

EMS Repairs Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "EMS Repairs" means EMS Repairs Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of EMS Repairs Pty Ltd.
- 1.2 "Client" means the person/s buying the Parts as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally (where the context so permits, the term 'Client' shall also mean the Client's duly authorised representative).
- 1.3 "Services" means all Parts or Services supplied by EMS Repairs to the Client (or the Client's vehicle/plant/machine etc.) at the Client's request from time to time (where the context so permits the terms 'Parts' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Parts as agreed between EMS Repairs and the Client in accordance with clause 6 below.
- 1.5 "GST" means Parts and Services Tax (GST) as defined within the "A New Tax System (Parts and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Parts.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and EMS Repairs.
- 2.3 The Client acknowledges that the supply of Parts/Services on credit shall not take effect until the Client has completed a credit application with EMS Repairs and it has been approved with a credit limit established for the account.
- 2.4 In the event that the supply of Parts request exceeds the Clients credit limit and/or the account exceeds the payment terms, EMS Repairs reserves the right to refuse delivery.
- 2.5 EMS Repairs reserves the right to substitute comparable Parts (or components of the Parts), and in all such cases EMS Repairs will notify the Client in advance of any such substitution.
- 2.6 The Client acknowledges and accepts that the supply of Parts for accepted orders may be subject to availability and if, for any reason, Parts are not or cease to be available, EMS Repairs reserves the right to vary the Price with alternative Parts as per clause 2.5.
- 2.7 In the event that the Parts and/or Services provided by EMS Repairs are the subject of an insurance claim that the Client has made, then the Client 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 EMS Repairs and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.8 Notwithstanding clause 2.6 EMS Repairs also reserves the right at their discretion to introduce additional new Parts as part of the Parts to be supplied.

3. Electronic Transactions Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to EMS Repairs as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Parts or Services on the Client's behalf and/or to request any variation to the Parts/Services on the Client's behalf (such authority to continue until all requested Parts/Services have been supplied or the Client otherwise notifies EMS Repairs in writing that said person is no longer the Client's duly authorised representative).
- 4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise EMS Repairs in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to EMS Repairs for all additional costs incurred by EMS Repairs (including EMS Repairs' profit margin) in providing any Parts/Services or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Change in Control

- 5.1 The Client shall give EMS Repairs not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by EMS Repairs as a result of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At EMS Repairs' sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by EMS Repairs to the Client; or
 - (b) EMS Repairs' estimated Price (subject to clause 7) which shall not be deemed binding upon EMS Repairs as the actual Price can only be determined upon completion of the Services. EMS Repairs undertakes to keep the Client informed should the actual Price look likely to exceed the original estimate.
 - (c) EMS Repairs' quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Time for payment for the Parts/Services being of the essence, the Price will be payable by the Client on the date/s determined by EMS Repairs, which may be:
- (a) upon delivery of the Parts/Services;
 - (b) thirty (30) days following the end of the month in which a statement is delivered to the Client's address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by EMS Repairs.
- 6.3 Payment may be made by cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and EMS Repairs.

EMS Repairs Pty Ltd – Terms & Conditions of Trade

- 6.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by EMS Repairs nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.5 Where EMS Repairs is requested to store the Client's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four hours of advice to the Client that they are ready for collection, then EMS Repairs (at its sole discretion) may charge a reasonable fee for storage.
- 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to EMS Repairs an amount equal to any GST EMS Repairs must pay for any supply by EMS Repairs under this or any other agreement for the sale of the Parts. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.

7. Additional Charges

- 7.1 EMS Repairs reserves the right to change the Price:
- (a) if a variation to the 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) in the event of increases to EMS Repairs in the cost of labour or Parts, or fluctuations in currency exchange rates, which are beyond EMS Repairs' control.
- 7.2 Any variations will be charged for on the basis of EMS Repairs' quotation, and will be detailed in writing, and shown as variations on EMS Repairs' invoice. The Client shall be required to respond to any variation submitted by EMS Repairs within ten (10) working days. Failure to do so will entitle EMS Repairs 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.
- 7.3 Where EMS Repairs is requested to store the Client's vehicle, or where the vehicle is not collected within twenty-four (24) hours of advice to the Client that it is ready for collection, then EMS Repairs (at its sole discretion) may charge a fee of (\$15.00 per day) for storage.
- 7.4 All tow and/or salvage fees will be charged to the Client, and will be added to the Price.
- 7.5 If EMS Repairs has been requested by the Client to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 7.6 The Client acknowledges and agrees that EMS Repairs 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.

