

## GENERAL TERMS & CONDITIONS OF TRADE

### 1 DICTIONARY

In these Conditions, unless the context requires otherwise, the following terms have the following meanings:

**AHS** means the company specified in (or contemplated by) a Contract as being the supplier of the relevant Products, being All Head Services (Aust) Pty Ltd ABN 54 143 407 694 as trustee of the All Head Services (Aust) Unit Trust or a Related Body Corporate of that company;

**AHS's Premises** means the relevant address or addresses as specified by AHS to the Customer from time to time, being 21 Technology Circuit, Hallam, Victoria 3803 and/or any other relevant address or addresses specified by AHS to the Customer from time to time;

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

**Conditions** means these General Terms & Conditions of Trade;

**Commercial Vehicle** means:

- (a) a "commercial motor vehicle" as defined in the *Road Safety Act 1986* (Vic); and
- (b) any other motor vehicle which AHS determines is a "Commercial Vehicle",

but excluding a Limited Warranty Vehicle;

**Consumer Contract** has the meaning given in section 23 of the Australian Consumer Law (and when used in the context of a Contract entered into (or varied) on or after 12 November 2016, includes a "small business contract" under section 23 of the Australian Consumer Law);

**Contract** means a contract (whether or not in writing) between or involving the Customer and AHS (and possibly one or more others) for the supply of Products by AHS to the Customer, to which these Conditions apply under clause 2.1, and includes any quotation or invoice given by AHS to the Customer, any Purchase Order to the extent it is accepted by AHS and the terms and conditions of the Loyalty Program, the Warranty Card and any Engine Reconditioner Warranty Card;

**Customer** means the person specified in (or contemplated by) a Contract as being the purchaser of the Products that relate to that Contract;

**Cylinder Exchange Product** means a cylinder head (which may contain reconditioned and/or new parts) that is supplied (or intended to be supplied) by AHS to the Customer on the understanding that the Customer will provide to AHS a Used Core and in circumstances where the Customer does not expect that particular Used Core to be repaired and/or reconditioned by AHS and returned to the Customer;

**Cylinder Head** means a Cylinder Exchange Product or Vehicle Owner Product supplied (or intended to be supplied) to the Customer under the relevant Contract;

**Engine Exchange Product** means a reconditioned or remanufactured engine for use in a Motor Vehicle (which may contain reconditioned and/or new parts) that is supplied (or intended to be supplied) by AHS to the Customer on the understanding that the Customer will provide to AHS a Used Engine and in circumstances where the Customer does not expect that particular Used Engine to be repaired and/or reconditioned by or on behalf of AHS and returned to the Customer;

**Engine Reconditioner** means the supplier of reconditioned and/or remanufactured engines to AHS for resale to Customers, being Northern Victorian Exchange Engines & Parts Pty Ltd ACN 107 164 867 and/or any other entity determined by AHS;

**Engine Reconditioner Warranty Card** means any warranty card or other similar document supplied to the Customer with an Engine Exchange Product setting out the Engine Reconditioner's terms and conditions relating to warranty claims for the Engine Exchange Product;

**Engine Stand** means a stand, case or frame that is used to hold and store an Engine Exchange Product or Used Engine in an upright position;

**Exchange Product** means a Cylinder Exchange Product or an Engine Exchange Product;

**Four Wheel Drive Vehicle** means a motor vehicle with a drivetrain that allows engine power to be transmitted to all 4 wheels of the vehicle some or all of the time, but excluding a Limited Warranty Vehicle;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Limited Warranty Vehicle** means a motor vehicle containing an engine where, in AHS's opinion, the design and/or functioning of the engine cooling system (and/or other issues associated with that engine) contribute significantly to the rate of cylinder head failure;

**Loyalty Program** means any loyalty program from time to time operated by AHS for the benefit of its customers, the terms and conditions of which are from time to time published on AHS's website (accessible at [www.allhead.com.au](http://www.allhead.com.au)) or otherwise given by AHS to the Customer;

**Motor Vehicle** means a Private Vehicle, Commercial Vehicle, Four Wheel Drive Vehicle or Limited Warranty Vehicle;

**Payment Date** in relation to an invoice issued by AHS to the Customer for Products supplied (or to be supplied) to the Customer, means:

- (a) the date specified in that invoice as the date for payment; or
- (b) if no payment date is specified in that invoice, the time of dispatch of those Products from AHS's Premises (or the premises of the Engine Reconditioner in the case of Engine Exchange Products) for delivery to the Customer;

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**Prescribed Rate** means the rate that is 2% per annum above the rate specified from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic);

**Prices** has the meaning given in clause 5.1;

**Privacy Act** mean the *Privacy Act 1988* (Cth);

**Private Vehicle** means a motor vehicle that is not a Commercial Vehicle, a Four Wheel Drive Vehicle or a Limited Warranty Vehicle;

**Products** means any goods and/or services supplied (or to be supplied) by or on behalf of AHS to the Customer (other than Engine Stands);

**Purchase Order** means any order, instruction, specification or requisition from the Customer to AHS relating to Products;

**Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth);

**Used Core** in relation to a Cylinder Exchange Product, means a used cylinder head which, once reconditioned by AHS (if considered appropriate by AHS), is intended for use in an engine with the same specifications as the engine from which the Cylinder Exchange Product originated;

**Used Engine** in relation to an Engine Exchange Product, means a used engine for use in a Motor Vehicle which, once reconditioned, is intended to be an engine with the same specifications as the Engine Exchange Product;

**Used Product** means:

- (a) in relation to a Cylinder Exchange Product, a Used Core; and
- (b) in relation to an Engine Exchange Product, a Used Engine;

**Vehicle Owner Product** means a cylinder head or other component of a Motor Vehicle received from the Customer that is (or is intended to be) repaired and/or reconditioned by (or at the request of) AHS (possibly using reconditioned and/or new parts) and then returned (or intended to be returned) to the Customer once it has been repaired and/or reconditioned; and

**Warranty Card** means any warranty card or other similar document from time to time published on AHS's website (accessible at [www.allhead.com.au](http://www.allhead.com.au)) or otherwise given by AHS to the Customer, and which contains terms and conditions dealing with the matters referred to in clause 13.

