

TERMS & CONDITIONS OF TRADE

1 DEFINITIONS

- 1.1. "FAAAL" shall mean Forest Aire Automotive Airconditioning Ltd, or any agents or employees thereof.
- 1.2. "Customer" shall mean the Customer, any person acting on behalf of and with the apparent authority of the Customer, or any person purchasing products and services from FAAAL.
- 1.3. "Goods" shall mean;
- 1.3.1 All Goods of the general description specified on the front of this agreement and supplied by FAAAL to the Customer and
- 1.3.2 All goods supplied by FAAAL to the Customer; and
- 1.3.3 All inventory of the Customer that is supplied by FAAAL; and
- 1.3.4 All Goods supplied by FAAAL and further identified in any invoice issued by FAAAL to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
- 1.3.5 All Goods that are marked as having been supplied by FAAAL or that are stored by the customer in a manner that enables them to be identified as having been supplied by FAAAL; and
- 1.3.6 All of the Customer's present and after-acquired Goods that FAAAL has performed work on of to or in which goods or materials supplied or financed by FAAAL have been attached or incorporated.
- 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods" shall also mean all goods, products, services and advise provided by FAAAL to the customer and shall include without limitation the importation, distribution, exportation and repair, the supply of parts, technical advice, and all charges for labour, hire charges, insurance charges, freight or any fee or charge associated with the supply of Goods by FAAAL to the Customer
- 1.5 "Price" shall mean the cost of the Goods as agreed between FAAAL and the Customer and includes all disbursements e.g charges FAAAL pays to others on the Customers behalf subject to clause 4 of these terms.

2 ACCEPTANCE

- 2.1. Any instructions received by FAAAL from the Customer for the supply of Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3 COLLECTION & USE OF INFORMATION

- 3.1. The Customer authorises FAAAL to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing and rights under this contract, or marketing any Goods provided by FAAAL to any other party.
- 3.2 The Customer authorises FAAAL to disclose any information obtained to any person for the purposes set out in clause 3.1
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4 PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the current amount as such Goods are sold by FAAAL at the time of the contract.

4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of FAAAL between the date of the contract and delivery of the Goods.

5 PAYMENT

5.1 Unless otherwise agreed in writing payment for Goods shall be made in full on completion of work or before the 20th day of the month following the date of the invoice ("the due date").

5.2 Interest may be charged on any amount owing after the due date at the rate of 2% per month or part month.

5.3 Any expenses, disbursements and legal costs incurred by FAAAL in the enforcement of any rights contained in this contract shall be paid by the Customer, including any solicitor's fees or debt collection agency's fees.

5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

5.5 A deposit may be required.

5.6 Progress payments may apply to large contracts.

6 QUOTATION

6.1 Where a quotation is given by FAAAL for Goods:

6.1.1 unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and

6.1.2 The quotation shall be exclusive of GST unless specifically stated to the contrary;

6.1.3 FAAAL reserves the right to alter the quotation because of circumstances beyond its control.

6.2 Where the Goods are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods.

7 RISK

7.1 The Goods remain FAAAL's risk until delivery to the Customer.

7.2 Delivery of Goods shall be deemed complete when FAAAL gives possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier, or other bailee for the purposes of transmission to the Customer.

7.3 All property of the Customer in the possession of FAAAL is stored and worked on solely at the Customer's risk. The Customer is responsible for keeping all Goods insured at all times.

8 TITLE & SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

8.1 Title in any goods supplied by FAAAL does not pass to the Customer until the Customer has paid in full for all Goods provided by FAAAL and of all other sums due to FAAAL by the Customer on any account whatsoever. Until all sums due to FAAAL by the Customer have been paid in full, FAAAL has a security interest in all Goods.

8.2 If the Goods are attached, fixed, or incorporated into any property of the customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with FAAAL until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to FAAAL as security for the full satisfaction by the Customer of the full amount owing between FAAAL and the Customer.

8.3 The Customer gives irrevocable authority to FAAAL to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if FAAAL believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. FAAAL shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. FAAAL may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as FAAAL reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

8.4 Where the Goods are retained by FAAAL pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

8.5 The following shall constitute defaults by the Customer:

8.5.1 Non-payment of any sum by the due date

- 8.5.2 The Customer intimates that it will not pay any sum by the due date.
- 8.5.3 Any Goods are seized by any other creditor or any other creditor intimates that it intends to seize Goods.
- 8.5.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to FAAAL
- 8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customers assets or a landlord distrains against any of the customers assets
- 8.5.6 A Court judgement is entered against the Customer and remains unsatisfied for seven (7) days.
- 8.5.7 Any material adverse change in the financial position of the Customer.

SECURITY INTEREST FOR SERVICE PROVIDERS

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- 9.1 The Customer gives FAAAL a security interest in all of the Customer's present and after-acquired property that FAAAL has performed services on or to or in which goods or materials supplied or financed by FAAAL have been attached or incorporated.

