

FIX'D AUTOMOTIVE ENGINEERING LIMITED

Terms of Trade

In these Terms of Trade, **we**, **us**, and **our** refer to FIX'D AUTOMOTIVE ENGINEERING LIMITED and include our employees. **You** refers to any person engaging our services and/or the Customer:

- (a) Any quote is addressed to,
- (b) Recorded in a Customer Detail Form, and/or
- (c) Placing an Order with us.

Parties refers to you and us.

The agreement between you and us (**Contract**) is contained exclusively in these Terms of Trade and any subsequent variations agreed to by us in writing.

By Placing an Order, you accept the terms of this Contract to the exclusion of any of your terms and all previous representations made to you.

1. Definitions

1.1 In these Terms of Trade:

Completion means the completion of the Work.

Delivered means when the Goods are made available for collection from our premises, or delivered to an address nominated by you.

Fee has the meaning given to it in clause 3.

Fixed Fee is any quote provided by us as a fixed price quote which you have accepted, or any agreement between us which expressly records in writing that the Work and/or the Goods are for a "Fixed Fee".

Goods means any goods we supply to you, whether through the performance of Work or otherwise.

Intellectual Property includes all intellectual property rights, including copyright, patent and design rights, drawings, documents, data, ideas, and calculations.

Order Details means any specifications or details expressly agreed to between you and us.

Payment Terms means any payment terms expressly agreed to in writing between you and us.

Place an Order means your confirmation to us, in any form, that you accept our offer to undertake the Work.

Work means the supply of services by us to you.

1.2 Reference to a party includes that party's successors, executors, administrators, and permitted assigns.

1.3 Reference to clauses is to clauses in this Contract.

1.4 Reference to a statute includes:

- (a) references to all regulations, orders, rules, or notices made under that statute;
- (b) all amendments to that statute and those regulations, orders, or notices; or
- (c) any statute passed in substitution of that statute.

2. Commencement and Completion

- 2.1 This Contract is binding on the parties from the date on which you Place an Order. If you Place an Order by email it creates the Contract.
- 2.2 If we have given you a date for Completion, that date is approximate only. We give no warranty that Completion will occur on or before that date.
- 2.3 We may unilaterally extend the date for Completion for any reason outside our control.

3. Fee

- 3.1 You will pay to us:
 - (a) the Fee, which shall either be:
 - (i) a Fixed Fee,
 - (ii) as expressly agreed in writing, or
 - (iii) in the absence of a Fixed Fee or agreement in writing, a reasonable fee for the Work;
 - (b) any disbursements incurred by us on your behalf;
 - (c) the cost of any subcontractors engaged by us under clause 8; and
 - (d) the cost of any Goods supplied to you, (together called the **Fee**).
- 3.2 Unless specified otherwise, the Fee and all other amounts payable under this Contract are inclusive of GST and are payable in New Zealand dollars.
- 3.3 Disbursements incurred by us on your behalf may include a reasonable mark-up by us.

4. Estimations

- 4.1 Where we have provided you with an estimation, it is an estimate of the Fee only and does not constitute the contract price between you and us.
- 4.2 The Fee payable by you may differ from any estimation we provide to you and shall be calculated in accordance with clause 3.1.

5. Fixed Fee

- 5.1 Where we have provided you with a Fixed Fee quote, which you have accepted, the Fixed Fee shall be subject to the following:
 - (a) The Fixed Fee shall be varied in the event of a Variation pursuant to clause 7;
 - (b) Where there is an increase in the cost of any Good to be sourced by us on your behalf, of up to 10%, you agree to pay such increase;
 - (c) Where there is an increase in the cost of any Good to be sourced by us on your behalf, exceeding 10%, either party shall be entitled to cancel the contract between us with 48 hours' notice, provided that you shall pay to us for all Work and Goods incurred by us until expiry of such notice; and
 - (d) Where, as a result of force majeure or your actions, there is a delay in the provision of the Work and/or the Goods, which results in an unacceptable increase to our base costs (which we shall determine in our sole discretion), we

shall be entitled to cancel the contract between us with 48 hours' notice.

