

MAINLAND COACHWORK TERMS AND CONDITIONS OF TRADE

Version: 1.0

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1. Definitions

- 1.1. **Force Majeure** means an event beyond the reasonable control of either party, including but not limited to death, disease, theft, flood, fire, war, pandemic, epidemic, earthquake or other natural disaster.
- 1.2. **Goods** means all goods and services supplied by us, including but not limited to the following:
 - a) supplying made-to-order horse coaches, horse truck parts and accessories;
 - b) horse truck and horse float repairs;
 - c) custom design, alterations and fit-out for various vehicles including horse trucks, horse floats, campervans and trucks.
- 1.3. **Intellectual Property** means all intellectual property rights including but not limited to copyright, registered and unregistered trademarks, patents, design rights, drawings, documents, data, ideas, procedures and calculations.
- 1.4. **Price** means the price charged by us and payable for the Goods.
- 1.5. **Quote** means a quote we provide to you that describes the Goods to be provided to you and the estimated Price for such Goods.
- 1.6. **Terms** means these terms and conditions of trade.
- 1.7. **We, us, or our** means Mainland Coachwork Limited
- 1.8. **Website** means mainlandcoachwork.co.nz
- 1.9. **You or your** means the person agreeing to be bound by these Terms.

2. How these Terms apply

- 2.1. These terms of trade apply in respect of all offers to sell, quotations made, contracts secured and other commercial transactions for the supply of Goods to you.
- 2.2. These Terms apply in their latest version available on our Website. We will provide you with reasonable notice

of any changes to these Terms that affect your rights and obligations.

3. Price and payment

- 3.1. You must pay the Price and any applicable fees in full, without any withholding, deduction or set-off of any kind, and in the manner specified in your Quote. If the Quote does not specify a time or manner of payment, you must pay us by way of **bank transfer** in full and cleared funds no later than the date of delivery of the Goods to you.
- 3.2. Unless agreed otherwise in writing, the price for the Goods is stated in New Zealand Dollars and shall be the current price charged by us at the date of delivery.
- 3.3. Unless agreed otherwise in writing the Price does not include GST or applicable costs of delivery.
- 3.4. Quotes are estimates only and may be altered at any time before delivery of the goods to you if salaries, the cost of materials, applicable taxes or delivery costs fluctuate before delivery. For the avoidance of doubt, you must pay us the Price we charge to you.
- 3.5. We may withdraw any Quote before it is accepted. The Quote will expire and be withdrawn on the date specified on the Quote. If the Quote does not specify an expiry date, the Quote will lapse **30** days after it is given.
- 3.6. We may pass on to you any costs of payment processing such as credit card surcharges for payments you make to us.
- 3.7. We may charge interest on payments not made when due and monies owed by you to us at the default rate of 15% per annum, which will accrue on a daily basis and compound monthly until all amounts due (including default interest) have been paid in full.
- 3.8. All costs incurred by us in recovering overdue monies and/or enforcing our rights under these Terms (including solicitor, court and debt collection

costs) are payable by you to us as a due debt without further demand.

due to circumstances beyond our reasonable control.

4. Delivery, Risk and Title

- 4.1. Goods purchased by you are at your risk at the time of delivery. The time of delivery is the time you collect the Goods or a carrier collects the Goods for delivery to you.
- 4.2. Ownership of and title to the Goods remains with us until you pay us in full for the goods and you have satisfied all your obligations under these Terms in respect of the Goods.
- 4.3. Where we have provided you with a time frame for delivery of the Goods, unless agreed otherwise with you in writing such a time frame is approximate only.
- 4.4. Until title in the Goods passes to you, you will:
 - a) hold or deal with the Goods as our agent and deal with them only on behalf of us;
 - b) store the Goods in a manner that protects them from damage or deterioration;
 - c) ensure that the Goods are separately identifiable from other property;
 - d) not grant any security, encumbrance or other interest or charge over the goods (except to us if we require such security); and
 - e) if we require, insure the Goods against all risks at your own cost for full replacement value and have our interests in the Goods noted on your insurance policy.
- 4.5. You are responsible for checking the quality of the Goods upon delivery. If you do not notify us in writing within 2 days of delivery, you will be deemed to have accepted the condition, suitability and quality of the Goods.
- 4.6. We reserve the right to request from you any such guarantee or security as we may think desirable for us to secure all sums due by you, and you agree to do all things necessary to grant such guarantees and securities.
- 4.7. Where we agree to deliver goods on your behalf, you are responsible for insuring the Goods in transit and we will not be responsible for any delay, failure or change in method of delivery

5. Warranties

- 5.1. To the extent we are able, we will pass on to you the benefit of any manufacturer warranties relating to the goods we provide to you.
- 5.2. We will perform our obligations under these Terms with reasonable care, skill and diligence.
- 5.3. We will endeavour to deliver the Goods in accordance with any time frames we agree with you.
- 5.4. Except for a 2-year warranty on the workmanship of the Goods produced by us, to the maximum extent permitted by law, we do not make any representations or warranties in respect of the condition or fitness for purpose relating to any goods.
- 5.5. You warrant the following:
 - a) You are able to legally enter into and perform your obligations under these Terms.
 - b) You will provide us with reasonable assistance to enable us to perform our obligations under these Terms.
 - c) You have sufficient resources to satisfy your obligations under these Terms including making payments when due and will immediately notify us in writing upon becoming aware of any matters or circumstances that may prevent your ability to perform your obligations under these Terms.
 - d) All information you have provided to us is true, complete and correct, and you will immediately notify us of any changes to this information.
- 5.6. You acknowledge and agree that you enter into these Terms and make transactions at your own risk and in reliance on your own judgement.

