

## Wizard 4x4

### **Important Consumer Information:**

Wizard 4X4's goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be acceptable quality. Wizard 4X4 as the Supplier and Fitter are to be the only party involved in replacements or repairs to any goods.

### **General Terms and Conditions of Supply**

#### **1. Parties**

The parties to these terms are:

- (a) Wizard 4X4 ACN 609 213 694 of 30 Isa Street Fyshwick in the State of the Australian Capital Territory, and is referred to as 'us', 'our' or 'Wizard 4X4';
- (b) The customer who acquires our goods and/or services, who is referred to as 'you' and 'your'; and
- (c) Car Dealerships who represent the customer acquiring the goods and/or services, who is referred to as 'you' and 'your' and 'representative' and 'dealership'.

#### **2. Application**

These terms and conditions apply to all goods and services that we provide, unless we agree otherwise in writing.

#### **3. Customer Contracts**

(a) Where we agree to provide you with goods and/or services, your customer contract with us is made up of (in order of precedence):

- (i) the quotation and job card; and
- (ii) these terms.

(b) Unless approved by us otherwise, all orders you make with us must be in writing in the form of an approved quotation or job card. All dealership orders must be in writing in the form of an email sent to [info@wizard4x4.com.au](mailto:info@wizard4x4.com.au). The order must include, among other things:

- (i) The make and model of the vehicle;
- (ii) The year of manufacture of the vehicle;
- (iii) The colour and paint code of the vehicle;
- (iv) Specific details of goods to be ordered/fitted;
- (v) Measurements of vehicles; and
- (vi) Customer confirmation for custom goods and measurements.

(c) A quotation that we provide you is not an offer by us to supply the goods and/or services.

(d) If you make an order based on a quotation, we will:

- (i) notify you in writing of our agreement to your offer; or
- (ii) deliver you the goods and/or provide you the services.

(e) If we agree to provide you with goods/or services, then we may impose conditions on our agreement, including the requirement for payment of a security deposit. Any such condition forms part of your customer contract with us and will be documented.

(f) Any variation of the customer contract must be in writing and approved by us before the variation is deemed effective.

#### **4. Quotations and Pricing**

- (a) Where we provide you with a quotation, that quotation is valid for a period of 30 days unless we advise you otherwise.
- (b) The prices shown in our price list are subject to change without notice.
- (c) Where materials or other goods that we use in the provision of our goods and/or services are not available or deficient in any way, then we are not obliged to accept an order.
- (d) We may vary pricing or quotations at any time before we accept an order and enter a customer contract with you. Notification will be made and agreement will be sought before the order is accepted.

#### **5. Payment**

- (a) Private customers must pay all outstanding amounts upon collection of your vehicle.
- (b) Dealerships must pay our invoices in cleared funds within 7 days of their date of issue, unless we advise you otherwise.
- (c) Some Goods and Services require full payment prior to installation. This will be advised if applicable.
- (d) Payment terms of any goods and/or services sold to you are an essential term of any customer contract.

#### **6. Final Sale & Delivery**

- (a) Any supply of goods and/or services is deemed final upon the delivery or installation of the goods.
- (b) You acknowledge that we will not refund you if you change your mind after the sale is final.
- (c) All delivery and freight charges are payable by you, unless we agree otherwise in writing. This amount will be included in the quotation.
- (d) Acceptance of the goods delivered to you, pursuant to this agreement, will be deemed for all purposes to have taken place at the expiration of 7 days from the date of delivery.

- (e) Any faults or questions about the Goods and/or Services must be advised to us as soon as possible for rectification or replacement if deemed faulty.

## 7. Returns

(a) When you buy from us, you should choose carefully, as you will not automatically get a refund for simply changing your mind. We will only accept a return (at our absolute discretion) if:

- (i) Goods have been wrongly described; or
- (ii) Different from the sample shown to you

(b) If you pay a deposit for a purchase and subsequently change your mind, we will charge you a fee of 30%, and will withhold the fee from your deposit.

