Automotive Technology Services (2017) Limited t/a Performance Industries **Terms & Conditions of Trade**

- Definitions "ATS" means Automotive Technology Services (2017) Limited tia Performance Industries, its successors and assigns or any person acting on behalf of and with the authority of Automotive Technology Services (2017) Limited. "Customer" means the person's buying the Goods as specified in any invoice, document, or order, and if there is more than one Customer is a reference to each Customer jointly and **1.** 1.1 8.7 1.2
- severainy. "Goods" means all Goods or Services supplied by ATS 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). "Price" means the Price payable for the Goods as agreed between ATS and the Customer in accordance with clause 4 below. 1.3
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2. 2.1

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- Acceptance 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. These terms and conditions may only be amended with ATS's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and ATS. All literature, specifications, dimensions and weights submitted with this quotation are approximate only and the data and descriptions contained in catalogues and other advertising material while being as accurate as possible may not necessarily be identical with Goods and Services ATS supplies, and ATS reserves the right to supply Goods that have minor modifications in specifications as ATS sees fit. 2.3
- al and price lists do not form part of the contract of sale of the Goods. 2.4

3. 3.1

Change in Control The Customer shall give ATS 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 number/s, or business practice). The Customer shall be liable for any loss incurred by ATS as a result of the Customer's failure to comply with this clause.

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- 4.2
- Price and Payment At ATSS sole discretion the Price shall be either: (a) as indicated on any invoice provided by ATS to the Customer; or (b) the Price as at the date of delivery of the Goods according to ATS's current price list; or (c) ATS's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thinty (30) days. ATS reserves the right to change the Price (a) in the event that the Customer requests a variation to ATS's quotation; or (b) where due to additional Services being required due to hidden or unidentifiable difficulties which are only discovered once the Services have commenced (including but not limited to the discovery of stock availability, corrosion, rust, and/or any variation made in writing or verbally at the request of the Customer); or (c) in the event of increases to ATS in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in the overseas transactions that may increase as a consequence of variations in the overseas transactions that may increase as a consequence of variations in the overseas transactions that may increase as a consequence of variations in the overseas transactions that may increase as a consequence of variations in the overseas transactions that may increase as a consequence of variations in the overseas transactions that may increase as a consequence of variations in the overseas transactions that may increase as a consequence of variations in the overseas transactions that may increase as a consequence of variations in the overseas transactions that may increase as a consequence of variations in the overseas transactions that may increase as a consequence of variations in the overseas transactions that may increase as a consequence of variations in the constance of the overseas transactions that may increase as a consequence of variations in the constant of the overseas transactions that may increase as a consequence of v
 - (c) In the event of increases to ATS in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in 8.15 foreign currency rates of exchange and/or international freight and insurance charges) which are beyond ATSs control.
 At ATS sole discretion a deposit may be required.
 Time for payment for the Goods being of the essence, the Price will be payable by the 8.16 Customer on the date's determined by ATS, which may be:
 (a) on delivery of the Goods;
 (b) for certain approved Customers, due twenty (20) days following the end of the month in which a slatement is posted to the Customers;

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- which a statement is posted to the Customer's address or 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 Customer by ATS: Payment may be made by cash, electronicion-line banking, credit card or by any other method as agreed to between the Customer and ATS. ATS may apply any payments received from or behalf of the Customer in reduction of the Price in such order and manner as ATS sees (1 (despite) any direction to the contrary and whether before or after the occurrence of the default). Unless otherwise stated the Price daes not include ST. In addition to the Price these include ST. 4.6
- 47 Unless otherwise stated the Price does not include GSI. In addition to the Price the Customer must pay to ATS an amount equal to any GST. ATS must pay for any supply by ATS under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set of 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.