## **2 APPLICATION OF THESE CONDITIONS**

- 2.1. Unless otherwise agreed in writing, these Conditions apply to all Products supplied (or to be supplied) by or on behalf of AHS to the Customer, and are taken to be incorporated in and form part of each Contract.
- 2.2. Each Contract constitutes the whole agreement and understanding between AHS and the Customer in relation to the relevant Products.
- 2.3. If there is any inconsistency between the terms set out in a Purchase Order or other document issued by or on behalf of the Customer to AHS (on the one hand) and the terms of these Conditions (on the other hand), then the terms of these Conditions prevail to the extent of the inconsistency.
- 2.4. AHS may from time to time vary these Conditions (other than in relation to Prices, which may be varied in accordance with clause 5) by giving written notice to the Customer. If a Contract is a Consumer Contract (and the variation does not relate to Prices), then the Customer may refuse to accept such a variation by giving written notice to AHS within 7 days after receiving AHS's notice, in which case the variation will not apply to that Contract unless otherwise agreed in writing by AHS and the Customer. If the Customer does not make such an election within the relevant 7 day period or a Contract is not a Consumer Contract, then the Customer agrees that all Products ordered after notification of the variation by AHS will be subject to the variation and the placing of such orders will be taken to be an acceptance of the variation by the Customer.

## **3 ACCEPTANCE AND CANCELLATIONS**

- 3.1. The Customer is taken to have acknowledged and accepted these Conditions by doing any one or more of the following:
  - (a) ordering Products from AHS;
  - (b) taking delivery of Products;
  - (c) making and/or facilitating payment to AHS in respect of ordered Products; or
  - (d) by agreeing to any other document provided by AHS that incorporates these Conditions by reference.
- 3.2. No Purchase Order issued by the Customer will be taken to have been accepted by AHS unless acceptance of that Purchase Order has been communicated by AHS to the Customer in writing.
- 3.3. Once a Purchase Order has been issued by the Customer to AHS, it may only be cancelled by the Customer with the written consent of AHS (acting reasonably). If such consent is given, then the Customer must reimburse AHS on demand for all losses, damages and expenses directly or indirectly incurred by AHS (including any internal costs of AHS on the basis of an hourly rate determined by AHS from time to time) in the preparation, procurement, storage, handling and/or delivery of the relevant Products to fulfil the relevant Purchase Order before it was cancelled.
- 3.4. AHS may cancel any Contract at any time before the relevant Products are delivered by giving written notice to the Customer. On giving such notice, AHS must promptly repay to the Customer any money paid by the Customer to AHS for the relevant Products.

## **4 QUOTATIONS**

Any quotation given by AHS to the Customer for the supply of any Products to the Customer:

- (a) is subject to change or withdrawal by AHS giving written notice to the Customer at any time before receipt by AHS of written acceptance of the quotation by the Customer; and
- (b) unless AHS states otherwise in the quotation, will be taken to have been rejected by the Customer if it is not accepted by the Customer giving written notice to AHS within 30 days after the date of the quotation (or within 14 days after the date of the quotation to the extent that the quotation relates to Engine Exchange Products).

## 5 PRICES

- 5.1. Subject to the other provisions of this clause 5 and clause 11, all prices payable by the Customer to AHS for Products supplied (or to be supplied) by AHS to the Customer (**Prices**) are as set out in the relevant Contract, or if not specified in that Contract, as notified to the Customer by AHS from time to time.
- 5.2. The Prices will reflect any discounts or other benefits in respect of which the Customer may be eligible under the Loyalty Program. The terms and conditions of the Loyalty Program are taken to be incorporated in and form part of each Contract.
- 5.3. All Prices are subject to change by AHS from time to time on AHS giving the Customer written notice of any such change. All Products ordered after notification of any such Price change will be subject to the Price change, and the placing of such orders will be taken to be an acceptance of the Price change by the Customer.
- 5.4. Unless otherwise stated in a Contract, the Prices do not include any of the following in relation to the relevant Products:
- (a) any applicable GST (as that term is defined in the GST Act);
  - (b) any other taxes (other than income tax), duties, levies and other government fees and charges (**Other Taxes**); and
  - (c) any delivery, packaging, freight, insurance, installation and/or commissioning costs, expenses or surcharges (**Delivery Charges**).
- 5.5. Unless otherwise stated in a Contract, the amount of any applicable GST, Other Taxes and Delivery Charges will be added to, and must be paid by the Customer to AHS, in the same way and at the same time as the Price for the relevant Products is payable under or in connection with that Contract.

## 6 TERMS OF PAYMENT

- 6.1. Payment of the Price and any other amounts payable in respect of the relevant Products must be made in full by the Customer to AHS on or before the Payment Date applicable to the invoice from AHS for those Products, notwithstanding the fact that those Products may not have been delivered, supplied, installed or commissioned by that Payment Date.
- 6.2. Invoices may be issued progressively as Products are delivered or supplied to the Customer and as any required work in relation to the Products is carried out by AHS or the Engine Reconditioner (as applicable).
- 6.3. Each payment must be made by the Customer by cash, bank cheque, electronic funds transfer, credit card or by any other method as may be agreed by AHS and the Customer. The Customer must bear the cost of any merchant fees or other similar amounts incurred by AHS on any credit card payments.