(c) No goods will be accepted for return:

- (i) If you do not provide us with proof of purchase – this is required to assist us in verifying that the goods were purchased from us and the date of purchase;
- (ii) The goods have been tampered with or is damaged;
- (iii) The product has been on-sold or assigned or otherwise disposed of by its original owner;
- (iv) If the goods are custom made and not a 'off the shelf' product;

## 8. Availability of Goods

(a) Subject to Clauses 12 and 15, and to the extent permitted by law, you acknowledge and agree that from time to time, some Goods and Services may be out of stock or unavailable and we may not be able to fulfill all or part of your order. If this occurs, Wizard 4X4 will contact you within five (5) Business Days to arrange a full or partial refund.

(b) We reserve the right to withdraw or suspend any Goods and/or Services from sale either temporarily or permanently at any time without notice to you.

(c) You acknowledge and agree that Wizard 4X4, to the extent permitted by law, is not liable for any loss and/or damage you or any third party may suffer as a result of:

- (i) The unavailability of stock of any Good; and/or
- (ii) The unavailability of any Service; and/or
- (iii) Us withdrawing or suspending the availability of a particular Good or Service; and/or
- (iv) Us not being able to fulfill and/or process your order; and/or
- (v) Any delay in processing your refund.

(c) Where your order is affected by an error (for example, in relation to a wrong part sent as part of the order) Wizard 4X4 will proceed to fulfill the remainder of your order in accordance with these Terms and Conditions. If you are not satisfied with the partial fulfillment of your order, you can return your order to us in accordance with the Returns Policy.

(d) You acknowledge and agree that:

- (i) All pictures and images of Goods displayed are for illustration purposes only, and the sizes and dimensions of Goods may differ in real life;
- (ii) You have read any corresponding written description of the Goods and Services prior to submitting your order;
- (iii) The colour of Goods as shown on the website may vary slightly in shade in real life;
- (iv) Where we provide sizing or other measurements in the descriptions of a Good (where applicable), it is your responsibility to ensure that the actual size of each item is suitable for your purpose prior to submitting your order; and
- (v) Any accessory featured with the Goods is for illustration purposes only.

## 9. Back Orders

Back orders will be supplied to you on the Terms and Conditions applying at the time the original order are accepted by us.

## 10. Installation Services

(a) Where we agree to provide installation services, we do so, subject to the following conditions:

- (i) That any proposed installation date is only indicative and is subject to variation by us;
- (ii) That any proposed installation date is subject to your payment of money and compliance with your obligations under your customer contract with us.

(b) Any delay in installation is not deemed to be a breach of a customer contract.

(c) You acknowledge we will not be liable for any:

- (i) Indirect, secondary or consequential loss, which you may suffer, as a result of the installation service not being provided on the installation date; and
- (ii) Loss and damage whatsoever, if the installation service is not provided on the installation date, as a result of your own actions and/or conduct.

## 11. Acknowledgements

You acknowledge that:

- (a) That when we paint goods for you, we do not warrant the accuracy of the colour of the painted goods, to the colour you have ordered, due to factors outside of our control e.g. There will be a colour variation of up to 10% between painting on fiberglass, plastic and/or metal. If you would like the paint colour of the goods to be as accurate as possible, we require you to provide us with your fuel cap (at your cost), so as we can match the paint as best we can with our painters.
- (b) The goods are weather resistant (e.g. deterioration from exposure to harsh elements) but we do not warrant they are weather or dust proof.
- (c) We are not liable to you for fair wear and tear from your use of the goods e.g. scratching and marking on the surfaces where Goods meets the body of the vehicle.

## 12. Warranty on Goods

- (a) All goods we sell you will have the benefit of our manufacturer warranty.
- (b) Warranty claims will only be considered for acceptance by us, if the return of the goods, is in accordance with our Warranty Policy.
- (c) We may vary or amend our Warranty Policy without notice. The website will be updated with the most recent warranty policy.