6. Payment Terms

6.1 You will pay the Fee when:

- (a) specified in any Payment Terms; or
- (b) in the absence of specified Payment Terms, on or before the 20th day of the month after we invoice the Fee

(Due Date).

6.2 If you do not pay on the Due Date, you will:

- (a) be in default;
- (b) pay us default interest:
 - (i) at the rate of 12% per annum;
 - (ii) accruing on a daily basis;
 - (iii) from the Due Date to the date of payment in full of the amount due, including any accrued interest.

6.3 Payment of all sums under this Contract will be without set-off or deduction of any kind.

6.4 We may apportion payments to outstanding accounts as we determine in our sole discretion.

7. Variations

7.1 If you require additional work and/or variations to the scope of the Work (**Variation**), then:

- (a) we will provide a price for the Variation;
- (b) we will advise of any time extension required for the completion of that work;
- (c) if you accept the price and time extension, then the Variation and the agreed price and time extension will be recorded in writing as a variation to the Contract. Email confirmation will be sufficient evidence of your acceptance of the Variation;
- (d) payment for the Variation will be in accordance with clause 6; and
- (e) where a Variation is agreed, the Contract will be deemed to be varied accordingly. These Terms of Trade will continue to apply to the Variation.

7.2 If we do not agree under this clause, the Contract remains unchanged, and the parties remain bound by its terms.

8. Subcontractors

8.1 We may subcontract any part of the Work, but the subcontracting of any part of the Work will not relieve us from any obligation to you under this Contract.

8.2 Any subcontractor we engage will be responsible to and paid by us. The subcontractor's fees will be charged to you as part of the Fee.

8.3 Any subcontractor or consultant you engage directly will be responsible to and paid by you. Our responsibility to you for this subcontractor or consultant is limited to coordinating their services as required for completion of the Work.

9. Performance of Work

9.1 We will:

- (a) perform the Work with reasonable skill, care, and diligence in a professional manner;
- (b) endeavour to ensure that the Work is performed in accordance with any time frames agreed in writing with you;

(c) liaise with you during the course of performing the Work in accordance with your reasonable requirements.

9.2 You will give reasonable assistance to enable us to perform the Work by:

- (a) giving clear instructions;
- (b) promptly providing any information or content required from you for us to complete the Work;
- (c) ensuring that the Work and products derived from the Work are fit for the purpose you intend to use them for and meet any appropriate statutory, regulatory, governmental, and industry and environmental controls, standards, or practices.

9.3 If we have given you a time frame for completion of the Work, unless otherwise agreed in writing, this time frame is approximate only and is not deemed to be of the essence of the contract.

10. Limitation of liability

10.1 Except to the extent that the law prevents us from excluding liability, we will not be liable for any loss, damage, or liability of any kind whatsoever (including consequential loss or lost profit or business) and whether:

- (a) suffered or incurred by you or another person;
- (b) in contract or tort, including in negligence or otherwise; or
- (c) the loss or damage arises directly or indirectly from the Work.

10.2 To the extent we are liable for any loss suffered by you arising from breach of these Terms of Trade, the Contract, or for any other reason, our liability is limited to the Fee.

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11. Title and Risk

11.1 We will retain title to Goods we supply until they have been paid for in full and you have performed all your other obligations under these Terms.

11.2 Risk in all Goods passes to you when the Goods are Delivered. You will insure Goods for their full price, and will not sell, dispose of, or part with possession of them or do anything else inconsistent with our ownership of the Goods, from Delivery until title in them passes to you.

11.3 You agree:

- (a) That any of your personal property stored or located on our premises are stored at your own risk, and
- (b) You have a current policy of insurance to cover any damage to, or loss of, your personal property while in our possession.

