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## Sims Brothers (2022) Limited T/A Sims Brothers Garage – Terms & Conditions of Trade

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### 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 **“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 using Sims Brothers Garage’s 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 making enquiries via the website.
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Sims Brothers Garage 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 **“Parts”** means all Parts or Services supplied by Sims Brothers 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).
- 1.5 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Parts as agreed between Sims Brothers Garage and the Customer in accordance with clause 5 below.
- 1.6 **“Sims Brothers Garage”** means Sims Brothers (2022) Limited T/A Sims Brothers Garage, its successors and assigns.

### 2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
  - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Parts and/or Services.
- 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 and accepts that the supply of Parts or Services on credit shall not take effect until the Customer has completed a credit application with Sims Brothers Garage and it has been approved with a credit limit established for the account. In the event that the supply of Parts or Services requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, Sims Brothers Garage reserves the right to refuse Delivery.
- 2.5 Any advice, recommendation, information, assistance or service provided by Sims Brothers Garage in relation to the Parts or Services supplied is given in good faith to the Customer, or the Customer’s agent and is based on Sims Brothers Garage’s own knowledge and experience and shall be accepted without liability on the part of Sims Brothers Garage.
- 2.6 Where Sims Brothers Garage is required to provide the Services urgently which may require Sims Brothers Garage’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then Sims Brothers Garage reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between Sims Brothers Garage and the Customer.
- 2.7 In the event that the:
- (a) Customer believes that Sims Brothers Garage has scratched the vehicle whilst conducting the Services and/or installing the Parts, the Customer shall within twenty-four (24) hours of delivery (time being of the essence) notify Sims Brothers Garage of any alleged defect or damage. The Customer shall afford Sims Brothers Garage an opportunity to inspect the vehicle within a reasonable time following delivery. If the Customer fails to comply with clause 2.7, the vehicle shall be presumed to be free from any defect or damage; and
  - (b) Parts and/or Services provided by Sims Brothers 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 Sims Brothers Garage and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.8 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. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Sims Brothers Garage 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 Sims Brothers Garage 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 Sims Brothers Garage in respect of the Services.
- 3.2 If such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Sims Brothers Garage; the Customer:
- (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
  - (b) shall not be responsible for any additional costs incurred by Sims Brothers Garage arising from the error or omission.

### 4. Change in Control

- 4.1 The Customer shall give Sims Brothers 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 and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by Sims Brothers Garage as a result of the Customer’s failure to comply with this clause.

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### 5. Price and Payment

- 5.1 At Sims Brothers Garage's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Sims Brothers Garage to the Customer; or
  - (b) the Price as at the date of Delivery of the Parts according to Sims Brothers Garage's current price list; or
  - (c) Sims Brothers Garage's estimated Price (subject to clause 6) which shall not be deemed binding upon Sims Brothers Garage as the actual Price can only be determined upon completion of the Services. Sims Brothers Garage undertakes to keep the Customer informed should the actual Price look likely to exceed the original estimate; or
  - (d) Sims Brothers Garage's quoted Price (subject to clause 6) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 5.2 At Sims Brothers Garage's sole discretion a reasonable non-refundable 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.
- 5.3 Time for payment for the Parts being of the essence, the Price will be payable by the Customer on the date/s determined by Sims Brothers Garage, which may be:
- (a) on or before Delivery of the Parts; or
  - (b) on completion of the Services; or
  - (c) by way of instalments/progress payments in accordance with Sims Brothers Garage's payment schedule; or
  - (d) for certain approved Customers, 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; or
  - (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 Sims Brothers Garage.
- 5.4 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and Sims Brothers Garage.
- 5.5 Sims Brothers Garage may in its discretion allocate any payment received from the Customer towards any invoice that Sims Brothers Garage determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Sims Brothers Garage may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Sims Brothers Garage, payment will be deemed to be allocated in such manner as preserves the maximum value of Sims Brothers Garage's Purchase Money Security Interest (as defined in the PPSA) in the Parts.
- 5.6 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 Sims Brothers Garage nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Sims Brothers Garage an amount equal to any GST Sims Brothers Garage must pay for any supply by Sims Brothers Garage under this or any other contract for the sale of the Parts. 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. Additional Charges

