

# BRINTECH CUSTOMS Pty Ltd

## GENERAL TERMS & CONDITIONS

### SERVICE WORK (2023)

#### **1 .Introduction**

These General Terms and Conditions – Service Work (2023) (the “Conditions”) shall, unless otherwise agreed in writing, apply to all service work performed in the field (“Service Work”) by any authorized member, agent or representative of the Brintech Group (the “Contractor”) to a customer (the “Customer”). Contractor’s offers are non-binding until accepted and confirmed by a quote issued by the Contractor or by a purchase order issued by Customer in compliance with these Conditions which is acknowledged by Contractor (any such acknowledged purchase order and/or quote, a “Contract”). These Conditions shall form an integral part of the Contract. Customer may not change or cancel any purchase order or quote after it has been received and approved unless Contractor has agreed in writing to such change or cancellation.

#### **2 .Confidentiality and Intellectual Property**

Neither party shall copy or disclose to a third party any document or data provided by the other party without the prior written consent of the other party or use them for purposes other than those for which they were provided. Intellectual property rights associated with the Service Work or any document or data provided by Contractor in connection therewith shall remain Contractor’s property. Customer shall defend, indemnify and hold harmless Contractor against all claims, losses and damages, including reasonable attorney’s fees, arising out of or resulting from any reuse, modification, reproduction or publication of Contractor’s intellectual property documents or data.

#### **3. Performance and acceptance of work**

Customer shall be deemed to have accepted the Service Work performed by Contractor as being in accordance with the Contract unless Customer has notified Contractor of any non-conformity within three (3) days following the last day on which the Service Work was performed. Any date or period for completion stipulated or quoted shall be deemed to be an estimate only, and there shall be no express or implied time limit in dispatching or completing any Service Work.

3.1 Engineering certification processes are to be handled within Contractor’s engineering network (using Contractor’s preferred suppliers). This is to ensure Contractor can provide any additional Service Work required to meet engineering specifications and certification. Any engineering certification processes carried out externally to Contractor’s engineering network is not guaranteed to qualify and Contractor will not be responsible for any rework or modifications required for certification.

#### **4. Compensation, payment and ownership**

4.1 If not expressly agreed otherwise in writing, the Contract's price is based on the Service Work performed during normal working hours. Details on work performed shall be provided by Contractor to Customer and shall be promptly checked and attested by Customer. Details on work performed shall be deemed to be evidence of the working hours invoiced by Contractor. Hourly rates, overtime rates and daily allowances shall be as specified in Contractor's standard rates then in effect (such rates are subject to change from time to time). A normal working week is comprised of thirty eight (38) hours; seven point six (7.6) hours per working day, spread over five (5) working days. Public holidays shall be observed. Unless otherwise agreed, any Service Work done outside normal working hours shall be charged to Customer as overtime. Any waiting time for which Contractor is not responsible (including supplier waiting time) shall be charged to Customer as normal working time.

4.2 All transport expenses incurred in connection with the Contract shall be for the account of Customer. Travel expenses include: (a) transport of Customer's vehicle to and from the Brintech workshop (for any purpose including warranties); (b) fares for journey by rail, sea, air, car and/or bus; (c) and carriage, freight and customs duties as well as insurance due in connection with personal effects, instruments and tools required for the Service Work, including necessary costs for overweight on air freight.

4.3 Unless otherwise agreed, payment shall be made by credit card or bank remittance in the currency and to the bank account set forth in the invoice before or upon collection of the vehicle. Payment shall be made in full without any set off, counterclaim or deduction. Parts shall be paid for by Customer before order is placed by Contractor unless agreed otherwise. Progress invoices should be paid before the commencement of the next portion of Service Work. If progress invoices remain unpaid, the vehicle will be deprioritized and no further Service Work will commence until the progress invoice is paid. If the progress invoice remains unpaid for more than ten (10) working days from the date of invoice, storage fees will be charged. Depending on where the car is stored, the fees will range from \$25-\$55 per day. These fees will be communicated to Customer via email or phone call. Customer shall pay interest on overdue payments from the maturity date until the actual date of payment at the rate of one and one quarter percent (1.25%) per month, compounded annually. Customer shall pay Contractor all costs related to the collection of overdue amounts, including reasonable attorney's fees. In the event any payment is more than thirty (30) days late, Contractor shall be entitled to suspend or terminate the Contract by written notice to Customer, and such remedies shall not be exclusive of Contractor's additional rights under contract or law. Title to any part, material, equipment, supplies, consumables or replacement and any other items furnished, provided or supplied by Contractor in performance of the Service Work shall pass to Customer only when payment in full has been received by Contractor. Contractor may as a precondition for the performance of the Service Work, request that Customer provides Contractor with security covering any unpaid amount already owed to Contractor or one of its affiliates.

4.4 Any assistance or work performed by Contractor outside the scope of Contract shall be charged as extra work in accordance with Contractor's standard rates then in effect and with these Conditions.

4.5 Payments by credit card of over \$5,000 AUD require the Customer to provide photo identification. This is to reduce the risk of fraudulent transactions. The Customer's address is required for transactions over \$1000 AUD as per ATO legislation.

