

# **Terms & Conditions**

## **BMC Auto Electrical & Air Conditioning**

### **1. Definitions**

- 1.1 'Company' shall mean BMC Auto Electrical & Air Conditioning and its successors and assigns or any person acting on behalf of and with the authority of BMC Auto Electrical & Air Conditioning.
- 1.2 'Client' shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Company to the Client.
- 1.3 'Guarantor' means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 'Works' shall mean all Works supplied by the Company to the Client (and where the context so permits shall include any supply of Parts as hereinafter defined) all such Works shall be as described on the invoices, quotation, work authorisation or any other forms provided by the Company to the Client and shall include any advice or recommendations.
- 1.5 'Parts' shall mean Parts supplied by the Company to the Client either separately, or as part of the Works (and where the context so permits shall include the supply of Works as defined above).
- 1.6 'Price' shall mean the price payable for the Works as agreed between the Company and the Client in accordance with clause 3 of this contract.

### **2. Acceptance**

- 2.1 Any instructions received by the Company from the Client for the supply of Works and/or the Client's acceptance of Works supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Company.
- 2.4 The Client shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Company as a result of the Client's failure to comply with this clause.
- 2.5 Works are supplied by the Company only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

### **3. Price And Payment**

- 3.1 At the Company's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by the Company to the Client in respect of the Works supplied; or
  - (b) the Company's estimated Price (subject to clause 32) which shall not be deemed binding upon the Company as the actual Price can only be determined upon completion of the Works. The Company undertakes to keep the Client informed should the actual Price look likely to exceed the original estimate.

- (c) the Company's quoted Price (subject to clause 3.2) which shall be binding upon the Company provided that the Client shall accept the Company's quotation in writing within thirty (30) days of issue.
- 3.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties or as a result of increases to the Company in the cost of materials and labour) will be charged for on the basis of the Company's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 At the Company's sole discretion a non-refundable deposit may be required.
- 3.4 Where the Company is requested to store the Client's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four hours of advice to the Client that they are ready for collection. then the Company (at its sole discretion) may charge a reasonable fee for storage.
- 3.5 At the Company's sole discretion:
- (a) payment shall be due on completion of the Works; or
  - (b) payment shall be due before undertaking the Works; or
  - (c) payment for approved Clients shall be made by installments in accordance with the Company's payment schedule; or
  - (d) payment for approved Clients shall be due thirty (30) days following the end of the month following the date of the invoice.
- 3.6 Time for payment for the Works shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.7 Payment will be made by cash, or by cheque (third party cheques will not be accepted, all cheques must be made payable to BMC Auto Electrical & Air Conditioning and marked not negotiable'), or by credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Client and the Company.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

#### **4. Delivery Of Works**

- 4.1 At the Company's sole discretion delivery of the Works shall take place when:
- (a) the Company provides the Works at the Company's address: or
  - (b) the Company provides the Works at the Client's nominated address.
- 4.2 Delivery of any Works to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 4.3 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 4.4 The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the Works (or any of them) promptly or at all where due to circumstances beyond the control of the Company.

#### **5. Risk**

- 5.1 If the Company retains ownership of any Parts nonetheless, all risk for those Parts passes to the Client on delivery.
- 5.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Client, the Company is entitled to receive all insurance proceeds payable for the Parts.

The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

- 5.3 Where the Client expressly requests the Company to leave Parts outside the Company's premises for collection or to deliver the Parts to an unattended location then such Parts shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Parts are insured adequately or at all.
- 5.4 The Company shall not be liable to pay for any further problems that may arise after completion of the Works.

## **6. Title**

- 6.1 The Company and Client agree that the ownership of any Parts shall not pass until:
- (a) the Client has paid the Company all amounts owing for the particular Parts whether or not the Parts have been fitted to the vehicle; and
  - (b) the Client has met all other obligations due by the Client to the Company in respect of all contracts between the Company and the Client.
- 6.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Parts shall continue.
- 6.3 It is further agreed that:
- (a) where practicable the Parts shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Client are met; and
  - (b) until such time as ownership of the Parts shall pass from the Company to the Client, the Company may give notice in writing to the Client to return the Parts or any of them to the Company. Upon such notice the rights of the Client to obtain ownership or any other interest in the Parts shall cease; and
  - (c) the Company shall have the right of stopping the Parts in transit whether or not delivery has been made; and
  - (d) if the Client fails to return the Parts to the Company, then the Company or the Company's agent may as the invitee of the Client, enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Parts are situated and take possession of the Parts; and
  - (e) the Client is only a bailee of the Parts and until such time as the Company has received payment in full for the Parts then the Client shall hold any proceeds from the sale or disposal of the Parts on trust for the Company; and
  - (f) the Client shall not deal with the money of the Company in any way which may be adverse to the Company; and
  - (g) the Client shall not charge the Parts in any way nor grant nor otherwise give any interest in the Parts while they remain the property of the Company; and
  - (h) the Company can issue proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts may not have passed to the Client; and
  - (i) until such time that ownership of the Parts passes to the Client, if the Parts are converted into other products, the parties agree that the Company will be the owner of the end products.

