



GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

“**Account**” means your account with Us and if an Account is held by You, You are the **Account Holder**;

“**Administration Costs**” means costs incurred by us as a result of your Account being unpaid by the due date and include the Default Fee;

“**Agreement**” means these terms and conditions as amended from time to time;

“**Australian Standards**” means the standards applicable to the Products and / or Services, as well as any other standards noted in the Quote;

“**Authorised Persons**” means You and any persons authorised by You to liaise with Us on Your behalf and includes your employees, contractors, sub-contractors, executors and / or administrators;

“**Commencement Date**” means the date of this Agreement or the date any Product, Service or Quote is provided to You, whichever is earlier;

“**Costs**” means any costs associated with this Agreement;

“**Credit Application**” means a credit application completed by You and accepted by Us (the terms of which do not form part of this Agreement);

“**Customer**” means the ultimate recipient of the Products and / or Products and / or Services and includes the Third Party Customer as the context requires;

“**Default Fee**” means the sum of \$55.00 (inc GST) being the fee payable if your Account shall be in arrears for greater than 14 days and we issue any reminder notices to You;

“**Delivery**” means the delivery of the Products or Products and / or Services, whether by delivery to the Worksite or collection from Us;

“**Demand Costs**” means the legal costs incurred by Us to issue a letter of demand to You if your Account remains unpaid for a period of 28 days from the due date, being \$250.00 plus GST as at the date of this Agreement;

“**Deposit**” means the deposit payable by You in accordance with this Agreement;

“**Force Majeure**” means any event outside of Our control which will have an impact on Our ability to provide the Products or Products and / or Services to You including acts of terrorism, acts of war, acts of God, tempest, heavy rain, equipment issues, strike or other industrial action and such other events reasonably determined by Us as being outside of Our control;

“**Invoice**” means a tax invoice issued by Us to You for the supply of the Products and / or Products and / or Services, as required from time to time;

“**Job**” means any individual Products or Service provided by Us to You pursuant to each Quote or purchase order raised by You;

“**Owner**” means the owner of the Worksite where the Products and / or Services will be provided;

“**Quote**” mean a quote provided by Us to You for the Products and / or Services;

“**Reports**” means any reports issued by Us to You following the completion of the Products and / or Services as may be required by You;

“**Service**” means any service utilised or requested by You in accordance with this Agreement, including diagnosing mechanical issues, servicing, tuning etc... and / or any other service provided by Us to You from time to time (including any Reports) and in accordance with this Agreement;

“**Sub-Contractors**” means any person contracted by Us to provide the Products and / or Services to You;

“**Term**” means the term of this Agreement as noted in clause 2;

“**Third Party Customer**” means the ultimate recipient of the Products and / or Services, who does not contract directly with Us and includes any head contractors or Owners;

“**Us**” / “**Our**” / “**We**” means NDS ASSOCIATION PTY LTD (ACN 609 819 525) and HD TUNING PTY LTD (ACN 641 271 221) and its employees, authorized representatives and assigns;

“**Vehicles**” means Your vehicle which we have been engaged to provide Products or Products and / or Services for;

“**Worksite**” means the location where the Products and / or Services will be provided, including our workshop(s) where appropriate and also includes any premises where We or our agents are delivering Products;

“**You**” means the person who contracts with Us or engages Us to quote or provide any Products and / or Services.

2. TERM AND TERMINATION OF AGREEMENT

- a) This Agreement will commence once accepted by You.
- b) You will be deemed to have accepted the terms and conditions of this Agreement if You:
 - i. request or accept a Quote from Us;

- ii. Pay a Deposit to Us; and / or
- iii. In any other way communicate with us in relation to the Products and / or Services after You have been provided with a copy of this Agreement.