- 6.1 Sims Brothers Garage reserves the right to change the Price:
- (a) if a variation to the Parts and/or 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) if during the course of the Services, the Parts are not or cease to be available from Sims Brothers Garage's third-party suppliers or the acquired part is deemed to not be compliant to complete the repair/s, then Sims Brothers Garage reserves the right to provide alternate/upgraded Parts subject to prior confirmation and agreement of both parties; or
  - (d) in the event of increases to Sims Brothers Garage in the cost of labour or Parts which are beyond Sims Brothers Garage's control.
- 6.2 Variations will be charged for on the basis of Sims Brothers Garage's quotation, and will be detailed in writing, and shown as variations on Sims Brothers Garage's invoice. The Customer shall be required to respond to any variation submitted by Sims Brothers Garage within ten (10) working days. Failure to do so will entitle Sims Brothers Garage 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.
- 6.3 Where Sims Brothers 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 Sims Brothers Garage (at its sole discretion) may charge a reasonable fee for storage.
- 6.4 All tow and/or salvage fees will be charged to the Customer, and will be added to the Price.
- 6.5 If Sims Brothers 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.
- 6.6 The Customer acknowledges and agrees that Sims Brothers 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.

### 7. Provision of the Services

- 7.1 Delivery ("**Delivery**") of the Parts is taken to occur at the time that Sims Brothers Garage (or Sims Brothers Garage's nominated carrier) delivers the Parts to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.
- 7.3 Sims Brothers Garage will not be liable whatsoever where the Parts have not been stored correctly, not used other than the intended purpose or not installed as properly by the Customer or a third party installer as per Sims Brothers Garage or the manufacturer's recommendations.
- 7.4 Any time specified by Sims Brothers Garage for Delivery of the Parts is an estimate only. The Customer must take Delivery by receipt or collection of the Parts whenever they are tendered for Delivery. Sims Brothers Garage will not be liable for any loss or damage incurred by the

