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## 1.4. **General Disclaimers; Disclaimer of Warranties and Liability**

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## **2. THE SERVICES**

### **2.1. Quotations**

- 2.1.1. Quotations/estimates shall be valid only if given in writing.
- 2.1.2. Quotations are based on a high level assessment of the work to be performed and on the basis of assumptions that all other components are in good working order, are original, and/or suitable for their purpose.
- 2.1.3. It is very difficult, or near impossible, to look at a vehicle and know exactly what the problem is, how much it will cost to repair, and how long the process will take. In this case a strip-and-quote estimate will be given, which will allow the Machining Man time and scope to ascertain any hidden or latent defects before an official quote is drawn up.
- 2.1.4. Quotations are at all times subject to what is revealed once the services commence and subject to unforeseen issues that require further labour and/or parts.
- 2.1.5. All quotations shall hold good for a period of 30 days from the date thereof.
- 2.1.6. A binding contract will come into existence immediately upon acceptance by the customer of any quotation/estimate.

2.1.7. Quotations for imported parts are based on the currency exchange rates and government levies and taxes prevailing at the date of the quotation. The cost of all imported products contained in a quotation are subject to change in the event that:

2.1.7.1. there is a change in the relevant foreign currency exchange rates; or

2.1.7.2. The government levies or taxes are increased or new taxes are imposed.

## **2.2. Payment**

2.2.1. All invoices are to be paid on date of invoice and prior to delivery/collection.

2.2.2. Payment may not be withheld or deferred on account of any counter-claim or set off.

2.2.3. Any amount not paid on due date, shall at the discretion of the Machining Man, bear interest from due date until payment thereof in full at a rate of 2% (two per cent) per month subject to the maximum allowable rate as prescribed by the Credit Regulator.

2.2.4. If any amount owed to the Machining Man becomes overdue and is handed to its attorneys for collection the customer agrees to bear all the legal costs incurred including the collection commission on the attorney's own client scale.

2.2.5. The Machining Man has the right to exercise a debtors lien over any property belonging to the customer which is being/has been worked on by the Machining Man, and it shall retain any such property until full payment, without set off, of all amounts due to the Machining Man have been made.

2.2.6. While any amount is owed by the customer to the Machining Man in respect of any products or services, the Customer shall be obliged to keep his property concerned free of any third party lien, hypothec, encumbrance and/or attachment.

2.2.7. The customer irrevocably authorises the Machining Man to liquidate any property held by the Machining Man in exercise of its lien, to recover damages suffered by the Machining Man as a result of non-payment of invoices, and hereby indemnifies the Machining Man against any and all claims, including claims for costs, whether direct, indirect or consequential, made by any person against the Machining Man and arising out of the aforesaid.

## **2.3. Warranty on Parts and Workmanship**

2.3.1. Where the customer requires parts to be manufactured or machined, the Machining Man gives no warranty of merchantability or fitness for a particular purpose and any warranty to be provided by the Machining Man in respect of such components shall be subject to:

- 2.3.1.1. The provision of detailed drawings by the customer, where application is required;
  - 2.3.1.2. Material specifications;
  - 2.3.1.3. Component sizes and tolerance specifications;
  - 2.3.1.4. Details of where and how the component is to be used;
  - 2.3.1.5. Any other information which is relevant to how the component is to be manufactured/used.
- 2.3.2. Subject to the provisos contained in 2.3.1, the Machining Man warrants that the mechanical parts manufactured or machined by it will under normal use and service remain free from defects of workmanship for a period of six months from the date of delivery.
- 2.3.3. The Machining Man will repair or replace any such mechanical part manufactured or machined by it, which under normal use and service, proves to be defective. Subject at all times to the proviso that the defect arises solely as a result of faulty workmanship and/or design, and does not relate to the materials, and provided further that:
- 2.3.3.1. the part has not been altered or modified in anyway;
  - 2.3.3.2. The part has not been damaged as a result of neglect accident or improper use;
  - 2.3.3.3. The defective part being returned to the Machining Man, if it so requires.
- 2.3.4. Products sold, manufactured or machined are not returnable, save with the written consent of the Machining Man.
- 2.3.5. The Machining Man's liability shall not extend to any labour costs involved in the removal and replacement of the defective parts.
- 2.3.6. Any goods, and or components supplied but not manufactured by the Machining Man, will be covered by the warranty (if any) of the original manufacturer.
- 2.3.7. The Machining Man undertakes to give all reasonable assistance to the customer to resolve any issues concerned with a faulty product supplied by a third party manufacturer. Subject to the following: -
- 2.3.7.1. The Machining Man must be advised of the problem in writing;
  - 2.3.7.2. The Machining Man reserves the right to charge the customer for any costs incurred in determining the cause of the problem;

2.3.7.3. the products must not have been altered or modified in anyway.

2.3.8. The Machining Man reserves the right to charge the customer for any work done in order to rectify the problem on the customers/manufacturers behalf. These costs will be claimed from the original supplier and the customer will be compensated only if the original supplier reimburses all or any of these costs. It is the responsibility of the customer to provide all details of the problem, and any documentary proof. This must be done in writing, without cost to the Machining Man.

2.3.9. The Machining Man warrants that all workmanship emanating from the provision of its services, under normal use and service, shall remain free from defects, arising solely from faulty workmanship, for a period of six months from date of delivery.

#### 2.4. **Risk**

2.4.1. Where a customer collects the products or repaired vehicle from the Machining Man's premises risk in the product/vehicle shall pass to that customer immediately on delivery to him.

2.4.2. Where delivery is made by means of the Machining Man's transport, then in such event risk in the products/vehicle whilst in transit shall remain with the Machining Man until the product/vehicle in question is delivered to the customer.