- c) This Agreement will continue in full force and effect until terminated by either party.
- d) This Agreement may be terminated by either party with 2 business days written notice to the other PROVIDED THAT such notice may not be provided by You prior to a Job being finalised, unless We have breached this Agreement.
- e) Your obligation to pay monies to Us in accordance with this Agreement will survive the termination of this Agreement.
- f) Any Jobs that remain unfulfilled at the date of any termination of this Agreement shall be paid in full by You and We will complete any Jobs paid in full.

3. COSTS AND CHARGES

3.1 Deposit

- a) Deposits may be payable by You in accordance with clause 7.2 of this Agreement and we may use the Deposit to pay for the hire of any equipment we may not own, in order to provide the Products and / or Services to You.
- b) Any Deposits paid by You are non-refundable.

3.2 Costs

- a) The Costs are payable by You and will be detailed in the Quote.
- b) The actual Costs may not be known until We or the Sub-Contractors have an opportunity to view the Worksite and ascertain the condition of the Worksite.
- c) You agree and acknowledge the Costs are estimated and We may Invoice You for any increased Costs incurred due to the Worksite not being as anticipated or as described by You.
- d) You agree to indemnify Us for any Costs and We reserve Our right to require prepayment of the Costs before commencing or finalising any Products and / or Services to You.

3.3 Administration Costs, Default Fees & Demand Costs

We may charge you Administration Costs, Demand Costs and / or Default Fees in accordance with this Agreement if You do not pay Your Invoices as required. These costs also include any debt recovery and legal costs (on an indemnity basis) that may be incurred by Us should you default on this Agreement.

3.4 Interest on Arrears

We reserve Our right to charge You interest on any accounts in arrears for more than 14 days at a rate of 15% per annum. The interest charged will form part of the Arrears and must be paid in full before the provision of any Products and / or Services or Reports to You.

3.5 Credit Card Fees

You may be liable for additional fees if You wish to pay an Invoice by credit card. Current credit card fees are 1.2% of any payment made by You by credit card and these fees will vary from time to time.

4. GST

All Costs and charges are exclusive of GST and are in Australian dollars unless otherwise stated.

5. BILLING

- a) We will provide an Invoice upon finalisation of the Job or in instalments as We reasonably determine, or as otherwise agreed in the Quote.
- b) We may charge you Administration Costs, Demand Costs and / or Default Fees in accordance with this Agreement if You do not pay Your Invoices as required.
- c) Should you fail to remedy any failures to pay, We may (in Our sole and absolute discretion):
 - i. stop issuing You credit (if You are an Account Holder);
 - ii. suspend any Products and / or Services being provided by Us to You;
 - iii. Withhold any Reports;
 - iv. refuse to supply any further Products or Products and / or Services to You; and / or
 - v. place conditions on Your agreement with Us, as We see fit (including, but not limited to, all Orders being paid in full in advance and / or bank guarantees or other security for payment).

6. QUOTES AND ESTIMATIONS

- a) We may be requested to provide a Quote for the provision of the Products and / or Products and / or Services to You, which may also be requested on behalf of a Third Party Customer.
- b) Our Quote will detail the Products and / or Products and / or Services that will be provided by Us and will detail assumptions made for the purposes of the Quote and items that are not included in the Quote.

- c) Worksite access confirmation and full Job particulars must be supplied by You by the date specified in the Quote.
- d) Once a Quote is provided to You, it will remain current and valid for 30 days from the date of the Quote, errors and omissions excepted.
- e) Any changes to the scope of works provided to Us as part of the quoting process (including any shortened time frames) will be a variation and will require an amended Quote.
- f) We may vary our Quote at any time prior to an Invoice being raised for the required Products and / or Products and / or Services for reasons where further charges are justified. Such additional costs are determined in our absolute discretion.
- g) We may call You / an Authorised Person, to note additional Products or Services are required as determined upon inspection of the Vehicle, noting the Costs associated with the same. We will not proceed with any additional works to the vehicle without express authority to incur the additional costs.
- h) Quotes may include rubbish removal costs if requested. If no rubbish removal costs are noted, they are not included in the Quote and You must arrange for all rubbish removal from the Worksite.