8. Delivery

- 8.1 At EMS Repairs' sole discretion delivery of the Services shall take place when:
- (a) EMS Repairs provides the Services at EMS Repairs' address; or
 - (b) EMS Repairs provides the Services at the Client's nominated address.
- 8.2 Where EMS Repairs is to provide any Services at the Client's nominated address then the Client shall be liable for all costs incurred by EMS Repairs 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 EMS Repairs' standard rates and any Parts purchased for the Services).
- 8.3 Any time or date given by EMS Repairs to the Client is an estimate only. The Client must still accept delivery of the Parts even if late and EMS Repairs will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

9. Risk

- 9.1 Risk of damage to or loss of the Parts passes to the Client on Delivery and the Client must insure the Parts on or before Delivery.
- 9.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Client, EMS Repairs is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by EMS Repairs is sufficient evidence of EMS Repairs' rights to receive the insurance proceeds without the need for any person dealing with EMS Repairs to make further enquiries.
- 9.3 The Client acknowledges and agree that where EMS Repairs has performed temporary repairs on the vehicle that:
- (a) EMS Repairs offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) EMS Repairs will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair of the vehicle.
- 9.4 EMS Repairs will accept no responsibility for valuables or other items left in the Client's vehicle. It is the Client's responsibility to remove any valuables from the Client's vehicle prior to servicing/repair.
- 9.5 The Client acknowledges that EMS Repairs is only responsible for Parts that are replaced by EMS Repairs, and that in the event that other components subsequently fail, the Client agrees to indemnify EMS Repairs against any loss or damage to the Parts or the Client's vehicle, or caused by the components, or any part thereof howsoever arising.
- 9.6 EMS Repairs shall not be liable for the loss of or damage to the Client'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 Client's responsibility to remain with the vehicle to ensure security of the same), unless caused by the negligence of EMS Repairs, or EMS Repairs' employees.
- 9.7 It is the Client's responsibility to ensure that the Client'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 in the possession of or otherwise stored at EMS Repairs' premises. The vehicle and its contents, at all times, remain at the Client's sole risk.
- 9.8 The Client acknowledges that EMS Repairs can only provide its Services on a vehicle in its current state as supplied to EMS Repairs. EMS Repairs shall not accept any responsibility or liability for the workmanship of any third party that has worked on a Client's vehicle prior to Services being undertaken by EMS Repairs (including, but not limited to, poor paintwork or repairs).

10. Title

- 10.1 EMS Repairs and the Client agree that ownership of the Parts shall not pass until:
- (a) the Client has paid EMS Repairs all amounts owing to EMS Repairs; and
 - (b) the Client has met all of its other obligations to EMS Repairs.
- 10.2 Receipt by EMS Repairs 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.

EMS Repairs Pty Ltd – Terms & Conditions of Trade

- 10.3 It is further agreed that, until ownership of the Parts passes to the Client in accordance with clause 10.1:
- (a) the Client is only a bailee of the Parts and must return the Parts to EMS Repairs on request;
 - (b) the Client holds the benefit of the Client's insurance of the Parts on trust for EMS Repairs and must pay to EMS Repairs the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed;
 - (c) the Client 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 Client sells, disposes or parts with possession of the Parts then the Client must hold the proceeds of any such act on trust for EMS Repairs and must pay or deliver the proceeds to EMS Repairs on demand;
 - (d) the Client should not convert or process the Parts or intermix them with other Parts but if the Client does so then the Client holds the resulting product on trust for the benefit of EMS Repairs and must sell, dispose of or return the resulting product to EMS Repairs as it so directs;
 - (e) the Client irrevocably authorises EMS Repairs to enter any premises where EMS Repairs believes the Parts are kept and recover possession of the Parts;
 - (f) EMS Repairs may recover possession of any Parts in transit whether or not delivery has occurred;
 - (g) the Client 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 EMS Repairs;
 - (h) EMS Repairs may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Client.

11. Personal Property Securities Act 2009 ("PPSA")

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Client 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 Parts and/or collateral (account) – being a monetary obligation of the Client to EMS Repairs for Services – that have previously been supplied and that will be supplied in the future by EMS Repairs to the Client.
- 11.3 The Client 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 EMS Repairs 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 11.3(a)(i) or 11.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, EMS Repairs 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 Parts charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of EMS Repairs;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Parts and/or collateral (account) in favour of a third party without the prior written consent of EMS Repairs;
 - (e) immediately advise EMS Repairs 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.
- 11.4 EMS Repairs and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by EMS Repairs, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client must unconditionally ratify any actions taken by EMS Repairs under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

12. Security and Charge

- 12.1 In consideration of EMS Repairs agreeing to supply the Parts/Services, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Client indemnifies EMS Repairs from and against all EMS Repairs' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising EMS Repairs' rights under this clause.
- 12.3 The Client irrevocably appoints EMS Repairs and each director of EMS Repairs as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

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

- 13.1 The Client must inspect the Parts on delivery and must within twenty-four (24) hours of delivery notify EMS Repairs in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Parts as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow EMS Repairs to inspect the Parts.
- 13.2 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**).
- 13.3 EMS Repairs acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, EMS Repairs makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Parts. EMS Repairs' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, EMS Repairs' liability is limited to the extent permitted by section 64A of Schedule 2.

