

# Expressway Spares Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Expressway Spares" means Expressway Spares Pty Ltd, its successors or assigns or any person acting on behalf of and with the authority of Expressway Spares Pty Ltd.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Expressway Spares to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by Expressway Spares to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Expressway Spares and the Customer in accordance with clause 5 below.
- 1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
2. **Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Expressway Spares and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, Expressway Spares reserves the right to refuse Delivery.
- 2.6 These terms and conditions may be meant to be read in conjunction with Expressway Spares' Hire Form, and:
  - (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
  - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Errors and Omissions**
- 3.1 The Customer acknowledges and accepts that Expressway Spares shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
  - (a) resulting from an inadvertent mistake made by Expressway Spares in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Expressway Spares in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of Expressway Spares; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 The Customer shall give Expressway Spares not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax numbers, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Expressway Spares as a result of the Customer's failure to comply with this clause.
5. **Price and Payment**
- 5.1 At Expressway Spares' sole discretion, the Price shall be either:
  - (a) as indicated on any invoice provided by Expressway Spares to the Customer; or
  - (b) Expressway Spares' quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of seven (7) days.
- 5.2 Expressway Spares reserves the right to change the Price:
  - (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, further faults found on disassembly etc) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to Expressway Spares in the cost of labour or materials which are beyond Expressway Spares' control.
- 5.3 Variations will be charged for on the basis of Expressway Spares' quotation, and will be detailed in writing, and shown as variations on Expressway Spares' invoice. The Customer shall be required to respond to any variation submitted by Expressway Spares within ten (10) working days. Failure to do so will entitle Expressway Spares to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Expressway Spares, which may be:
  - (a) on Delivery of the Goods;
  - (b) before Delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with Expressway Spares' payment schedule;
  - (d) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Expressway Spares.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Expressway Spares.
- 5.6 Expressway Spares may in its discretion allocate any payment received from the Customer towards any invoice that Expressway Spares determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Expressway Spares may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Expressway Spares, payment will be deemed to be allocated in such manner as preserves the maximum value of Expressway Spares' Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Expressway Spares nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Expressway Spares an amount equal to any GST Expressway Spares must pay for any supply by Expressway Spares under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
6. **Delivery of Goods**
- 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
  - (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Expressway Spares' address; or
  - (b) Expressway Spares (or Expressway Spares' nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At Expressway Spares' sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 6.3 Any time specified by Expressway Spares for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. Expressway Spares will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then Expressway Spares shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 Expressway Spares may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 The Customer shall ensure that Expressway Spares has clear and free access at all times to enable them to deliver the Goods. Expressway Spares shall not be liable for any loss or damage to the delivery site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Expressway Spares.
7. **Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Expressway Spares is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Expressway Spares is sufficient evidence of Expressway Spares' rights to receive the insurance proceeds without the need for any person dealing with Expressway Spares to make further enquiries.
- 7.3 The Customer acknowledges that Expressway Spares is only responsible for parts that are replaced/supplied by Expressway Spares and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Customer agrees to indemnify Expressway Spares against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising.
- 7.4 Where the Customer has supplied any materials for Expressway Spares to complete the Goods and/or Services under this Contract, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. Expressway Spares shall not be responsible for any defects in the Goods, any loss or damage howsoever arising from the use of materials supplied by the Customer.
- 7.5 The Customer acknowledges that variations of colour and texture are inherent in Goods and Expressway Spares shall not be liable for any loss, damage or costs howsoever arising resulting from any variation of the colour or texture between different batches of product.
- 7.6 Detailed drawings of any services that will be embedded in the Goods are to be provided to Expressway Spares prior to commencement of any Services. Whilst all due care will be taken no liability will be accepted by Expressway Spares for damage to the services or any other element embedded in the Goods.
- 7.7 Expressway Spares shall not be liable for any defect, deterioration and/or damage to the Goods:
  - (a) if the Customer does not follow Expressway Spares' recommendations; and
  - (b) resulting from incorrect use and/or installation of the Goods by the Customer or any other third party; and
  - (c) where welding, galvanising (or any other heat related process) has caused distortion or any other damage.