7. JOBS

7.1 Requesting a Job

Should You request We proceed with a Job as per the Quote, We will advise you of the estimated completion / supply date for the Products and / or Products and / or Services. This estimated date may vary (including being cancelled and rescheduled) based on weather conditions at the date the Products and / or Products and / or Services are to be provided, access restrictions at the Worksite, Force Majeure, scheduling issues and / or such other reasons which may restrict our ability to provide the Products and / or Products and / or Services at the time anticipated.

7.2 Deposits

- a) On confirming a Job, you may be required to pay a Deposit, as determined by Us in Our absolute discretion and stated in the Quote.
- b) The Deposits paid by You are non-refundable, unless We have acted in breach of this Agreement.
- c) We reserve our rights to vary (including increase) the amount of any Deposit required from You and place any conditions we deem necessary on such Deposit.

7.3 Payment of Account

- a) The Invoice will be payable in full immediately upon the finalisation of the Products and / or Services / provision of the Products, unless You are an Account Holder in which case You must pay the Invoice in accordance with your Account conditions.
- b) If You are an Account Holder and Your Account is in arrears or default, We will not complete any further Products and / or Services for You and reserve Our rights to exercise a lien over Your Reports or Vehicles unless the Account arrears are cleared and the Invoice is paid in full.

7.4 Ownership of Intellectual Property in the Reports

Upon full payment of the Invoice, ownership of the Report will vest in You (or the Third Party Customer if applicable). Unless and until the Invoice has been paid in full, We retain ownership of the Report and reserve Our rights to take action as We see fit to enforce Our rights.

7.5 Finalisation Time Frames

We will make Our best endeavours to provide the Products and / or Services and Reports to You within the time frames detailed in the Quote, as may be amended from time to time if required by Us. We take no responsibility for any delays which have been caused by Your breach of this Agreement or Force Majeure.

8. PRICELIST

Our price list may vary from time to time and the price payable by You will be as per the current price list at the date of Invoice, or in accordance with a current Quote.

9. PRODUCT AND SERVICE LIABILITY

9.1 Quality and Timing of the Product or Service

- a) We will endeavour at all times and wherever reasonably practicable to ensure that the Products and / or Products and / or Services provided to You are as described and as requested and provided within time frames as agreed.
- b) We will endeavour to notify You as soon as possible if We expect that the Products and / or Products and / or Services and / or the finalisation of the Reports may be delayed for any period of time, in so far as we are able to monitor the same.

9.2 Force Majeure

For any delays that may arise due to Third Parties, utility issues, or for other reasons outside of Our control (such as Force Majeure) You agree and acknowledge that We will not be liable for any costs or delays for any Product Delivery or Products and / or Services to be provided by Us

pursuant to this Agreement.

9.3 Third Parties

Should Our ability to supply the Products and / or Products and / or Services to You be impacted by third parties (including, but not limited to, if there are other tradespersons within the Worksite who are impacting on Our ability to provide any Products and / or Services in a timely or safe manner), You agree that We will not be held liable.

9.4 Voiding Our Liability

We will not be liable to You for any losses, costs or damages howsoever incurred by You or a Third Party Customer in any of the following circumstances:

- (i) improper installation or incorrect application of a Product by any persons not directly employed by Us;
- (ii) a Product being fitted by a person who is not a licensed repairer or mechanic;
- (iii) overheating or overloading of a vehicle;
- (iv) insufficient use or incorrect use of oil or lubricants;
- (v) failure to carry out correct maintenance in a timely manner;
- (vi) any unauthorized repairs, alterations or dismantling;
- (vii) misuse, neglect or accidents on the part of the Customer or any third party;
- (viii) timing belt and or chain and seals not being changed or repaired in a timely manner;
- (ix) the continued use of any Product after a defect becomes apparent or would have become apparent to a reasonably prudent operator of a Vehicle;
- (x) fair wear and tear or any act of God (including but not limited to, storm, fire, tempest and earthquake);
- (xi) damage to a Product by the Customer or a third party;
- (xii) a failure on the part of the Customer to follow any instructions or guidelines provided by Us; or
- (xiii) any action or inaction on the part of the Customer or a third party.

