Auto Group.
- Adams Auto Group is entitled to recover from the Customer, in addition to the price, any GST on the supply of the Goods and Services except to the extent that the prices expressly include GST.
- Adams Auto Group is entitled to recover from the Customer, in addition to the price of Goods and Services, all losses, expenses, disbursements and costs (including legal fees) on a full indemnity basis, consequent upon Adams Auto Group seeking to execute or enforce a right under these Terms & Conditions and/or any guarantees related to the Customer's account, and all such amounts are recoverable from the Customer by Adams Auto Group as a liquidated debt.
- Adams Auto Group accepts payment made by Visa or Mastercard, or Direct Debit's or cheque.
- The Credit Card limit is \$500, unless otherwise agreed in writing by Adams Auto Group to increase this limit.

7 DELIVERY

- Adams Auto Group will use all reasonable endeavours to deliver the Goods and Services on or before the Delivery Date, but:
 - the Delivery Date is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire or any cause beyond the reasonable control of Adams Auto Group; and
 - Adams Auto Group will not be liable for any loss, damage or other liability whether in contract, tort, negligence or otherwise and whether directly or indirectly arising from the Goods and Services not being delivered by the Delivery Date for any reason.
- The Customer will be charged for all costs related to delivery and such costs will be detailed on a tax invoice provided to the Customer.
- Adams Auto Group may, with the agreement of the Customer, deliver Goods and Services to the Customer in instalments and in which Adams Auto Group may separately invoice the Customer for payment for each delivery instalment (each of which shall be taken to be the subject of a separate and distinct contract between the parties).
- Any Goods and Services sought to be returned will only be accepted with the prior written approval of Adams Auto Group and may be subject to a 20% handling/restocking fee.
- Goods which have been specifically manufactured by Adams Auto Group for the Customer or altered by the Customer cannot be returned simply because the Customer has changed its mind in respect of those Goods.

8 RISK AND PROPERTY IN GOODS

- For the purposes of the PPSA (as amended from time to time) "Goods" in this clause means any and all present and after acquired goods supplied by Adams Auto Group to the Customer;
- The Goods shall be entirely at the risk (including loss, damage or

deterioration) of the Customer from the time of delivery of the Goods (the carrier of the Goods shall be taken to be the agent of the Customer even if engaged or paid by Adams Auto Group).

- (c) Adams Auto Group retains full title to the Goods until Adams Auto Group receives payment in full for the Goods and all other amounts owed by the Customer to Adams Auto Group.
- (d) Until all Monies have been paid:
 - (i) Adams Auto Group has the right to call for or recover possession of the Goods (for which purpose Adams Auto Group's employees or agents may enter onto the Customer's premises) and the Customer must deliver up the Goods if so directed by Adams Auto Group;
 - (ii) the Customer:
 - (A) agrees that the relationship between the Customer and Adams Auto Group shall be fiduciary and the Customer shall keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to Adams Auto Group;
 - (B) has the right to resell the Goods in the ordinary course of the Customer's business as Adams Auto Group's fiduciary agent but must not otherwise dispose of or encumber the Goods;
 - (C) shall not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to Adams Auto Group in their original state;
 - (D) agrees that if the Goods are incorporated with goods of the Customer, the resultant product shall become and be deemed to be the sole property of Adams Auto Group. If the Goods are incorporated in any way with the property of a party other than the Customer, the resultant product shall become and be deemed to be owned in common by Adams Auto Group with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Customer of the incorporated materials; and
 - (E) will hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Customer) in trust for Adams Auto Group and shall pay the proceeds into a separate fiduciary account to be held in trust for Adams Auto Group until accounted for to Adams Auto Group at the demand of Adams Auto Group.
- (e) To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause 8 that there is created for the benefit of Adams Auto Group a Purchase Money Security Interest in the Goods;
- (f) The Customer agrees that Adams Auto Group may register any personal property security interest created by these Terms & Conditions on the Personal Property Securities Register and the Customer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by Adams Auto Group in respect of any personal property of the Customer. The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place an obligation on Adams Auto Group, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that Adams Auto Group otherwise agrees in writing.

9 LIABILITY

The Customer agrees that (subject to clause 12(c)):

- (a) the Customer must satisfy itself as to the truth and accuracy of and may not rely for any purpose upon, any technical or other advice or information provided by or on behalf of Adams Auto Group in connection with Goods and Services or these Terms & Conditions;
- (b) except to the extent prohibited by law (and subject to clause 11(c) herein), the only remedy of the Customer against Adams Auto Group for any loss, damage or liability whether in contract, tort, negligence or otherwise of the Customer in connection with these Terms & Conditions and/or Goods and Services, Adams Auto Group's supply of the Goods and Services, or Adams Auto Group's failure to supply the Goods and Services to the Customer, shall be limited to Adams Auto Group, at its option, replacing or repairing any Goods supplied and/or re-performing the Services; and
- (c) Adams Auto Group shall otherwise have no liability to the Customer whether in contract, tort, negligence or otherwise.

