

## Autotest Servicing NZ Limited - TERMS OF TRADE

In continuing to supply Services and/or Products from Autotest Servicing NZ Limited ("Autotest", "we", "us", "our") to you our customer ("you"), together, we as the parties (the "parties") agree to adhere to these Terms of Trade ("Terms"), which shall apply to our continuing and on-going business relationship.

Your acceptance of our Services and/or Products indicates your continuing acceptance of these Terms. Whilst we will endeavour to provide you notice should we update these Terms; we reserve the right to update these Terms at any time and will use our reasonable endeavours to notify you, however we encourage you to check them regularly.

### 1. Definitions and Term

1.1. In these Terms, "**Business Days**" means an ordinary work day excluding Saturday and Sunday, statutory holidays, or any other public holidays celebrated in Christchurch New Zealand; "**Loss**" means a loss, claim, action, damage, liability cost, expenses, charges, penalty, fines, compensation, and includes (but is not limited to) any direct, indirect, consequential loss whether suffered through contract or tort and includes loss of profit, revenue, goodwill or opportunity, or loss suffered by a third party or a related company (as defined by the Companies Act 1993); "**Products**" means machines, parts, equipment, consumables and other item we supply to you either for resupply by you or for your own use; "**Services**" means any repairs, calibrations, installations, training, maintenance or any other services we may provide to you.

1.2. These Terms will replace and prevail over all of our earlier terms of trade and any conditions contained in any document used by you and purporting to have contractual effect.

1.3 These Terms will continue to apply for as long as we provide the Products and Services to you or until we update them. Either party may, by providing written notice to other, terminate these Terms by:

- giving either 90 Business Days' written notice to other, unless the parties agree otherwise;
- if either party is in material breach of these Terms and it is not possible to rectify the breach within 60 Business Days' of receiving written notice from the other of breach;
- where the material breach is not capable of being remedied, then upon written notice of the material breach termination will occur immediately; or
- immediately on written notice if the other party experiences, or looks likely in the reasonable opinion of the other party to experience, an insolvency event (threatened or actual).

### 2. Price and Orders

2.1. Quoted prices are valid for 7 days from date of issue, unless otherwise stated on our written formal quote.

2.2. You must pay all delivery costs, applicable taxes and duties. We may ask you to pay a deposit for goods, and where you ask us to pre-order or install goods or machinery, we may require you to pay some, or all, of the price in advance.

2.3. We reserve the right to refuse to accept any order or any part of an order, and to deliver goods by instalments, in which

case each instalment will comprise a separate contract and shall be paid for as if it were a separate order.

### 3. Risk and Delivery

3.1. You are responsible for insurance and risk in and over the Products when: a) you send a Product(s) to us and before we take possession of the Product; or b) when we send a Product(s) then from the earlier of the time that the Product is delivered to the address requested by you, or (if you arrange delivery) the time that it is collected by you or your agent.

3.2. Where Products or other goods appear to be damaged or missing, you must contact us immediately and supply us with a copy of the proof of delivery, and a clear description of the damage, and evidence showing the damage (i.e. a photograph). All claims for damage during delivery must be confirmed in writing by us within 5 Business Days of the date of delivery. After this time, it will be at our sole discretion whether we will accept any claim against us for damage, although we will endeavour to provide you with reasonable assistance if you are making a claim against a third-party courier or carrier for damage. Damaged goods must be made available for inspection.

3.3 In the circumstance where we store Products for you, or on your behalf, and you fail to collect or accept any Product by the delivery date specified, you agree to pay our reasonable storage costs until you collect those Products.

3.4 If it is likely that there will be a delay in delivering your Product or Service, we will use our reasonable endeavours to provide you with notice of the delay. However, we will not be liable to you for any Loss sustained as a result of the delay and we reserve the right to cancel delivery of Products without prejudice to our rights to recover any sums owing to us in respect of deliveries already made.

### 4. Parties Obligations

4.1. We will take reasonable efforts to ensure the timely delivery of Products, and we will use our reasonable endeavours to meet the timings agreed for completion of Services. We will provide the Services in a professional manner. We will not be liable to you for any Loss or damage arising in any way from any delay in delivery, or in the performance of the Product or Services. Delay or Loss suffered as a result of delivery or performance does not entitle you to cancel any order for Product or Services or our contractual arrangement, unless we agree.

4.2. Unless otherwise stated in writing, all Products will be shipped, and it is your responsibility to assemble, configure and install them. If we are asked to deliver goods outside New Zealand, it is your responsibility to pay all shipping costs and warehousing costs, duties and taxes in the destination country.

4.3. Where you ask us to deliver goods directly to another person, that person takes possession of the goods for you as your agent, and you are still directly responsible to us under these Terms.