12. Force majeure

12.1 We will not be liable for any delay in Completion or failure to deliver the Work if the cause of the delay or failure is beyond our control.

12.2 In the event of Force Majeure, we shall be entitled to cancel the contract between you and us with 48 hours' notice.

13. Default

13.1 If:

- (a) you fail to pay any money owing on the Due Date;
- (b) we believe you:
 - (i) have committed or will commit an act of bankruptcy;
 - (ii) have had or are about to have a receiver or liquidator appointed; or
 - (iii) are declared insolvent;
- (c) you are otherwise in breach under this Contract; then, in addition to any remedies we have at law, we may do one or more of the following:
 - (d) require immediate payment of the Fee;
 - (e) charge default interest under clause 6.2; and/or
 - (f) immediately terminate the Contract by written notice to you.

14. Intellectual Property

- 14.1 All Intellectual Property as at the date of these Terms of Trade remains with the owner.
- 14.2 If any Work is based on your designs, you warrant that the undertaking of the Work by us will not infringe any third party's Intellectual Property rights. You indemnify us against any loss, liability, costs, and expenses if any other person claims that the Work infringes any patent, copyright, or other rights.
- 14.3 Subject to clauses 14.1 and 14.6, we will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests in the Work, and any other work we perform for you.
- 14.4 We will retain exclusive worldwide ownership at all times of our artistic styles, methods of working, techniques, ideas, skills, and know-how.
- 14.5 You must not attribute the Work to anyone other than us or remove our trade marks, signatures, logos, or similar from our Work.
- 14.6 On payment of all amounts owing to us under these Terms of Trade and the Contract, we assign to you the copyright in the final form of any Work which we have:
 - (a) specifically created for you for the countries and purposes as specified in the description of the Work; or
 - (b) if not specified, for the countries and the purposes which would be reasonably expected given the nature of your request for the Work, unless there is agreement between you and us that we are to retain intellectual property in the Work.

15. Variation/Termination

- 15.1 We may at any time:
 - (a) vary these Terms of Trade, acting reasonably, and you will be bound by the variation from the date you were notified of the variation; or
 - (b) terminate these Terms of Trade.

16. Notices

- 16.1 Any notice may be delivered in person or sent by email to you or to any director, where you are a company.

17. Costs

- 17.1 You must pay our costs of the enforcement or attempted enforcement of our rights under these

Terms of Trade or the Contract, including all debt recovery costs and legal costs.

18. Assignment

- 18.1 You must not assign any of your rights, powers, or obligations under these Terms of Trade or this Contract without our prior written consent.

19. Disputes

- 19.1 If a dispute arises under this Contract, the parties will act in good faith to resolve the dispute.
- 19.2 Any claim or dispute arising under the Contract will be referred to mediation if the parties are unable to resolve the dispute themselves within ten (10) working days of the dispute arising.
- 19.3 If the dispute is not resolved at mediation, the dispute will be:
 - (a) referred to the Disputes Tribunal if the dispute falls within the jurisdiction of the Disputes Tribunal, or
 - (b) referred to arbitration in accordance with the Arbitration Act 1996.
- 18.4 Nothing in this clause prevents either party from taking immediate steps to seek any injunctive relief in the New Zealand courts.

20. Notification of Defect

- 20.1 Where you discover a defect in the Goods and/or the Services, you agree to immediately advise us (and no later than 24 hours' after discovery) of the defect and provide us (or our appointed agent) with an opportunity to sight, remedy and/or take steps to prevent damage, deterioration or waste.
- 20.2 You are required to raise any claim or dispute arising out of the supply of the Goods and/or the Work within three (3) months of the cause of action being discovered, or being reasonably discoverable.
- 20.3 Nothing in this clause prevents the operation of the Limitation Act 2010.