10 USED AND REFURBISHED PARTS

Adams Auto Group may carry out repairs by using used and/or refurbished parts of the same type rather than repairing parts. Used and/or refurbished parts may be used to replace existing parts unless otherwise specifically stated.

11 DEFECTIVE GOODS & SERVICES

- (a) Within ten (10) days after the delivery of the Goods and Services and the provision of the Services the Customer shall complete any inspection or testing required by it to confirm the Goods and Services comply with these Terms & Conditions or any Order or specifications and notify Adams Auto Group in writing of the extent to which the Goods and Services do not comply with the Terms & Conditions or any Order or specifications.
- (b) The Customer shall not use the Goods and Services (other than to the extent reasonably necessary for inspection and testing) before the Customer completes inspection and testing and satisfies itself that

Goods and Services comply with the Terms & Conditions or any Order or specifications, and, if the Customer notifies Adams Auto Group in writing that the Goods and Services do not comply with the Terms & Conditions or any Order or specifications, until Adams Auto Group has had a reasonable opportunity to inspect and test the Goods and Services after Adams Auto Group receives that notice.

- (c) If the Customer does not comply with clause 10(a) or 10(b), the Customer shall be taken to have unconditionally accepted the Goods and Services.

12 ADAMS AUTO GROUP'S WARRANTY

- (a) This warranty is given by Adams Auto Group of 9 Pioneer Road, Yandina, QLD 4561 (Telephone 07 5472 7222 or Facsimile 07 5472 7888) in addition to other rights and remedies under Australian Consumer Law.
- (b) During the period of six (6) months from the Delivery Date, Adams Auto Group will replace or repair (at Adams Auto Group's discretion) any defective Goods and Services without charge so long as the defect does not arise from:
 - (i) improper adjustment, operation or use of the Goods and Services by any party other than Adams Auto Group;
 - (ii) any modification or adaptation of, or addition to, the Goods and Services by any party other than Adams Auto Group;
 - (iii) misuse of the Goods and Services or operation contrary to specifications by any party other than Adams Auto Group; or
 - (iv) inadequate or improper maintenance or storage of the Goods and Services.
- (c) If the Customer is a Consumer ("Consumer" has the meaning defined in Section 3 of the Competition and Consumer Act 2010) the Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods and Services repaired or replaced if the Goods and Services fail to be of acceptable quality and the failure does not amount to a major failure.

13 CHARGING CLAUSE

- (a) To secure payment of all Moneys, the Customer (or where the Customer is comprised of two or more persons or other entities then each person and other entities jointly and severally) hereby charges as legal and/or beneficial owner and as trustee of any trust in favour of Adams Auto Group all the Customer's right, title and interest in land (held now or in the future) with the due payment of all of those Moneys. The Customer acknowledges that Adams Auto Group may register a caveat or caveats over the Customer's land in respect of this charge.
- (b) If the Customer is a trustee of any trust:
 - (i) it is bound by these Terms & Conditions and charges the Customer's land as trustee;
 - (ii) warrants that it is a proper exercise of the Customer's authority and power under the trust instrument and at law to trade with Adams Auto Group and to charge the Customer's Land in accordance with these Terms & Conditions.
- (c) Upon demand by Adams Auto Group, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to Adams Auto Group to further secure the Customer's indebtedness to Adams Auto Group and the Customer acknowledges by reason of this agreement to give a mortgage in favour of Adams Auto Group that Adams Auto Group is an equitable mortgagee in respect of the Customer's Land.
- (d) Should the Customer fail within a reasonable time of such demand to execute such mortgage or other instrument then the Customer appoints irrevocably the credit manager or a duly authorised officer of Adams Auto Group to be the Customer's lawful attorney to execute any such mortgage or other instrument.

14 TRUST AND TRUSTEES

Where the Customer is a trustee of any trust:-

- (a) the Customer agrees to produce immediately to Adams Auto Group a stamped copy of the trust deed (including all amendments) upon written notice from Adams Auto Group demanding a copy of that trust deed.
- (b) the Customer warrants that it has full power and authority to enter into these Terms & Conditions on behalf of the trust and that it shall be bound by these Terms & Conditions both personally and as trustee and clause 12 extends to any land held by the Customer as trustee.