## 7 EXCHANGE PRODUCTS

- 7.1. For each Exchange Product ordered by the Customer and which AHS agrees to supply to the Customer, the Customer must (at its own cost) send to AHS a Used Product as an "exchange" for that Exchange Product.
- 7.2. The Customer must ensure that each Used Product:
- (a) is received by AHS (or its nominee) at AHS's Premises within 21 days after the date of the invoice from AHS that applies to the relevant Exchange Product (or if clause 7.8(b) applies, within any time period specified in any request by AHS for that Used Product under that clause); and
  - (b) is in a reasonable condition (as determined by AHS) and packaged in accordance with AHS's requirements.
- 7.3. Where the Exchange Product ordered by the Customer is an Engine Exchange Product, the Used Engine to be sent by the Customer to AHS (or its nominee) under clauses 7.1 and 7.2 must be packaged in the Engine Stand that was delivered to the Customer with the relevant Engine Exchange Product.
- 7.4. Each time the Customer orders an Exchange Product, AHS may notify the Customer that:
- (a) the Customer must pay to AHS a deposit (for an amount specified or to be specified by AHS) (**Deposit**) before AHS supplies that Exchange Product to the Customer; or
  - (b) the Customer will be liable to pay AHS an additional charge (for an amount specified or to be specified by AHS) (**Exchange Charge**) if the relevant Used Product is not received by AHS (or its nominee) in accordance with clauses 7.1 and 7.2.
- 7.5. If the Customer is required to pay a Deposit to AHS under clause 7.4(a) in relation to an Exchange Product, then:
- (a) AHS will promptly refund the amount of that Deposit to the Customer if the relevant Used Product is received by AHS (or its nominee) in accordance with clauses 7.1 and 7.2; and
  - (b) where the relevant Used Product is not received by AHS (or its nominee) in accordance with clauses 7.1 and 7.2, the amount of that Deposit will immediately become non-refundable and may be retained by AHS for its own use absolutely.
- 7.6. If the Customer is required to pay an Exchange Charge to AHS under clause 7.4(b) and the relevant Used Product is not received by AHS (or its nominee) in accordance with clauses 7.1 and 7.2, then the amount of that Exchange Charge will become payable to AHS by the Customer on demand.
- 7.7. Title and risk in any Used Product sent by the Customer to AHS passes from the Customer to AHS when that Used Product is received by AHS (or its nominee) at AHS's Premises.
- 7.8. If clause 7.5(b) or 7.6 applies in relation to an Exchange Product, then:
- (a) where the relevant Used Product has been received by AHS, AHS must (if requested by the Customer within 30 days after AHS's receipt of that Used Product and at the Customer's cost) return that Used Product to the Customer, with title and risk in that Used Product passing back to the Customer when it is received by the Customer; and

- (b) if requested by AHS, the Customer must repeat its obligations under clauses 7.1 and 7.2 in relation to the supply of a Used Product as an “exchange” for that Exchange Product.
- 7.9. Without limiting the circumstances where AHS may make a determination under this clause 7 that a Used Product is not in a reasonable condition, a Used Product will not be in a reasonable condition for the purpose of this clause 7 if in the opinion of AHS that Used Product:
- (a) has a hole or other similar puncture or damage to any part of its exterior;
  - (b) has been machined below the product manufacturer’s minimum thickness specifications;
  - (c) is incomplete and not fully assembled;
  - (d) has a hardness reading on the Brinell scale that is less than the level required by AHS’s reconditioning standard (or the reconditioning standard of the Engine Reconditioner) from time to time;
  - (e) has been previously welded;
  - (f) is otherwise unsuitable for reconditioning; or
  - (g) in relation to Engine Exchange Products, the Engine Exchange Product is not received by AHS (or its nominee) in the required Engine Stand (or AHS reasonably determines that the Engine Stand has been damaged).

## **8 DELIVERY**

- 8.1. Where the Products are goods, the Products will be delivered (or taken to be delivered) when they are delivered to the delivery place specified in the relevant Contract. If no such address is specified in that Contract, the Customer is unable to take delivery at the address specified in the Contract or the Customer nominates an unmanned location for delivery, then delivery will be taken to occur at the time when the Products are ready for collection at AHS’s Premises (or such other collection premises that AHS may nominate), or at the time the Products are left at the unmanned location, as applicable.
- 8.2. Without limiting clause 8.1, if the Customer is unable to take delivery of the Products at the delivery place specified in the relevant Contract or it is unmanned at the time of delivery, then AHS may charge the Customer a reasonable fee for redelivery and/or storage of the relevant Products and the Customer must pay that charge to AHS on demand.
- 8.3. Delivery may be by separate instalments. Each separate instalment must be accepted and fully paid for by the Customer, notwithstanding any late delivery or any non-delivery of any other instalment.
- 8.4. Any times quoted for delivery are estimates only. AHS will not be liable to the Customer for any failure to deliver or for delay in the delivery of the Products. Any delay in delivery does not entitle the Customer to terminate any Contract.

## **9 RISK**

Risk in each Product will pass to the Customer at the time delivery of that Product to the Customer occurs (or is taken to have occurred) in accordance with clause 8.1.

## **10 TITLE**

- 10.1. Capitalised terms used in this clause 10 that are not otherwise defined in these Conditions have the meaning given in the PPSA.
- 10.2. The Customer agrees that legal title and property in the Products which are goods is retained by AHS (and that AHS retains a Security Interest in such Products and all Proceeds relating to those Products) until payment is received in cleared funds from the Customer of all sums owing to AHS in relation to those Products.
- 10.3. The Customer acknowledges and agrees that:
- (a) the Security Interest granted to AHS is also a Purchase Money Security Interest;
  - (b) the Customer consents to the registration of that Security Interest on the Personal Property Securities Register; and
  - (c) each Contract constitutes a Security Agreement under the PPSA and secures AHS’s right to receive the Price of all Products sold under that Contract and all other amounts from time to time owing by the Customer to AHS under that Contract or any other Contract.
- 10.4. The Customer must promptly do anything required by AHS to ensure that the relevant Security Interest is a perfected Security Interest, has priority over all other Security Interests in the relevant Products and any Proceeds relating to those Products, and is otherwise enforceable.
- 10.5. Until legal title and property in any Product has passed to the Customer, the Customer must:
- (a) before that Product is either resold by the Customer or becomes part of other goods of the Customer for resale by the Customer (in each case in the ordinary course of the Customer’s business), ensure that Product is kept separate from other goods and is readily identifiable as being supplied by AHS;
  - (b) where that Product is either resold by the Customer or becomes part of other goods which are then sold by the Customer, hold such part of the proceeds of any such sale as represents the amount payable by the Customer to AHS for that Product in a separate identifiable account as the beneficial property of AHS, and the Customer must pay that amount to AHS on demand; and
  - (c) not grant or create (or purport to grant or create) any Security Interest, lien or encumbrance over or in connection with or otherwise purport to offer or use as security or deal with in any other way, that Product or any other Personal Property that AHS has an interest in (other than any Security Interests, liens or encumbrances granted or created in favour of AHS), provided that this clause 10.5(c) does not prevent the Customer from selling that Product in the ordinary course of the Customer’s business.
- 10.6. If the Customer fails to pay any amount to AHS in relation to any Products by the due date required under the relevant Contract for that payment, then AHS may (without limiting any of its other rights and remedies) recover and resell any of the Products which are goods (and in which property has not passed to the Customer) and recover any Proceeds relating to those Products. In addition to any rights AHS may have under Chapter 4 of the

