

TERMS AND CONDITIONS OF MORENO & WARD PTY LTD ACN 145 261 829 T/AS CLARKE DIESEL REPAIRS

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 Moreno & Ward Pty Ltd ACN 145 261 829 t/as Clarke Diesel Repairs;
- 1.5 "Work" means all works carried out by the Repairer pursuant to these Terms and Conditions for or 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.

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 or about the Goods; and
 - (b) remove from the Goods any machinery, part or device.
- 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 an 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.

2.3 Where the Customer is acting as agent in requesting the Works, the Customer agrees to be jointly and severally liable with its principal 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 at 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 responsible 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 such additional work will be charged accordingly.

4.3 Any charges 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 manufacturers, 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.

6. Terms of Payment

6.1 The Customer shall pay for the Works, plus any other amounts payable to the Repairer under these Terms and Conditions immediately upon receipt of the Repairer's tax invoice and without reduction or deferment on account of any claim, counterclaim or set off that 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 thirty (30) 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 be 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. **Jurisdiction:** This contract shall be governed by and construed by the laws of the state of Queensland and the Commonwealth of Australia.

11. **Severability:** If a provision of these Terms and Conditions is void or unenforceable then it must be severed from these Terms and Conditions and the provisions that are not void or unenforceable are unaffected by the severance.

12. **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.

13. ACL

13.1 The Works come with certain guarantees that cannot be excluded under the ACL.

13.2 The parties acknowledge that clauses 13.3 and 13.4 do not apply unless the Customer falls within the definition of "Consumer" under the ACL.

13.3 If a guarantee under the ACL is not complied with by the Repairer, then the Customer is entitled to reject the Works or claim compensation or damages for a major failure or, in the case of a failure to comply with a guarantee that does not result in a major failure, then the Customer will be entitled to have the Repairer remedy the failure within a reasonable time ("Consumer Rights").

13.4 Any exclusions, restrictions or modifications of direct, incidental, consequential or other damages referred to in these Terms and Conditions apply only to the Customer's rights under these Terms and Conditions and do not affect the Customer's Consumer Rights.

14. Sub-contracting and Indemnity

14.1 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 or things that are in the opinion of the Repairer necessary or desirable to carry out and complete the Work.

14.2 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 or 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.

15. **Liability of Employees, Agents and Sub-contractors:** It is hereby expressly agreed that every exemption from liability and every right, defence and immunity of whatsoever nature applicable to the Repairer or to which the Repairer is entitled hereunder shall also be available and shall extend to protect every employee or agent of the Repairer (including every independent contractor from time to time employed by the Repairer) while acting in the course of or in connection with their employment or engagement, the Repairer is or shall be deemed to be acting as an agent or trustee on behalf of and for the benefit of all persons who are or might be employees or agents from time to time (including any independent contractors or sub-contractors aforesaid) and all such

persons shall to this extent be or be deemed parties to the contract entered into by the Repairer.

16. Lien: In addition to any workman's or repairer's lien which the Repairer may have over the Goods or any other goods on which the Works have been carried out, the Repairer shall have a general lien over the Goods or other goods and all other property of the Customer that comes into the possession of the Repairer for any reason whatsoever until all amounts owing by the Customer to the Repairer on any account whatsoever have been paid to the Repairer.

17. General

17.1 No employee, agent or sub-contractor or other associated person of the Repairer has authority to vary these terms and conditions.

17.2 Where the Repairer designs any object or part of an object for constructions, installation, repair or maintenance in connection with the Works agreed to be undertaken, the intellectual property in the designs including drawings, tracings, reproductions and specifications shall remain the property of the Repairer unless otherwise agreed in writing. The Customer shall treat and maintain confidential and secret all designs.

18. Termination

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

18.1 the Customer defaults in payment due to the Repairer;

18.2 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;

18.3 the Customer is merged, consolidated or changes the nature of character of its business or share capital,

and upon termination by either party:

18.4 all sums due to either party shall be paid immediately;

18.5 any orders received and accepted by the Repairer prior to the termination of the

Agreement shall be fulfilled in accordance with their terms.

19. PPSA

19.1 In this clause, PPSA means the *Personal Property Securities Act*. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.

19.2 The Customer grants to the Repairer a security interest under the PPSA in any goods supplied under these Terms and Conditions.

19.3 The Customer acknowledges and agrees that the Repairer may apply to register a security in the Goods at any time before or after delivery of the Goods. The Customer waives its right under section 157 of the PPSA to receive notice of any verification of the registration.

19.4 The Repairer can apply amounts it receives from the Customer towards amounts owing to it in such order as the Repairer chooses.

19.5 If the Customer defaults in the performance of any obligation owed to the Repairer under these Terms and Conditions or any other agreement for Repairer to supply goods to the Customer, the Repairer may enforce its security interest in any goods by exercising all or any of its rights under these Terms and Conditions or the PPSA.

19.6 To the maximum extent permitted by law, the Customer and the Repairer agree that the following provisions of the PPSA do not apply to the enforcement by the Repairer of its security interest in the goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.

19.7 The Customer and the Repairer agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.

19.8 The Customer must promptly do anything required by the Repairer to ensure that the Repairer's security interest is a perfected security interest and has priority over all security interests in the goods.

19.9 Nothing in this clause is limited by any other provision of these Terms and Conditions or any other agreement between the parties.