

## Terms and Conditions of Sale and Work

### 1. Application

- 1.1 These terms and conditions shall apply to any contract of servicing and/or maintenance and/or repair work (hereinafter collectively referred to as "work") to be carried out on any vehicle, and any parts, materials, accessories or other items (hereinafter collectively referred to as "the goods") sold by LSM Distributors (Pty) Ltd trading as Porsche Centre South Africa (**PCSA**) or used, supplied or installed by PCSA in the performance of the work as authorized by the customer.
- 1.2 The customer acknowledges that PCSA has selected and accredited subcontractors to carry out certain work and supply certain goods on behalf of PCSA, and the customer accepts PCSA's recommendation that the convenience to the customer in having such work carried out and such goods supplied by these subcontractors, outweighs the limitation of the customer's right to choose other suppliers.

### 2. Delivery

- 2.1 Any estimated date of completion of the work or delivery of the goods communicated to the customer by PCSA is an approximate date only and the actual completion date or delivery date may vary.
- 2.2 **PCSA and the customer expressly agree that time is not of the essence and, in the event that PCSA is unable to complete the work or deliver the goods on the estimated date communicated to the customer, the customer shall not have the right to cancel the contract of sale, nor shall PCSA be liable for any loss or damages which the customer may suffer as a result of the actual completion or delivery date being later than the estimated date.**
- 2.3 The customer shall take delivery of the goods or delivery of the vehicle upon completion of the work to be carried out, at PCSA's premises. Delivery shall be completed when the goods are handed to the customer or its agent at PCSA's premises.

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2.4 PCSA shall be entitled to withhold the delivery of the goods or the vehicle if the customer is in breach of any of the terms of this contract.

2.5 PCSA may effect the delivery of the goods at different times.

### 3. Price

3.1 PCSA will give the customer an estimate for the cost of repair or maintenance work to be carried out and the cost of any replacement parts, components, materials, accessories or other items to be supplied or installed in the performance of the work;

3.2 The work will only be commenced with once the customer has approved the estimate and authorized the work.

3.3 In the event of it being necessary for PCSA to perform diagnostic work or to disassemble and re-assemble any goods in order to prepare an estimate for the work as envisaged in **3.1** above, PCSA shall give the customer an estimate for the cost of performing such diagnostic work, the cost of disassembly and re-assembly of the goods and the cost of any parts, components and materials required to prepare the estimate (if any);

3.4 The customer shall be required to approve these costs prior to the estimate being prepared;

3.5 The estimates referred to in **3.1** and **3.3** above, and any other estimate given by PCSA shall only be valid for a period of 30 (thirty) days from the date of issue thereof.

3.6 In the event that the customer does not accept the cost of preparing any of the estimates referred to herein, or in the event that the customer does not accept the estimate for the cost of any work to be carried out and the cost of any replacement parts, components, materials, accessories or other items to be supplied or installed in the performance of the work, the customer shall remove the goods or vehicle from the premises of PCSA at the customer's own cost.

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### 4. Additional work

- 4.1 If the customer accepts PCSA's estimate for the cost of work to be carried out and the cost of any replacement parts, components, materials, accessories or other items required, supplied or installed in the performance of the work, and it transpires that additional charges will have to be incurred in order to complete the work, PCSA will inform the customer of the additional estimated charges, whereupon the customer shall be required to authorize the work to continue.
- 4.2 Should the customer not authorize the work to continue, the customer shall remove the goods or vehicle from the premises of PCSA at the customer's own cost, and PCSA shall have no obligation to re-assemble the goods unless the customer undertakes to pay the cost of such re-assembly.

### 5. Payment and ownership

- 5.1 The customer shall pay the cost of the work authorized and approved in accordance with the provisions of **3. Price** and **4. Additional work** above, prior to the removal of any goods from PCSA's premises, unless alternative arrangements are made and authorized by PCSA's credit manager in writing.
- 5.2 If PCSA accepts a cheque or other instrument in respect of payment of any amount due, payment is made by electronic transfer, PCSA reserves the right to retain possession of the goods until such cheque or instrument is honoured or the electronic payment is cleared for use by PCSA. The customer expressly acknowledges that PCSA has a debtor and creditor lien over the goods or vehicle which secures the payment of any amount due in respect of work carried out and goods supplied.
- 5.3 Notwithstanding any provision to the contrary contained herein, the parties specifically agree that ownership in the goods shall not pass to the customer upon delivery of the goods, but shall remain vested in PCSA until all amounts payable to PCSA in respect of services rendered and/or parts and goods supplied have actually been paid in full.

