
Mercedes-Benz Unimog Centre – 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 “Mercedes-Benz Unimog Centre” means The DRM Trust T/A Mercedes-Benz Unimog Centre, its successors and assigns or any person acting on behalf of and with the authority of The DRM Trust T/A Mercedes-Benz Unimog Centre.
- 1.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Mercedes-Benz Unimog Centre 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 (including but not limited to any parts or consumables) or Services supplied by Mercedes-Benz Unimog Centre 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, goods, designs, 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 Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre 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 Customers credit limit and/or the account exceeds the payment terms, Mercedes-Benz Unimog Centre reserves the right to refuse Delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by Mercedes-Benz Unimog Centre in relation to Goods or Services supplied is given in good faith, is based on Mercedes-Benz Unimog Centre’s own knowledge and experience and shall be accepted without liability on the part of Mercedes-Benz Unimog Centre and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.
- 2.7 These terms and conditions may be meant to be read in conjunction with Mercedes-Benz Unimog Centre’s Hire Form, and:
- (a) where the context so permits, the terms ‘Services’ or ‘Goods’ 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.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 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 Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre 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 wilful misconduct of Mercedes-Benz Unimog Centre; 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 Mercedes-Benz Unimog Centre 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, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Mercedes-Benz Unimog Centre as a result of the Customer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At Mercedes-Benz Unimog Centre’s sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Mercedes-Benz Unimog Centre to the Customer; or

Mercedes-Benz Unimog Centre – Terms & Conditions of Trade

- (b) the Price as at the date of Delivery of the Goods according to Mercedes-Benz Unimog Centre's current price list; or
 - (c) Mercedes-Benz Unimog Centre's estimated Price (subject to clause 5.2) which shall not be deemed binding upon Mercedes-Benz Unimog Centre as the actual Price can only be determined upon completion of the Services.; or
 - (d) Mercedes-Benz Unimog Centre's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Mercedes-Benz Unimog Centre 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 which are only discovered on commencement of the Services; or
 - (d) in the event of increases to Mercedes-Benz Unimog Centre in the cost of labour or Goods which are beyond Mercedes-Benz Unimog Centre's control.
- 5.3 The Customer acknowledges and accepts that payment for variations are to be made as follows:
- (a) for variations up to ten thousand dollars (\$10,000), the payment for the variation amount will be due upon completion of the Services; or
 - (b) for variations over ten thousand dollars (\$10,000) the payment of sixty percent (60%) of the variation amount will be payable immediately, with balance payable on completion of the Services.
- 5.4 Variations will be charged for on the basis of Mercedes-Benz Unimog Centre's quotation, and will be detailed in writing, and shown as variations on Mercedes-Benz Unimog Centre's invoice. The Customer shall be required to respond to any variation submitted by Mercedes-Benz Unimog Centre within ten (10) working days. Failure to do so will entitle Mercedes-Benz Unimog Centre 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
- 5.5 Where Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre (at its sole discretion) may charge a fee of one hundred dollars (\$100.00) per week for storage.
- 5.6 At Mercedes-Benz Unimog Centre's sole discretion, a deposit may be required & in most instances will be non-refundable.
- 5.7 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Mercedes-Benz Unimog Centre, which may be:
- (a) on Delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with Mercedes-Benz Unimog Centre's payment schedule;
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Mercedes-Benz Unimog Centre.
- 5.8 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (Visa, Mastercard and American Express only) (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Mercedes-Benz Unimog Centre.
- 5.9 Mercedes-Benz Unimog Centre may in its discretion allocate any payment received from the Customer towards any invoice that Mercedes-Benz Unimog Centre determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Mercedes-Benz Unimog Centre may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Mercedes-Benz Unimog Centre, payment will be deemed to be allocated in such manner as preserves the maximum value of Mercedes-Benz Unimog Centre's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.10 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 Mercedes-Benz Unimog Centre nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.11 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Mercedes-Benz Unimog Centre an amount equal to any GST Mercedes-Benz Unimog Centre must pay for any supply by Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre's address; or
 - (b) Mercedes-Benz Unimog Centre (or Mercedes-Benz Unimog Centre's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At Mercedes-Benz Unimog Centre's sole discretion, the cost of Delivery is in addition to the Price.
- 6.3 Any time specified by Mercedes-Benz Unimog Centre 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. Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre shall be entitled to charge a reasonable fee for redelivery and/or storage.