15 DEFAULT, INSOLVENCY AND TERMINATION

If the Customer:

- (a) commits a substantial breach of the Terms & Conditions including unreasonably refusing to accept any Goods and Services or failing to pay for any Goods and Services, in accordance with the Terms & Conditions; or
 - (b) informs any person it is insolvent, commits an act of bankruptcy, has a bankruptcy petition presented against it, becomes bankrupt, becomes subject to or bound by any arrangement, assignment, composition or moratorium of debts with its creditors, official management, receivership, liquidation, voluntary administration, winding up or other external administration,
- all monies owing by the Customer to Adams Auto Group become immediately due and payable and Adams Auto Group may, without affecting Adams Auto

Group's other rights:

- (c) immediately terminate supply of Goods and Services;
- (d) refuse, suspend or withhold supply of any further Goods and Services;
- (e) enter upon (personally or by its employees or agents) any premises in the possession or control of the Customer and use reasonable force for the purposes of retaking possession of any Goods (title to which has not passed to the Customer), in which case the sale of those Goods by Adams Auto Group to the Customer shall be taken to be terminated and Adams Auto Group shall have no liability to the Customer whether for trespass, negligence, payment of damages or compensation or otherwise;
- (f) terminate any credit arrangement with the Customer.

pursuant to these Terms & Conditions may be delivered:

- (i) by post to the Customer's last known address (and shall be taken as delivered on the second business day following posting); or
 - (ii) by facsimile to the Customer's last known facsimile number (and will be taken to be received when a successful facsimile transmission is notified by Adams Auto Group's fax machine); or
 - (iii) by email to the last notified email address of the Customer (which will be taken to be received within 24 hours of Adams Auto Group sending the email to the correct email address).
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16 GOVERNING LAW

The laws of the State of Queensland shall apply to the Terms & Conditions and the Customer submits to the exclusive jurisdiction of the Courts of the Central Business District in Brisbane.

17 LIEN

- (a) The Customer acknowledges that Adams Auto Group has a right to a lien (under general law and/or equity) over all property in Adams Auto Group possession belonging to the Customer, including the Customer's vehicle and/or all items, of any description, in or attached to the Customer's vehicle, to secure payment of any or all amounts outstanding ("Lien").
- (b) The Customer agrees that Adams Auto Group may, at its discretion, exercise the Lien in respect of any due and unpaid amounts outstanding by the Customer and may retain the Customer's vehicle and/or any items, of any description, in or attached to the Customer's vehicle until payment of the amounts outstanding by the Customer and Adams Auto Group will be at liberty pursuant to clause 17 herein to sell any property of the Customer in Adams Auto Group's possession so as to recover part or all of the monies owed by the Customer to Adams Auto Group .

18 ABANDONMENT

- (a) If any amounts outstanding have not been paid within six (6) calendar months of Adams Auto Group providing notice to the Customer that Adams Auto Group is exercising its right to a Lien over the Customer's property, including the Customer's vehicle and/or all items, of any description, in or attached to the Customer's vehicle, and Adams Auto Group does not receive full payment from the Customer after making reasonable attempts to contact the Customer, Adams Auto Group may sell the Customer's vehicle and/or all items, of any description, in or attached to the Customer's vehicle, in accordance with any applicable legislation relating to the disposal of uncollected goods and vehicles.
- (b) In the event that Adams Auto Group sells the Customer's vehicle and/or items, of any description, in or attached to the Customer's vehicle, Adams Auto Group will apply the proceeds in the first instance to the satisfaction of the amounts outstanding by the Customer and the costs of exercising the right of sale.
- (c) Any balance of the proceeds of the sale will be returned, where possible, to the Customer.

19 AUTHORITY IN RESPECT OF THE VEHICLE

- (a) The Customer authorises Adams Auto Group to do every act, matter and thing that Adams Auto Group considers desirable or necessary for Adams Auto Group to provide the Customer with the Goods and Services in respect of the Customer's vehicle, including (but not limited to):
 - (i) entering the Customer's vehicle; and
 - (ii) test driving the Customer's vehicle (including driving the Customer's vehicle to another location outside of Adams Auto Group's premises).

20 NON-WAIVER

Adams Auto Group's failure to exercise any right under the Terms & Conditions or to insist on strict performance of any part of the Terms & Conditions does not operate as a waiver and a partial exercise of a right does not preclude any further or fuller exercise of that right.

21 SEVERANCE

If any part of these Terms & Conditions or any related document is or becomes void or unenforceable that part is severed so that all parts which are not void or unenforceable remain in full force and effect and are unaffected by the severance.

22 NOTICES

- (a) Notices required to be given by the Customer to Adams Auto Group pursuant to these Terms & Conditions may be delivered to Adams Auto Group:
 - (i) personally to Adams Auto Group at 9 Pioneer Road, Yandina, QLD 4561; or
 - (ii) sent by post to Adams Auto Group postal address at 9 Pioneer Road, Yandina, QLD 4561; or
 - (iii) sent by facsimile to Adams Auto Group at 07 5472 7888.
- (b) Notices will be taken as delivered when received by Adams Auto Group.
- (c) Notices required to be given by Adams Auto Group to the Customer