

1. Definitions

- 1.1 “WCAG” shall mean West City Auto Group Limited, its successors and assigns or any person acting on behalf of and with the authority of West City Auto Group Limited.
- 1.2 “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by WCAG to the Customer.
- 1.3 “Works” shall mean all Works supplied by WCAG to the Customer (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 WCAG to the Customer and shall include any advice or recommendations.
- 1.4 “Parts” shall mean Parts supplied by WCAG to the Customer either separately, or as part of the Works (and where the context so permits shall include the supply of Works as defined above).
- 1.5 “Loan Car” means any Loan Car including any accessories supplied on hire by WCAG to the Customer (and where the context so permits shall include any supply of Works). The Loan Car shall be described on the invoices. Quotation, authority to hire, or any work authorisation form supplied by WCAG to the Customer.
- 1.6 “Price” shall mean the price payable for the Works as agreed between WCAG and the Customer in accordance with clause 4 of this contract.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Parts.
- 2.2 These terms and conditions may only be amended with WCAG’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and WCAG.

3. Change in Control

- 3.1 The Customer shall give WCAG not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by WCAG as a result of the Customer’s failure to comply with this clause.

4. Price And Payment

- 4.1 At WCAG’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by WCAG to the Customer in respect of the Works supplied; or
 - (b) WCAG’s quoted Price (subject to clause 4.2) which shall be binding upon WCAG provided that the Customer shall accept WCAG’s quotation in writing within thirty (30) days of issue.
- 4.2 WCAG reserves the right to change the Price in the event of a variation to WCAG’s quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, additional works required due to hidden or unidentifiable difficulties beyond the control of WCAG such as overseas transactions may increase as a consequence of variations in foreign currency rates of exchange or as a result of increases to the Seller in the cost of materials and labour) will be charged for on the basis of the Seller’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.
- 4.3 At WCAG’s sole discretion a deposit may be required.
- 4.4 Where WCAG 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 WCAG (at its sole discretion) may charge a reasonable fee for storage.
- 4.5 At WCAG’s sole discretion payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer’s address or address for notices.
- 4.6 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.
- 4.7 Payment will be made by cash, or by cheque, electronic/on-line banking, credit card (plus a surcharge of up to three percent (3%) of the Price), or by any other method as agreed to between the Customer and WCAG.
- 4.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to WCAG an amount equal to any GST WCAG must pay for any supply by WCAG under this or any other agreement for the sale of the Parts. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery Of Works

- 5.1 At WCAG’s sole discretion delivery of the Works shall take place when:
 - (a) WCAG provides the Works at WCAG’s address; or
 - (b) WCAG provides the Works at the Customer’s nominated address.
- 5.2 Where WCAG is to provide any Works at the Customer’s nominated address then the Customer shall be liable for all costs incurred by WCAG from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at WCAGs standard rates and any Parts purchased for the Works).
- 5.3 The failure of WCAG to deliver shall not entitle either party to treat this contract as repudiated.

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5.4 WCAG shall not be liable for any loss or damage whatsoever due to failure by WCAG to deliver the Works (or any of them) promptly or at all where due to circumstances beyond the control of WCAG.

6. Risk

- 6.1 If WCAG retains ownership of any Parts nonetheless, all risk for the Parts passes to the Customer on delivery.
- 6.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Customer, WCAG is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by WCAG is sufficient evidence of WCAG's rights to receive the insurance proceeds without the need for any person dealing with WCAG to make further enquiries.
- 6.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third party arising out of the use or possession of any of the Parts sold by WCAG, whether such Parts are used singularly, or in combination of other Parts, substances, or process.
- 6.4 The Customer acknowledges and accepts that the supply of Parts for accepted orders may be subject to availability and if, for any reason, Parts are not or cease to be available, WCAG reserves the right to vary the Price with alternative Parts as per clause 4.2. WCAG also reserves the right to halt the Works until such time as WCAG and the Customer agree to such changes.
- 6.5 In the event that the Customer believes that WCAG has scratched the vehicle during the installation process of the Parts, the Customer shall within twenty-four (24) hours of delivery (time being of the essence) notify WCAG of any alleged defect or damage in accordance with 11.1. If the Customer fails to comply with clause 11.1, the vehicle shall be presumed to be free from any defect or damage.
- 6.6 The Customer acknowledges that it is the Customer's responsibility to remove all personal/valuable items from the vehicle prior to Horsley carrying out their Services. WCAG shall not be liable in the event of any apparent loss or damage to personal/valuable items left in the vehicle.
- 6.7 The Customer accepts that in the event that the vehicle is stored for any period on WCAG's premises that it is done so at the Customer's own risk and it shall be the Customer's responsibility to ensure their vehicle and its contents are insured adequately or at all.
- 6.8 The Customer acknowledges that WCAG can only provide its Services on a vehicle in its current state as supplied to WCAG therefore WCAG shall not accept any responsibility for any workmanship of any third party that has worked on a Customer's vehicle prior to Services being undertaken by WCAG (including but not limited to, poor paintwork or repairs).