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, Mercedes-Benz Unimog Centre is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Mercedes-Benz Unimog Centre is sufficient evidence of Mercedes-Benz Unimog Centre's rights to receive the insurance proceeds without the need for any person dealing with Mercedes-Benz Unimog Centre to make further enquiries.
- 7.3 If the Customer requests Mercedes-Benz Unimog Centre to leave Goods outside Mercedes-Benz Unimog Centre's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

8. Customer's Responsibility & Acknowledgment

- 8.1 The Customers acknowledges and accepts that:

Mercedes-Benz Unimog Centre – Terms & Conditions of Trade

- (a) if in the opinion of Mercedes-Benz Unimog Centre that the Customer's request for modifications are in deemed to be unsuitable and unsafe to proceed with, then Mercedes-Benz Unimog Centre reserves the right to halt the Services until such time as the Customer authorises Mercedes-Benz Unimog Centre in writing to proceed with the modifications and accepts that Mercedes-Benz Unimog Centre shall not be responsible for any defects in the Services, any loss or damage to the vehicle (or any part thereof), howsoever arising from the modifications instructions supplied by the Customer;
 - (b) any modifications carried out by Mercedes-Benz Unimog Centre to the Customer's vehicle engine to increase power may result in lessening the overall life of the engine due to additional strain on associated components, Mercedes-Benz Unimog Centre does not accept any liability in the event of any damage caused as a direct result of power increase modifications;
 - (c) whilst Mercedes-Benz Unimog Centre shall endeavour to modify the vehicle to the exact specifications or instructions of the Customer, Mercedes-Benz Unimog Centre can offer no guarantee that any technique used will provide the exact effect desired by the Customer;
 - (d) Mercedes-Benz Unimog Centre can only provide its Services on a vehicle in its current state as supplied to Mercedes-Benz Unimog Centre therefore Mercedes-Benz Unimog Centre shall not accept any responsibility for the workmanship of any third party that has worked on a Customers' vehicle prior to Services being undertaken by Mercedes-Benz Unimog Centre;
 - (e) Mercedes-Benz Unimog Centre, its employees, agents or contractors may test drive or carry out tests of the vehicle at Mercedes-Benz Unimog Centre's discretion and may, if requested by the Customer, collect or re-deliver the vehicle where nominated by the Customer and Mercedes-Benz Unimog Centre will not be liable to the Customer for any damage which occurs to or is caused by the vehicle during such driving, testing, collection or delivery unless it arises from the reckless or wilful conduct of Mercedes-Benz Unimog Centre, its employees, agents, or contractors;
 - (f) it is the Customers' responsibility to remove all personal/valuable items from the vehicle prior to Mercedes-Benz Unimog Centre carrying out their Services. Mercedes-Benz Unimog Centre shall not liable in the event of any apparent loss or damage to personal/valuable items left in the vehicle; and
