



Terms of Trade

For the provision of Diesel Repair

By

Double A Diesel Repair Ltd and DMD Services Ltd



1. INTRODUCTION

All goods and services supplied by the Contractor to the Customer are supplied on these terms of trade, unless otherwise agreed in writing.

2. QUOTING AND PRICING

- i. The price for the goods and services will be as quoted by the Contractor in writing to the Customer. If the Contractor has not provided a written quote, the Contractor's standard charges will apply.
- ii. All prices are exclusive of GST, freight and handling (if applicable).
- iii. The Contractor may withdraw a quote for the provision of goods and services at any time before it is accepted by the Customer.

3. OBLIGATIONS

- i. The Contractor will:
 - A. provide the goods and services in a timely and efficient manner; and
 - B. not be liable for any delay or non-performance in providing the goods or services if the delay or non-performance is attributable, either directly or indirectly, to circumstances beyond the control of the Contractor.
- ii. The Customer will pay all amounts due and payable to the Contractor.
- iii. In each and every respect, time shall be of the essence, in the performance of a party's obligations under these terms of trade.

4. PAYMENT

- i. Payment must be received by the Contractor on the 20th day of the month following the Contractor's invoice, unless the Contractor has requested payment earlier than that date.
- ii. The Contractor may charge the Customer a surcharge for payments made by credit card.
- iii. All amounts outstanding after the due date will be subject to a late payment interest charge of up to 2% per month, compounding. The Contractor may also recover from the Customer all legal and debt collection costs, including legal costs on a solicitor/client basis, incurred by the Contractor in enforcing or attempting to enforce its rights under these terms of trade.

5. OWNERSHIP AND RISK

- i. Where the Contractor supplies any goods to the Customer, ownership does not pass to the Customer until the Customer has discharged all outstanding indebtedness, whether in respect of the goods or otherwise, to the Contractor.
- ii. Until the Contractor has received full payment, the Contractor may register a financing statement pursuant to the provisions of the *Personal Property Securities Act 1999* to secure payment in relation to the goods.
- iii. The Contractor will take reasonable precautions to preserve the goods pending delivery to the Customer. Notwithstanding this, the risk in the goods passes to the Customer from the time the goods leave the Contractor's premises.
- iv. In relation to work that the Contractor performs for the Customer, the Customer will acquire ownership of the product of that work in its tangible form including any correspondence, reports and any other documents prepared for the Customer's use. The Customer is entitled to receive any such papers provided the Customer has discharged all outstanding indebtedness to the Contractor.
- v. The Contractor retains ownership of its working papers and the copyright and all other intellectual property rights in the work that it does for the Customer. The Contractor is entitled to use, analyse, share and develop the knowledge, experience and skills of general application gained through working with the Customer.

6. RECORDS MANAGEMENT

- i. The Contractor will make reasonable efforts to store the Customer's file for a period of up to 10 years after completion of the Customer's work ("**the Hold Period**"). After the Hold Period, the Customer's file will be destroyed, unless the Customer instructs otherwise in writing.
- ii. If the Customer wishes to access their file during the Hold Period, the Contractor may charge a retrieval fee and any reasonable photocopying charges.

7. CREDIT

- i. The Customer authorises the Contractor to carry out any credit checks with third parties.
- ii. The Contractor may impose credit limits, which may be varied from time to time. If the Customer exceeds the credit limit, then goods and services may be withheld until the Customer's account is back within the credit limit.

8. WARRANTIES AND LIMITATION OF LIABILITY

- i. Except as required by law, the Contractor gives no express warranty in relation to any goods or services supplied to the Customer. The Customer acknowledges that it has not relied on any representation or warranty made on behalf of the Contractor.

- ii. Certain legislation may imply conditions and warranties into these terms of trade. To the extent that such conditions and warranties may lawfully be excluded, all such conditions and warranties are expressly excluded.
- iii. The Customer acknowledges that if it acquires the goods and services for a business purpose, then the statutory guarantees and implied terms, covenants and conditions contained in the *Consumer Guarantees Act 1993* are excluded.
- iv. In the event of any dispute arising out of the supply of the goods or services, the remedies of the Customer shall be limited to damages. Under no circumstances will the liability of the Contractor to the Customer exceed \$1,000.

9. TERMINATION

- i. The Customer may give notice to the Contractor at any time that it no longer wishes to receive goods and/or services from the Contractor. If this occurs, the Customer must pay the Contractor's fees for work done, and any other charges incurred, up until the date of termination.
- ii. Without prejudice to any of the Contractor's other remedies, if any amount payable by the Customer to the Contractor is overdue or the Customer becomes insolvent, commits an act of bankruptcy, enters into or is likely to enter in any arrangement with its creditors or in the case of a Contractor does any act that would render it liable to be liquidated, or if a resolution is passed or proceedings commenced for the liquidation or voluntary administration of the Customer or if a receiver is appointed in respect of all or part of the Customer's assets, then:
 - A. the Contractor may cancel any outstanding order or arrangement with the Customer; and
 - B. any moneys payable by the Customer to the Contractor whether due for payment or not will become immediately due and payable.

10. NOTICES

All notices or other communications to be given under these terms of trade will be given at the recipient's last known place of address.

11. GENERAL

a. No Waiver

No waiver of any breach of, or failure to enforce, any provision of these terms of trade at any time by any party in any way affects, limits or waives the right of such party thereafter to enforce compliance with these terms of trade.

b. Entire Agreement

These terms of trade record the entire agreement between the parties and prevails over any earlier agreement, written or oral, which are of no further effect.

c. Amendments

No amendment to these terms of trade is enforceable unless it is in writing and signed by the parties.

d. Further assurance

Each party will promptly do everything reasonably required to give effect to these terms of trade.

e. Partial invalidity

If any part of these terms of trade is held to be invalid or unenforceable by any judicial or other competent authority but would be valid or enforceable if some part of the provision were modified or deleted, the provision in question will apply with the minimum modification or deletion necessary to make it valid and enforceable, and the other provisions in these terms of trade will be unimpaired and will remain in full force and effect.

f. Governing Law

These terms of trade are governed by and will be construed in accordance with the laws of New Zealand. Any dispute will be determined by the exclusive jurisdiction of the New Zealand Courts.

Customer Acknowledgement

I/We confirm I/we have read and accept these Terms of Trade for the provision of Diesel Repair by Double A Diesel Repair Ltd and DMD Services Ltd.

Signed:

Dated: