

# AUTOCARE - STANDARD TERMS

These Standard Terms set out the terms on which Services will be provided by Autocare to You. These Standard Terms will be attached to and form part of, a booking confirmation, quotation, rate schedule, schedule of particulars or other document which specifies the types of Services to be provided.

## 1. PERFORMANCE AND DELIVERY OF THE SERVICES

- 1.1.1. Autocare will provide the Services in accordance with this Agreement for the Term.
- 1.1.2. Autocare will provide the Services and deliver the Goods (if relevant) in accordance with the details specified in the Booking Confirmation or, if relevant, the Bill of Lading or consignment note. You are responsible for arranging that the delivery location is accessible at the times agreed for delivery and is reasonably suitable for delivery of the Goods. If the delivery location is unattended or not reasonably accessible or delivery of the Goods is refused, Autocare may choose to deposit the Goods at the delivery location, store the Goods or return the Goods to the sender at Your risk and expense and that action will be deemed to constitute delivery.
- 1.1.3. If Autocare becomes aware of any damage to Goods whilst in its possession or under its control, Autocare will promptly notify You and, to the extent reasonably practicable, allow You to inspect them. You and Autocare must use reasonable endeavours to agree as to what to do with the damaged Goods.

## 2. AUTOCARE'S RIGHTS

- 2.1.1. Autocare is not a common carrier and may refuse to contract with You in its absolute discretion.
- 2.1.2. Autocare may at Your risk and expense refuse to provide the Services or provide the Services in a manner other than that previously agreed (including opening Containers and inspecting Goods and delaying the provision of Services) if Autocare is required to do so by law or considers it necessary in the interest of safety.
- 2.1.3. If Autocare refuses to provide some or all of the Services in accordance with this Agreement, it will promptly notify You and will specify a reasonable period of time by which the Goods must be collected by You. You must pay any amounts outstanding prior to collecting the Goods under this clause. Autocare will refund to You any amount for the Services not provided by Autocare. If You do not comply with a requirement to collect or remove the Goods under this Agreement, Autocare is entitled to charge for the storage of the Goods and Autocare may remove the Goods to a storage facility, return the Goods to You or Your Associate or treat the Goods as Abandoned Goods at Your risk and expense.
- 2.1.4. If you are acquiring the Services for a purpose other than domestic or personal use, Autocare (or a third party appointed by Autocare) may conduct an audit or review of Your compliance with Your obligations under this Agreement.
- 2.1.5. Except to the extent specified in the Booking Confirmation, Autocare has no obligation to inspect the Goods and if it has inspected the Goods, it will not be Liable if the Goods are not correctly described.
- 2.1.6. Autocare may subcontract the Services in whole or part without notifying You. If Autocare subcontracts the services, the benefit of this Agreement and any rights which Autocare has at law will apply to the Subcontractor, but Autocare will remain primarily Liable for the provision of the Services.
- 2.1.7. If Autocare's performance is delayed or prevented by a Force Majeure Event, Autocare will be released from its obligations to the extent of and for the duration of that Force Majeure Event. Autocare will use its reasonable endeavours to promptly overcome a Force Majeure Event but will not be obliged to settle any strike or other industrial dispute or to contest the validity or enforceability of any law, regulation or legally enforceable order by way of legal proceedings. If the Force Majeure Event continues for more than 3 months, either party may terminate this agreement with immediate effect and Autocare will refund to You any amount paid for Services which have not been provided.

## 3. WARRANTIES AND INDEMNITIES

- 3.1.1. You warrant that:
    - a) You either own the Goods and enter into this Agreement on Your own behalf or that You are the authorised agent of the person who owns the Goods or has an interest in the Goods and You enter into this Agreement as authorised agent of that person;
    - b) You and Your Associates will comply with any applicable laws and any policies and procedures of Autocare which Autocare notifies to You or Your Associates and will assist Autocare in complying with any applicable laws, policies and procedures;
    - c) Unless Autocare packs the Goods, the Goods are packed in accordance with all laws and to withstand the ordinary risks of the Services;
    - d) the Goods comply with all laws, are properly described and do not include Dangerous Goods, You have provided appropriate handling instructions and there are no personal effects contained in the Goods, other than those declared by you, which you warrant are compliant with the conditions applicable to the transportation of possessions;
    - e) any Vehicle used by You or Your Associate to deliver or collect the Goods is in a fit and proper condition and complies with all applicable laws;
    - f) the person delivering the Goods to and the person collecting the Goods from Autocare is authorised to do so and is authorised to bind You under this Agreement; and
    - g) the Goods are in a roadworthy condition and can be moved under its own power and have a minimum ground clearance of 15 centimetres (6 inches).
- \*NOTE – If the Goods do not comply with this clause 3.1.1. Autocare will not be held liable for any damages or loss of any kind.

