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## Gear Heads Garage (2017) Limited – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Gear Heads Garage” means Gear Heads Garage (2017) Limited, its successors and assigns or any person acting on behalf of and with the authority of Gear Heads Garage (2017) Limited.
- 1.2 “Customer” means the person/s buying the Parts as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Parts” means all Parts or Services supplied by Gear Heads Garage to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Parts’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Parts as agreed between Gear Heads Garage and the Customer in accordance with clause 2 below.

### 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 Services provided by Gear Heads Garage.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Gear Heads Garage.
- 2.3 In the event that the Parts and/or Services provided by Gear Heads Garage are the subject of an insurance claim that the Customer has made, then the Customer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by Gear Heads Garage and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Change in Control

- 3.1 The Customer shall give Gear Heads Garage 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 number/s, or business practice). The Customer shall be liable for any loss incurred by Gear Heads Garage as a result of the Customer’s failure to comply with this clause.

### 4. Price and Payment

- 4.1 At Gear Heads Garage’s sole discretion, the Price shall be either:
  - (a) as indicated on invoices provided by Gear Heads Garage to the Customer in respect of the Services supplied; or
  - (b) Gear Heads Garage’s estimated Price (subject to clause 5) which shall not be deemed binding upon Gear Heads Garage as the actual Price can only be determined upon completion of the Services. Gear Heads Garage undertakes to keep the Customer informed should the actual Price look likely to exceed the original estimate.
  - (c) Gear Heads Garage’s quoted Price (subject to clause 5 which shall be binding upon Gear Heads Garage provided that the Customer shall accept Gear Heads Garage’s quotation in writing within thirty (30) days of issue.
- 4.2 At Gear Heads Garage’s sole discretion, a deposit may be required, the amount or percentage of which will be stipulated at the time of the Customer’s order and shall become immediately due and payable.
- 4.3 Where Gear Heads Garage is requested to store the Customer’s Parts or vehicle, or where Parts or vehicles are not collected within twenty-four hours of advice to the Customer that they are ready for collection, then Gear Heads Garage (at its sole discretion) may charge a reasonable fee for storage.
- 4.4 At Gear Heads Garage’s sole discretion:
  - (a) payment shall be due on completion of the Services; or
  - (b) payment shall be due before undertaking the Services; or
  - (c) payment for approved Customers shall be made by instalments in accordance with Gear Heads Garage’s payment schedule; or
  - (d) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer’s address or address for notices.
- 4.5 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated, then payment shall be due seven (7) days following the date of the invoice.
- 4.6 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 Gear Heads Garage nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.7 Payment will be made by cash, or by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction) of the Price), or by any other method as agreed to between the Customer and Gear Heads Garage.

### 5. Additional Charges

- 5.1 Gear Heads Garage reserves the right to change the Price:
  - (a) if a variation to the Services which are to be provided is requested; or
  - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, further faults which are found upon disassembly and/or further inspection) which are only discovered upon commencement of the Services; or
  - (c) in the event of increases to Gear Heads Garage in the cost of labour or Parts, or fluctuations in currency exchange rates, which are beyond Gear Heads Garage’s control.
- 5.2 Where Gear Heads Garage is requested to store the Customer’s vehicle, or where the vehicle is not collected within twenty-four (24) hours of advice to the Customer that it is ready for collection, then Gear Heads Garage (at its sole discretion) may charge a fee of (\$15.00 per day) for storage.
- 5.3 All tow and/or salvage fees will be charged to the Customer, and will be added to the Price.
- 5.4 If Gear Heads Garage has been requested by the Customer to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.