PPSA, AHS may, without notice, enter any premises where it suspects any such Products and/or any Proceeds relating to those Products may be located and remove them without committing a trespass, and the Customer authorises AHS to enter on to the premises where those Products and/or Proceeds are located to take possession of those Products and/or Proceeds for that purpose at any time.

- 10.7. The Customer agrees to waive any right to receive any notice or statement from AHS under the PPSA, except to the extent that the giving of that notice or statement is required by the PPSA and cannot be excluded by agreement.
- 10.8. To the maximum extent permitted by law:
- (a) for the purpose of sections 115(1) and 115(7) of the PPSA:
    - (i) AHS need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
    - (ii) sections 142 and 143 are excluded;
  - (b) for the purpose of section 115(7) of the PPSA, AHS need not comply with sections 132 and 137(3); and
  - (c) if the PPSA is amended after the date of the relevant Contract to permit AHS and the Customer to agree to not comply with or to exclude other provisions of the PPSA, then AHS may notify the Customer that any of those provisions are excluded, or that AHS need not comply with any of those provisions, as notified to the Customer by AHS, and that notice will be binding on the Customer.
- 10.9. If AHS exercises a right, power or remedy in connection with any Contract, then that exercise is taken not to be an exercise of a right, power or remedy under the PPSA, unless AHS states otherwise at the time of exercise. However, this clause 10.9 does not apply to a right, power or remedy that can only be exercised under the PPSA.
- 10.10. The Security Interests arising under this clause 10 attach to the relevant Products when the Customer obtains possession of those Products. The parties confirm that they have not agreed that any Security Interest arising under this clause 10 attaches at any later time.
- 10.11. The Customer agrees that any Engine Stand delivered to the Customer in connection with the supply of an Engine Exchange Product is supplied by AHS (as bailor) to the Customer (as bailee) and that legal title and property in that Engine Stand remains with AHS at all times. In addition to any rights AHS may have under clause 7, if that Engine Stand is not returned to AHS in accordance with clause 7.3, AHS may, without notice, enter any premises where it suspects that Engine Stand may be located and remove that Engine Stand without committing a trespass, and the Customer authorises AHS to enter on to the premises where that Engine Stand is located to take possession of that Engine Stand for that purpose at any time.
- 10.12. All fees and costs associated with the exercise of AHS's rights under this clause 10 must be paid or reimbursed by the Customer to AHS (or as directed by AHS) on demand.

## 11 PROVISION OF SERVICES

- 11.1. Where a Product (or any part of that Product) includes services to be provided by AHS (such as diagnostic services or repairs to Vehicle Owner Products required by the Customer), the date(s) on which those services must be provided by AHS will be the date(s) determined by the Contract or as otherwise agreed by AHS and the Customer. If for any reason, other than the negligence or wilful default of AHS, AHS is unable to proceed with the relevant services on the required date, then AHS may delay the provision of those services until AHS and the Customer have agreed on any necessary variations to the Prices resulting from that delay.
- 11.2. Unless otherwise specified in the relevant Contract, all Prices associated with the services have been quoted by AHS based on the assumption that:
- (a) the services will be provided during the normal working hours of 9am to 5pm (in the place where the services are to be provided);
  - (b) the services will be provided from the locations specified in the Contract; and
  - (c) the Customer will provide AHS and its employees, agents and contractors with reasonable access to any vehicles, parts, sites or premises required by AHS to carry out the services.

Any variation to these assumptions may result in additional costs being incurred by AHS, and AHS may delay the provision of the relevant services until AHS and the Customer have agreed on any necessary variations to the Prices as a result of those additional costs.

- 11.3. If AHS receives a Vehicle Owner Product from the Customer for repair, modification or for AHS to perform any other services in relation to that Vehicle Owner Product and AHS has not received payment from the Customer of all amounts owing to AHS under the relevant Contract (or any other Contract), then until all outstanding amounts have been paid to AHS in full, AHS has a lien on that Vehicle Owner Product.

## 12 DEFAULT

- 12.1. If the Customer fails to pay to AHS any amount when due under a Contract, then AHS may (at its sole discretion and without limiting its other rights and remedies):
- (a) suspend performance of its obligations under or in connection with that Contract until the amount outstanding is paid in full; and
  - (b) charge interest on the amount outstanding at the Prescribed Rate, calculated from and including the date on which the relevant payment became due until but excluding the date on which the relevant payment is made, which interest is payable by the Customer to AHS on demand.
- 12.2. Without limiting any other right or remedy either AHS or the Customer may have, AHS or the Customer (**Non-Defaulting Party**) may terminate a Contract with immediate effect by providing written notice to the other party (**Defaulting Party**) if the Defaulting Party:
- (a) breaches any of its obligations of under that Contract (including the obligation of the Defaulting Party to pay any amounts when due under that Contract) and if the breach is capable of remedy, the Defaulting Party does not remedy the breach within 7 days after being notified in writing by the Non-Defaulting Party; or
  - (b) has a receiver, receiver and manager, liquidator, provisional liquidator, trustee, mortgagee in possession, administrator, controller or inspector appointed under any law (or any similar official is appointed in respect of the Defaulting Party or any of its assets) or the Defaulting Party is unable to pay its debts when due or otherwise is, becomes or is deemed to be insolvent or bankrupt.