 - (g) Mercedes-Benz Unimog Centre is only responsible for parts that are replaced by Mercedes-Benz Unimog Centre and does not at any stage accept any liability in respect of previous services and/or materials supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify Mercedes-Benz Unimog Centre against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 8.2 Subject to clause 8.1(e), neither Mercedes-Benz Unimog Centre, nor its employees, agents or contractors will be responsible for the loss of, any damage of any kind whatsoever and howsoever caused to, the vehicle or any property (including, but without limiting the generality thereof any perishable items) in or upon the vehicle, or any trailer attached thereto and whether such property belongs to the Customer or a third party while the same is in the possession or under control of Mercedes-Benz Unimog Centre, its employees, agents or contractors and the Customer hereby indemnifies Mercedes-Benz Unimog Centre against any claim for such loss or damage.
- 8.3 Where the Customer has:
- (a) supplied Goods for Mercedes-Benz Unimog Centre to complete the Services, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the Goods. Mercedes-Benz Unimog Centre shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of Goods supplied by the Customer; and
 - (b) left a vehicle with Mercedes-Benz Unimog Centre for repair, restoration or for Mercedes-Benz Unimog Centre to perform any other Services in relation to the item, it shall be at the sole risk of the Customer. Mercedes-Benz Unimog Centre shall not be liable for any loss or damage to any vehicle whilst in the care of Mercedes-Benz Unimog Centre, it shall be the responsibility of the Customer to ensure the vehicle is adequately insured, or at all (including but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored on Mercedes-Benz Unimog Centre's premises regardless of whether vehicle is registered or unregistered.
- 8.4 In the event the Customer requests Mercedes-Benz Unimog Centre to work on a vehicle, and leaves the vehicle and/or the keys at Mercedes-Benz Unimog Centre's premises whilst the site is unattended, then Mercedes-Benz Unimog Centre 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.
- 9. Title**
- 9.1 Mercedes-Benz Unimog Centre and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Mercedes-Benz Unimog Centre all amounts owing to Mercedes-Benz Unimog Centre; and
 - (b) the Customer has met all of its other obligations to Mercedes-Benz Unimog Centre.
- 9.2 Receipt by Mercedes-Benz Unimog Centre 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.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Mercedes-Benz Unimog Centre on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Mercedes-Benz Unimog Centre and must pay to Mercedes-Benz Unimog Centre the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) 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 Mercedes-Benz Unimog Centre and must pay or deliver the proceeds to Mercedes-Benz Unimog Centre on demand;
 - (d) 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 Mercedes-Benz Unimog Centre and must sell, dispose of or return the resulting product to Mercedes-Benz Unimog Centre as it so directs;
 - (e) the Customer irrevocably authorises Mercedes-Benz Unimog Centre to enter any premises where Mercedes-Benz Unimog Centre believes the Goods are kept and recover possession of the Goods;
 - (f) Mercedes-Benz Unimog Centre may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) 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 Mercedes-Benz Unimog Centre;