21. Deferred Payment

- 21.1 We are under no obligation to supply Work or Goods to you on a deferred payment basis or to extend credit to you.
- 21.2 Where we agree to defer payment of the Fee:
 - (a) You acknowledge and agree that the Fee will be paid in full within one month and twenty-seven days of issuance of our invoice for the Fee;
 - (b) The supply of the Work and/or Goods is a "credit sale" and there is an agreed price for the supply of the Work and/or Goods; and
 - (c) The supply of the Work and/or Goods on a credit sale basis does not constitute a credit contract pursuant to the Credit Contracts and Consumer Finance Act 2003.
- 21.3 Where we have extended to you a deferred payment and/or credit arrangement, we may (without cause and/or explanation):
 - (a) Withdraw such arrangement at any time and make demand of any monies owed to us, and/or
 - (b) Decline any request to provide deferred payment and/or credit arrangements in future.

22. Lien

- 22.1 Where we have supplied Goods and/or Work, on or in respect of your personal property and we have

retained possession of the personal property to which the Goods and/or Work have been applied, we claim:

- (a) A general lien at law, and/or
- (b) An unpaid seller's lien pursuant to the Contract and Commercial Law Act 2017,

over such personal property, pending receipt by us of the Fee in full.

23. Personal Property Securities Act 1999 (PPSA)

- 23.1 Clause 11.1 creates a security interest in Goods we supply to you.
- 23.2 You will not grant any other security interest or any lien over Goods that we have a security interest in.
- 23.3 At our request you will promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first ranking perfected security interest in the Goods.
- 23.4 We may at any time enter your premises and properties to uplift Goods that we have a security interest in.
- 23.5 If Goods that we have a security interest in are processed, included, or dealt with in any way causing them to become accessions, processed or commingled Goods, our security interest will continue in the whole in which they are included. You will not grant any other security interest or any lien in either the Goods or in the whole.
- 23.6 You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, and 133 of the PPSA.
- 23.7 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 23.8 You will give us prior written notice of any proposed change of your name or address.

24. Consumer legislation

- 24.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations on us which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these Terms, we exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 24.2 Where you acquire Goods and/or Work from us for the purposes of a business:
 - (a) the parties acknowledge and agree that:
 - (i) you are acquiring the Goods and/or the Work for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;
 - (ii) the Goods and/or the Works are supplied and acquired in trade for the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and
 - (b) you agree that all warranties, conditions, and other terms implied by the Consumer Guarantees

Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause

25. Privacy of Information

25.1 You authorise us:

- (a) to collect, retain and use information about you from any person (including yourself) for the purpose of assessing your creditworthiness;
- (b) to disclose information about you:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
 - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies, and powers under our Terms.

25.2 Where we have agreed to (or are assessing your application for) a deferred payment arrangement, you consent to us, or any financier or credit-rating agency, making enquiries of and obtaining any information about your financial standing and credit worthiness.

26. Jurisdiction

26.1 These Terms are governed by and construed according to the laws of New Zealand.

27. General

- 27.1 These Terms supersede and cancel any earlier representations, warranties, understandings, and agreements (whether oral or written) and together with your Customer Detail Form (if any) and/or any written agreement between you and us (if any), constitutes the entire agreement between us and you.
- 27.2 You may only assign, sell, or otherwise dispose of any right or obligation under these Terms if we consent in writing first.
- 27.3 If you have entered into these Terms as the trustee of a trust and you have no right to or interest in any of the assets of the trust except in your capability as trustee of the trust, your liability will be limited to the value of the assets of the trust which now or in the future are (or, but for your wilful neglect or default, would be) in the hands of the trustees for the time being of the trust. This clause does not limit any liability you have to us as a personal guarantor.
- 27.4 No failure or delay by us to exercise (in whole or in part) any right, power or remedy under these Terms will operate as a waiver of that right, power or remedy.
- 27.5 We may change these Terms at any time. Any change applies from when we notify you of that change.