7. Customer's Responsibility

- 7.1 It is the Customer's responsibility to ensure that the Customer's motor vehicle is insured against all possible damage (including but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored on the Customer's premises. The motor vehicle is at all times stored and repaired at the Customer's sole risk.
- 7.2 The Customer agrees that any work carried out on the motor vehicle and/or storage of the motor vehicle at WCAG's premises is done so at the Customer's own risk and releases to the full extent permitted by law, WCAG, its franchisees with whom the Customer contracts, and each of their servants, agents, employees, contractors and invitees from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property arising out of the storage and/or repair of the motor vehicle.
- 7.3 WCAG shall not be liable for the loss or damage to any motor vehicle left with WCAG, its accessories or personal/valuable items while it is being stored, transported or operated in connection with the work authorised unless caused by the negligence of WCAG or WCAG's employees.

8. Title

- 8.1 WCAG and Customer agree that the ownership of any Parts shall not pass until:
- (a) the Customer has paid WCAG all amounts owing for the particular Parts; and
 - (b) the Customer has met all other obligations due by the Customer to WCAG in respect of all contracts between WCAG and the Customer.
- 8.2 Receipt by WCAG 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 WCAG's ownership or rights in respect of the Parts shall continue.
- 8.3 It is further agreed that:
- (a) where practicable the Parts shall be kept separate and identifiable until WCAG shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Parts shall pass from WCAG to the Customer WCAG may give notice in writing to the Customer to return the Parts or any of them to WCAG. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Parts shall cease; and
 - (c) the Customer is only a bailee of the Parts and until such time as WCAG has received payment in full for the Parts then the Customer shall hold any proceeds from the sale or disposal of the Parts, up to and including the amount the Customer owes to WCAG for the Parts, on trust for WCAG; and
 - (d) until such time that ownership in the Parts passes to the Customer, if the Parts are converted into other products, the parties agree that WCAG will be the owner of the end products; and
 - (e) if the Customer fails to return the Parts to WCAG then WCAG or WCAG's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises

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where the Parts are situated and take possession of the Parts, and WCAG will not be liable for any reasonable loss or damage suffered as a result of any action by WCAG under this clause.

9. Personal Property Securities Act 1999 (“PPSA”)

- 9.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - a security interest is taken in all Parts previously supplied by WCAG to the Customer (if any) and all Parts that will be supplied in the future by WCAG to the Customer.
- 9.2 The Customer undertakes to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which WCAG may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - indemnify, and upon demand reimburse, WCAG for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Parts charged thereby;
 - not register a financing change statement or a change demand without the prior written consent of WCAG; and
 - immediately advise WCAG 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.
- 9.3 WCAG and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by WCAG, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Customer shall unconditionally ratify any actions taken by WCAG under clauses 9.1 to 9.5.

10. Customer’s Disclaimer

- 10.1 The Customer hereby disclaims any right to rescind, or cancel any contract with WCAG or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by WCAG and the Customer acknowledges that the Works are bought relying solely upon the Customer’s skill and judgement.

11. Defects

- 11.1 The Customer shall inspect the Works/Parts on delivery and shall within two (2) days of delivery (time being of the essence) notify WCAG of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford WCAG an opportunity to inspect the Works/Parts within a reasonable time following delivery if the Customer believes the Works/Parts are defective in any way. If the Customer 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 WCAG has agreed in writing that the Customer is entitled to reject, WCAG’s liability is limited to either (at WCAG’s discretion) replacing the Works/Parts or repairing the Works/Parts.
- 11.2 Parts will not be accepted for return other than in accordance with 11.1 above.

12. Returns Of Parts

- 12.1 Returns of Parts will only be accepted provided that:
- the Customer has complied with the provisions of clause 11.1; and
 - WCAG has agreed in writing to accept the return of the Parts; and
 - the Parts are returned at the Customer’s cost within two (2) days of the delivery date; and
 - WCAG will not be liable for Parts which have not been stored or used in a proper manner; and
 - the Parts are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 12.2 WCAG may (at their sole discretion) accept the return of Parts for credit but this may incur a handling fee of up to ten percent (10%) of the value of the returned Parts plus any freight costs.

13. Warranty

- 13.1 Subject to the conditions of warranty set out in clause 13.2 WCAG warrants that if any defect in any workmanship of WCAG becomes apparent and is reported to WCAG within the earlier of six (6) months of the date of delivery or 5,000 kilometres (time being of the essence) then WCAG will either (at WCAG’s sole discretion) replace or remedy the workmanship.
- 13.2 The conditions applicable to the warranty given by clause 13.1 are:
- The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - failure on the part of the Customer to properly maintain any Works; or
 - failure on the part of the Customer to follow any instructions or guidelines provided by WCAG; or
 - any use of any Works otherwise than for any application specified on a quote or order form; or
 - the continued use of any Works after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - fair wear and tear, any accident or act of God.