Mercedes-Benz Unimog Centre – Terms & Conditions of Trade

(h) Mercedes-Benz Unimog Centre may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

10. Personal Property Securities Act 2009 (“PPSA”)

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 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 Mercedes-Benz Unimog Centre for Services – that have previously been supplied and that will be supplied in the future by Mercedes-Benz Unimog Centre to the Customer.
- 10.3 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 Mercedes-Benz Unimog Centre 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 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre;
 - (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 Mercedes-Benz Unimog Centre;
 - (e) immediately advise Mercedes-Benz Unimog Centre 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.
- 10.4 Mercedes-Benz Unimog Centre 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.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Mercedes-Benz Unimog Centre, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by Mercedes-Benz Unimog Centre under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

- 11.1 In consideration of Mercedes-Benz Unimog Centre 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).
- 11.2 The Customer indemnifies Mercedes-Benz Unimog Centre from and against all Mercedes-Benz Unimog Centre’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Mercedes-Benz Unimog Centre’s rights under this clause.
- 11.3 The Customer irrevocably appoints Mercedes-Benz Unimog Centre and each director of Mercedes-Benz Unimog Centre as the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer’s behalf.

12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre to inspect the Goods.
- 12.2 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**).
- 12.3 Mercedes-Benz Unimog Centre acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Mercedes-Benz Unimog Centre makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Mercedes-Benz Unimog Centre’s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, Mercedes-Benz Unimog Centre’s liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Mercedes-Benz Unimog Centre is required to replace the Goods under this clause or the CCA, but is unable to do so, Mercedes-Benz Unimog Centre may refund any money the Customer has paid for the Goods.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, Mercedes-Benz Unimog Centre’s liability for any defect or damage in the Goods is:

Mercedes-Benz Unimog Centre – Terms & Conditions of Trade

- (a) limited to the value of any express warranty or warranty card provided to the Customer by Mercedes-Benz Unimog Centre at Mercedes-Benz Unimog Centre's sole discretion;
 - (b) limited to any warranty to which Mercedes-Benz Unimog Centre is entitled, if Mercedes-Benz Unimog Centre did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
 - (b) Mercedes-Benz Unimog Centre has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (ie back to base warranty); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Mercedes-Benz Unimog Centre shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) 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;
 - (d) the Customer failing to follow any instructions or guidelines provided by Mercedes-Benz Unimog Centre;
 - (e) fair wear and tear, any accident, or act of God.
- 12.10 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 Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre 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 12.10.
- 12.11 Mercedes-Benz Unimog Centre may in its absolute discretion accept non-defective Goods for return in which case Mercedes-Benz Unimog Centre 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.
- 12.12 Notwithstanding anything contained in this clause if Mercedes-Benz Unimog Centre is required by a law to accept a return then Mercedes-Benz Unimog Centre will only accept a return on the conditions imposed by that law.
- 12.13 Subject to clause 12.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

13. Intellectual Property

- 13.1 Where Mercedes-Benz Unimog Centre has designed, drawn or developed Goods, then the copyright in any goods, designs and drawings and documents shall remain the property of Mercedes-Benz Unimog Centre. Under no circumstances may such goods, designs, drawings and documents be used or replicated without the express written approval of Mercedes-Benz Unimog Centre.
- 13.2 The Customer warrants that all designs, specifications or instructions given to Mercedes-Benz Unimog Centre will not cause Mercedes-Benz Unimog Centre to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Mercedes-Benz Unimog Centre against any action taken by a third party against Mercedes-Benz Unimog Centre in respect of any such infringement.
- 13.3 The Customer agrees that Mercedes-Benz Unimog Centre may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Mercedes-Benz Unimog Centre has created for the Customer.

14. Default and Consequences of Default

- 14.1 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 Mercedes-Benz Unimog Centre's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes Mercedes-Benz Unimog Centre any money the Customer shall indemnify Mercedes-Benz Unimog Centre from and against all costs and disbursements incurred by Mercedes-Benz Unimog Centre in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Mercedes-Benz Unimog Centre's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies Mercedes-Benz Unimog Centre may have under this Contract, if a Customer has made payment to Mercedes-Benz Unimog Centre, 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 Mercedes-Benz Unimog Centre under this clause 14 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.
- 14.4 Without prejudice to Mercedes-Benz Unimog Centre's other remedies at law Mercedes-Benz Unimog Centre shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Mercedes-Benz Unimog Centre shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Mercedes-Benz Unimog Centre becomes overdue, or in Mercedes-Benz Unimog Centre'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 Mercedes-Benz Unimog Centre;
 - (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.

15. Cancellation

Mercedes-Benz Unimog Centre – Terms & Conditions of Trade

- 15.1 Without prejudice to any other remedies Mercedes-Benz Unimog Centre may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Mercedes-Benz Unimog Centre may suspend or terminate the supply of Goods to the Customer. Mercedes-Benz Unimog Centre will not be liable to the Customer for any loss or damage the Customer suffers because Mercedes-Benz Unimog Centre has exercised its rights under this clause.
- 15.2 Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre shall repay to the Customer any money paid by the Customer for the Goods. Mercedes-Benz Unimog Centre shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 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 Mercedes-Benz Unimog Centre as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods 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.