4.4. Pursuant to providing you with the Products or Services, you agree to provide us all necessary information without undue delay.

4.5. Any delays caused by you or your agent or any third-party that causes us to delay in providing the Services or Products, does not entitle you to cancel our business arrangement and



we shall not be liable to you for any Losses you incur. If your delay is persistent and continues for more than 3 Business Days', and as a result we suffer loss (or Loss), we have the right to invoice you for our reasonable losses (or Losses) and /or expenses.

4.6. We will install Products according to the manufacturer's guidelines or specifications. We will provide our Services in a manner and to the degree that would be reasonably expected of other service agents in our industry.

## 5. Returns

5.1. You acknowledge and agree that returns shall only be accepted by us in the following circumstances: a) incorrect Product(s) have been supplied or ordered; or b) faulty or defective Product(s), which is the result of the manufacturer's error.

5.2. You must notify us immediately if you wish to return a Product.

5.3. Product returns must be sent back to us within 3 Business Days'.

5.4. We will supply you a credit for goods returned only if we have consented in writing and in our sole discretion. We may charge you a re-stocking fee. Where the goods that we supply you have been specially ordered for you and are not stock items, you may not return them.

5.5. However, nothing in these Terms or in our returns policy will limit or affect any rights that a non-business consumer may have under the Consumer Guarantees Act 1993 in relation to consumer goods.

## 6. Payment

6.1. Unless we have agreed in writing to extend credit to you, you must pay us by direct credit into a bank account nominated by us for our Services or supply of Products.

6.2. Unless we have agreed in writing to extend credit to you, you must pay in full and by the due date indicated on the due date of the invoice, or if no due date is indicated, then within 14 Business Days' from the due date of our invoice.

6.3 We may agree to different payment terms, upon which we will provide you our written consent.

6.4. Payment is made only when funds have fully cleared through the banking system and into our bank account. Payments which you make to us will be considered to be applied first to any amount owing in respect of Services we provide, then to payment for any Products which have been purchased as inventory and which have been sold by you, then to payment for Products supplied by us which have not been sold by you. We may allocate your payments in this manner or otherwise at any time after receipt even if we have sent you a statement, which indicates payments are allocated in a different manner.

6.5. We have sole discretion to determine the amount of credit we will extend to you at any time.

6.6. You agree to pay for the Products in full without deduction or setoff and to pay goods and services tax and any other government duties, levies or taxes in respect of the Products, if these should arise.

6.7. If payment is not made in full by the due date we may charge you our costs incurred (including collection costs or fees and legal costs on a solicitor-client basis) and suspend delivery of further Products or performance of further Services until the account is paid. Possession of Products on our premises, remains with Autotest until payment is made in full. We shall retain a security interest over any Products that we have returned to you until payment has been made in full.

6.8. Payment must be made by the 20<sup>th</sup> of the month following the date of invoice, unless we agree otherwise. If payment has not been made we will exercise our legal rights to either engage a collection agency at your cost or sell your goods in order to recoup our losses (or Losses) including any associated costs or any other losses (or Losses) we incur, which may include legal costs in order to pursue an action against you.

6.9. Notwithstanding clause 6.7. all payments shall immediately become due to us if you refuse to accept delivery of any Products without reasonable cause, if we reasonably believe that the information which you have given us in your application for credit is incorrect, or are no longer correct, and you have failed to give us correct information satisfactory to us within 5 Business Days of our request, if you sell or otherwise dispose of any goods which have not been paid for without our consent, if you become insolvent, commit any act of bankruptcy, if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, if you make or attempt to make an arrangement or composition with creditors, or if you fail to comply with any of the provisions of these Terms.

6.10 Where a dispute arises over a payment, you must pay the undisputed portion of the invoice. Failure to do so will result in Us charging you interest on the amount due (calculated on a daily basis from the due date) at 3% above our bank overdraft rate and withholding any further Products or Services until the debt is fully paid.

## 7. Title

7.1. Title, which includes ownership or possession, in any Product(s), whether in their original form or incorporated in or attached to another product will not pass to you but will remain with us until we receive payment in full of the purchase price of the Products and all other amounts that you owe to us for any reason.

7.2. Until title passes to you, you shall hold any Products in trust as fiduciary bailee for us, and store them in a manner to enable them to be identified and cross referenced to particular invoices, making it clear that the Products are still owned by us ensuring that the Products are kept separate from your other inventory; and in the event that you resell our Products, you will be deemed as holding the proceeds of that sale on account in trust for us. Unless we agree, You must not represent that you have any authority to act for us.

7.3. You must not resell or part with possession of those Products before you have paid for them in full, unless we have given you written consent.