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- 5.5 The Customer acknowledges and agrees that Gear Heads Garage shall be entitled to:
- (a) retain any components replaced during the provision of the Services; and
  - (b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.
- 6. Delivery**
- 6.1 At Gear Heads Garage's sole discretion delivery of the Services shall take place when:
- (a) Gear Heads Garage provides the Services at Gear Heads Garage's address; or
  - (b) Gear Heads Garage provides the Services at the Customer's nominated address.
- 6.2 Where Gear Heads Garage is to provide any Services at the Customer's nominated address then the Customer shall be liable for all costs incurred by Gear Heads Garage from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at Gear Heads Garages standard rates and any Parts purchased for the Services).
- 6.3 Any time or date given by Gear Heads Garage to the Customer is an estimate only. The Customer must still accept delivery of the Parts even if late and Gear Heads Garage will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Parts passes to the Customer on Delivery and the Customer must insure the Parts on or before Delivery.
- 7.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Customer, Gear Heads Garage is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by Gear Heads Garage is sufficient evidence of Gear Heads Garage's rights to receive the insurance proceeds without the need for any person dealing with Gear Heads Garage to make further enquiries.
- 7.3 The Customer acknowledges and agree that where Gear Heads Garage has performed temporary repairs on the vehicle that:
- (a) Gear Heads Garage offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - (b) Gear Heads Garage will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair of the vehicle.
- 7.4 Gear Heads Garage will accept no responsibility for valuables or other items left in the Customer's vehicle. It is the Customer's responsibility to remove any valuables from the Customer's vehicle prior to servicing/repair.
- 7.5 The Customer acknowledges that Gear Heads Garage is only responsible for Parts that are replaced by Gear Heads Garage, and that in the event that other components subsequently fail, the Customer agrees to indemnify Gear Heads Garage against any loss or damage to the Parts or the Customer's vehicle, or caused by the components, or any part thereof howsoever arising.
- 7.6 Gear Heads Garage shall not be liable for the loss of or damage to the Customer's vehicle, its accessories or contents while being repaired or operated in connection with the authorised Services (including in the event of a call-out: it shall be the Customer's responsibility to remain with the vehicle to ensure security of the same), unless caused by the negligence of Gear Heads Garage, or Gear Heads Garage's employees.
- 7.7 It is the Customer's responsibility to ensure that the Customer's vehicle is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at Gear Heads Garage's premises. The vehicle is at all times stored and repaired at the Customer's sole risk.
- 8. Title**
- 8.1 Gear Heads Garage and the Customer agree that ownership of the Parts shall not pass until:
- (a) the Customer has paid Gear Heads Garage all amounts owing to Gear Heads Garage; and
  - (b) the Customer has met all of its other obligations to Gear Heads Garage.
- 8.2 Receipt by Gear Heads Garage 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.
- 8.3 It is further agreed that:
- (a) until ownership of the Parts passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Parts and must return the Parts to Gear Heads Garage on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Parts on trust for Gear Heads Garage and must pay to Gear Heads Garage the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed.
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Parts then the Customer must hold the proceeds of any such act on trust for Gear Heads Garage and must pay or deliver the proceeds to Gear Heads Garage on demand.
  - (d) the Customer should not convert or process the Parts 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 Gear Heads Garage and must sell, dispose of or return the resulting product to Gear Heads Garage as it so directs.
  - (e) the Customer irrevocably authorises Gear Heads Garage to enter any premises where Gear Heads Garage believes the Parts are kept and recover possession of the Parts.
  - (f) Gear Heads Garage may recover possession of any Parts in transit whether or not delivery has occurred.
  - (g) the Customer shall not charge or grant an encumbrance over the Parts nor grant nor otherwise give away any interest in the Parts while they remain the property of Gear Heads Garage.
  - (h) Gear Heads Garage may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Customer.
- 9. Personal Property Securities Act 1999 ("PPSA")**
- 9.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and

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- (b) a security interest is taken in all Parts previously supplied by Gear Heads Garage to the Customer (if any) and all Parts that will be supplied in the future by Gear Heads Garage to the Customer.
- 9.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Gear Heads Garage may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Gear Heads Garage for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Parts charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of Gear Heads Garage; and
  - (d) immediately advise Gear Heads Garage of any material change in its business practices of selling the Parts which would result in a change in the nature of proceeds derived from such sales.
- 9.3 Gear Heads Garage and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by Gear Heads Garage, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Customer shall unconditionally ratify any actions taken by Gear Heads Garage under clauses 9.1 to 9.5.
- 10. Customer's Disclaimer**
- 10.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Gear Heads Garage or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Gear Heads Garage and the Customer acknowledges that the Services are bought relying solely upon the Customer's skill and judgement.
- 11. Defects and Returns**
- 11.1 The Customer shall inspect the Services/Parts on delivery and shall within three (3) days of delivery (time being of the essence) notify Gear Heads Garage of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Gear Heads Garage an opportunity to inspect the Services/Parts within a reasonable time following delivery if the Customer believes the Services/Parts are defective in any way. If the Customer shall fail to comply with these provisions the Services/Parts shall be presumed to be free from any defect or damage. For defective Services/Parts, which Gear Heads Garage has agreed in writing that the Customer is entitled to reject, Gear Heads Garage's liability is limited to either (at Gear Heads Garage's discretion) replacing the Services/Parts or repairing the Services/Parts.
- 11.2 Parts will not be accepted for return other than in accordance with 11.1 above, and provided that:
- (a) the Customer has complied with the provisions of clause 11.1; and
  - (b) Gear Heads Garage has agreed in writing to accept the return of the Parts; and
  - (c) the Parts are returned at the Customer's cost within seven (7) days of the delivery date; and
  - (d) Gear Heads Garage will not be liable for Parts which have not been stored or used in a proper manner; and
  - (e) the Parts are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 11.3 Gear Heads Garage will not accept the return of Parts for credit.
- 11.4 Gear Heads Garage may (at their sole discretion) accept the return of Parts for credit but this may incur a handling fee of up to ten percent (10%) of the value of the returned Parts plus any freight costs.
- 11.5 Subject to clause 11.1, non-stocklist items or Parts made to the Customer's specifications are not acceptable for credit or return.
- 12. Warranty**
- 12.1 Subject to the conditions of warranty set out in clause 12.2 Gear Heads Garage warrants that if any defect in any workmanship of Gear Heads Garage becomes apparent and is reported to Gear Heads Garage within the earlier of three (3) months of the date of delivery or 5,000 kilometres (time being of the essence) then Gear Heads Garage will either (at Gear Heads Garage's sole discretion) replace or remedy the workmanship.
- 12.2 The conditions applicable to the warranty given by clause 12.1 are:
- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain any Services; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Gear Heads Garage; or
    - (iii) any use of any Services otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Services after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) The warranty shall cease and Gear Heads Garage shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Gear Heads Garage's consent.
  - (c) In respect of all claims Gear Heads Garage shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 12.3 For Parts not manufactured by Gear Heads Garage, the warranty shall be the current warranty provided by the manufacturer of the Parts. Gear Heads Garage shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Parts.
- 12.4 In the case of second hand Parts, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults, as is and acknowledges that no warranty is given by Gear Heads Garage as to the quality or suitability of the Part(s) for

