



# Terms and Conditions

## 1. Definitions

The following rules of interpretation apply unless the context requires otherwise:  
headings are for convenience only and do not affect interpretation; the singular includes the plural and conversely;  
a reference to a person includes a body corporate, an unincorporated body or other entity; where examples of a thing or set of things are given by reference to the word "including", the meaning of references to the thing or set of things is not to be limited by reference to the examples.

"Service Authorisation" is the signing of an agreement being a job order/sheet, quote or verbal approval of works to be carried out.

## 2. General

These terms and conditions form part of the contract ("agreement") between Sam Mechanical Pty Ltd T/AS Burns Mechanical (ABN 45 662 443 030) (in this agreement, "we" or "us") and the customer (in this agreement, "you") that is formed when you sign a form issued by us (such as job sheet, quote, that describes services that we will perform ("Service Authorisation") or when we agree to sell products to you.

You acknowledge that these terms and conditions and the Service Authorisation embody the whole agreement between you and us. You agree that the scope and terms of the "Service Authorisation" may change as a result of updated instructions from you. By offering to buy products and/or services from us by either accepting a quote, booking in a job and receiving a booking reminder email/confirmation or by signing a "Service Authorisation" you agree to be bound by this agreement.

A reference to "products" in this agreement includes all parts or products fitted as part of services we provide to you or are sold to you unless the context requires otherwise.

## 3. Performance and Services

We agree to perform the services as described in the Service Authorisation (or as amended as a result of updated instructions from you), which also includes all labour, spare parts and materials.

Burns Mechanical is not liable for any loss or damage to your vehicle, its accessories or contents, or your vehicle component, while your vehicle or vehicle component is being driven for the purpose of providing or checking the Services provided, unless such loss or damage is a direct result of the negligence of Burns Mechanical.

## 4. Price and Payment

1. All our prices and quotes include GST unless stated otherwise. A quote or price is only binding on us once the "Service Authorisation" has been signed. The scope and pricing of the "Service Authorisation" may change because of updated instructions from you.

2. We will provide an estimate of the cost of any additional Services; and the estimate will be discussed with you before work is commenced on your vehicle or vehicle component.

3. Estimates/quotes remain valid for 30 days after the date we give them to you.

4. If providing any Additional Services will mean the estimate is exceeded, we will first contact you to explain the Additional Services required and to seek your authorisation for the additional costs to be incurred.

5. The price you pay for the Services will be the one that is current when you agree to these Terms and Conditions.

6. Once the Services have been provided, we will give you a tax invoice describing the Services provided and the price payable for the Services.

7. You must pay for the Services in full on the day that the provision of

the Services is completed.

8. Notwithstanding, clause 5.7, if you have an authorised trading account with Burns Mechanical, or set up an payment plan prior, then you have an arrangement on which time the tax invoice must be paid for the Services.

9. You can pay by cash, credit card, EFTPOS. **Credit card and EFTPOS Payment incur an additional 1.6% Transaction Fee to the customer via the SQUARE Terminal.** Personal cheques are not accepted.

**Mastercard or Visa payments via FlipPay incur a 1.50% Surcharge to the customer.**

FlipPay provide a **PAY in 4** option which is Pay in 5 instalments every 14 days with the first payment today. This is for any invoice over \$200 and incurs an overall service fee of 4.95% by FlipPay to FlipPay.

10. You agree to pay us in full for all services rendered and products supplied before removing your vehicle and/or the products (as applicable) from our care, possession, control unless otherwise agreed. You further agree that payment of all amounts for work as set out in the Service Authorisation and (in the absence of manifest error) all amounts set out in that document become due upon completion of the relevant work and must be paid on or before completion of the work unless we have agreed otherwise. In the event that there is an outstanding amount owed by you to us costs including but not limited to interest and administration fees may be incurred at the amounts of 5% and \$20 administration fee additional per calendar month.

11. To the extent allowed by law, in the event that you:

1. become bankrupt;
2. have an administrator, controller, liquidator, receiver or receiver and manager appointed ("external administrator"); or
3. any steps are taken, or proceedings commenced, to make you bankrupt or have an external administrator appointed,

this agreement will terminate with immediate effect and any outstanding monies will become due and payable immediately.

## 5. Parts and Lubricants

Burns Mechanical uses original vehicle manufacturer parts where possible or quality aftermarket parts and lubricants that meet or exceed the specifications of those originally fitted by your vehicle manufacturer. If you want to use an alternate brand or product, Burns Mechanical will take reasonable action to source that part or product for you, although this may impact on the pricing and time commitments of the provision of the Services.

You understand that larger vehicles may require high quantities or higher-grade oil during servicing. Burns Mechanical may at its sole discretion, and without contacting you for authorisation, charge an amount to cover the cost of the oil used in the service.

## 6. Registered Vehicles

You understand that driving an unregistered vehicle is illegal and you warrant that your vehicle is registered in accordance with the state/territory legislative and regulatory requirements applicable to your vehicle.

You must notify Burns Mechanical if your vehicle is not registered. If this is the case, we will not take your vehicle for a test drive on public roads and may not be able to assess whether the Services have been effectively provided, or you can arrange for a temporary movement permit and provide the paperwork or we can arrange a temporary movement permit from the Department of Transport under the clause "Road testing of vehicles limited to repairers licensed under the *Motor Vehicle Repairers Act 200*. Cost of the Temporary Movement Permit will be on charged to you, the client.

