

**1. Definitions**

In these terms and conditions, unless inconsistent with the context or subject matter:

- 1.1 “**ACL**” means the Australian Consumer Law as set out in Schedule 2 of the *Competition & Consumer Act 2010*;
- 1.2 “**Customer**” means the party identified as the customer on the Service Invoice;
- 1.3 “**Goods**” means any goods of any nature whatsoever delivered to the Repairer by the Customer in relation to which the Repairer is to carry out the Works;
- 1.4 “**Repairer**” means Cairns Diesel Service Pty Ltd ACN 069261043;
- 1.5 “**Work**” means all works carried out by the Repairer pursuant to these Terms and Conditions for on behalf of the Customer including, without limitation, the repair, service, maintenance, refitting, improvement, inspection, parts supply, testing, storage, transport, handling or delivery of the goods together with the supply, installation and/or fitting of the Goods and the supply of labour, tools, parts, units, components, accessories and equipment.

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**2. Customer Warranties**

- 2.1 By requesting the repairer to carry out the Works, the Customer authorises the Repairer to do all things necessary that are, in the opinion of the Repairer, to carry out and complete the Work including, without limitation:-
  - (a) operate the Goods or any part or device on about the Goods; and
  - (b) remove from the Goods any machinery, part or device.
  - (c)
- 2.2 **The Customer warrants to the Repairer that:-**
  - (a) It has the authority to request the Repairer to carry out the Works and has provided the Repairer with and accurate and sufficiently detailed description of the nature and scope of the Works to be performed;
  - (b) The Goods are not of a dangerous, damaging or unsafe nature, so as to be liable to cause damage or to be a risk to property, life or health; and
  - (c) All books and records furnished by or on behalf of the Customer relating to the Goods are complete and accurate.
  - (d)
- 2.3 Where the Customer is acting as agent in requesting the Works, the Customer agrees to be jointly and severally liable with its principle for all amounts payable to the Repairer arising out of the Works and payable pursuant to these Terms and Conditions.
- 2.4 The Customer cannot withdraw a request for the Works to be done or request for the Works to ease before completion unless the Repairer agrees in writing.

**3. Time for Completion**

The Repairer will use its best endeavours to carry out the Work within the time stated and all completion dates shall be regarded as best as estimates only. The Customer must accept the actual completion date and the Repairer shall not be liable for any losses, costs, damages or expenses suffered by the Customer or any other party as a result of any delay in delivery. In the event that the Repairer is hindered or prevented from performing the work, owing to any cause beyond its reasonable control or its inability to procure services, materials, or articles required for the performance of the contract, except at enhanced prices, the Repairer may at its sole option, delay performance of, or cancel the whole or any part of the contract and the Repairer shall not be held responsibility for any such delay or cancellation or any inability to deliver.

**4. Costs and Estimates**

- 4.1 Estimates for Works by the Repairer are valid for the period stated in the estimate unless otherwise advised by the Repairer in writing.
- 4.2 The Estimate is based on the information provided to the Repairer by the Customer at the time of the Estimate and in the event that any unexpected issues arise or, for whatever reason, the Customer requires the Repairer to undertake additional work then additional work will be charges accordingly.
- 4.3 Any changes such as GST and other government taxes or levies are not included in any estimated price provided by the Repairer and shall be an additional charge to be paid by the Customer.
- 4.4 The cost of sub-contracted items of work and goods and components parts purchased from other manufactures, shall be payable by the Customer at the rate charged to the Repairer plus an administration charge.

- 5. **Dockyard Works:** Unless the Repairer otherwise agrees in writing, where the Works are to be carried out to a vessel or any machinery, part or device on or about the vessel at a dockyard, slipway, wharf, jetty or any other place, the Customer authorises the Repairer to move the vessel by whatever means and in whatever circumstances that the Repairer considers appropriate.

Initials

6. **Terms of Payment**

- 6.1 The Customer shall pay for the Works, plus any other amounts payable to the Repairer under the Terms and Conditions immediately upon receipt of the Repairer's tax invoice and without reduction of deferment on account of any claim, counterclaim or set off the Customer may allege to have against the Repairer.
- 6.2 Unless specifically agreed to in writing by the parties, payment in full shall be due prior to dispatch or upon notification by the Repairer to the Customer that the Goods are ready for dispatch.
- 6.3 If the Customer fails to make payment within thirty (30) days from the date of the Repairer's tax invoice then the Customer shall be liable to pay interest on the outstanding amount at the rate of 15% per annum calculated daily.

7. **Collection of Goods**

- 7.1 The Goods must be collected by the Customer within (7) days after the Customer has been notified by the Repairer that the Goods are ready for dispatch and, in the event that the Customer fails to do so then the Repairer shall be entitled to charge the Customer for storage costs in relation to the Goods at a rate of 2% of the total price for the Works for each day that the Goods are not collected.
- 7.2 The Customer must examine the Goods immediately upon dispatch by the Repairer and, in the event that the Customer is taken to accept the Works then the Works will deemed to have been carried out by the Repairer in a proper and satisfactory manner.