- 12.3. On termination by AHS under clause 12.2, AHS may at its option exercise any one or more of the following rights (in addition to any other rights it may have under the relevant Contract or at law):
- (a) suspend deliveries of further Products to the Customer;
  - (b) terminate any other Contract in relation to any Products that have not been delivered or supplied to the Customer;
  - (c) withdraw any credit facilities which may have been extended to the Customer and require immediate payment of all moneys owed to AHS by the Customer from time to time (and the Customer must comply with that requirement);
  - (d) issue an invoice for, and demand immediate payment of, Products ordered by the Customer but not delivered (and the Customer must comply with that demand);
  - (e) in respect of any Products or Engine Stands already delivered or otherwise supplied to the Customer, enter onto the Customer's premises to recover and resell those Products and Engine Stands (and the Customer must ensure that AHS is able to exercise that right of entry);
  - (f) to the extent permitted by law, sell or retain any property belonging to the Customer in which AHS has a lien; and
  - (g) exercise any rights that AHS has under the PPSA or any other applicable law.
- 12.4. On termination of the relevant Contract by AHS for any reason and without limiting AHS's other rights and remedies, the Customer will be responsible for any storage, repossession and recovery fees, including administrative and legal costs of recovery, in relation to the Products and all other reasonable costs and charges incurred by AHS in connection with the termination, which fees, costs and charges will be payable by the Customer to AHS on demand.

### 13 CYLINDER HEAD WARRANTY

13.1. Subject to this clause 13, if a Cylinder Head supplied to the Customer:

- (a) contains a defect in materials or workmanship which is the fault of AHS (**Cylinder Product Warranty**);
- (b) is damaged during the process of installing the Cylinder Head in the relevant Motor Vehicle (**No Fault Warranty**); or
- (c) is damaged following installation as a result of a blown cylinder head gasket (**No Blown Gasket Warranty**),

and in each case the Customer makes a claim under clause 13.2 in relation to that defect or damage which is accepted by AHS, then AHS must at its cost and at its option (and as the Customer's sole remedy, subject to clauses 13.3 and 13.4):

- (d) repair the Cylinder Head using new and/or refurbished parts;
- (e) replace the Cylinder Head with another cylinder head (which may contain new and/or refurbished parts); or
- (f) give the Customer a refund for the price paid by the Customer to AHS in relation to the Cylinder Head.

13.2. If the Customer wishes to make a warranty or other claim against AHS in relation to a Cylinder Head supplied to the Customer by exercising any of its rights under this clause 13 and/or any applicable law (**Cylinder Warranty Claim**), then the relevant defect or damage in relation to the Cylinder Head must have appeared before the expiration of the relevant Cylinder Warranty Period (as defined in clause 13.6), and before the expiration of that Cylinder Warranty Period the Customer must:

- (a) contact AHS by telephone on +61 1300 41 61 81 during normal business hours;
- (b) give AHS (by way of email or facsimile using the contact details for AHS set out at the beginning of these Conditions):
  - (i) details of the alleged defect or damage;
  - (ii) the Customer's full name, address and telephone number;
  - (iii) a copy of the Contract and any proof of purchase (e.g. invoice) relating to the Cylinder Head; and
  - (iv) any other information required by AHS; and
- (c) comply with any directions given by AHS (whether during the telephone call referred to in clause 13.2(a) or separately to that call), including in relation to any one or more of the following:
  - (i) any assistance required by AHS in diagnosing the issue with the Cylinder Head;
  - (ii) removing (or not removing) the Cylinder Head from the relevant Motor Vehicle; and
  - (iii) arranging for the Cylinder Head to be returned to AHS, together with any gaskets, bolts, water pumps, fuel samples and other items that may be required by AHS for diagnostic purposes.

13.3. If AHS elects to repair or replace a Cylinder Head as a result of a Cylinder Warranty Claim, then:

- (a) AHS will arrange for the Cylinder Head to be collected from the Customer's premises, and then for the repaired or replacement cylinder head to be returned to those premises (together with all necessary gaskets and bolts reasonably required by the Customer in order to reinstall the repaired or replacement cylinder head in the relevant Motor Vehicle);
- (b) the Customer must comply with AHS's reasonable directions so as to enable AHS to comply with its obligations under clause 13.3(a);
- (c) in the case of a Cylinder Product Warranty where AHS is satisfied that the relevant defect associated with the Cylinder Head is solely the fault of AHS:
  - (i) the Customer will not be charged for the repaired or replacement cylinder head, nor the gaskets and bolts supplied under clause 13.3(a);
  - (ii) the freight costs incurred by AHS under clause 13.3(a) will be the responsibility of AHS, not the Customer; and