16. Privacy Policy

- 16.1 All emails, documents, images or other recorded information held or used by Mercedes-Benz Unimog Centre is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. Mercedes-Benz Unimog Centre 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 IIIC 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"). Mercedes-Benz Unimog Centre acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Mercedes-Benz Unimog Centre that may result in serious harm to the Customer, Mercedes-Benz Unimog Centre 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.
- 16.2 Notwithstanding clause 16.1, privacy limitations will extend to Mercedes-Benz Unimog Centre in respect of Cookies where transactions for purchases/orders transpire directly from Mercedes-Benz Unimog Centre's website. Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre when Mercedes-Benz Unimog Centre sends an email to the Customer, so Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre's website.
- 16.3 The Customer agrees for Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre.
- 16.4 The Customer agrees that Mercedes-Benz Unimog Centre may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) 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
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 16.5 The Customer consents to Mercedes-Benz Unimog Centre being given a consumer credit report to collect overdue payment on commercial credit.
- 16.6 The Customer agrees that personal credit information provided may be used and retained by Mercedes-Benz Unimog Centre for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.7 Mercedes-Benz Unimog Centre may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 16.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 16.3 above;
 - (b) name of the credit provider and that Mercedes-Benz Unimog Centre is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) 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);
 - (f) 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

Mercedes-Benz Unimog Centre – Terms & Conditions of Trade

the Customer no longer has any overdue accounts and Mercedes-Benz Unimog Centre has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

(g) information that, in the opinion of Mercedes-Benz Unimog Centre, the Customer has committed a serious credit infringement;

(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

16.9 The Customer shall have the right to request (by e-mail) from Mercedes-Benz Unimog Centre:

(a) a copy of the Personal Information about the Customer retained by Mercedes-Benz Unimog Centre and the right to request that Mercedes-Benz Unimog Centre correct any incorrect Personal Information; and

(b) that Mercedes-Benz Unimog Centre does not disclose any Personal Information about the Customer for the purpose of direct marketing.

16.10 Mercedes-Benz Unimog Centre 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.

16.11 The Customer can make a privacy complaint by contacting Mercedes-Benz Unimog Centre via e-mail. Mercedes-Benz Unimog Centre 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.

17. Unpaid Seller's Rights

17.1 Where the Customer has left any item with Mercedes-Benz Unimog Centre for repair, modification, exchange or for Mercedes-Benz Unimog Centre to perform any other service in relation to the item and Mercedes-Benz Unimog Centre has not received or been tendered the whole of any monies owing to it by the Customer, Mercedes-Benz Unimog Centre shall have, until all monies owing to Mercedes-Benz Unimog Centre are paid:

(a) a lien on the item; and

(b) 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.

17.2 The lien of Mercedes-Benz Unimog Centre shall continue despite the commencement of proceedings, or judgment for any monies owing to Mercedes-Benz Unimog Centre having been obtained against the Customer.

18. Service of Notices

18.1 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.

18.2 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.

19. Trusts

19.1 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 Mercedes-Benz Unimog Centre may have notice of the Trust, the Customer covenants with Mercedes-Benz Unimog Centre as follows:

(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;

(b) 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;

(c) the Customer will not without consent in writing of Mercedes-Benz Unimog Centre (Mercedes-Benz Unimog Centre 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 property.

20. Dispute Resolution

20.1 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:

(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and

(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

21. General

21.1 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.

Mercedes-Benz Unimog Centre – Terms & Conditions of Trade

- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which Mercedes-Benz Unimog Centre has its principal place of business, and are subject to the jurisdiction of the Gold Coast Courts in Queensland.
- 21.3 Subject to clause 12, Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre of these terms and conditions (alternatively Mercedes-Benz Unimog Centre's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.4 Mercedes-Benz Unimog Centre may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 21.5 The Customer cannot licence or assign without the written approval of Mercedes-Benz Unimog Centre.
- 21.6 Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre's sub-contractors without the authority of Mercedes-Benz Unimog Centre.
- 21.7 The Customer agrees that Mercedes-Benz Unimog Centre 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 Mercedes-Benz Unimog Centre to provide Goods to the Customer.
- 21.8 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.
- 21.9 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.