9.5 Liquidated Damages

Should We be held liable for any costs, damages or losses, howsoever incurred, You agree that any liquidated damages payable by Us to You shall be paid at a fixed rate of \$1.00 (AUD) per day and You acknowledge these costs are fixed and reasonable.

10. WORKSITE

10.1 Access

You will provide Us or our agents and Sub-Contractors safe and prompt access to the Worksite to inspect the Worksite and / or complete the Products and / or Services or deliver the Products, including if we reasonably require access following termination of this Agreement.

10.2 Owner's Permission

If You are not the Owner, You agree that You have obtained the consent of the Owner to allow Us to supply the Products and / or Services or deliver the Products within the Worksite.

10.3 Safety

You are responsible for ensuring the Worksite is safe and free of any obstacles.

10.4 Worksite Assumptions

We make assumptions about the Worksite based on information provided by You for the Job and as detailed in the Quote. Should these assumptions be incorrect (which We only know with certainty when the Job has commenced), We will contact You or Your Authorised Person to obtain a verbal confirmation We are authorised to proceed with the Products and / or Services for the Job and confirm any additional Costs if We proceed. We reserve Our rights to cease works if We reasonably determine authority from You or the Authorised Person is required to proceed, and cannot be obtained.

11. ACCOUNT HOLDERS

We may offer You the privilege of being an Account Holder with Us, subject to a Credit Application being completed by You and accepted by Us, in accordance with our applicable terms and conditions at the time of application. We may refuse or revoke any Account in our absolute discretion, including if the Account Holder is in breach of this Agreement and / or their Account is in arrears. It is a condition of any Account being granted to You that any guarantees required from You are provided as required. The terms and conditions of an Account do not form part of this Agreement, however this Agreement will remain applicable to any Account Holders.

12. AUTHORISED PERSONS

- a) An Authorised Person, as noted by You and amended from time to time in writing, may contract with Us on Your behalf and may instruct Us as to the supply of the Products and / or Products and / or Services as required from time to time for a Job (whether an existing Job or a new Job including a Quote).
- b) An Authorised Person may incur expenses on Your Account and on Your

behalf which You agree and acknowledge You will be held liable for, absolutely.

- c) You may revoke the authority of an Authorised Person by providing us notice in writing, by email, by fax or by post, noting that the authority of the Authorised Person has been revoked. This will take up to one business day for Us to process and You will remain liable for any Costs incurred by Us or charged to Your Account within the said business day after you have provided us with the said notice (unless otherwise acknowledged by Us in a shorter time frame).
- d) We will do everything reasonably necessary to ensure any revoked authority is noted by Us and enforced, however You release Us from any liability for a period of 2 business days from the date You notify Us of the change in Authorised Persons for Your Account.
- e) In circumstances of alleged fraudulent charges to Your Account (by someone holding themselves out as an Authorised Person) You release Us absolutely for any costs and charges on your Account which have been charged by Us to You in good faith where we have acted reasonably.
- f) We will make best endeavours to identify any Authorised Persons at the time of any charges to Your Account and You will ensure any Authorised Person will provide photographic identification (any Australian issued driver's license, passport or proof of age card) upon request.

13. WARRANTY

13.1 Australian Standards

We warrant that We will provide the Products and / or Products and / or Services to You in accordance with the Australian Standards.

13.2 Code of Practice

We will at all times, acting reasonably, comply with the Code of Practice applicable to our business and the Service type.

13.3 Liability for Defects

If You notify Us in writing within 14 days of Us completing the Job that there are issues with the Products and / or Products and / or Services provided and / or the Report, We will remedy any defects as soon as reasonably possible at Our expense. This acceptance of liability does not include any defects or issues arising from the actions of third parties, such as pegs or pipes being removed by any party prior to a surveyor attending the Worksite.