## 13. Title and Risk

- (a) Risk in all goods passes to you upon delivery to you or your representative or any authorised third party to receive the goods.
- (b) Title to goods does not pass to you until you have paid us all money payable under your customer contract in cleared funds.
- (c) You grant us an irrevocable licence to enter upon your premises/property upon which goods we supplied you are located or stored. This includes demonstration Goods on display at Dealerships:

- (i) To inspect the goods if reported to be faulty or damaged; and
- (ii) To take possession of the goods at any time prior to total passing to you, if you:
  - Are in breach of these terms or any other agreement between us;
  - Have parted possession with the goods; or
  - Are or have been declared bankrupt or are

- wound up (whichever is applicable);
- Issued with a statutory demand or committed an act of bankruptcy; or
- Served with a pending creditors petition or winding up application (which ever is applicable);
- Put into receivership, liquidation or administration or have had a receiver, receiver and manager, administrator or liquidator appointed.

## 14. Liability, Indemnities and Warranties

- (a) To the extent permitted by law we:
  - (i) Will provide services with reasonable care and skill but do not warrant that they will be provided without fault;
  - (ii) Will provide services that are reasonably fit for their intended purpose but do not warrant that they will be provided without fault;
  - (iii) Will supply goods of an 'acceptable quality' but do not warrant that they will be supplied without fault or defect;
- (b) Except for any express warranties in a customer contract, to the extent permitted by law we disclaim all express and implied warranties in relation to goods, services or a customer contract.
- (c) In the case of any breach of a customer contract, or any negligence for which we are responsible, or breach of a condition or warranty that legislation prohibits us from excluding (which condition or warranty shall accordingly be included), our liability to you will be limited, at our option, to:
  - (i) If the breach or negligence relates to goods –
    - Replacement of any goods involved or the supply of equivalent goods; or
    - The repair of such goods; or
    - The payment of the cost of replacing the goods or acquiring equivalent goods; or
    - The payment of the cost of having the goods repaired;
  - (ii) If the breach relates to services –
    - Supplying of the services again; or
    - The payment of the cost (for the period of the breach) of having the services supplied again.
- (d) In no circumstances are we liable for any indirect, secondary or consequential loss (including among other things, loss or business interruption) that you or anyone else may suffer.
- (e) Our liability to you for loss or damage of any kind arising out of a customer contract, these terms or in connection with the relationship established by it, is reduced to the extent (if any) that you cause or contribute to the loss or damage. This reduction

applies whether our liability is in contract, tort (including negligence), under any statute or otherwise.

(f) For all other liability we may be liable for, our liability will not exceed the total of the last tax invoice we have issued you, and you have paid us, for the period of 12 months prior to such liability arising.

(g) You indemnify us (on a full indemnity basis including all legal costs and expenses) against any claim, loss or damage we suffer to the extent that it arises from:

- (i) Any act or omission by you;
- (ii) Any breach of any law by you;
- (iii) Any breach of a customer contract;
- (iv) By you or anyone receiving the goods and services or the benefit of them.

## 15. Substitution and Repairs

We reserve the right to and consent to us:

- (a) Substituting the goods with ones that are of the same or similar quality where goods that you order are not available – in which case we will endeavour to advise you of this;
- (b) Varying the design of the goods to provide for improvement in installation; or
- (c) At the time of installation of the goods, to use filers, sealers and touch-up paint to repair any small marks, cracks and/or scratches of the good, if there are factors which require us to that are outside of our control.

## 16. Cancellation

(a) You acknowledge and agree that if you cancel a customer contract, we may suffer loss and damage, and we reserve our rights to recover such loss and damage from you. In the event we have suffered loss and damage, you agree to us retaining any deposit you have paid us, as compensation for our loss and damage.