7.4. Where Products or other goods are supplied to you as inventory or otherwise for resupply (including by way of attachment to or incorporation into manufactured or assembled goods), if we have agreed in writing you may sell the Products in the ordinary course of your business, but you must hold any accounts receivable or other proceeds for our



benefit. If you use any money proceeds to purchase replacement inventory, whether from Autotest or another third party, you hold that replacement inventory and its proceeds as collateral for our benefit until all sums owing to Us are paid in full.

7.5. Where we reasonably believe you are, or will be, in breach of any part of this clause or clauses 6, or 8 of these Terms, we or our agent may without notice enter any premises under your control to remove any Products which are the property of Autotest, or which are subject to Autotest's security interest, including Products installed in or attached to any other goods, using such force as is necessary, and without prejudice to any other of Autotest's rights. You indemnify us against all costs and claims in respect of its exercise of rights under this clause.

7.6. Where you acquire consumer goods from us for your personal, domestic or household use, nothing in clauses 6, 7 or 8 will limit or affect the rights you may have under the Credit Contracts and Consumer Finance Act, and we will comply with that Act in exercising our repossession powers under clause 7.5.

## 8. Security Interests

8.1. This clause 8 applies where goods are supplied to you on credit. If we already have a perfected security interest in the Products we supply to you from time to time together with their proceeds of all kinds, that security interest is continued under these Terms. Otherwise, you grant us a security interest in the Products that we supply to you, which we may register or perfect in any means possible to ensure that we have an enforceable security against you and the Products and any proceeds of sale in the Products. Our security interest covers the Products together with all proceeds (including, without limitation, accounts receivable), whether or not those Products have become accessions to other goods or processed or commingled into or mixed with other goods. The Products subject to the security interest will be described on our invoices. Where Products that we supply to you have become mixed with other similar goods or products supplied by other persons, you grant us a security interest in the mixed goods to the value of the Products in the mixture that we have supplied to you but which have not yet been paid for.

8.2. You agree that you will do all acts necessary and provide to us on request all information we require to register a financing statement over the Products and their proceeds of all kinds or all things necessary to assist us to execute or arrange for the execution of all documents that we may require in order to perfect our security interest in the Products, and that you will advise us immediately in writing of any changes to that information. You waive all rights to receive a copy of any verification statement of a financing statement under section 148, and agree that sections 114(1)(a), 133 and 134 of the Personal Property Securities Act 1999 (**PPSA**) will not apply on the enforcement by us of any security interest created or provided for by these Terms for which Part 9 of the PPSA may apply. Further, you waive any rights you may have under sections 116, 120(2), 121, 125, 129 and 131 of the PSSA on such enforcement. You agree not to assign, charge, encumber, mortgage, or permit any liens to arise over, or any other security interest (except our interest) to attach to the Products unless we have provided written consent.

8.3. You agree that we may require you to pay all reasonable costs, including legal costs on a solicitor-client basis, associated with the discharge or amendment of any financing

statement registered by us, whether or not the change was initiated by you.

8.4. If we repossess any Products under these Terms, we may retain those Products or dispose of them, and, after deducting reasonable costs of sale, we may credit any surplus by way of set-off against any sums owing to us by you. We shall not be obliged to pay to any person other than you or your receiver or liquidator any sum in excess of the total amount you owe us at the time we credit your account. We will not be obliged to reinstate these Terms or resupply any goods to you.

8.5. You authorise us to search the Personal Property Securities Register at any time for any information about you or (if you are a company) your parent or associated companies.

## 9. Warranties and Liability

9.1. The only warranties we give are those given in writing. To the extent permitted by law and any relevant third-party terms, We will pass through to you or hold for your benefit all manufacturer's warranties in respect of the Products.

9.2. To the extent permitted by law, all implied warranties, conditions and guarantees are expressly excluded including any warranty as to the quality, state or condition of any goods or Services or their appearance, quality, content or fitness for any particular purpose (including the United Nations Convention on Contracts for the International Sale of Goods 1980 and the Contracts and Commercial Law Act 2017).

9.3. You are responsible for the cost of returning goods to us under any warranty, and you may be responsible for additional costs including (but not limited to) freight. Where you require us to do anything related to a warranty claim, you must pay for our Service and call-out charges. We may refuse to assist with warranties if any sum that you owe us for any reason is overdue. You are responsible for all costs arising from supply or resupply of the Products outside New Zealand.

9.4. Any warranty may be voided, and we will not be liable to you in any way for Loss or damage in relation to the Products caused by unreasonable use, damage or misuse (including problems caused by misuse or damage after the Products have left Autotest's care), negligent installation by third parties (including failure to follow installation instructions) or operation, inadequate or unauthorised repairs or modifications or the addition or use of accessories not supplied by Autotest.