10 PAYMENT ALLOCATION

- 10.1 FAAAL may in its discretion allocate any payment received from the customer towards any invoice that FAAAL determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payment previously received and allocated. In the absence of any payment allocation by FAAAL, payment shall be deemed to be allocated in such manner as preserves the maximum value of FAAAL's purchase money security interest in the Goods.

11 GENERAL LIEN

- 11.1 The Customer agrees that FAAAL may exercise a general lien against any Goods or property belonging to the Customer that is in the possession of FAAAL for all sums outstanding under this contract and any other contract to which the Customer and FAAAL are parties.
- 11.2 If the lien is not satisfied within seven (7) days of the due date FAAAL may, having given notice of the lien at its option either:
 - 11.2.1 Remove such Goods and store them in such a place and in such a manner as FAAAL shall think fit and proper and at the risk and expense of the Customer; or
 - 11.2.2 Sell such Goods or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damaged caused.

12 DISPUTES & RETURN OF GOODS

- 12.1 FAAAL reserves the right to decline any Goods returned after seven (7) days from the date of delivery.
- 12.2 No Goods will be considered for return without prior approval of FAAAL. Any returned Goods must be unused, undamaged and in original condition and packaging.
- 12.3 A 10% handling fee may be deducted after seven (7) days.
- 12.4 Procured or indented items are not returnable for credit.

13 EXCLUSION OF LIABILITY

- 13.1 All terms, warranties, conditions or obligations implied in this agreement by statute which can be lawfully excluded are hereby excluded.
- 13.2 Except as otherwise implied by law and not able to be excluded pursuant to Clause 13.1 above. FAAAL is not liable for:
 - 13.2.1 Any loss or damage of any kind whatsoever, arising from the supply or non supply of Goods by FAAAL to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by FAAAL to the Customer; and
 - 13.2.2 The Customer shall indemnify FAAAL against all claims and loss of any kind whatsoever however caused or arising and without the generality of the foregoing of this clause whether caused or arising as a result of the negligence of FAAAL or otherwise, brought by any person in connection with any matter, act, omission, or error by FAAAL its agents or employees in connection with the Goods; and
 - 13.2.3 The Customer has entered any contract with FAAAL in reliance on the Customer's own skill and judgement and has not been induced to do so by any representation made by FAAAL: and

13.2.4 FAAAL is not liable to the Customer for any loss or damage arising directly or indirectly from any representation made by FAAAL

14 WARRANTY

- 14.1 FAAAL gives no warranty on any Goods beyond that offered by the manufacturer of the Parts/Goods. The judgement of the manufacturer as to the validity of any claims is final and binds both the Customer and FAAAL. The liability in the event of a valid claim will not exceed the sale price of the Goods concerned plus the cost of labour charged by FAAAL.
- 14.2 In respect of services performed by FAAAL, no warranty is given for any sum greater than the cost of labour originally provided by FAAAL.
- 14.3 This undertaking is in place of any implied condition as to the merchantable quality and all other conditions, warranties, undertakings of terms whether expressed or implied, statutory or otherwise, inconsistent with the provisions of this warranty are to the extent permitted by law hereby expressly excluded.
- 14.4 FAAAL gives no warranty that the Goods are fit for any purpose, suitable for any purpose or any other warranty other than that referred to in Clause 14.1 above

15 CONSUMER GUARANTEES ACT

- 15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from FAAAL for the purposes of a business in terms of s.2 and s.43 of that Act.

16 MISCELLANEOUS

- 16.1 FAAAL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control
- 16.2 Failure by FAAAL to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any rights or obligations FAAAL has under this contract.
- 16.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.4 In the event that the Customer is an accredited franchisee, these terms and conditions of trade shall take preference over the franchise agreement.
- 16.5 The law of New Zealand applies to this contract.

17 PERSONAL GUARANTEE OF SIGNATORY TO CREDIT APPLICATION FORM

- 17.1 If the Customer is a company or is a trust, the director/s or trustee/s signing this agreement, in consideration for FAAAL agreeing to supply goods and grant credit to the Customer at the Customer's request, also signs this contract in that person's personal capacity and hereby unconditionally guarantees to FAAAL the due and punctual payment by the Customer of all monies payable in respect of Goods as and when the same shall become due and payable by the trader.
- 17.2 The signatory hereby accepts joint and several liability with the Customer to FAAAL for any and all funds now or hereafter owed by the Customer to FAAAL against non-payment by the Customer.
- 17.3 This personal guarantee is a continuing guarantee and is not discharged by any settlement on account.
- 17.4 Liability under this personal guarantee shall not be discharged, abrogated, prejudiced or effected by:
- 17.4.1 The granting of time, credit or other indulgence or other concession to the Customer; or
- 17.4.2 Any alteration, modification, variation or addition to any agreement in respect of the supply of the goods; or
- 17.4.3 Any other act, omission or event which but for this provision might operate to discharge, impair or otherwise effect the signatory's obligations under this personal guarantee or any of the rights, powers or remedies conferred upon FAAAL by this guarantee or by law.