## 5. Warranty

5.1 Contractor shall repair or re-perform, in whole or in part, at its sole discretion, any defective Service Work which appears during the warranty period. Customer shall have the responsibility to establish that its claim is covered by this warranty and shall immediately take appropriate steps to prevent any defect from becoming more serious, and all warranty claims with respect to this warranty shall be made in writing without delay and not later than fourteen (14) days following discovery of such defect during the warranty period. Contractor will then find a suitable time to complete the warranty. This work is to be completed by Contractor at their location (1077 Castlereagh Rd, Castlereagh NSW 2749). Replaced parts shall become Contractor's property and upon Contractor's request, be returned at Contractor's cost. Delivery of repairs or re-performance under this warranty will be made in accordance with the original Contract delivery terms. Any Service Work performed by individual/s or company/s external to Contractor (including Service Work needing to be done under Contractor's warranty) will not be reimbursed and will void Contractor's original warranty.

5.2 The warranty period for the Service Work begins on the date of delivery and ends three (3) months from the last day of performance of the applicable Service Work. Warranty on service work only includes labour warranty coverage for parts supplied by Contractor, unless written otherwise. This warranty extends for the lifespan of the parts warranty (i.e. used parts carry a 90-day warranty and new parts carry a 12 month warranty even if the suppliers warranty is longer than 12 months). The warranty period in respect of Service Work which has been re-performed under the warranty shall expire three (3) months following the last day on which the Service Work was re-performed under the warranty. The warranty for re-performed Service Work shall be subject to the same terms, conditions and limitations of liability, as those applicable to the originally-performed Service Work. Under no circumstances shall the warranty period of any Service Work (whether original or re-performed) extend beyond the date that is twelve (12) months following the date of commencement of the original warranty period as stipulated above in the first sentence of this Clause 5.2.

5.3 Contractor shall not be liable for any defect due to or arising in connection with: (1) any materials, components, tools, designs or software provided by Customer; (2) negligence or willful misconduct of Customer; (3) parts, accessories or attachments other than those supplied by Contractor in the course of performance of the Service Work; (4) improper service work, installation or alterations carried out by Customer; (5) normal wear and tear; (6) use of unsuitable material or consumables by Customer; or (7) any use, service or operation of any equipment, parts or components upon which Service Work was performed which is not in conformity with manuals, instructions or specifications provided by Contractor or which is otherwise not in accordance with normal industry practice. Contractor's Service Work warranty obligation does not include any parts. Parts are covered under the parts warranty outlined in General Terms and Conditions – Parts (2023). If after Contractor's warranty investigation it is found that Customer does not have a warranty claim within the scope of these Conditions, then Customer shall be responsible for all applicable costs and expenses for such inspection, repaired or replaced parts or other service work.

5.3(a) Warranties are not transferrable to any new owners of a vehicle worked on by the Contractor.

5.4 THIS CLAUSE 5 SETS FORTH THE ONLY WARRANTY APPLICABLE TO THE SERVICE WORK AND IS IN LIEU OF ANY OTHER WARRANTIES, GUARANTEES, OBLIGATIONS AND LIABILITIES EXPRESS OR IMPLIED INCLUDING WARRANTIES, GUARANTEES, OBLIGATIONS OR LIABILITIES AGAINST NON-CONFORMITY OR

DEFECTS. CUSTOMER HEREBY WAIVES ALL OTHER REMEDIES, WARRANTIES, GUARANTEES AND LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION FITNESS FOR PURPOSE, MERCHANTABILITY OR SATISFACTORY QUALITY).

## **6. Contractor's liability**

6.1 Contractor shall not be liable for any work carried out by Customer or by any third party, even though carried out with assistance of Contractor's personnel. Contractor will take great care however, Customer shall bear the risk of loss of its equipment and other goods in connection with the Service Work, even if such equipment or goods are in facilities used by Contractor.

## **7. Insurance**

Each of Contractor and Customer shall at its own cost provide for and maintain comprehensive insurance coverage to protect its own property and personnel.

## **8. Security Agreement**

To the extent permitted by law, Customer hereby grants to Contractor a lien on and a continuing security interest, and when applicable a repairer's lien for necessaries, in and to all equipment, parts and components upon which the Service Work is performed and all products and proceeds derived from the sale or lease thereof as security for the payment in full of such Service Work. Customer hereby waives any and all claims, defenses and causes of action that Customer may have in connection with the exercise of any such lien rights by Contractor.

[Repairer's Lien (applies to all Customers) – We (the Contractor) are legally entitled to exercise a Lien over your (the Customer) vehicle, or any other goods left with us for repair, in the event of non-payment of any amount owing to us on account of any repairs or storage undertaken at your request. Your vehicle and/or goods will only be released to you in exchange for payment in full of all amounts owing to us. Any repair charges, labour costs, the cost of parts, incidental costs, storage charges, legal fees and ancillary expenses involved in exercising the Lien, shall be added to the amount outstanding and the Customer shall be liable to pay the total thereof in order to obtain the release of the vehicle and/or goods.]

## **9. Governing law and arbitration**

The Contract shall be governed by and interpreted in accordance with the law of Australia. Any controversy, claim or dispute between the parties hereto arising out of or related to this Contract shall be submitted to the NSW Civil and Administrative Tribunal (NCAT) with the number of arbitrators set out by NCAT. The arbitration proceeding shall be in the English language and shall take place in Sydney, Australia.

## **10. Entire Agreement**

These Conditions, plus the additional agreed upon terms of the Contract (relating only to price, time and location for performance, and technical specifications and scope of Service Work to be performed) contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. The sale of any parts purchased from Contractor by Customer shall be in accordance with Contractor's

General Terms and Conditions – Parts (2023). If a provision of these Conditions is at variance with necessary requirements of applicable law, then these Conditions shall be deemed to be amended to the minimum extent necessary to comply with such applicable law. No terms, conditions, representations, warranties or covenants contained in any correspondence, catalogue, or in any other form shall be applicable unless incorporated herein by express written agreement of the parties hereto.



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