If you have not notified Burns Mechanical that your vehicle is not

registered, you agree to indemnify Sam Mechanical Pty Ltd its directors, employees and independent contractors, against any fines, penalties, claims, damages, losses, costs, liabilities and expenses (including, but not limited to, reasonable legal fees), injury or death caused to any person or property, including by negligence, arising out of or related to Burns Mechanical's provision of the Services, including driving or otherwise operating your vehicle.

## **7. Warranty**

Burns Mechanical guarantees the parts and labour that it supplied and uses in the servicing of your vehicle for the time period or kilometres travelled (whichever occurs first) outlined in the following warranty conditions. The warranty does not apply to parts which are second hand however this does not affect your statutory rights and the non-excludable guarantees provided under Australian Consumer Law will apply to any second-hand parts supplied and used by Burns Mechanical.

Car servicing and engine maintenance 6 months or 10,000km, whichever occurs first

General mechanical repairs 6 months or 10,000km, whichever occurs first

Batteries (as per manufacturer's warranty) Ranges from 6 to 36 months  
If a new or reconditioned part is not available for your vehicle we can fit a second hand part. Where a second-hand part fitment is required we will seek your approval first.

This warranty will not apply:

to normal wear and tear; where goods come to the end of their natural service life; to maintenance items such as globes, wiper blades, lubricants and fluids; or where the defect is a result of: alteration, accident, misuse, abuse or neglect; unsafe or inappropriate driving practices; or where the product or services are subsequently repaired or modified by an unauthorised service agent.

## **8. Risk/Title/Lien**

Risk in any goods sold to you will pass when you take delivery of the goods. Title in the goods sold will not pass until full payment for the goods and any other amounts which you may owe to Burns Mechanical, either under this agreement or any other agreement, have been paid in full.

Until such time as title in the goods passes to you, you will hold the goods as bailee of Burns Mechanical, where practicable store the goods in a manner which makes them identifiable as the property of Burns Mechanical and keep the goods insured against theft, damage and destruction.

You acknowledge that we have a lien (under general law or equity) over all products in our possession belonging to you, including your vehicle and all goods in or attached to your vehicle ("Lien"), to secure payment of any or all amounts outstanding from time to time.

You agree that we may, at our discretion, exercise the Lien in respect of any due and unpaid amounts outstanding by you and may retain your vehicle and/or any goods in your vehicle and serve notice on you requiring immediate payment of the amounts outstanding by you. Burns Mechanical is entitled, at any time while any debt remains outstanding by you beyond its due date of payment, to notify you of its intention to take possession of goods and for this purpose to enter upon your land and buildings with all necessary equipment to take possession of the goods.

## **9. Matters Outside our Control**

We will not be liable for any delay in performing, or any failure to carry out repairs to your vehicle to the extent that such delay or failure results from events or circumstances outside our reasonable control. You understand that when repairing your vehicle, the power supply in your vehicle may be temporarily interrupted. This may cause your audio system to lock and require an unlock code. We will take reasonable steps to prevent this from happening however it is usually outside our control. The unlock code for your audio system is supplied by the

manufacturer of your vehicle and any cost incurred by us in unlocking your audio system will be your sole responsibility.

## **10. Liability**

We will not be liable to you or any third party in respect of any claim for injury, death, loss or damage to any person or property caused or arising out of the use of products sold by us, or out of any services performed by us, except to the extent that liability is imposed upon us or implied into a transaction by this agreement or by any statutory provisions that cannot be excluded by this agreement.

We have no authority to accept any goods for safe custody from you and will not be liable in any case for loss of, or damage to, any articles alleged to have been left with us by you or alleged to have been left in your vehicle, however such loss or damage was caused.

To the maximum extent permitted by law, Burns Mechanical will not be liable to you or any third parties for:

any claim, whether that claim arises in contract, tort (including negligence) or statute;

any loss (including loss of profits or special, indirect, incidental or consequential loss); or

damage, injury or death to any person or property, arising out of or relating to the goods sold by us or the Services provided by us.

## **11. Authority In Respect Of The Vehicle**

You authorise us to do every act, matter and thing that we consider desirable or necessary for us to provide you with the products and/or services set out in the Service Authorisation in respect of your vehicle, including (but not limited to):

1. access to and entering the vehicle;
2. working on your vehicle;
3. creating a suitable work space or environment to work on your vehicle; and
4. test driving your vehicle.

## **12. Privacy/Marketing**

We will comply with all applicable privacy legislation, including the Privacy Act 1988 (Cth).

Unless you indicate otherwise, you hereby consent to us using your personal information for the following purposes:

1. our internal marketing activities, including direct marketing, database compilation, analysis of demographics and the processing or creation of other marketing information;
2. customer surveys and individual follow-up calls, letters or emails enquiring as to your satisfaction with our products and services;
3. reminders that your vehicle may be due for a service or that your registration may be due for renewal;
4. advising you of information which may be relevant to you, including our closures or openings; and
5. advising you of offers that we feel may be of interest to you.

If, at any time, you wish to withdraw your consent to any one or more of the above purposes, please contact us via email.

You understand that we may collect recordings, video footage and/or photos of any kind at Burns Mechanical without express consent and advertise our work completed.

## **13. Jurisdiction**

The proper law of the agreement between you and us is the law of the State of Western Australia and the parties agree to submit to the exclusive jurisdiction of the courts of that State.

If part or all of any of this agreement is illegal or unenforceable it will be severed from this agreement and will not affect the continued operation of the remaining provisions of this agreement.