9.5. Where the Products or Services that you acquire from us are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties and guarantees set out in the Contracts and Commercial Law Act 2017, or implied by common law will not apply and are excluded from these Terms.

9.6. This exclusion of liability includes, but is not limited to, costs (including costs of uninstalling and reinstalling, storage or returning Products to Autotest), Loss, consequential loss, loss of profits, damage caused by or arising from delays in manufacturing or delivery, faulty or delayed installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design,



and faulty materials, components, manufacture, compilation, or assembly of the Products.

9.7. We will not be liable to you for any Losses caused by events beyond our reasonable control and this includes any other force majeure event as commonly understood within the laws of New Zealand. We will not be required to settle a strike or lockout or other industrial disturbance against our wishes in order to benefit from this clause. In any of these events, you will not have an automatic right of cancellation, unless we both agree. Instead, we will use reasonable endeavours to work together in order to find a solution. If we are unable to do so, then either of us may terminate our business relationship, but providing the other with 14 Business Days' notice, at which time you must ensure that all accounts are settled.

9.8. Our maximum liability to you (if any) shall be limited to the value of any faulty Products or Services supplied, and none of Autotest directors, shareholders, officers, employees, contractors or agents will be liable to you for Loss or damage of any kind that arises, however that Loss or damage is caused or arises, as a result of a manufacturer's fault or defect in the Product, or other manufacturer's error which may include an installation error in the manufacturer's guidelines or specifications.

9.9. You indemnify Autotest against all costs (including legal costs) expenses, Losses, damages or claims arising in any way as a result of your failure to comply with any part of these Terms or ensuring compliance when using the Products with all applicable law of New Zealand.

## 10. Customer Warranties

10.1. If you acquire any Products or Services from us for re-supply, use or incorporation in, any goods or services ordinarily acquired for personal household or domestic use or consumption ("Consumer Products") you warrant that: (a) If you supply the Consumer Products directly to an end user/consumer you will do so using terms and conditions of supply which exclude liability for any claims under the Consumer Guarantees Act 1993; and (b) If your customer acquires any goods or services for re-supply, your customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the Consumer Guarantees Act 1993, but in each case only where the end user/consumer acquires the Consumer Products for business purposes.

10.2. You agree to indemnify us, our suppliers and the manufacturers of any goods against any failure by you, your customers or any person in your distribution chain to properly contract out of liability to business end users/consumers under the Consumer Guarantees Act 1993 and any applicable local consumer law.

10.3 You confirm that you are acquiring all Products and Services for the purposes of a business as defined in the Consumer Guarantees Act 1993. The provisions of the Act do not apply to the Products and Services we supply to you under these Terms.

## 11. Health and Safety

11.1. Where we carry out a visit to your premises or carry out Services on premises under your control, you must provide us with your health and safety requirements, and we will take all practicable steps to carry out safety procedures. We will

adhere to our legal obligations under the Health and Safety at work laws and regulations.

## 12. Intellectual Property and Confidentiality

12.1. All intellectual property and rights including trademarks and designs or similar, shall remain the property of Autotest or any supplier entitled to it, and neither Autotest nor its suppliers shall transfer any right, title or interest in the intellectual property to you, unless authorised to do so in writing.

12.2. You must not use any trademarks or otherwise, which are the property of Autotest or its suppliers, or any similar words or marks, or any combination of words which includes any of those trademarks or any similar words or marks, except to the extent authorised by Autotest in writing.

12.3. If you resupply any Products, you agree to dispatch them only under the trademarks which they are supplied by Autotest, and under no circumstances shall you apply any of the trademarks to any product which is not a genuine branded product supplied to you by Autotest. You will indemnify us, to the fullest extent as permitted under the law, against any legal action by any supplier for any breach, or claim of breach, of intellectual property or intellectual property rights.

12.4. You agree to ensure that all confidential information supplied or given to you by Autotest is treated as confidential and not shared or publicised in any manner, without our written consent.

12.5. This clause 12 as well as clauses 8,9,10, shall survive the termination of these Terms.

## 13. General

13.1. You may not assign or purport to assign or subcontract any contract with us without the written consent of Autotest. We reserve the right to assign or subcontract the Products and/or Services under these Terms.

13.2. If Autotest fails to enforce any of these Terms or exercise its rights under these Terms at any time, this will **not** be deemed as waiver of Autotest rights.

13.3. If any provision of these Terms is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these Terms.

13.4. Notices may be emailed to: [accounts@autotest.co.nz](mailto:accounts@autotest.co.nz) and you must write "Notice" in the subject line of the email. Alternatively, and in cases of emergency, please call Autotest on 03 343 3721

13.5. This agreement is governed by the laws of New Zealand and any dispute under it shall be subject to the exclusive jurisdiction of the Courts of New Zealand.