3.1.2.

## 4. NON-EXCLUDABLE RIGHTS

- 4.1.1. This clause 4 applies only in circumstances where You are deemed a 'consumer' under the Australian Consumer Law.
- 4.1.2. The Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, you are entitled:
  - a) to cancel your service contract with us; and
  - b) to a refund for the unused portion, or to compensation for its reduced value.
- 4.1.3. You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, you are entitled to cancel your contract and obtain a refund for the unused portion of the contract.

## 5. AUTOCARE'S LIABILITY

- 5.1.1. To the extent permitted by law, Autocare makes no and expressly excludes all warranties and representations with respect to the Services. Certain State and Commonwealth legislation, including the *Competition Consumer Act 2010* (Cth), implies consumer guarantees, conditions and imposes obligations which cannot be excluded, restricted or modified except to a limited extent. These Standard Terms must in all cases be read subject to those statutory provisions.
- 5.1.2. To the extent permitted by law, Autocare will not be Liable to You or Your Associates in tort, contract, bailment or otherwise for loss of or damage to the Goods or any Motor Vehicle, delay in delivering or failing to deliver the Goods or provide the Services, or delay arising out of the breakdown of equipment or infrastructure, except to the extent directly caused or contributed to by Autocare. For the avoidance of doubt, Autocare has no Liability to You for loss or damage to undeclared personal items in a motor vehicle or damage caused by hail, bird/animal droppings or airborne objects, stone chips, environmental/industrial fallout or bug or insect marks, or damage or loss to any non-standard motor vehicle accessory which is not permanently affixed to the Motor Vehicle, (including but not limited to booster seats, navigation units and tarpaulins).
- 5.1.3. On receipt of the Goods, You or your Associate will inspect the Goods and will immediately notify Autocare of any alleged damage to the Goods by noting such damage on the Vehicle Survey Report/consignment note issued by Autocare.
- 5.1.4. To the extent permitted by law, and except to the extent that Autocare is Liable for a loss suffered by You due directly to Autocare's gross negligence, criminal conduct, fraud, or wilful misconduct, where Autocare is Liable for a loss suffered by You with respect to the Goods, Autocare's Liability is limited to the cost of repairing the Goods or the payment of the market value of the Goods (whichever is the lesser amount). Autocare shall be entitled to choose whether it will repair the Goods at a repairer of its choice or pay the cost of the market value. Autocare also has the right to specify the use of new, used or non-genuine parts for the repairs. Autocare may appoint a loss assessor of its own choice.
- 5.1.5. You must notify Autocare of any alleged loss, damage, death or personal injury as soon as practicable:
  - c) in respect of Goods which have been stored or processed by Autocare, before the Goods leave a premises;
  - d) in respect of Goods which have been transported, within 3 days of delivery of the Goods; and
  - e) in the case of death or personal injury to any person within 7 days of the date of the death or injury.
- 5.1.6. You acknowledge that the above timeframes are reasonable notice periods to allow Autocare to respond to any alleged loss, damage, death or personal injury within a reasonable time frame.
- 5.1.7. Notwithstanding any other provision of this Agreement, no party to this Agreement is Liable to any other party for Consequential Loss.

## 6. CHAIN OF RESPONSIBILITY

- 6.1.1. To the extent applicable at law, You and Autocare acknowledge and agree that each of you have obligations under the Chain of Responsibility Law and will comply with such obligations.
- 6.1.2. You must (and procure that Your Associates) comply with any directions, procedures or policies advised or notified by Autocare or its Associates to You or Your Associates with respect to packing, loading or unloading of the Goods or entry into, use of or egress from a Premises.

## 7. INSURANCE

- 7.1.1. You must maintain insurance in respect of the Goods for their full replacement value with a reputable insurer at all times during the Term.
- 7.1.2. If You are not an individual whose acquisition of the Services is wholly or predominantly for personal, domestic or household use or consumption, You must at all times during the period when Autocare is required to provide the Services have in place public liability insurance to a minimum value of \$20,000,000 and such other insurances as are required by law.