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- (b) The warranty shall cease and WCAG shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without WCAG's consent.
 - (c) In respect of all claims WCAG shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 13.3 For Parts not manufactured by WCAG, the warranty shall be the current warranty provided by the manufacturer of the Parts. WCAG 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.

14. Consumer Guarantees Act 1993

- 14.1 If the Customer is acquiring Parts for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Parts by WCAG to the Customer.

15. Default & Consequences of Default

- 15.1 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 WCAG's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Customer owes WCAG any money the Customer shall indemnify WCAG from and against all costs and disbursements incurred by WCAG in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, WCAG's collection agency costs, and bank dishonour fees).
- 15.3 Without prejudice to any other remedies WCAG may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions WCAG may suspend or terminate the supply of Parts to the Customer. WCAG will not be liable to the Customer for any loss or damage the Customer suffers because WCAG has exercised its rights under this clause.
- 15.4 Without prejudice to WCAG's other remedies at law WCAG shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to WCAG shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to WCAG becomes overdue, or in WCAG's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer 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 Customer or any asset of the Customer.

16. Security And Charge

- 16.1 Despite anything to the contrary contained herein or any other rights which WCAG may have howsoever:
- (a) where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to WCAG or WCAG's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer agrees that WCAG (or WCAG'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 WCAG elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer shall indemnify WCAG from and against all WCAG's costs and disbursements including legal costs on a solicitor and own Customer basis.
 - (c) the Customer agrees to irrevocably nominate constitute and appoint WCAG or WCAG's nominee as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.

17. Loan Cars

- 17.1 Loan Cars shall at all times remain the property of WCAG and are returnable on demand by WCAG.
- 17.2 The Loan Car may only be driven during the period of loan by the Customer or any other person that WCAG agrees may drive the Loan Car and then only if they hold a current driver's licence appropriate for the Loan Car at the time when they are driving it.
- 17.3 The Customer shall;
- (a) ensure that all reasonable care is taken in handling and parking the Loan Car and that it is left securely locked when not in use; and
 - (b) keep the Loan Car in the Customers own possession and control and not allow the use of the Loan Car by any third party; and
 - (c) not alter or make any alterations to the Loan Car (including but without limitation, altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Loan Car or in any other manner interfere with the Loan Car; and
 - (d) keep the Loan Car, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by WCAG to the Customer. In the event that the Loan Car is not returned in clean condition then WCAG reserves the right to charge the Customer for all costs WCAG incurs in cleaning the Loan Car.

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- 17.4 The Customer acknowledges and agrees that they shall not permit any form of charge to be applied in relation to the Loan Car and further agrees that they shall not be entitled to any form of lien over the Loan Car.
- 17.5 The Customer shall be liable for any parking or traffic infringements, or related impoundment, towage and storage, and will supply all relevant details as required by the Police (and/or WCAG) relating to such parking or traffic infringements or any other offences.
- 17.6 The Customer, by signing this agreement, accepts that they shall be liable to WCAG for any loss of, or damage to, the Loan Car and consequential loss to the full extent of any insurance excess (where applicable). In the event insurance is rendered invalid by any action of the Customer then the Customer shall be liable to WCAG for the full cost of repairing or replacing the Loan Car (whichever is the lesser).
- 17.7 Any excess applies (plus GST) shall be for each and every claim. Window glass damage or breakage also carries a separate excess.

18. Cancellation

- 18.1 WCAG 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 Customer. On giving such notice WCAG shall repay to the Customer any sums paid in respect of the Price. WCAG shall not be liable for any loss or damage howsoever arising from such cancellation.
- 18.2 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any loss incurred by WCAG (including, but not limited to, any loss of profits) up to the time of cancellation.

19. Privacy Act 1993

- 19.1 The Customer authorises WCAG or WCAG's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by WCAG from the Customer directly or obtained by WCAG from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 19.2 Where the Customer is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Customer shall have the right to request WCAG for a copy of the information about the Customer retained by WCAG and the right to request WCAG to correct any incorrect information about the Customer held by WCAG.

20. Lien

- 20.1 Where the Customer has left the vehicle or item with WCAG for repair, modification, exchange or for WCAG to perform any other Service in relation to the item and WCAG has not received or been tendered the whole of the Price, or the payment has been dishonoured, WCAG shall have:
- (a) A lien on the vehicle or item;
 - (b) The right to retain the vehicle or item for the Price while WCAG is in possession of the item;
 - (c) A right to sell the vehicle or item.
- 20.2 The lien of WCAG shall continue to dispute the commencement of proceedings, or judgement for the Price having been obtained.

21. General

- 21.1 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.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Henderson, New Zealand.
- 21.3 WCAG shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by WCAG of these terms and conditions.
- 21.4 In the event of any breach of this contract by WCAG the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Parts.
- 21.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by WCAG nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.6 WCAG may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 21.7 WCAG 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 WCAG notifies the Customer of such change.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 21.9 The failure by WCAG to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect WCAG's right to subsequently enforce that provision.