EMS Repairs Pty Ltd – Terms & Conditions of Trade

- 13.6 If EMS Repairs is required to replace the Parts under this clause or the CCA, but is unable to do so, EMS Repairs may refund any money the Client has paid for the Parts.
- 13.7 If the Client is not a consumer within the meaning of the CCA, EMS Repairs' liability for any defect or damage in the Parts is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by EMS Repairs at EMS Repairs' sole discretion;
 - (b) limited to any warranty to which EMS Repairs is entitled, if EMS Repairs did not manufacture the Parts;
 - (c) otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 13.1; and
 - (b) EMS Repairs has agreed that the Parts are defective; and
 - (c) the Parts are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Parts are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, EMS Repairs 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 Client failing to properly maintain or store any Parts;
 - (b) the Client using the Parts for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Parts after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by EMS Repairs;
 - (e) fair wear and tear, any accident, or act of God.
- 13.10 Notwithstanding anything contained in this clause if EMS Repairs is required by a law to accept a return then EMS Repairs will only accept a return on the conditions imposed by that law.

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 EMS Repairs' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes EMS Repairs any money the Client shall indemnify EMS Repairs from and against all costs and disbursements incurred by EMS Repairs in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, EMS Repairs' contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies EMS Repairs may have under this contract, if a Client has made payment to EMS Repairs, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by EMS Repairs under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 14.4 Without prejudice to EMS Repairs' other remedies at law EMS Repairs shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to EMS Repairs shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to EMS Repairs becomes overdue, or in EMS Repairs' opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by EMS Repairs;
 - (c) the Client 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 Client or any asset of the Client.

15. Cancellation

- 15.1 Without prejudice to any other remedies EMS Repairs may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions EMS Repairs may suspend or terminate the supply of Parts/Services to the Client. EMS Repairs will not be liable to the Client for any loss or damage the Client suffers because EMS Repairs has exercised its rights under this clause.
- 15.2 EMS Repairs may cancel any contract to which these terms and conditions apply or cancel delivery of Parts/Services at any time before the Parts/Services are delivered by giving written notice to the Client. On giving such notice EMS Repairs shall repay to the Client any money paid by the Client for the Parts/Services. EMS Repairs shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that the Client cancels delivery of Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by EMS Repairs as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Parts made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

16. Privacy Act 1988

- 16.1 The Client agrees for EMS Repairs to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by EMS Repairs.
- 16.2 The Client agrees that EMS Repairs may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 16.3 The Client consents to EMS Repairs being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Client agrees that personal credit information provided may be used and retained by EMS Repairs for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Parts; and/or

EMS Repairs Pty Ltd – Terms & Conditions of Trade

- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Parts; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Parts.
- 16.5 EMS Repairs may give information about the Client 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 Client including credit history.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above;
 - (b) name of the credit provider and that EMS Repairs is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client'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 the Client no longer has any overdue accounts and EMS Repairs has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of EMS Repairs, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.7 The Client shall have the right to request (by e-mail) from EMS Repairs:
- (a) a copy of the information about the Client retained by EMS Repairs and the right to request that EMS Repairs correct any incorrect information; and
 - (b) that EMS Repairs does not disclose any personal information about the Client for the purpose of direct marketing.
- 16.8 EMS Repairs will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 16.9 The Client can make a privacy complaint by contacting EMS Repairs via e-mail. EMS Repairs 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 17. General**
- 17.1 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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which EMS Repairs has its principal place of business, and are subject to the jurisdiction of the Dubbo Courts in that state.
- 17.3 Subject to clause 13 EMS Repairs shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by EMS Repairs of these terms and conditions (alternatively EMS Repairs' liability shall be limited to damages which under no circumstances shall exceed the Price of the Parts).
- 17.4 EMS Repairs may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 17.5 EMS Repairs may sub-contract all or any part of its rights and/or obligations under this contract with the written consent of the Client, which shall not be unreasonably withheld. Where EMS Repairs elects to sub-contract out any part of the Services, it shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and accepts that it has no authority to give any instruction to any of EMS Repairs' sub-contractors without the authority of EMS Repairs.
- 17.6 The Client agrees that EMS Repairs may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for EMS Repairs to provide Parts to the Client.
- 17.7 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.
- 17.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.