## 8. PAYMENT

- 8.1. **RATES**
  - 8.1.1. You must pay the Rates to Autocare for the Services prior to commencement of the Services unless Autocare agrees otherwise.
  - 8.1.2. If You do not pay the Rates by the due date for payment, Autocare may suspend the provision of Services until the Rates have been paid or may, on 7 days' notice terminate this Agreement.
  - 8.1.3. The Rates must be paid by credit card or by deposit to an account identified by Autocare in the Booking Confirmation.
  - 8.1.4. The Rates payable for the Services are confidential and You agree not to disclose them to any third party.
- 8.2. **GOODS AND SERVICES TAX**

- 8.2.1. Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- 8.2.2. If GST is payable, on any supply made under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply. The recipient must pay this amount in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

## 9. DISPUTE RESOLUTION

- 9.1.1. If a Dispute arises, You and Autocare must meet promptly in order to discuss the Dispute. If You and Autocare cannot settle the Dispute within a reasonable timeframe, You and Autocare must endeavour to settle the matter with the assistance of a mediator appointed by the Resolution Institute, which mediator may adopt such procedures as they see fit to resolve the Dispute. If the Dispute is not resolved within one month of the appointment of a mediator, either party may commence court proceedings.
- 9.1.2. Nothing in this clause precludes a party from seeking urgent injunctions or other urgent interlocutory relief.

## 10. NOTICES

- 10.1.1. All notices under this Agreement must be in writing. Notices must be delivered or sent by pre-paid registered mail, courier or similar traceable form of delivery or by fax or email, provided that where a notice is sent by fax or email, the machine from which it is sent must produce a report that states it was successfully delivered.
- 10.1.2. A notice is regarded as given and received on receipt if sent by registered mail, courier or other similar traceable form of delivery or if sent by fax or email:
- by 5:00pm (local time in the place of receipt) on a working day - on that day; or
  - after 5.00 pm (local time in the place of receipt) on a working day, or on a day that is not a working day - on the next working day.

## 11. INFORMATION TECHNOLOGY SYSTEMS

You are granted a non-exclusive, non-transferable license to use the information technology and software on the website set out in the Booking Confirmation. This license must not be used for any purpose other than as set out in the Booking Confirmation and will cease immediately once the Services have been provided.

## 12. TERMINATION

Either party may terminate this Agreement immediately by notice to the other party if the other party breaches a material provision of this agreement and fails to remedy such breach within 7 days of receiving notice to do so, becomes insolvent or bankrupt or has an administrator, receiver, liquidator, manager, trustee in bankruptcy or other like officer or entity appointed to administer its affairs.

## 13. MISCELLANEOUS PROVISIONS

- 13.1.1. The Agreement can only be amended, supplemented, replaced by another document signed by both parties.
- 13.1.2. This Agreement constitutes the entire understanding of the parties as to its subject matter and supersedes and cancels all prior arrangements, understandings and negotiations in connection with it.
- 13.1.3. Waiver of rights
- The failure of a party at any time to require full or partial performance of any provision of this Agreement does not affect in any way the full right of that party to require that performance subsequently.
  - The waiver by any party of a breach of a provision of this Agreement is not deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently.
  - Any waiver of a breach of this Agreement must be in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver.
- 13.1.4. The Agreement will be governed and construed in accordance with:
- if the Services are only provided in one State or Territory, the laws of the State or Territory in which Autocare provides the Services and the parties submit to the exclusive jurisdiction of the courts of that State or Territory; or
  - if the Services are provided in more than one State or Territory, the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the courts of Victoria.
- 13.1.5. Where the law of the State of Western Australia is to apply to the Services performed under the Agreement, all of the provisions comprising Parts 1A, 1B, 1C, 1D, 1E and 1F of the *Civil Liability Act 2002 (WA)* are expressly excluded from application to this Agreement.
- 13.1.6. Any provision in this Agreement that is prohibited or unenforceable (or found to be so) in any jurisdiction is ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- 13.1.7. Nothing in this Agreement creates a relationship of employer and employee, principal and agent or partnership between the parties.
- 13.1.8. This Agreement may be executed in any number of counterparts. Each counterpart is an original, but the counterparts together are one and the same agreement. This Agreement is binding on the parties on the exchange of executed counterparts.