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- Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Parts as arranged then Sims Brothers Garage shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.5 At Sims Brothers Garage's sole discretion Delivery of the Services shall take place when:
- (a) Sims Brothers Garage provides the Services at Sims Brothers Garage's address; or
  - (b) Sims Brothers Garage provides the Services at the Customer's nominated address.
- 7.6 Where Sims Brothers Garage is to provide any Services at the Customer's nominated address then the Customer shall be liable for all costs incurred by Sims Brothers 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 Sims Brothers Garages standard rates and any Parts purchased for the Services).
- 7.7 The Customer shall ensure that Sims Brothers Garage has clear and free access to the vehicle and/or site where the vehicle is located at all times to enable them to undertake the Services. Sims Brothers Garage shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Sims Brothers Garage.
- 8. Risk**
- 8.1 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.
- 8.2 If any of the Parts are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Sims Brothers Garage is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by Sims Brothers Garage is sufficient evidence of Sims Brothers Garage's rights to receive the insurance proceeds without the need for any person dealing with Sims Brothers Garage to make further enquiries.
- 8.3 If the Customer requests Sims Brothers Garage to leave Parts outside Sims Brothers Garage's premises for collection or to deliver the Parts to an unattended location then such Parts shall be left at the Customer's sole risk.
- 8.4 The Customer acknowledges and accepts that:
- (a) where Sims Brothers Garage has performed temporary repairs on the vehicle that:
    - (i) Sims Brothers Garage offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
    - (ii) Sims Brothers Garage will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair of the vehicle.
  - (b) Sims Brothers Garage is only responsible for Parts that are replaced by Sims Brothers Garage, and that in the event that other components subsequently fail, the Customer agrees to indemnify Sims Brothers 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; and
  - (c) in the event the Customer requests Sims Brothers Garage to work on a vehicle, and leaves the vehicle and/or the keys at Sims Brothers Garage's premises whilst the site is unattended, then Sims Brothers Garage shall not be responsible for the security of the vehicle or the keys, and shall not be held liable for any loss, damages or costs howsoever resulting.
- 8.5 Sims Brothers 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.
- 8.6 Sims Brothers 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 Sims Brothers Garage, or Sims Brothers Garage's employees.
- 8.7 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 Sims Brothers Garage's premises. The vehicle is at all times stored and repaired at the Customer's sole risk.
- 9. Testing of vehicles**
- 9.1 Sims Brothers Garage or its employees may test drive or carry out tests on the vehicle at Sims Brothers Garage's discretion. Sims Brothers Garage will not be liable for (and the Customer indemnifies Sims Brothers Garage against) any damages caused to, or by, the vehicle during such tests, collecting or delivery unless it arises from the recklessness or wilful misconduct of Sims Brothers Garage or its employees.
- 10. Compliance with Laws**
- 10.1 Sims Brothers Garage shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Parts and/or Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 11. Title**
- 11.1 Sims Brothers Garage and the Customer agree that ownership of the Parts shall not pass until:
- (a) the Customer has paid Sims Brothers Garage all amounts owing to Sims Brothers Garage; and
  - (b) the Customer has met all of its other obligations to Sims Brothers Garage.
- 11.2 Receipt by Sims Brothers 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.
- 11.3 It is further agreed that until ownership of the Parts passes to the Customer in accordance with clause 11.1:
- (a) the Customer is only a bailee of the Parts and must return the Parts to Sims Brothers Garage on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Parts on trust for Sims Brothers Garage and must pay to Sims Brothers 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 Sims Brothers Garage and must pay or deliver the proceeds to Sims Brothers 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 Sims Brothers Garage and must sell, dispose of or return the resulting product to Sims Brothers Garage as it so directs;

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- (e) the Customer irrevocably authorises Sims Brothers Garage to enter any premises where Sims Brothers Garage believes the Parts are kept and recover possession of the Parts;
- (f) Sims Brothers 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 Sims Brothers Garage; and
- (h) Sims Brothers Garage may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Customer.

### 12. Personal Property Securities Act 1999 (“PPSA”)

- 12.1 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
  - (b) a security interest is taken in all Parts that have previously been supplied and that will be supplied in the future by Sims Brothers Garage to the Customer, and the proceeds from such Parts as listed by Sims Brothers Garage to the Customer in invoices rendered from time to time.
- 12.2 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 Sims Brothers 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, Sims Brothers 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, or permit to be registered, a financing statement or a financing change statement in relation to the Parts or the proceeds of such Parts in favour of a third party without the prior written consent of Sims Brothers Garage; and
  - (d) immediately advise Sims Brothers 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.
- 12.3 Unless otherwise agreed to in writing by Sims Brothers Garage, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.4 The Customer shall unconditionally ratify any actions taken by Sims Brothers Garage under clauses 12.1 to 12.3.
- 12.5 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 13. Security and Charge

- 13.1 In consideration of Sims Brothers Garage agreeing to supply the Parts, 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, and the Customer grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 13.2 The Customer indemnifies Sims Brothers Garage from and against all Sims Brothers Garage’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Sims Brothers Garage’s rights under this clause.
- 13.3 The Customer irrevocably appoints Sims Brothers Garage and each director of Sims Brothers Garage as the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer’s behalf.