8. **No Liability for Loss:** The Repairer shall not be liable for any loss or damage of any kind whatsoever sustained to any plant, machinery or other property of the Customer whilst same is in the possession of or under the control of the Repairer.

9. **Force Majeure:** The Repairer will not be liable for breach of contract arising from or caused by, directly or indirectly, fire, flood, earthquake, storm or tempest, the action of any government or other public authority or corporation, the lack of labour, supplies or equipment or whatsoever cause or any other cause beyond the Repairer's control.

10. **Indemnity:** The Customer shall indemnify and keep indemnified the Repairer against all loss, damage, costs and expenses suffered or incurred by the Repairer due to the failure of the Customer to observe or perform any or all of the Terms and Conditions on the part of the Customer to be observed, performed or fulfilled under the Agreement.

11. **Sub-Contracting and Indemnity**

- 11.1 The Repairer shall be entitled to sub-contract on any terms in the whole of any part of the Work and any and all acts of things that are in the opinion of the Repairer necessary or desirable to carry out and complete the Work.
- 11.2 The Customer undertakes that no claim or allegation shall be made against any person whomsoever, who performs or undertakes the Work (including all sub-contractors of the Repairer), other than the Repairer, which imposes or attempts to impose upon any such person any liability whatsoever in connection with the Work, Whether of not arising out of negligence on the part of such person and, if any such claim or allegation should nevertheless be made, to indemnify the Repairer against all consequences thereof.

12. **Termination**

The Repairer may, by notice in writing, terminate the Agreement upon occurrence of any of the following:

- 12.1 The Customer defaults in payment due t Repairer;
- 12.2 The Customer becomes insolvent, bankruptcy proceedings are issued by or against the Customer, the Customer is placed into administration, receivership or liquidation or the Customer makes any arrangement with its creditors;
- 12.3 The Customer is merged, consolidated or changes the nature of character of its business or share capital, and upon termination by either party;
- 12.4 All sums due to either party shall be paid immediately;
- 12.5 Any orders received and accepted by the Repairer prior to the termination of the Agreement shall be fulfilled in accordance with their terms.

Initials



**Workshop Terms & Conditions**

- This company does not assume in any way, liability whatsoever, for vehicles/parts left with us for repairs, storage or other purposes, or while being driven by our employees.
- If requested by customer, to leave keys or goods in an unsecured place, we do not take responsibility for the safety of the vehicle/goods.
- Workshop charge – covers cleaning rags, cleaning solvents etc
- Parts and materials supplied subject only to manufacturer’s warranty
- Due to storage constraints, vehicles/old parts for repairs/parts will be held for 7 days, unless we received a request in writing to hold for longer. After the 7 day period, a storage fee of \$10.00 per day may be charged. If the goods still remain on premises after six months, we are entitled to proceed with the “Disposal of Uncollected Goods Act 1967”. Under this act, uncollected goods may be sold, six months after the date on which they were ready for collection.
- Warranty – please refer below for our warranty conditions.

**Parts Return**

- Stock Items – if returned within
  - 14 days – full credit (CDS receipt to be provided)
  - 15-30 days – less 10% handling/freight fee
  - After 30 days – no returns will be accepted
- Special procurement – Parts that we do not supply as “regular stock” will require a deposit before ordering.
- Vendor surcharge will be deducted from credits where applicable.
- Freight must be prepaid.
- Goods will not be accepted for credit without invoice number.
- All goods returned for credit must be in a resalable condition, in original packaging (unopened).
- Consumables such as oil, grease, filters etc will not be accepted for return.
- Parts and materials supplied subject only to manufacturer’s warranty.

**Payment Terms**

- Approved account customers – Nett 30 days
- Cash customers – cleared payment before delivery or collection

**Workshop Warranty**

- Cairns Diesel Service will warrant certain repairs carried out by our workshop. This is conditional and all claims will be assessed by our Workshop Manager.
- Where a customer elects to have a lesser or alternative repair carried out on their parts/vehicle, this would “void” any warranty.
- Warranty applies only to the portion of a component repaired.
- The standard form of warranty for a major component repair ie engine, gearbox, fuel pump, rear axle, front axle, steering box, suspension, will have a 6 month or 50,000km from the date of repair. Electrical components ie alternator, starter motor, heater fan, air conditioner etc is 30 days from the date of repair of manufacturer’s warranty (if new).
- Warranty applies to labour and parts.
- Any repairs carried out by an outside repairer (subcontractor) must be authorised by the Workshop Manager.

**EXCLUSION from warranty is the following:-**

- Failure caused by a lack of lubricant or coolant.
- Associated costs arising from a failure, such as towing, travelling, accommodation, overtime rates and loss of revenue are not covered in the warranty conditions.
- Subsequent damage that may be caused by failing to take proper precautions when a failure occurs is not covered by this warranty.
- Warranty excludes drive abuse or accident damage, as determined by Cairns Diesel Service.
- Removal and refitting of faulty components and associated costs are not covered under warranty if components were not fitted by Cairns Diesel Service.

Please accept our Terms & Conditions (Refer our website for Full Terms & Conditions)

Customers Signature ..... Date .....