## 14. DEFINITIONS AND INTERPRETATION

### 14.1. DEFINITIONS –

In these Standard Terms:

**Abandoned Goods** means the Goods which have not been accepted for delivery and have remained in the possession of Autocare for 28 days after the date of arrival at the Premises or in the case of vehicle storage services, 28 days after the end of the storage term.

**Agreement means** the agreement comprising Autocare's Booking Confirmation and these Standard Terms

**Associate** means a party's employees, officers, servants, agents, invitees and subcontractors and, in the case of You also means any person who has an interest in the Goods and their employees, officers, servants, agents, and subcontractors and any person driving a Vehicle.

**Autocare** means Autocare Services Pty Limited (ABN 67 004 497 607).

**Booking Confirmation** means the document, quotation, rate schedule, schedule of particulars or other document produced by Autocare and sent to You confirming (among other things) the Services to be provided and the Rates payable.

**Bill of Lading** means a Bill of Lading and any other contract for the carriage of the Goods and/or Containers.

**Chain of Responsibility Laws** means any law or regulation relating to chain of responsibility obligations, including laws and regulations relating to driver fatigue, mass, dimension, load restraint and dangerous goods.

**Claim** means a demand, claim, action or proceeding made or brought by or against a person, however arising and whether present, unascertained, immediate, future or contingent.

**Consequential Loss** means any loss which is indirect or consequential; or is by way of loss of revenue, loss of profit, loss of goodwill or credit, loss of business, loss of reputation or future reputation, loss of use, loss or denial of opportunity, loss of production, increased overhead cost, production or other down time.

**Container** means any container, autotainer, trailer or any similar device used to consolidate and carry cargo.

**Dangerous Goods** means dangerous goods as defined in the Australian Dangerous Goods Code (7th Edition) and any Goods which are or which may become dangerous, volatile, explosive, flammable or offensive or which are or may become harmful to any person, property or the environment.

**Dispute** means any controversy, claim or dispute arising out of or in relation to this Agreement.

**Force Majeure Event** means circumstances where Autocare is delayed or unable, wholly or in part, to perform any obligations under this Agreement due to any cause beyond its reasonable control.

**Goods** means the motor vehicle, spare parts or other item in relation to which any part of any Services have been or are to be performed and any Container or item in or on which they are contained or with which they are stored or handled.

**Liability** means any Claim, loss, liability, cost or expense of any kind and however arising (whether in contract, negligence, another tort, the general law, under statute or otherwise), including damages, penalties, fines and interest.

**Premises** means those locations where Autocare provides the Services pursuant to this Agreement.

**Rates** means the fees, rates, charges and/or tariffs payable by You to Autocare for the provision of the Services, as set out in the Booking Confirmation or otherwise agreed by the parties.

**Services** means the whole of the operations and services described in the Booking Confirmation undertaken by Autocare in anyway whatsoever connected with or concerning the Goods, together with the provision of the license referred to in clause 10.

**Term** means the period of time during which Autocare carries out the Services as described in the Booking Confirmation.

**Vehicle** means a truck or other motor vehicle, or train employed by a person other than Autocare or its subcontractors to deliver Goods to Autocare or to collect Goods from Autocare at a Premises.

**You and Your** means you, the customer specified in the Booking Confirmation.

### 14.2. RULES FOR INTERPRETING THIS DOCUMENT

The following rules apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply:

14.2.1. a singular word includes the plural, and vice versa;

14.2.2. a reference to \$ is to an amount in Australian currency;

14.2.3. "Include" and "including" are not words of limitation.

### 14.3. RELATIONSHIP OF AUTOCARE ENTITIES

Each indemnity, limitation, condition and liberty in this Agreement and every right, exclusion from or limitation of Liability, defence and immunity of whatever nature applicable to Autocare or to which Autocare is entitled under this Agreement will be available to Autocare's Related Bodies Corporate and to the Associates of Autocare and its Related Bodies Corporate. Where Autocare is acting as agent or trustee on behalf of and for the benefit of a Related Body Corporate or its Associates, those Related Bodies Corporate or Associates are, to this extent, deemed to be party to this Agreement and may enforce the terms of this clause 13.3 against You. A reference to a Related Body Corporate has the meaning given in the *Corporations Act 2001 (Cth)*.