(b) We may end a customer contract at any time if:

- (i) You breach any term of your customer contract or these terms, including non-payment;
- (ii) We deem you (in our absolute discretion) to be an unacceptable credit risk;
- (iii) You are declared bankrupt;
- (iv) You have been served with a bankruptcy notice, creditor's petition or winding up application;
- (v) You are insolvent, or we have reason to believe that you are insolvent (in our absolute discretion);

(vi) You are placed under management, or have a receiver and manager appointed, or you go into voluntary administration or liquidation;

(vii) We are unable to perform our obligations under a customer contract, due to a breach by any of our suppliers, or an event of force majeure.

(c) If a customer contract is cancelled by you or ended by us, we reserve the right, in addition to any other existing rights we may have, to:

- (i) Charge you the freight costs for the delivery and return of the goods (including the insurance); and/or
- (ii) Charge you a handling fee of 30% of the price of the goods and/or services.

## 17. Representations and Entire Agreement

(a) These terms contain the whole agreement between us, unless agreed otherwise in writing. We both agree that neither of us is entitled to rely on any warranty or statement in relation to:

- (i) These terms
- (ii) Any goods and/or services provided under these terms to fullest extent permitted by law.

## 18. Disparaging Statements

In consideration of us providing you goods and/or services, you agree that you:

- (a) Will not make; and
- (b) Will not encourage or procure others to make any adverse, critical or disparaging statements, allegations or comments (whether expressly or by inference), in any form whatsoever, with respect to us, our business, our officeholders, our employees, our agents or any other party related to us, in any professional or personal capacity, in any way related to:

- (i) Our goods and/or services;
- (ii) Our business or any part of it;
- (iii) Our staff; or these terms

## 19. Force Majeure

(a) We are not responsible for the consequences of force majeure.

(b) For the purpose of this Clause a force majeure is an event or circumstance beyond our reasonable control.

## 20. GST

(a) Except where express provision is made to the contrary, the consideration payable by the customer under this agreement represents the value of any taxable supply for which payment is to be made.

(b) Amounts payable under or in respect of a taxable supply made by us (Other than under Clause C are GST Exclusive).

(c) Subject to us supplying you with a valid tax invoice, if we make a taxable supply for a consideration, which represents its value, then you will, at the same time and in the same manner as the value is otherwise payable, (or, if for any reason that does not happen, without delay after we request you to) the amount of any GST payable in respect of the taxable supply.

(d) Subject to us supplying you with a valid tax invoice, if this agreement requires you to pay, reimburse or contribute to an amount paid or payable by us in respect of an acquisition of a taxable supply from a third party, the amount required to be paid, reimbursed or contributed by you will be the value of the acquisition by us less any input tax credit to which we are entitled plus, if our recovery from you is a taxable supply, any GST payable under clause 14.2.

(e) For the purpose of this Clause 14:

(i) GST means GST within the meaning of the GST Act; and

(ii) A new Tax System (Goods and Services Tax) Act 1999 (as amended).

## **21. Assignment**

(a) You may not transfer your rights or obligations under a customer contract to or share them with anyone without our prior written consent. We may transfer our rights or obligations under this agreement to or share them with anyone without notifying you.

## **22. Intellectual Property Rights**

(a) You may not use any of our intellectual property including our photographs, logos, trademarks, or get up without our written consent.

(b) Where we allow to use our intellectual property, we may revoke that consent at any time – where do we, you must immediately cease using our intellectual property.

## **23. Variations**

We may vary or amend these terms without your consent, but where we do we will endeavour to update our website at least 7 days before we do so.

## **24. Severance**

If any provision in this agreement is unlawful or inconsistent with any law, then to the extent of the unlawful nature or inconsistency, that provision may be severed from without affecting the remainder of the agreement.

## **25. Jurisdiction**

This agreement and any customer contract is governed by the law of the Australian Capital Territory, Australia. Any legal proceedings relating to them can only be taken in courts with jurisdiction in the Australian Capital Territory.