

TERMS AND CONDITIONS

Volks Centre Cairns ABN 71 471 168 455

Mobile Chip Tuning Australia ABN 71 471 168 455

Unless otherwise agreed in writing, all repairs, servicing and supplying of goods, invoices and estimates are governed exclusively by the following terms and conditions:

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 (Cth)*;
- 1.2 "Customer" means the party identified as the "owner" on the Repair Order Card;
- 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 "PPSA" means the *Personal Property Securities Act 2009 (Cth)*;
- 1.5 "Repairer" means either of:
 - (a) Tobias Claus Schneck trading as Volks Centre Cairns ABN 71 471 168 455; or
 - (b) Tobias Claus Schneck trading as Mobile Chip Tuning Australia ABN 71 471 168 455;
- 1.6 "Repair Order Card" means the document completed by the Repairer and the Customer at the time the Goods are initially delivered by the Customer to the Repairer;
- 1.7 "Works" 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, tuning, 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 that the Repairer to carry out the Works, the Customer authorises the Repairer to do all things that are, in the opinion of the Repairer, necessary to carry out and complete the Works including, without limitation:-
 - (a) operate the Goods or any part or device on or about the Goods; and
 - (b) remove any machinery, part or device from the Goods.
- 2.2 The Customer warrants to the Repairer that:-
 - (a) the Customer 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

- 3.1 The Repairer will use its best endeavours to carry out the Works within the time stated on the Repair Order Card and all completion dates shall be regarded at best as estimates only.
- 3.2 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.
- 3.3 In the event that the Repairer is hindered or prevented from performing the Works, owing to any cause beyond its reasonable control or its inability to procure services, materials, or articles required for the performance of the agreement, except at higher prices, the Repairer may at its sole discretion, 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.

5. Terms of Payment

- 5.1 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.
- 5.2 Unless specifically agreed to in writing by the parties, payment in full shall be due prior to dispatch of the Goods or upon notification by the Repairer to the Customer that the Goods are ready for dispatch.
- 5.3 If the Customer fails to make payment within thirty (30) days from the date of the Repairer's tax invoice, the Customer will be liable to pay interest on the outstanding amount at the rate of 10% per annum, calculated daily.

6. Collection of Goods

- 6.1 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 collection. In the event that the Customer fails to collect the Goods within that time, the Repairer will 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.
- 6.2 The Customer must examine the Goods immediately upon dispatch by the Repairer. 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.

7. No Liability for Loss

7.1 The Repairer shall not be liable for any loss or damage of any kind whatsoever sustained to any plant, machinery, accessories, contents or other property of the Customer whilst same is in the possession of or under the control of the Repairer.

8. Force Majeure

8.1 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.

9. Jurisdiction

9.1 This contract shall be governed by and construed by the laws of the state of Queensland and the Commonwealth of Australia.

10. Severability

10.1 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.

11. Indemnity

11.1 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.

12. Australian Consumer Law

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

12.2 The parties acknowledge that clauses 12.3, 12.4 and 12.5 only apply if the Customer falls within the definition of "consumer" under the ACL.

12.3 The Customer is entitled to a replacement or refund for a "major failure" (defined in the ACL) and compensation for any other reasonably foreseeable loss or damage.

12.4 The Customer is entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a "major failure" (defined in the ACL).

12.5 Any exclusions, restrictions or modifications of direct, incidental, consequential or other damages referred to in these Terms and Conditions do not affect the Customer's rights set out in the ACL and clauses 12.3 and 12.4.

13. Repairer Warranties

13.1 This clause operates in addition to clause 12 regarding the ACL.

13.2 If there is a specific warranty applicable to a part, component, accessory or equipment used by the Repairer, the Repairer will notify the Customer in writing of the terms of that warranty.

13.3 If the Customer is not advised in writing of a specific warranty applicable to a part, component, accessory or equipment, there is no applicable warranty in relation to that part, component, accessory or equipment.

14. Sub-contracting and Indemnity

14.1 The Repairer shall be entitled to sub-contract, on any terms, the whole or any part of the Works and any and all acts or things that are, in the opinion of the Repairer, necessary or desirable to carry out and complete the Works.

14.2 The Customer undertakes that no claim or allegation shall be made against any person who performs or undertakes the Works (including sub-contractors of the Repairer), which imposes or attempts to impose upon any such person any liability whatsoever in connection with the Works, 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. Employees, Agents and Sub-contractors

15.1 It is 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 shall 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.

15.2 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) and all such persons shall to this extent be or be deemed to be parties to the contract entered into by the Repairer.

16 No Liability

16.1 It is expressly agreed that it is the Customer's responsibility to ensure that the Customer drives safely and in compliance with relevant Commonwealth and State laws after the Works have been completed by the Repairer.

16.2 The Repairer is not liable for any damage or loss suffered by the Customer as a result of the negligent, unlawful, reckless or dangerous use of the Goods.

17. Lien

17.1 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.

18. Authority to vary

18.1 No employee, agent or sub-contractor or other associated person of the Repairer has authority to vary these terms and conditions. These Terms and Conditions may only be varied with the express consent in writing of the Repairer.

19. Termination

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

- (a) the Customer defaults in payment due to the Repairer;

- (b) 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; or
 - (c) the Customer is merged, consolidated or changes the nature of character of its business or share capital.
- 19.2 Upon termination of this Agreement by the Repairer, all sums due to the Repairer shall be paid by the Customer immediately.

20. PPSA

- 20.1 The Customer grants to the Repairer a security interest under the PPSA in any goods supplied to the Repairer under these Terms and Conditions.
- 20.2 The Customer acknowledges and agrees that the Repairer may apply to register a security interest 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.
- 20.3 The Repairer can apply amounts it receives from the Customer towards amounts owing to the Repairer in such order as the Repairer chooses.
- 20.4 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.
- 20.5 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.
- 20.6 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.
- 20.7 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 other security interests in the Goods.
- 20.8 Nothing in this clause 20 is limited by any other provision of these Terms and Conditions or any other agreement in writing between the parties.

21. Privacy

- 21.1 The Repairer does not sell, rent, trade, or loan its customers' names, VIN number, email address or any other type of personal information.

Refurbished parts – Notice

- 1. This notice is given pursuant to the ACL.***
- 2. 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.***