6. Intellectual Property

- 6.1. All Intellectual Property rights existing prior to entry into these Terms belongs to its owner as of the date of entry into these Terms.
- 6.2. Nothing in these Terms grants you ownership of or interest in the Intellectual Property owned by us including our ideas, techniques, skills and know-how.

- 6.3. Unless agreed otherwise in writing you will not prevent us from using any design ideas or suggestions that you provide to us.
- 6.4. Unless agreed otherwise in writing you permit us to use pictures and videos of the Goods we provide to you (including pictures and videos of your vehicles that we have repaired or otherwise provided services in relation to) for promotional purposes including on our Website.

7. Indemnity

- 7.1. You indemnify us, our directors, officers, employees and agents from and against all claims, losses, damages, costs, judgements, expenses and liabilities of any kind arising out of or in connection with your breach of your obligations under these Terms.

8. Liability

- 8.1. Our sole liability is where we have provided defective or faulty Goods to you and we accept that such goods are defective or faulty. In such an event we may at our discretion either replace the Goods, refund you the Price of the Goods, or repaid the Goods provided to you.
- 8.2. To the maximum extent permitted by law we will not be liable to you whether in tort, contract or otherwise for any loss or damages of any kind, whether direct, indirect, special or consequential that are incurred by you.
- 8.3. If for any reason we cannot fully rely on the exclusions of liability in these Terms, our maximum aggregate liability to you will be the lesser of:
 - a) the amount of any payment actually received by us from you in relation to a transaction; or
 - b) \$1,000.00.
- 8.4. To the extent permitted by law, we will not be liable to you for any loss or damage caused by us exercising our rights under these Terms and you indemnify us, our servants and agents for any exercise of our rights under these Terms.

9. Advice

- 9.1. Any advice, recommendations, information or suggestions we provide to you in relation to the Goods is given in good faith. However, to the fullest extent permitted by law, such is provided without responsibility or liability on our part.

10. Default

- 10.1. If you fail to comply with any of these Terms, supply false or misleading information to us, then without prejudice to any of our rights under these Terms or at law, we may cancel any transaction with you and/or immediately take possession of any Goods in your possession.

11. Restrictions

- 11.1. Unless otherwise agreed, the Goods are provided to you for your own use and you may not sell the goods to the public or appoint anyone to resell the Goods.

12. Cancellation

- 12.1. You may not cancel any transaction without our written consent. As a condition of giving such consent we may require reimbursement of any direct or indirect costs we incur in reliance on such transaction.
- 12.2. In the event that you fail to pay any amount for the Goods when due, become insolvent, or fail to fulfil any of your obligations to us and such failure is incapable of remedy within 5 days, then without limiting our rights under these Terms or at law we may cancel any transactions, forfeit any deposit paid, or sue you for the Price and any costs or expenses incurred by us as a result of your default.

13. Force Majeure

- 13.1. We will not be liable to you for any delay in delivery, non-delivery, destruction or damage to all or any part of the Goods caused by an event of Force Majeure.
- 13.2. If a Force Majeure event occurs we may at our discretion either cancel the date of delivery for Goods or amend the date of delivery for such time as

we reasonably determine to be necessary.

14. Disputes

- 14.1. Any disputes arising out of or in connection with these Terms or any Quote will be referred to an independent expert for determination. The independent expert will be appointed by us after consultation with you.
- 14.2. The independent expert will act as an expert and not an arbitrator, rely on their own judgement and be entitled to make their own independent enquiries.
- 14.3. The expert will provide their determination as soon as practicable after being appointed. Their decision will be in writing, include reasons, and be final and binding.
- 14.4. The expert's fees will be paid equally by us and you, except to the extent that the extent determines otherwise.
- 14.5. Nothing in these Terms prevents either party from seeking urgent interlocutory relief.

15. Privacy

- 15.1. We will collect, store, disclose and use any personal information received in connection with these Terms in accordance with our obligations under the Privacy Act 2020.

16. General

- 16.1. **Assignment:** We may assign our rights and obligations under these Terms by notice to you. You may only assign your rights and obligations under these Terms with our prior written consent.
- 16.2. **Legislation:** A reference to any legislation in these Terms includes a reference to any amended or replacement legislation and any regulations enacted under that legislation.
- 16.3. **Governing Law:** These Terms are governed by New Zealand Law and subject to the jurisdiction of the New Zealand courts.
- 16.4. **Severability:** Each clause of these Terms are separately binding, and if any clause is held to be void,

unenforceable or otherwise ineffective by a court of competent jurisdiction, the remaining clauses will continue to be valid and binding and the offending clause will be deemed amended to the minimum extent required to make it valid and enforceable.

- 16.5. **Joint and Several Liability:** Where you are more than one person or entity the liability of those persons is joint and several.
- 16.6. **Waiver:** The failure of a party to enforce any provision of these Terms will not be treated as a waiver by that party of that provision, or affect that party's ability to subsequently enforce that provision.
- 16.7. **Contra Proferentum:** The rule of construction known as contra Proferentum does not apply to these Terms.
- 16.8. **Notices:** Any notices given under these Terms may be made by phone or email to the email address or phone number designated by a party.
- 16.9. **Counterparts:** a Quote may be entered into digitally in any number of counterparts.