14. TOLERANCES AND LIMITATIONS

You agree and acknowledge that there are limits to the Products and / or Products and / or Services. When We are providing the Products and / or Products and / or Services to You, you acknowledge there will be tolerances as determined by the Australian Standards.

15. SUSPENSION OF THE SERVICE

We may suspend the Products and / or Products and / or Services and supply of any Reports to You if:

- a) required by law;
- b) there is a Force Majeure;
- c) there is a threat or risk to security to Us, Our employees, agents and / or Sub-Contractors;
- d) You are in default of this Agreement;
- e) any Account held by You is in arrears;
- f) there is suspected fraud by You or Customer (including in relation to Your Account);
- g) You are considered by Us (in our absolute discretion) to be an unacceptably high credit risk,
- h) An insolvency event occurs;
- i) You die; and / or
- j) You cease trading.

16. AGREEMENT PREVAILS

Should We enter into any subsequent agreement with You relating to any Products and / or Products and / or Services, this Agreement will prevail and this Agreement will be treated as being re-executed by You one day after we have signed any further Agreement with You.

17. ENFORCEMENT

Should We be required to instruct solicitors to enforce this Agreement against You, such as contacting You to demand the payment of costs and Costs in relation to this Agreement, as well as commence any proceedings against You, You agree and acknowledge that You will be liable for all of our legal costs and expenses on a full indemnity basis.

18. INDEMNITY

We do not guarantee, represent, or warrant that our Products and / or Products and / or Services will be uninterrupted or error-free.

You agree that, to the maximum extent permitted by law, any and all liability and responsibility of Us to You, the Third Party Customer, the Owner or any other person under or in connection with this Agreement, or in connection with the Products and / or Services, or Your use of or inability to use the Products and / or Services is excluded regardless of whether such liability arises in contract, tort (including negligence), equity, breach of statutory duty

or otherwise providing that such loss or damage has not resulted from Our breach of this Agreement or Our negligent acts or omissions.

Our liability and responsibility is excluded in respect of any and all loss or damage, whether direct or indirect, including, without limitation, general and special damages and consequential and incidental loss.

19. PRIVACY

We may use Your address, contact and email account details as provided in this Agreement to provide You with Quotes, Invoices, reminder notices and other administrative notices and receipts from Us.

20. FAULT REPORTING

We will take all possible and reasonable steps to rectify any faults that are required to be rectified by Us in accordance with this Agreement.

21. VARIATIONS TO THIS AGREEMENT

This Agreement may be varied by Us from time to time by notice in writing to You.

22. JURISDICTION

The proper law of this Agreement shall be the law of Western Australia and the parties to this Agreement agree to unconditionally submit to the non-exclusive jurisdiction of the courts of Western Australia.

23. NOTICES

All Notices must be in writing and addressed to the party at their address nominated in this Agreement, or as amended in writing from time to time.

24. ASSIGNMENT OF THIS AGREEMENT

You must not assign any of Your rights or obligations under this Agreement without Our written consent, which may be arbitrarily withheld.

We may assign Our rights under this Agreement to any successors, assigns or purchasers of our business, with notice to You in writing.

25. ELECTRONIC COMMUNICATION

We will communicate with You via electronic means to the email address provided by You from time to time. For contractual purposes, You:

- a) Consent to receive communications from Us in an electronic form; and
- b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that We provide to You electronically satisfy any legal requirement that such communications would satisfy if it were in hardcopy writing.

26. WAIVER

Subject to any express consent in writing of any of the parties no waiver by any party or any default in the strict and literal performance of, or compliance with, any provision, condition, or requirement of this Agreement shall be deemed to be a waiver of strict and literal performance of, and compliance with, any other provision, condition or requirement, nor to be a waiver of, or in any manner release of, any other party from strict compliance with any provision or requirement in the future or in any manner impair the exercise of any such rights accruing to it.