5. 5.1

- Delivery of Goods 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
- 5.2 5.3
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at ATS's address; or (b) ATS's or ATS's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer's not present at the address. At ATS's sole discretion the cost of delivery is in addition to the Price. ATS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. Any time or date given by ATS to the Customer is an estimate only. ATS accepts no responsibility for delivery of delayods even if late and ATS will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- **6.** 6.1
- Compliance with Laws The Customers and ATS shall comply with the provisions of all statutes, regulations and any other relevant safety standards or legislation that may be applicable to the Services

7. 7.1

- Risk Risk of damage, loss or deterioration of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, ATS is sentified to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ATS is sufficient evidence of ATSs rights to receive the insurance proceeds without the need for any person dealing with ATS to make further enquires. 7.2
- to make number enquines. If the Customer requests ATS to leave Goods outside ATS'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. 7.3
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- Transmuture of the boddb. Customer's Responsibility & Acknowledgment The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available. Als reserves the right to vary the Price with alternative Goods as per clause 4.2. ATS also reserves the right to avail all Services until such time as ATS and the Customer agree to such changes. The Customer acknowledges that ATS can only provide its Services on a vehicle in its current state as supplied to ATS therefore ATS shall not accept any responsibility for the workmanship of any third party that has worked on a Customer's vehicle prior to Services being undertaken by ATS. Also, its engloyees, agents or contractors may test drive or carry out tests of the vehicle at 8.2
- being undertaken by ALS. ATS, its employees, agents or contractors may lest drive or carry out tests of the vehicle at ATS's discretion and may, if requested by the Customer, collect or re-deliver the vehicle where norminated by the Customer and ATS 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 reddess or whild conduct ATS, its employees, agents, 8.3 8.4
- damage which occurs to its or an order of a second of the excelless of wildly conduct of A15, its entryprogram, or contractors. Where the Customer has purchased Goods only and where ATS has not installed the Goods, such Goods are supplied on the understanding that they will be used strictly as per the manufacture's instructions. The Customer advowledges that they accept responsibility for the suitability of purpose and ATS shall not be responsible for any loss, damage or injury due to modify the vehicle or part to the exact specifications or instructions of the Customer, ATS can offer no guarantee that any technique used will provide the exact effect desired by the Customer.
- 8.5 Please note that a larger print version of these terms and conditions is available from ATS on request.

- **14.** 14.1
- Where the Customer has supplied materials for ATS to complete the Services, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in the materials. ATS shall not be responsible for any defacts in the Services, any loss or damage to the materials (ar any part thereof), howsoever arising from the use of materials supplied by the Customer. Where the Customer has left a vehicle with ATS for repair, restoration, or modification or for ATS to perform any other Service in relation to the item, it shall be at the sole adequately insured, or at all (including but not limited to, the perils of accident, fire, thet and burglary insured, or at all (including but not limited to, the perils of accident, fire, thet and burglary and all other usual risks) whils tored on ATS carrying out their Services. ATS shall not liable items from the vehicle prior to ATS carrying out their Services. ATS shall not liable in the event of any apparent loss or damage to personal/valuable letems form the vehicle in the vehicle is not be accompany. The Services. ATS shall not liable in the event of any apparent loss or damage to personal/valuable terms for the vehicle is not whiche.
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- personalivaluable items from the vehicle prior to ATS carrying out their Services. ATS shall not liable in the event of any apparent loss or damage to personalivaluable items left in the vehicle. If in the option of ATS the Customer's requests for modifications are in deemed to be unsuitable and unsafe to proceed with, then ATS reserves the right to halt the Services until such time as the Customer's around their Services and the Services in the Services and the vehicle (or any part thered), howsoever arising from the modifications and accepts that ATS shall not be responsible for any defects in the Services, any loss or damage to the vehicle (or any part thered), howsoever arising from the modifications instructions supplied by the Customer . Notwithstanding clause 8.9, In the event ATS agree to proceed with modification that falls outside the regulations of any relevant legislative body or for any modification that falls outside the regulations of any relevant legislative body or for any modification that falls outside the regulations of any relevant legislative body or for any modification to scertain readvorthines. The Customer's order the vehicle uncadworth, ATS will storingly recommend for the Customer's own risk. Modifications carried out by ATS to the Customer's own risk. Modifications carried out by ATS to the Customer's own risk. ATS accepts no liability as a result on modifications or the suspension (including, but any modifications carried out by ATS to the Customer's vehicle are at the Customer's own risk. ATS accepts no liability as a result on that may result in lessening the overal life of the engine clue coomay. Additional strain and stress on the braking system, increased tyre wear, risk of sustained loss of susting that may areal to linestori, towerd like obtime activations and stress on the raking system, increased tyre wear, risk of sustained loss of susting that may arealize the same and that the accepts the same with all faults and that no warranty is given by ATS as to the quality or sul 8.12
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- any excess funds. Where the Customer has purchased race equipment, such Goods are supplied on the understanding that they will be used strictly as per the manufacturer's instructions. The Customer acknowledges that they accept responsibility for the suitability of purpose and ATS shall not be responsible for any loss, damage or injury due to misuse or inappropriate use of the Goods supplied. The Customer agrees for any warranty claims it is the Customer's responsibility of deal with the manufacturer directly in the event of any claim on 18.3 184 such equipment