- (iii) following receipt of a valid tax invoice, AHS will reimburse the Customer for any reasonable labour costs (up to a maximum rate of \$85 per hour plus GST) incurred by the Customer in removing the Cylinder Head from the relevant Motor Vehicle and then reinstalling the repaired or replacement cylinder head in that Motor Vehicle, but only to the extent that the relevant work was authorised by AHS and provided that the total amount of those labour costs does not exceed the total amount originally invoiced by AHS to the Customer (excluding any Deposit) for that Cylinder Head;
  - (d) in the case of a No Fault Warranty or No Blown Gasket Warranty or any other Cylinder Warranty Claim (other than a Cylinder Product Warranty) which is accepted by AHS:
    - (i) the Customer will not be charged for the repaired or replacement cylinder head, but will be invoiced at AHS's standard prices for the gaskets and bolts supplied under clause 13.3(a) (which the Customer must pay to AHS on demand);
    - (ii) AHS may invoice the Customer for some or all of the freight costs incurred by AHS under clause 13.3(a) (which the Customer must pay to AHS on demand); and
    - (iii) AHS will not be required to reimburse the Customer for any labour costs incurred by the Customer in removing the Cylinder Head from the relevant Motor Vehicle and then reinstalling the repaired or replacement cylinder head in that Motor Vehicle; and
  - (e) for the avoidance of doubt, AHS will not be required to carry out any work other than repair or replacement of the Cylinder Head, and the Customer is responsible for undertaking any required additional work such as installation of the repaired or replacement cylinder head and the setting of engine timing.
- 13.4. The Cylinder Heads come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have a Cylinder Head repaired or replaced if the Cylinder Head fails to be of acceptable quality and the failure does not amount to a major failure. These benefits are in addition to any other rights and remedies available to the Customer at law in relation to Cylinder Heads, subject to clause 16. This clause 13.4 only applies where the Customer is a consumer in connection with the supply of the Cylinder Heads.
- 13.5. To the extent that these Conditions place a repair obligation on AHS, goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods. If the goods are capable of retaining user-generated data, repair of the goods may result in loss of the data. Terms used in clause 13.4 and this clause 13.5 which are not defined in these Conditions, have the meaning given to them in the Australian Consumer Law.
- 13.6. For the purpose of this clause 13, **Cylinder Warranty Period** means:
- (a) for an Exchange Product installed (or to be installed) in the engine of:
    - (i) a Private Vehicle, Commercial Vehicle or Four Wheel Drive Vehicle - 12 months from the date on which the Customer received that Cylinder Head from AHS or the time period taken for that Motor Vehicle (with that Cylinder Head installed) to travel 20,000km following the Customer's receipt of that Cylinder Head from AHS (whichever period expires first); or
    - (ii) a Limited Warranty Vehicle – 3 months from the date on which the Customer received that Cylinder Head from AHS; and
  - (b) for a Vehicle Owner Product installed (or to be installed) in the engine of:
    - (i) a Private Vehicle, Commercial Vehicle or Four Wheel Drive Vehicle - 12 months from the date on which the Customer received that Cylinder Head from AHS or the time period taken for that Motor Vehicle (with that Cylinder Head installed) to travel 20,000km following the Customer's receipt of that Cylinder Head from AHS (whichever period expires first); or
    - (ii) a Limited Warranty Vehicle – 3 months from the date on which the Customer received that Cylinder Head from AHS,
 or in each case, any longer period required by law.
- 13.7. If AHS supplies a repaired or replacement Cylinder Head under this clause 13, then the relevant Cylinder Warranty Period for that Cylinder Head will not recommence and will remain as beginning on the date on which the Customer received the original Cylinder Head from AHS before that repair or replacement.
- 13.8. To the maximum extent permitted by law, clauses 13.1, 13.2, 13.3 and 13.4 do not apply, and a Cylinder Warranty Claim cannot be made, in respect of any loss, damage, failure or defect which, in AHS's opinion, relates to or arises from any one or more of the following in relation to a Cylinder Head:
- (a) the Cylinder Head being reconditioned or otherwise intended for petrol use only, but is used with liquid petroleum gas (or vice versa);
  - (b) the Cylinder Head being reconditioned or otherwise intended for leaded petrol use only, but is used with unleaded petrol (or vice versa);
  - (c) the Cylinder Head not having been installed, used, serviced or repaired in accordance with the manufacturer's specifications or recommendations (or any instructions, specifications or recommendations of AHS);
  - (d) the Cylinder Head being repaired, modified or altered in a manner that has not been authorised by the manufacturer or AHS;
  - (e) the Cylinder Head otherwise having been misused, abused, neglected or improperly installed, stored or maintained;
  - (f) the Cylinder Head being used in conjunction with other parts or accessories that have not been manufactured, supplied or approved by AHS;
  - (g) normal wear and tear of the Cylinder Head;
  - (h) the Cylinder Head being installed in an engine for which the Cylinder Head was not designed or an engine that is worn or unserviceable;
  - (i) the Motor Vehicle in which the Cylinder Head is installed being involved in motorsport (or other high performance conditions) or in an accident or other incident;

- (j) the Cylinder Head being used in a Motor Vehicle where an after-market turbo charger has been fitted;
  - (k) the Cylinder Head being subjected to abnormal temperatures, humidity, pressure, stress or other conditions;
  - (l) the continued use of the Cylinder Head after the relevant defect or damage is discovered;
  - (m) any degeneration of the cooling system of the Motor Vehicle in which the Cylinder Head is installed;
  - (n) damage to any water pump, fan belt, cooling component or other part or accessory in the Motor Vehicle in which the Cylinder Head is installed; or
  - (o) the Cylinder Head being lost or damaged as a result of a power surge, accident, theft, vandalism, misuse, abuse, negligence, collision with another object, operation of a computer virus, fire, flood, liquid spillage or ingress, earthquake, thunderstorm activity, acts of God or any other event or circumstance beyond the reasonable control of AHS.
- 13.9. Without limiting the other provisions of this clause 13 and to the maximum extent permitted by law, clauses 13.1, 13.2, 13.3 and 13.4 do not apply, and AHS will not be liable under any Cylinder Warranty Claim, in relation to a Cylinder Head if any one or more of the following apply:
- (a) the Customer has not paid AHS in full the Price applicable to the Cylinder Head and all other amounts owing by the Customer to AHS in accordance with these Conditions (whether in relation to that or any other Product);
  - (b) the Customer not having strictly complied with this clause 13 (or any provision of the Warranty Card) in relation to the Cylinder Head and/or the relevant Cylinder Warranty Claim;
  - (c) the Customer not having strictly complied with all other provisions of the Contract applicable to the Cylinder Head; or
  - (d) AHS determining that the Cylinder Head is not defective or damaged, or any such defect or damage is not within the scope of the warranty coverage provided under this clause 13.
- 13.10. If, following any inspection or other assessment of a Cylinder Head in connection with a Cylinder Warranty Claim, AHS determines that the Cylinder Head is not defective or damaged (or that any such defect or damage is not within the scope of the warranty coverage provided under this clause 13), then the Customer must pay AHS a handling fee in accordance with clause 15.2.
- 13.11. The terms and conditions of the Warranty Card are taken to be incorporated in and form part of each Contract.