8. **Title**
- 8.1 Expressway Spares and the Customer agree that ownership of the Goods shall not pass until:
  - (a) the Customer has paid Expressway Spares all amounts owing to Expressway Spares; and
  - (b) the Customer has met all of its other obligations to Expressway Spares. Receipt by Expressway Spares of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.2 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 8.1:
  - (a) the Customer is only a bailee of the Goods and must return the Goods to Expressway Spares on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Expressway Spares and must pay to Expressway Spares the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- 8.3 The Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Expressway Spares and must pay or deliver the proceeds to Expressway Spares on demand;
- 8.4 The Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Expressway Spares and must sell, dispose of or return the resulting product to Expressway Spares as it so directs;
- 8.5 The Customer irrevocably authorises Expressway Spares to enter any premises where Expressway Spares believes the Goods are kept and recover possession of the Goods;
- 8.6 Expressway Spares may recover possession of any Goods in transit whether or not Delivery has occurred;
- 8.7 The Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Expressway Spares;
- 8.8 Expressway Spares may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
9. **Personal Property Securities Act 2009 ("PPSA")**
- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Expressway Spares for Services – that have previously been supplied and that will be supplied in the future by Expressway Spares to the Customer.
- 9.3 The Customer undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Expressway Spares may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Expressway Spares for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Expressway Spares;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Expressway Spares;
  - (e) immediately advise Expressway Spares of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 Expressway Spares and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by Expressway Spares, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Customer must unconditionally ratify any actions taken by Expressway Spares under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
10. **Security and Charge**
- 10.1 In consideration of Expressway Spares agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Customer indemnifies Expressway Spares from and against all Expressway Spares' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Expressway Spares' rights under this clause.
- 10.3 The Customer irrevocably appoints Expressway Spares and each director of Expressway Spares as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.
11. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 11.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Expressway Spares in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Expressway Spares to inspect the Goods.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.3 Expressway Spares acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Expressway Spares makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Expressway Spares' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Customer is a consumer within the meaning of the CCA, Expressway Spares' liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If Expressway Spares is required to replace the Goods under this clause or the CCA, but is unable to do so, Expressway Spares may refund any money the Customer has paid for the Goods.

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- 11.7 If the Customer is not a consumer within the meaning of the CCA, Expressway Spares' liability for any defect or damage in the Goods is:
- limited to the value of any express warranty provided to the Customer at the time of completion by Expressway Spares, which shall be:
    - for a period of twelve (12) months or 3,000 hours of operation whichever occurs first (unless otherwise agreed in writing) and shall be limited to parts and component replacement only labour shall not be included; and
    - in the event of a major failure as deemed by the CCA, the Buyer accepts that Expressway Spares' liability shall be limited to the value of the Goods or Services provided in accordance with clause 20.3; and
  - limited to any warranty to which Expressway Spares is entitled, if Expressway Spares did not manufacture the Goods;
  - otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
- the Customer has complied with the provisions of clause 11.1; and
  - Expressway Spares has agreed that the Goods are defective; and
  - the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Expressway Spares shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Customer failing to properly maintain or store any Goods;
  - the Customer using the Goods for any purpose other than that for which they were designed;
  - the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - the Customer failing to follow any instructions or guidelines provided by Expressway Spares;
  - fair wear and tear, any accident, or act of God.
- 11.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Expressway Spares as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Expressway Spares has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 11.10.
- 11.11 Expressway Spares may in its absolute discretion accept non-defective Goods for return in which case Expressway Spares may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 11.12 Notwithstanding anything contained in this clause if Expressway Spares is required by a law to accept a return then Expressway Spares will only accept a return on the conditions imposed by that law.
- 11.13 Subject to clause 11.1, customised, or non-stockist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.
- 12. Intellectual Property**
- 12.1 Where Expressway Spares has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Expressway Spares. Under no circumstances may such designs, drawings and documents be used without the express written approval of Expressway Spares.
- 12.2 The Customer warrants that all designs, specifications or instructions given to Expressway Spares will not cause Expressway Spares to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Expressway Spares against any action taken by a third party against Expressway Spares in respect of any such infringement.
- 12.3 The Customer agrees that Expressway Spares may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Expressway Spares has created for the Customer.
- 13. Default and Consequences of Default**
- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Expressway Spares' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Customer owes Expressway Spares any money the Customer shall indemnify Expressway Spares from and against all costs and disbursements incurred by Expressway Spares in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Expressway Spares' contract default fee, and bank dishonour fees).
- 13.3 Further to any other rights or remedies Expressway Spares may have under this Contract, if a Customer has made payment to Expressway Spares, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Expressway Spares under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 13.4 Without prejudice to Expressway Spares' other remedies at law Expressway Spares shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Expressway Spares shall, whether or not due for payment, become immediately payable if:
- any money payable to Expressway Spares becomes overdue, or in Expressway Spares' opinion the Customer will be unable to make a payment when it falls due;
  - the Customer has exceeded any applicable credit limit provided by Expressway Spares;
  - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 14. Cancellation**
- 14.1 Without prejudice to any other remedies Expressway Spares may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Expressway Spares may suspend or terminate the supply of Goods to the Customer. Expressway Spares will not be liable to the Customer for any loss or damage the Customer suffers because Expressway Spares has exercised its rights under this clause.