2.4.3. When a delivery is made by the Machining Man to the customer through the medium of the any carrier, then and in such event all risk in and to the products/vehicle in question shall pass to the customer against delivery of same by the Machining Man to such carrier at the point of delivery by the Machining Man or collection by the carrier.

#### 2.5. **Delivery**

2.5.1. Subject to clause 2.5.2, the Machining Man will make all reasonable efforts to deliver the products/vehicle by the delivery dates recorded in any quotation or as communicated to the customer.

2.5.2. Each delivery date recorded in a quotation or communicated to the customer is approximate only and is not to be construed as a material term. The customer shall not be entitled to cancel this contract or refuse to accept delivery because delivery dates have not been met.

2.5.3. If delivery is to be made by instalments then:

2.5.3.1. Each instalment shall constitute a separate contract; and

2.5.3.2. The Machining Man shall be entitled to withhold delivery of any undelivered instalments until monies payable for delivered instalments have been made.

2.5.4. All property must be collected or delivery arranged within 5 days of being notified that same is ready for collection/delivery.

2.5.5. Where the customer has been notified that his property is ready for collection/delivery and such customer has failed to collect or arrange delivery within the 5 days referred to above, or in the event that the Machining Man will not release the property due to failure to make full payment, then the Machining Man shall charge the customer a storage fee of R250 per day from the date that the customer was notified that the services were completed and that same was ready for collection/delivery until the date of collection/delivery, both days included.

## 2.6. **Ownership**

2.6.1. The ownership of all plans, diagrams, jigs, tools and templates and patterns prepared by or on the instructions of the Machining Man and all copyright or patents therein, whether registrable or not, shall remain vested in the Machining Man and no copies of any of these items shall be made without the Machining Man's prior written consent.

2.6.2. Ownership of all products sold, manufactured or machined shall remain the property of the Machining Man until paid for in full, and the customer may not alienate, pledge or encumber such products in any way prior to full payment.

## 3. **LIMITATION OF LIABILITY**

3.1. Neither the Machining Man nor any of the its suppliers, associate companies, officers, employees, or agents shall be liable for any loss or damage whether direct, indirect, consequential or otherwise, suffered by the customer as a result of any cause arising in connection with any business dealings as contemplated in these terms (including without limitations, late delivery for whatever reason and any cause arising from anything done or not done pursuant to the contract) whether such loss or damage results from breach of contract (whether fundamental/ material or otherwise) delict, negligence or any other cause without limitation.

3.2. All risk in and to any property such as, *inter alia*, vehicles, motorbikes, go-carts, horse boxes, bicycles and golf carts that are left at the premises of the Machining Man are done so entirely at the owners risk. The Machining Man shall not be held liable for any damage to a customer's property as a result of a force majeure event such as, *inter alia*, acts of god, inclement weather, hail, theft, vandalism, riot. In this regard the customer warrants that all property belonging to the customer that is left at the premises of the Machining Man shall ensure that he maintains adequate insurance against damage and loss.

- 3.3. Any liability of the Machining Man for direct loss or damage arising from a breach of this Agreement will not exceed the total price paid or due to be paid by the customer for the products and/or services that form the subject matter of such claim.
- 3.4. All representations made by the Machining Man in respect of the capabilities of the products are made in good faith and based on the Machining Man's interpretation of the specifications provided by the manufacturer of the products. The Machining Man will not be held liable for any deviations from such representations made by the Machining Man to the customer.
- 3.5. The customer hereby indemnifies the Machining Man for and holds it harmless against any claim, damage, loss, cost or expense of whatever nature made against the customer by any third party arising from or associated with the products and/or services supplied by the Machining Man to the customer, the customer's or a third party's use, operation or storage of the products and/or services, the customer's representations given to third parties in respect of the products and/or services or any other matter for which the Machining Man would not be liable to the customer under this Agreement.
- 3.6. If any products and/or services or any part of them are to be supplied in accordance with specifications, measurements or other instructions furnished by the customer, the customer shall not have any claim of any nature whatsoever against the Machining Man for any loss or damage sustained by the customer or any third party as a result of any error, discrepancy or defect in those specifications, measurements or other instructions, or if the products in question are not suitable for the purpose for which they are required, whether that purpose was known to the Machining Man or not.
- 3.7. Notwithstanding the above, nothing in this Agreement shall exclude any liability which cannot be limited or excluded by applicable law.

#### 4. **GENERAL**

- 4.1.1. The agreement wherever made shall be governed and construed according to the Laws of the Republic of South Africa.
- 4.1.2. In the event of the Machining Man deciding to institute legal action for the enforcement of any of its rights against a customer, the customer consents to the jurisdiction of the Magistrates court having jurisdiction in respect of location, despite the monetary value of the claim and regardless of whether it would ordinarily, but for this agreement, exceed the monetary jurisdiction of the Magistrates court.

- 4.1.3. No agent or employee of the Machining Man, other than the Director, has the Machining Man's authority to alter or vary these conditions by an undertaking or promise given before or after the performance of any services.
- 4.1.4. No agreement varying, adding to, deleting from or cancelling any of these conditions and no waiver of any rights under these conditions, shall be effective unless reduced to writing and signed by one of the Director of the Machining Man.
- 4.1.5. In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which shall remain of full force and effect as if such invalid provisions had not been included herein.
- 4.1.6. If any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.
- 4.1.7. No indulgence which the Machining Man may grant the customer shall constitute a waiver of or prejudice the rights of the Machining Man, and who shall not thereby be precluded from exercising any rights against the customer which may have arisen in the past or which might arise in the future.