#### 14 ENGINE WARRANTY

- 14.1. Subject to this clause 14, if an Engine Exchange Product supplied to the Customer contains a defect in materials or workmanship which is the fault of the Engine Reconditioner (**Engine Product Warranty**) and the Customer makes a claim under clause 14.2 in relation to that defect or damage which is accepted by AHS, then AHS must at its cost, procure that the Engine Reconditioner complies with the terms of the Engine Reconditioner Warranty Card.
- 14.2. If the Customer wishes to make a warranty or other claim against AHS or the Engine Reconditioner in relation to an Engine Exchange Product supplied to the Customer by exercising any of its rights under this clause 14, the Engine Reconditioner Warranty Card and/or any applicable law (**Engine Warranty Claim**), then the relevant defect or damage in relation to the Engine Exchange Product must have appeared before the expiration of the relevant warranty period set out in the Engine Reconditioner Warranty Card (**Engine Warranty Period**), and before the expiration of that Engine Warranty Period the Customer must:
- (a) contact the Engine Reconditioner by telephone on (03) 5868 2253 during normal business hours;
  - (b) give the Engine Reconditioner (by way of email or facsimile sent to [northernvictorian@bigpond.com](mailto:northernvictorian@bigpond.com) or (03) 5868 2234)
    - (i) details of the alleged defect or damage;
    - (ii) the Customer's full name, address and telephone number;
    - (iii) a copy of the Contract and any proof of purchase (e.g. invoice) relating to the Engine Exchange Product; and
    - (iv) any other information required by the Engine Reconditioner; and
  - (c) comply with any directions given by the Engine Reconditioner (whether during the telephone call referred to in clause 14.2(a) or separately to that call), including in relation to any one or more of the following:
    - (iv) any assistance required by the Engine Reconditioner in diagnosing the issue with the Engine Exchange Product;
    - (v) removing (or not removing) the Engine Exchange Product from the relevant Motor Vehicle; and
    - (vi) arranging for the Engine Exchange Product to be returned to the Engine Reconditioner, together with any gaskets, bolts, water pumps, fuel samples and other items that may be required by the Engine Reconditioner for diagnostic purposes.
- 14.3. The Engine Exchange Products come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have an Engine Exchange Product repaired or replaced if the Engine Exchange Product fails to be of acceptable quality and the failure does not amount to a major failure. These benefits are in addition to any other rights and remedies available to the Customer at law in relation to the Engine Exchange Product, subject to clause 16. This clause 14.3 only applies where the Customer is a consumer in connection with the supply of the Engine Exchange Product.
- 14.4. To the extent that these Conditions or the Engine Reconditioner Warranty Card place a repair obligation on AHS or the Engine Reconditioner, goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods. If the goods are capable of retaining user-generated data, repair of the goods may result in loss of the data. Terms used in clause 14.3 and this clause 14.4 which are not defined in these Conditions, have the meaning given to them in the Australian Consumer Law.

- 14.5. If AHS or the Engine Reconditioner supplies a repaired or replacement engine under this clause 14, then the relevant Engine Warranty Period for that engine will not recommence and will remain as beginning on the date on which the Customer received the original Engine Exchange Product from AHS before that repair or replacement.
- 14.6. To the maximum extent permitted by law, clauses 14.1, 14.2 and 14.3 do not apply, and an Engine Warranty Claim cannot be made, in respect of any loss, damage, failure or defect which, in AHS's opinion, is excluded by the terms of the Engine Reconditioner Warranty Card.
- 14.7. Without limiting the other provisions of this clause 14 and to the maximum extent permitted by law, clauses 14.1, 14.2 and 14.3 do not apply, and AHS will not be liable under any Engine Warranty Claim, in relation to an Engine Exchange Product if any one or more of the following apply:
- (a) the Customer has not paid AHS in full the Price applicable to the Engine Exchange Product and all other amounts owing by the Customer to AHS in accordance with these Conditions (whether in relation to that or any other Product);
  - (b) the Customer not having strictly complied with this clause 14 (or any provision of the Engine Reconditioner Warranty Card) in relation to the Exchange Engine Product and/or the relevant Engine Warranty Claim;
  - (c) the Customer not having strictly complied with all other provisions of the Contract applicable to the Exchange Engine Product; or
  - (d) AHS or the Engine Reconditioner determining that the Engine Exchange Product is not defective or damaged, or any such defect or damage is not within the scope of the warranty coverage provided under this clause 14 or the Engine Reconditioner Warranty Card.
- 14.8. If, following any inspection or other assessment of an Engine Exchange Product in connection with an Engine Warranty Claim, AHS or the Engine Reconditioner determines that the Engine Exchange Product is not defective or damaged (or that any such defect or damage is not within the scope of the warranty coverage provided under this clause 14 or the Engine Reconditioner Warranty Card), then the Customer must pay AHS a handling fee in accordance with clause 15.2.
- 14.9. The terms and conditions of the Engine Reconditioner Warranty Card are taken to be incorporated in and form part of each Contract, and for that purpose, AHS is taken to enter into each Contract in its own capacity and as agent for the Engine Reconditioner.

## 15 RETURN OF PRODUCTS

- 15.1. To the maximum extent permitted by law, and subject to clauses 13, 14, 15.2 and 16, AHS may, but will not be required to, accept a return of any Product and no return will be accepted by AHS unless it is authorised in writing by AHS. Any return of a Product by a Customer to AHS (or its nominee) will be at the Customer's risk.
- 15.2. If the Customer returns any Product to AHS (or its nominee), then except to the extent that AHS is responsible for the relevant amount under clause 13 or 14, the Customer must pay to AHS on demand a handling fee for an amount specified by AHS. This handling fee will be up to 10% of the Price of that Product (exclusive of any applicable GST), plus any freight costs incurred by AHS in collecting that Product from the Customer and then returning it to the Customer if AHS elects to do so.