- **9.** 9.1
- 9.2 9.3
- Title
 Title
 ATS and the Customer agree that ownership of the Goods shall not pass until:
 (a) the Customer has paid ATS all amounts owing to ATS; and
 (b) the Customer has met all of its other obligations to ATS; and
 (c) ATS has released the security interest.
 Receipt by ATS of any form of payment thas been honoured, cleared or recognised.
 It is further agreed that:
 (a) until ownership of the Goods passes to the Customer in accordance with clause 9.1
 that the Customer is only a bailee of the Goods and must return the Goods to ATS on
 request.

 - request. (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for ATS and must pay to ATS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed. (c) the Customer must not estil, 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, dispose or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for ATS and must pay or deliver the proceeds to ATS on demand. 192
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Personal Property Securities Act 1999 ("PPSA") Upon assenting to these terms and conditions in writing the Customer acknowledges and **10.** 10.1

- s that: stat: state of the purposes of the purposes of the agr (a)
- 20.3 PPSA; and a security interest is taken in all Goods previously supplied by ATS to the Customer (if any) and all Goods that will be supplied in the future by ATS to the Customer. (b)
- any) and all Goods that will be supplied in the tuture by ATS to the Customer.
 The Customer undertakes to:
 The Sustomer undertakes to:
 as sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ATS may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register.
 (b) indemnity, and upon demand reimburse. ATS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby.
 (c) on register a financing change statement or a change demand without the prior written consent of ATS, and 21. 21.1
- (c) Not register a minimum summary and the second se 21.2 22.1
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- sales. ATS and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions. The Customer waves its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA. Unless otherwise agreed to in writing by ATS, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA. The Customer shall unconditionally ratify any actions taken by ATS under clauses 10.1 to 10.5. 10.5 10.6

- Security and Charge In consideration of ATS 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). The Customer idenmifies ATS from and against all ATS costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ATS's rights under this charge. 11.2
- 22.5 22.6 11.3
- cause. The Customer irrevocably appoints ATS and each director of ATS as the Customer's and lawful attorney/s to perform all necessary acts to give effect to the provisions o clause 11 including, but not limited to, signing any document on the Customer's behalf. Customer's Disclaimer The Customer hereby d
- **12.** 12.1 Consolute a biochamic scheme beneby disclaims any right to rescind, or cancel any contract with ATS or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by ATS and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment. 22.8
 - Defects The Customer shall inspect the Goods on delivery and shall within thirty (30) days of delivery for uninstalled Goods or ten (10) days for installed Goods (time being of the essence) notify ATS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall aftor ATS an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall all to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which ATS has agreed in writing that the Customer is nellful to reject, ATS's liability is limited to either (at ATS's discretion) replacing the Goods or repairing the Goods.

- Returns will only be accepted provided that: (a) The Customer has complied with the provisions of clause 13.1; and (b) ATS has agreed in writing to accept the return of the Goods; and (c) The Goods are returned at the Customer's cost within seven (7) days of the delivery
- (d) ATS will not be liable for Goods which have not been stored or used in a proper
- manner; and (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the dircumstances. ATS may (in its discretion) accept the return of Goods for credit but this may incur a function give of thereity two percent (25%) of the value of the returned Goods plus any 14.2 freight
- Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

Waranty For Goods not manufactured by ATS, the waranty shall be the current waranty provided by the manufacturer of the Goods. ATS shall not be bound by nor be responsible for any term, condition, representation or waranty other than that which is given by the manufacturer of the Goods.

the Goods. In the case of second hand Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by ATS as to the quality or suitability for any purpose and any implied warranty, statutory, or otherwise, is expressly excluded. ATS shall not be responsible for any 15.2 loss or damage to the Goods, or caused by the Goods, or any part thereof ho

Intellectual Property Where ATS has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of ATS. The Customer warrants that all designs, specifications or instructions given to ATS will not customer's order and the Customer agrees to indemnify ATS against any action taken by a third party against ATS in respect of any such infringement. The Customer agrees that ATS may [4th on cost] use for the purposes of marketing or entry into any competition, any documents, designs, drawings, photographic material of completed projects or Goods which ATS has created for the Customer.