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any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Gear Heads Garage shall not be responsible for any consequential loss or damage howsoever arising out of the use of second hand Parts.

### 13. Consumer Guarantees Act 1993

13.1 If the Customer is acquiring Parts for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Parts by Gear Heads Garage to the Customer.

### 14. Intellectual Property

14.1 Where Gear Heads Garage has designed, drawn or created specific items for the Customer, then the copyright in those designs and drawings and items shall remain vested in Gear Heads Garage, and shall only be used by the Customer at Gear Heads Garage's discretion.

14.2 The Customer warrants that all designs or instructions to Gear Heads Garage will not cause Gear Heads Garage to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Gear Heads Garage against any action taken by a third party against Gear Heads Garage in respect of any such infringement.

### 15. Default and Consequences of Default

15.1 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 Gear Heads Garage's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

15.2 If the Customer owes Gear Heads Garage any money the Customer shall indemnify Gear Heads Garage from and against all costs and disbursements incurred by Gear Heads Garage in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, Gear Heads Garage's collection agency costs, and bank dishonour fees).

15.3 Further to any other rights or remedies Gear Heads Garage may have under this contract, if a Customer has made payment to Gear Heads Garage by credit card, 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 Gear Heads Garage under this clause 9, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

15.4 Without prejudice to any other remedies Gear Heads Garage may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Gear Heads Garage may suspend or terminate the supply of Parts to the Customer. Gear Heads Garage will not be liable to the Customer for any loss or damage the Customer suffers because Gear Heads Garage has exercised its rights under this clause.

15.5 Without prejudice to Gear Heads Garage's other remedies at law Gear Heads Garage shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Gear Heads Garage shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Gear Heads Garage becomes overdue, or in Gear Heads Garage's opinion the Customer will be unable to make a payment when it falls due;
- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 16. Security And Charge

16.1 Despite anything to the contrary contained herein or any other rights which Gear Heads Garage may have howsoever:

- (a) where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of their joint and/or several interests in the said land, realty or any other asset to Gear Heads Garage or Gear Heads Garage's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer agrees that Gear Heads Garage (or Gear Heads Garage's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should Gear Heads Garage elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer shall indemnify Gear Heads Garage from and against all Gear Heads Garage's costs and disbursements including legal costs on a solicitor and own Customer basis.
- (c) the Customer agrees to irrevocably nominate constitute and appoint Gear Heads Garage or Gear Heads Garage's nominee as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.

### 17. Cancellation

17.1 Gear Heads Garage may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Customer. On giving such notice Gear Heads Garage shall repay to the Customer any sums paid in respect of the Price. Gear Heads Garage shall not be liable for any loss or damage howsoever arising from such cancellation.

17.2 In the event that the Customer cancels the delivery of Services the Customer shall be liable for any loss incurred by Gear Heads Garage (including, but not limited to, any loss of profits) up to the time of cancellation.

### 18. Privacy Act 1993

18.1 The Customer authorises Gear Heads Garage or Gear Heads Garage's agent to:

- (a) access, collect, retain and use any information about the Customer;
  - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Customer.

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- (b) disclose information about the Customer, whether collected by Gear Heads Garage from the Customer directly or obtained by Gear Heads Garage from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 18.2 Where the Customer is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Customer shall have the right to request Gear Heads Garage for a copy of the information about the Customer retained by Gear Heads Garage and the right to request Gear Heads Garage to correct any incorrect information about the Customer held by Gear Heads Garage.

### 19. General

- 19.1 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.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 19.3 Gear Heads Garage 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 Gear Heads Garage of these terms and conditions.
- 19.4 In the event of any breach of this contract by Gear Heads Garage the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Parts.
- 19.5 Gear Heads Garage may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 19.6 The Customer cannot licence or assign without the written approval of Gear Heads Garage.
- 19.7 Gear Heads Garage 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 Gear Heads Garage's sub-contractors without the authority of Gear Heads Garage.
- 19.8 Gear Heads Garage reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Gear Heads Garage notifies the Customer of such change.
- 19.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 19.10 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.