## 16 LIABILITY

- 16.1. Subject to the other provisions of this clause 16, and to the maximum extent permitted by law, AHS is not liable to the Customer or to any other person for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, or loss or damage resulting from wasted management time, irrespective of whether the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise, or AHS or any other person was previously notified of the possibility of that loss or damage.
- 16.2. Any warranty, guarantee, condition, representation, undertaking or other right that would be implied in or otherwise required in connection with the relevant Contract by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.
- 16.3. Notwithstanding the other provisions of this clause 16 and anything else in these Conditions, AHS does not exclude, restrict or modify any warranty, guarantee, condition, representation, undertaking or other right under any statute (including the *Competition and Consumer Act 2010 (Cth)*) where to do so would contravene that statute or cause any part of these Conditions to be void (**Non-excludable Condition**).
- 16.4. Subject to this clause 16 and notwithstanding clauses 13 and 14, the maximum aggregate liability of AHS for all proven losses, damages and claims arising out of any Contract, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Customer to AHS under the relevant Contract to which the relevant breach, negligence, tort or common law or statutory action relates.
- 16.5. To the maximum extent permitted by law, and except to the extent that clause 13 or 14 expressly provides otherwise, the liability of AHS for a breach of any Non-excludable Condition in respect of any goods or services supplied under a Contract that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited, at AHS's option to:
- (a) in the case of goods:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the goods repaired; and
  - (b) in the case of services:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.

- 16.6. For the purposes of clauses 16.5(a)(iv) and 16.5(b)(ii), all labour costs associated with the relevant repair of goods or re-supply of services (as applicable) must be calculated at a rate of \$85 per hour (plus any applicable GST) or any alternative rate reasonably determined by AHS.

## **17 INTELLECTUAL PROPERTY**

Any technical information, knowledge or installation methods at any time given or transmitted either orally or in writing by AHS to the Customer (or otherwise obtained by the Customer directly or indirectly from AHS) will remain the property of AHS and must be treated by the Customer as confidential information of AHS. Except to the extent expressly permitted by a Contract, the Customer must not without the prior written consent of AHS use any such information, knowledge or methods for any purpose, nor sell, transfer or divulge any of it in any manner to anyone.

## **18 FORCE MAJEURE**

- 18.1. Where any failure or delay by AHS in the performance of its obligations under a Contract is caused, directly or indirectly, by an event or occurrence that is beyond the reasonable control of AHS (**Force Majeure Event**), AHS is not liable for that failure or delay and AHS's obligations under that Contract are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.
- 18.2. A Force Majeure Event includes the failure or inability of any suppliers of AHS to supply any goods or services required by AHS in order to supply the Products to the Customer.

## **19 CONSENTS AND PRIVACY**

- 19.1. For the purposes of AHS applying its credit policy and ongoing credit management of the Customer's account with AHS, the Customer consents to AHS collecting and using personal information of or relating to the Customer in accordance with any privacy policy of AHS published from time to time on AHS's website (accessible at [www.allhead.com.au](http://www.allhead.com.au)).
- 19.2. Without limiting clause 19.1, the Customer acknowledges and agrees that AHS may:
- (a) obtain from a credit reporting agency a credit report containing personal credit information about the Customer; and
  - (b) exchange information about the Customer with credit reporting agencies, trade referees and other persons listed in credit reports relating to the Customer, for the purpose of:
    - (i) assessing any application submitted by the Customer;
    - (ii) notifying other credit providers of a default by the Customer;
    - (iii) exchanging information with other credit providers; and
    - (iv) assessing the creditworthiness of the Customer,
- and the Customer acknowledges and agrees that the information that may be exchanged may include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are permitted to exchange under the Privacy Act.
- 19.3. For the purpose of the Privacy Act, the Customer agrees to AHS being given a credit report relating to the Customer to assist AHS in collecting payments that are overdue in respect of any commercial credit provided to the Customer by AHS.
- 19.4. The Customer acknowledges and agrees that the Customer's personal credit information may be used and retained by AHS for the following purposes (and any other purposes agreed between the Customer and AHS from time to time or otherwise required or permitted by law):
- (a) the supply of Products;
  - (b) the marketing of Products by AHS;
  - (c) analysing, verifying and/or checking the Customer's credit, payments and/or status in relation to the supply of Products;
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and
  - (e) enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Products.
- 19.5. AHS may give information about the Customer to a credit reporting agency to obtain a credit report about the Customer and to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 19.6. The information given to a credit reporting agency may include:
- (a) personal particulars (including the Customer's name, sex, address, previous address, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Customer's application for credit and the amount requested;
  - (c) advice that AHS is a current credit provider to the Customer;
  - (d) details concerning any overdue accounts, loan repayments and any other outstanding moneys owing which are overdue by more than 30 days;
  - (e) advice that the Customer's overdue accounts, loan repayments and any other outstanding moneys are no longer overdue in respect of any default that has been reported;
  - (f) information that, in the opinion of AHS, the Customer has committed a serious credit infringement (that is, fraudulently or showing an intention not comply with the Customer's credit obligations);
  - (g) advice that cheques drawn by the Customer for \$100 or more have been dishonoured more than once; and

(h) that credit provided to the Customer by AHS has been paid or otherwise discharged.

## **20 GENERAL**

- 20.1. Headings are used for convenience only and do not affect the interpretation of any Contract.
- 20.2. Any notice to be given by a party under these Conditions may be given personally, by post, by fax or by email.
- 20.3. Words importing natural persons include partnerships, bodies corporate, associations, governments, and governmental and local authorities and agencies.
- 20.4. A reference to either AHS or the Customer includes its respective executors, administrators, successors and permitted assigns.
- 20.5. Wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".
- 20.6. If any provision of a Contract is or becomes invalid, void, illegal or unenforceable, then the validity, existence, legality and enforceability of the remaining provisions will not be affected.
- 20.7. A failure or delay by a party in exercising any right conferred on that party under any Contract does not operate as a waiver of the right.
- 20.8. Neither party may transfer, assign, create an interest in or deal in any other way with any of its rights under any Contract without the prior written consent of the other party (which consent must not be unreasonably withheld or delayed).
- 20.9. The Customer must not set off against or deduct from any Price or other amounts owing to AHS, any amounts owed or claimed to be owed to the Customer by AHS, nor withhold payment of any amount due to AHS because that amount or any part of it is in dispute.
- 20.10. Each Contract is governed by and must be construed in accordance with the laws in force in Victoria. The Customer submits to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to that Contract.