

## FORM A

## TERMS AND CONDITIONS OF TRADE

**1. Definitions**

In these Terms:

"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth);

"Contract" means any agreement for the provision of goods or services by Us to You; "Consumer" is as defined in the ACL;

"You" means the person, jointly and severally if more than one, acquiring goods or services from Us; "goods" means goods supplied by Us to You;

"GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth); "PPSA" means the Personal Property Securities Act 2009 (Cth);

"services" means services supplied by Us to You;

"We", "Our" or "Us" means Balyang Motors ABN 24 504 512 779

"Terms" means these Terms and Conditions of Trade; and

"Vehicle" means any equipment or vehicle or part of a vehicle provided by You for the purpose of obtaining any goods or services.

**2. Basis of Agreement**

- 2.1 The Terms apply exclusively to every Agreement.
- 2.2 Any quotation provided by the Supplier to You for the proposed supply of goods or services is:
  - (a) valid for 30 days;
  - (b) an invitation to treat only; and (c) only valid if in writing.
- 2.3 Any terms in Our job sheet form part of the Terms and will prevail to the extent of any inconsistency.
- 2.4 A contract is accepted by Us when We accept an offer from You or provide the goods or services to You.
- 2.5 We have absolute discretion to refuse any offer.
- 2.6 You must provide Us with Your specific requirements, if any, in relation to the goods and services.
- 2.7 If the Company has been requested by the Customer to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.

**3. Pricing & Payment**

- 3.1 Prices quoted for the supply of goods and services include GST.
- 3.2 Subject to clause 3.3, full payment must be made within 30 days of the date of Our invoice.
- 3.3 We reserve the right to require payment in full on delivery of the goods or completion of the services.
- 3.4 The time for payment is of the essence.
- 3.5 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 3.6 The Company reserves the right to change the Price:
  - (a) if a variation to the Works which are to be provided is requested; or
  - (b) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, further faults which are found upon disassembly and/or further inspection) which are only discovered upon commencement of the Works; or

- (c) in the event of increases to the Company in the cost of labour or Parts which are beyond the Company's control.

**4. Passing of Property**

- 4.1 Until You make full payment for all goods and services and for all other amounts owing to Us:
  - (a) title in all goods remains vested in Us;
  - (b) You must hold the goods as fiduciary bailee and agent for Us;
  - (c) You must hold the proceeds of sale of the goods on trust for Us in a separate account with a bank to whom You have not given security however failure to do so will not affect Your obligation as trustee;
  - (d) in addition to our rights under the PPSA, We may enter any premises and remove the goods and for this purpose You irrevocably licence Us to enter such premises and also indemnify Us from and against all costs, claims, demands or actions by any party arising from such action; and
  - (e) We retain a lien over any Vehicle which entitles Us to sell any Vehicle in Our possession, subject to providing 14 days written notice to You, by treaty or public auction as We deem suitable, and allocate the proceeds to satisfy any amounts owing.
- 4.2 You acknowledge that We have a statutory right to sell or dispose of uncollected goods pursuant to and within the meaning of the *Australian Consumer Law and Fair Trading Act 2012* (Vic) or *Disposal of Uncollected Goods Act 1968* (Tas) (as applicable).
- 4.3 Default and Consequences of Default
  - (a) Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
  - (b) If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's contract default fee, and bank dishonour fees).
  - (c) Where the Company is requested to store the Customer's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four (24) hours of advice to the Customer that they are ready for collection, then the Company (at its sole discretion) may charge the Customer a reasonable fee for storage.

**5. Personal Property Securities Act**

- 5.1 The PPSA applies to these Terms.
- 5.2 These Terms are a security agreement and We have a Purchase Money Security Interest in all present and future goods supplied by Us to You and the proceeds of the goods. Where the goods are installed in or affixed to other goods, the security interest extends to both the accession and the other goods or mass.
- 5.3 Where permitted by the PPSA, You waive any rights to receive the notifications, verifications, disclosures or other documentation

specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

- 5.4 The Supplier and You agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- 5.5 To the extent permitted by the PPSA, You agree that:
- (a) the provisions of Chapter 4 of the PPSA which are for Your benefit or which place obligations on Us will apply only to the extent that they are mandatory or We agree to their application in writing; and
  - (b) where We have rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

## 6. Risk

- 6.1 Risk in the goods will pass to You on the goods being delivered to You or taken from Our premises.
- 6.2 You are responsible for all loss, damage or injury to persons or to property arising out of the use, installation or possession of the goods, unless recoverable from Us under the ACL.

## 7. Delivery

- 7.1 Any date for delivery of goods or provision of services stated by Us is an estimate only.
- 7.2 We will not be liable for any loss or damage suffered by You or any third party for failure to meet any estimated date.
- 7.3 If We cannot complete the services by any estimated date, We will complete the services within a reasonable time.
- 7.4 Unless otherwise agreed, You must collect the goods or any Vehicle within 2 days of being advised that they are ready. If you do not you will be liable for storage charges payable on demand.

## 8. Liability and Disclaimers

- 8.1 Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.
- 8.2 During repairs, some or all of Your stored data, if any, may be lost. You must ensure that any data is saved elsewhere prior to repairs.
- 8.3 Except as the Terms state, or as contained in any express warranty provided in relation to the goods or services, the Contract does not include by implication any other term, condition or warranty in respect of the quality, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 8.4 Except to the extent of any liability under the ACL, We are not liable:
- (a) to You or any third party for any failure of a statutory guarantee under the ACL;
  - (b) for any indirect or consequential losses or expenses suffered by You or any third party, howsoever caused.
- 8.5 Nothing in the Terms excludes, restricts or modifies the application of any State or Federal legislation which cannot be excluded, restricted or modified.

## 9. Variation and Cancellation

- 9.1 We reserve the right to change the specifications of the goods provided that the end performance is not materially prejudiced.
- 9.2 If We are unable to provide the goods or services, then We may cancel Your order.
- 9.3 No purported cancellation by You is binding on Us.

## 10. Miscellaneous

- 10.1 The law of Victoria (where goods and services are being provided in Victoria) or the law of Tasmania (where the goods and services are being provided in Tasmania) govern these Terms.