### 14. Defects and Returns

- 14.1 The Customer shall inspect the Parts on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Sims Brothers Garage of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Sims Brothers Garage an opportunity to inspect the Parts within a reasonable time following Delivery if the Customer believes the Parts are defective in any way. If the Customer fails to comply with these provisions the Parts shall be presumed to be free from any defect or damage. For defective Parts, which Sims Brothers Garage has agreed in writing that the Customer is entitled to reject, Sims Brothers Garage’s liability is limited to either (at Sims Brothers Garage’s discretion) replacing the Parts or repairing the Parts.
- 14.2 Parts will not be accepted for return other than in accordance with 14.1 above, and provided that:
  - (a) Sims Brothers Garage has agreed in writing to accept the return of the Parts; and
  - (b) the Parts are returned at the Customer’s cost within seven (7) days of the Delivery date; and
  - (c) Sims Brothers Garage will not be liable for Parts which have not been stored or used in a proper manner; and
  - (d) 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.
- 14.3 If Sims Brothers Garage accepts that the Customer is entitled to reject the Parts following their return pursuant to clause 14.2(b) Sims Brothers Garage will reimburse the Customer’s actual and reasonable costs of return Delivery.
- 14.4 Sims Brothers Garage will not accept the return of Parts for credit.
- 14.5 Subject to clause 14.1, non-stocklist items or Parts made to the Customer’s specifications are not acceptable for credit or return.

### 15. Warranty

- 15.1 Subject to the conditions of warranty set out in clause 15.2 Sims Brothers Garage warrants that if any defect in any Services provided by Sims Brothers Garage becomes apparent and is reported to Sims Brothers Garage within three (3) months of the date of Delivery or 5,000 kilometres (time being of the essence) then Sims Brothers Garage will either (at Sims Brothers Garage’s sole discretion) replace or remedy the defect.
- 15.2 The conditions applicable to the warranty given by clause 15.1 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 Parts or serviced item; or

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- (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Sims Brothers Garage; or
  - (iii) any use of any Parts or serviced item otherwise than for any application specified on a quote or order form; or
  - (iv) the continued use of any Parts or serviced item 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 Sims Brothers Garage shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled without Sims Brothers Garage's consent.
- (c) in respect of all claims Sims Brothers Garage shall not be liable to compensate the Customer for any delay in either replacing or remedying the defective Parts or Services or in properly assessing the Customer's claim.
- 15.3 For Parts not manufactured by Sims Brothers Garage, the warranty shall be the current warranty provided by the manufacturer of the Parts. Sims Brothers 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.
- 15.4 In the case of second hand Parts, the Customer acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by Sims Brothers Garage as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Sims Brothers Garage shall not be responsible for any loss or damage to the Parts, or caused by the Parts, or any part thereof however arising.
- 16. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**
- 16.1 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 ("CGA") do not apply to the supply of Parts by Sims Brothers Garage to the Customer.
- 16.2 Sims Brothers Garage agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").
- 17. Intellectual Property**
- 17.1 Where Sims Brothers Garage has designed, drawn or developed Parts for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Sims Brothers Garage. Under no circumstances may such designs, drawings and documents be used without the express written approval of Sims Brothers Garage.
- 17.2 The Customer agrees that Sims Brothers Garage may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Parts which Sims Brothers Garage has created for the Customer.
- 18. Default and Consequences of Default**
- 18.1 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 Sims Brothers Garage's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes Sims Brothers Garage any money the Customer shall indemnify Sims Brothers Garage from and against all costs and disbursements incurred by Sims Brothers Garage in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Sims Brothers Garage's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Sims Brothers Garage may have under this Contract, if a Customer has made payment to Sims Brothers Garage, 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 Sims Brothers Garage under this clause 18 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.
- 18.4 Without prejudice to Sims Brothers Garage's other remedies at law Sims Brothers Garage shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Sims Brothers Garage shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Sims Brothers Garage becomes overdue, or in Sims Brothers Garage's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by Sims Brothers Garage;
  - (c) 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 19. Cancellation**
- 19.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Services or purchase of Parts to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 19.2 If Sims Brothers Garage, due to reasons beyond Sims Brothers Garage's reasonable control, is unable to deliver any Parts and/or Services to the Customer, Sims Brothers Garage may cancel any Contract to which these terms and conditions apply or cancel Delivery of Parts and/or Services at any time before the Parts and/or Services are delivered by giving written notice to the Customer. On giving such notice Sims Brothers Garage shall repay to the Customer any money paid by the Customer for the Parts and/or Services. Sims Brothers Garage shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 The Customer may cancel Delivery of the Parts and/or Services by written notice served within seventy-two (72) hours of placement of the order. Failure by the Customer to otherwise accept Delivery of the Parts and/or Services shall place the Customer in breach of this Contract.
- 19.4 Cancellation of orders for Parts made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**20. Privacy Policy**