## **7. Personal Property Securities Act 2009 ("PPSA")**

- 7.1 In this clause:
- (a) financing statement has the meaning given to it by the PPSA;
  - (b) financing change statement has the meaning given to it by the PPSA;

- (c) security agreement means the security agreement under the PPSA created between the Client and the Company by these terms and conditions; and
  - (d) security interest has the meaning given to it by the PPSA.
- 7.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA: and
  - (b) create a security interest in:
    - (i) all Parts previously supplied by the Company to the Client (if any);
    - (ii) all Parts that will be supplied in the future by the Company to the Client.
- 7.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 7.3(a)(i) or 7.3(a)(ii);
  - (b) indemnify, and upon demand reimburse the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Parts charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Company;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Parts in favour of a third party without the prior written consent of the Company; and
  - (e) immediately advise the Company of any material change in its business practices of selling the Parts which would result in a change in the nature of proceeds derived from such sales.
- 7.4 The Company and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 7.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 7.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 7.7 Unless otherwise agreed to in writing by the Company, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 7.8 The Client shall unconditionally ratify any actions taken by the Company under clauses 7.3 to 7.5.

## **8. Defects**

- 8.1 The Client shall inspect the Works/Parts on delivery and shall within three (3) days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Company an opportunity to inspect the Works/Parts within a reasonable time following delivery if the Client believes the Works/Parts are defective in any way. If the Client shall fail to comply with these provisions the Works/Parts shall be presumed to be free from any defect or damage. For defective Works/Parts, which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Works/Parts or repairing the Works/Parts, except where the Client has acquired Works/Parts

as a consumer within the meaning of the Trade Practices Act 1974 (With) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Works/Parts, or repair of the Works/Parts, or replacement of the Works/Parts.

- 8.2 In the event that it is discovered that the Parts are not defective or that misuse by the user has led to the defect in the Parts then the Client shall be liable for payment of the replacement Parts (if any) and any associated costs such as freight and insurance charges.
- 8.3 Parts will not be accepted for return other than in accordance with 8.1 above.

## **9. Warranty**

- 9.1 For Parts not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Parts. The Company shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Parts.
- 9.2 In the case of second-hand Parts, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults as is and acknowledges that no warranty is given by the Company as to the quality or suitability of the Part(s) for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Company shall not be responsible for any consequential loss or damage howsoever arising out of the use of second-hand Parts.

## **10. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**

- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 10.2 Where the Company buys Parts as a consumer, these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

## **11. Intellectual Property**

- 11.1 Where the Company has designed, drawn or created specific items for the Client, then the copyright in those designs and drawings and items shall remain vested in the Company, and shall only be used by the Client at the Company's discretion.
- 11.2 The Client warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.

## **12. Default & Consequences of Default**

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of two-and-one-half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.

- 12.3 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Works to the Client and any of its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company has exercised its rights under this clause.
- 12.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### **13. Security And Charge**

- 13.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - (b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

### **14. Cancellation**

- 14.1 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are delivered by giving written notice to the Client. On giving such notice the Company shall repay to the Client any sums paid in respect of the Price. The Company shall not be liable for any loss or damage howsoever arising from such cancellation.
- 14.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

## 15. Privacy Act 1988

- 15.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Company.
- 15.2 The Client agrees that the Company may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Client consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as shall be agreed between the Client and Company or required by law from time to time):
- (a) the provision of Parts; and/or
  - (b) the marketing of Parts by the Company, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Parts; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of the Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Parts.
- 15.5 The Company may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 15.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's license number);
  - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
  - (c) advice that the Company is a current credit provider to the Client;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Client's overdue accounts, bank repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of the Company, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);

(g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;

(h) that credit provided by the Client by the Company has been paid or otherwise discharged.

## **16. General**

- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 16.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 16.4 The Company shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions.
- 16.5 In the event of any breach of this contract by the Company the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Works.
- 16.6 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Company.
- 16.7 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.8 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change. Except where the Company supplies further Parts to the Client and the Client accepts such Parts, the Client shall be under no obligation to accept such changes
- 16.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.10 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.