Default and Consequences of Default 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 (25%) per calendar month (and at ATS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. If the Customer owes ATS any money the Customer shall indemnify ATS from and against all costs and disbursements incurred by ATS in recovering the det/ (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ATS's collection agency costs, and bank disbnour fees). Without prejudice to any other remedies ATS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions ATS may suspend or terminate the supply of Goods to the Customer. ATS will not be liable to the Customer or any loss or damage the Customer suffers because ATS has exercised its rights under this datue. Without prejudice to [ATS] solution remedies at law ATS shall be entitled to cancel all or any

has exercised its rights under this clause. Without prejudice to ATS's other remedies at law ATS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to ATS shall, whether or not due for payment, become immediately payable if. (a) any money payable to ATS becomes overdue, or in ATS sophion the Customer will be unable to make a payment when it falls due; (b) 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

creditors; or a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

Cancellation ATS 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 ATS shall repay to the Customer any money paid by the customer for the Goods. ATS shall not be liable for any loss or damage whatseover arising

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a cancellation tee of torty five percent (45%) of the Price will apply once the order has been place with ATS's supplier. Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has

Privacy Act 1993
The Customer authorises ATS or ATS's agent to:

(a) access, collect, retain and use any information about the Customer;
(i) (induing any overdue lines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
(iii) for the purpose of marketing products and services to the Customer
(b) disclose information about the Customer, source), any other redit provider or any credit reporting agency for the purposes of providing or obtaining a redit reference, debt collection or notifying a default by the Customer.

Where the Customer is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
The Customer shall have the right to request ATS to correct any incorrect information about the Customer is about the Customer is about the Customer form about the Customer formation about the createst of the privacy Act 1993.

Unpaid Selier's Rights Where the Customer has left any item with ATS for repair, modification, exchange or for ATS to perform any other service in relation to the item and ATS has not received or been tendered the whole of any moneys owing to it by the Customer, ATS shall have, until all moneys owing to ATS are paid. (a) a lien on the item; and (b) the right roterian or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods. The lien of ATS shall continue despite the commencement of proceedings, or judgment for any moneys owing to ATS having been obtained against the Customer.

General The failure by ATS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ATS's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, viaid, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, and any contract to which they apply shall be governed by the

Zealand. ATS shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profils suffered by the Customer arising out of a breach by ATS of these terms and conditions (alternatively ATSs liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods). The Customer shall not be entitled to set of against, or deduct from the Price, any sums oved or claimed to be owed to the Customer by ATS nor to withhold payment of any invoice because nort of the timevine in circumstances.

because part of that invoice is in dispute. ATS may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

Customer's consent. The Customer agrees that ATS may amend these terms and conditions at any time. If ATS makes a change to these terms and conditions, then that change will take effect from the date on which ATS notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for ATS to provide Goods to the Customer. 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.

lock-out, industrial action, file, induct, struint to unite event version us or developed and the either party. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary autionsations to allow it do do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it. If the Customer is a trust, these terms and conditions will bind each trustee of that trust and each trustee personally. ATS's rights against each trustee will only be limited if the trustee is an independent trustee (not being a trustee who has a right to or interest in any of the assets of the trust except in the trustee's capacity as a trustee of that trust. The liability of an independent trustee ends all be limited to the assets of the trust. However, this shall not affect the liability of an independent trustee who has guaranteed the Customer's obligations under these terms and conditions in his or her capacity.

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Shan hou be alreaded, prepubliced or impaired. These terms and conditions and any contract to which they apply shall be governed b laws of New Zealand and are subject to the jurisdiction of the Tauranga Courts of Zealand.

Consumer Guarantees Act 1993 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by ATS to the Customer. **16.** 16.1

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Privacy Act 1993