- 20.1 All emails, documents, images or other recorded information held or used by Sims Brothers Garage is “**Personal Information**” as defined and referred to in clause 20.3 and therefore considered confidential. Sims Brothers Garage acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 (“the Act”) including Part II of the OECD Guidelines as set out in the Act. Sims Brothers Garage acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer’s Personal Information, held by Sims Brothers Garage that may result in serious harm to the Customer, Sims Brothers Garage will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to Sims Brothers Garage in respect of Cookies where the Customer utilises Sims Brothers Garage’s website to make enquiries. Sims Brothers Garage 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:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to Sims Brothers Garage when Sims Brothers Garage sends an email to the Customer, so Sims Brothers Garage may collect and review that information (“collectively Personal Information”)
- If the Customer consents to Sims Brothers Garage’s use of Cookies on Sims Brothers Garage’s website and later wishes to withdraw that consent, the Customer may manage and control Sims Brothers Garage’s privacy controls via the Customer’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Customer authorises Sims Brothers Garage or Sims Brothers Garage’s agent to:
- (a) access, collect, retain and use any information about the Customer;
    - (i) including, 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 or 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.
  - (b) disclose information about the Customer, whether collected by Sims Brothers Garage from the Customer directly or obtained by Sims Brothers 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.
- 20.4 Where the Customer is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 20.5 The Customer shall have the right to request (by e-mail) from Sims Brothers Garage, a copy of the Personal Information about the Customer retained by Sims Brothers Garage and the right to request that Sims Brothers Garage correct any incorrect Personal Information.
- 20.6 Sims Brothers Garage 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.
- 20.7 The Customer can make a privacy complaint by contacting Sims Brothers Garage via e-mail. Sims Brothers Garage 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 twenty (20) 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 Privacy Commissioner at <http://www.privacy.org.nz>.

**21. Service of Notices**

- 21.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) 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;
  - (e) if sent by email to the other party’s last known email address.
- 21.2 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.

**22. Trusts**

- 22.1 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 or as an agent for a trust (“Trust”) then whether or not Sims Brothers Garage may have notice of the Trust, the Customer covenants with Sims Brothers Garage as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe 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, the trustees and 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;
  - (c) the Customer will not during the term of the Contract without consent in writing of Sims Brothers Garage (Sims Brothers Garage will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust fund or trust property.

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**Sims Brothers (2022) Limited T/A Sims Brothers Garage – Terms & Conditions of Trade**

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**23. General**

- 23.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 23.2 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.
- 23.3 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 Dunedin Courts of New Zealand.
- 23.4 Subject to the CGA, the liability of Sims Brothers Garage and the Customer under this Contract shall be limited to the Price.
- 23.5 Sims Brothers Garage may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 23.6 The Customer cannot licence or assign without the written approval of Sims Brothers Garage.
- 23.7 Sims Brothers 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 Sims Brothers Garage's sub-contractors without the authority of Sims Brothers Garage.
- 23.8 The Customer agrees that Sims Brothers Garage 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 Sims Brothers Garage to provide Parts and/or Services to the Customer.
- 23.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make any payment due to Sims Brothers Garage, following cessation of a Force Majeure.
- 23.10 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.