- 14.2 Expressway Spares may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Expressway Spares shall repay to the Customer any money paid by the Customer for the Goods. Expressway Spares shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Expressway Spares as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 15. Privacy Policy**
- 15.1 All emails, documents, images or other recorded information held or used by Expressway Spares is Personal Information, as defined and referred to in clause 15.3, and therefore considered Confidential Information. Expressway Spares acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Expressway Spares acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Expressway Spares that may result in serious harm to the Customer, Expressway Spares will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 15.2 Notwithstanding clause 15.1, privacy limitations will extend to Expressway Spares in respect of Cookies where transactions for purchases/orders transpire directly from Expressway Spares' website. Expressway Spares agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- IP address, browser, email client type and other similar details;
  - tracking website usage and traffic; and
  - reports are available to Expressway Spares when Expressway Spares sends an email to the Customer, so Expressway Spares may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Expressway Spares' website.
- 15.3 The Customer agrees for Expressway Spares to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by Expressway Spares.
- 15.4 The Customer agrees that Expressway Spares may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Customer; and/or
  - to notify other credit providers of a default by the Customer; and/or
  - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 15.5 The Customer consents to Expressway Spares being given a consumer credit report to collect overdue payment on commercial credit.
- 15.6 The Customer agrees that personal credit information provided may be used and retained by Expressway Spares for the following purposes (and for other agreed purposes or required by):
- the provision of Goods; and/or
  - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - enabling the collection of amounts outstanding in relation to the Goods.
- 15.7 Expressway Spares may give information about the Customer to a CRB for the following purposes:
- to obtain a consumer credit report;
  - allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 15.8 The information given to the CRB may include:
- Personal Information as outlined in 15.3 above;
  - name of the credit provider and that Expressway Spares is a current credit provider to the Customer;
  - whether the credit provider is a licensee;
  - type of consumer credit;
  - details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Expressway Spares has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - information that, in the opinion of Expressway Spares, the Customer has committed a serious credit infringement;
  - advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.9 The Customer shall have the right to request (by e-mail) from Expressway Spares:
- a copy of the Personal Information about the Customer retained by Expressway Spares and the right to request that Expressway Spares correct any incorrect Personal Information; and
  - that Expressway Spares does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 15.10 Expressway Spares will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 15.11 The Customer can make a privacy complaint by contacting Expressway Spares via e-mail. Expressway Spares will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 16. Unpaid Seller's Rights**
- 16.1 Where the Customer has left any item with Expressway Spares for repair, modification, exchange or for Expressway Spares to perform any other service in relation to the item and Expressway Spares has not received or been tendered the whole of any monies owing to it by the Customer, Expressway Spares shall have, until all monies owing to Expressway Spares are paid:
- a lien on the item; and
  - the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 16.2 The lien of Expressway Spares shall continue despite the commencement of proceedings, or judgment for any monies owing to Expressway Spares having been obtained against the Customer.
- 17. Service of Notices**
- 17.1 Any written notice given under this Contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
  - by leaving it at the address of the other party as stated in this Contract;
  - by sending it by registered post to the address of the other party as stated in this Contract;
  - if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - if sent by email to the other party's last known email address.
- 17.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 18. Trusts**
- 18.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Expressway Spares may have notice of the Trust, the Customer covenants with Expressway Spares as follows:
- the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - the Customer will not without consent in writing of Expressway Spares (Expressway Spares will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - the removal, replacement or retirement of the Customer as trustee of the Trust;
    - any alteration to or variation of the terms of the Trust;
    - any advancement or distribution of capital of the Trust; or
    - any resettlement of the trust property.
- 19. Dispute Resolution**
- 19.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 20. General**
- 20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Expressway Spares has its principal place of business, and are subject to the jurisdiction of the Port Macquarie Courts in New South Wales.
- 20.3 Subject to clause 11, Expressway Spares shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Expressway Spares of these terms and conditions (alternatively Expressway Spares' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 20.4 Expressway Spares may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 20.5 The Customer cannot licence or assign without the written approval of Expressway Spares.
- 20.6 Expressway Spares may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Expressway Spares' subcontractors without the authority of Expressway Spares.
- 20.7 The Customer agrees that Expressway Spares may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Expressway Spares to provide Goods to the Customer.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.