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- 5.4 **It is hereby specifically agreed that any payment made to PCSA will first be applied in reduction of earlier debts in chronological order of the accrual dates of such amounts and it is specifically recorded that the debtor and creditor lien of PCSA over the goods or vehicle to which repairs are carried out will remain of full force and effect until payment is received of all amounts payable to PCSA in respect of services rendered and/or parts and goods supplied.**
- 5.5 PCSA shall be entitled to charge interest on any unpaid amount from the due date of such amount to the date of payment at a rate which is two percent above the prime rate charged by PCSA's bankers.

### **6. Warranty**

Except as provided for in any other warranty given in writing by PCSA to the customer:

- 6.1 all new or reconditioned parts installed during any repair or maintenance work, and the labour required to install it, are warranted to be free from defect in respect of materials and workmanship for a period of twelve months from the date of the work being completed, and such warranty shall be deemed to have terminated twelve months from the date appearing on the invoice issued by PCSA in respect of that job, provided that for Genuine Porsche Parts and for exchanged and remanufactured engines, the warranty will be valid for a period of twenty-four months from the date of completion of the work.
- 6.2 any warranty in terms of this paragraph 6 will be void in respect of goods that have been subjected to misuse or abuse, and does not apply to ordinary wear and tear, having regard to the circumstances in which the goods are ordinarily intended to be used.

### **7. Exclusion of liability**

- 7.1 **Save as provided in 6, PCSA shall not be liable to the customer for any loss or special or consequential damages whatsoever, arising out of any breach by PCSA of any of its obligations in terms of this agreement.**

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**7.2 Without limiting the generality of 7.1, PCSA shall not be liable for any loss or damage whatever suffered by the customer as a result of:**

**7.2.1 goods or any part thereof supplied by an independent contractor or independent sub-contractor, or work carried out by an independent contractor or independent sub-contractor, not being free from defect in respect of materials and workmanship;**

**7.2.2 any damage to goods or property of the customer, howsoever arising, except if caused by the gross negligence of PCSA. In the event of the goods being a vehicle, the goods and its contents are stored and driven by the PCSA's representatives at the customer's risk.**

### **8. Cancellation**

If either party:

- 8.1 commits a breach of any of these terms and conditions; or
- 8.2 being a natural person, dies or is provisionally or finally sequestrated or surrenders his estate; or
- 8.3 being a partnership, is dissolved; or
- 8.4 being a company, is placed under provisional or final order of liquidation or judicial management; or
- 8.5 compromises or attempts to compromise generally with its creditors,

**(the defaulting party)**

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the aggrieved party may cancel this agreement immediately by giving the defaulting party written notice to that effect, without prejudice to any other rights the aggrieved party may have as a result of such breach or cancellation.

If the customer is the defaulting party, PCSA shall be entitled to apply any amounts paid by the customer to PCSA in reduction of any damages which PCSA may suffer as a consequence of any such default by the customer.

### 9. Jurisdiction

The customer consents to the jurisdiction of the Magistrates' Court having jurisdiction over the parties hereto, notwithstanding that any claim by PCSA may exceed the normal jurisdiction of the Magistrates' Court as to amounts. Notwithstanding the foregoing, PCSA shall in its discretion be entitled to institute legal proceedings in any other court of competent jurisdiction.

### 10. Domicilia and Notices

10.1 The parties choose *domicilia citandi et executandi* ("domicilii") for purposes of the giving of any notice, the serving of any process and for any other purpose arising from this Agreement at the following addresses:

10.1.1 PCSA: Corner of Witkoppen & Wroxham Roads  
Paulshof  
2191

10.1.2 The Customer: The address reflected on the New Vehicle Order Agreement and/or Vehicle Tax Invoice

10.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.

10.3 Any party may by written notice to the other party change its chosen address to another physical address, provided that the change shall become effective on the fourteenth day after the receipt of the notice by the addressee.

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10.4 Any notice to a party contained in a correctly addressed envelope and sent by pre-paid registered post to it at its chosen address, shall be deemed to have been received on the 7<sup>th</sup> business day after posting.

10.5 Notwithstanding anything to the contrary herein contained, written notice or communication actually received by one of the parties from the other, shall be an adequate written notice or communication to such party, notwithstanding that it was not sent or delivered to its chosen *domicilium*.

### **11. Whole Agreement**

11.1 This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties, other than those set out herein, are binding on the parties.

11.2 No addition to, variation or amendment of, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination, shall be of any force or effect unless reduced to writing and signed by both parties or their duly authorized representatives.

### **12. Relaxation**

No latitude, extension of time or other indulgence which may be given or allowed by either party to the other in respect of performance of any obligation hereunder or the enforcement of any right arising from this agreement, and no single or partial exercise of any right by any party shall operate as a waiver or novation or otherwise affect any of that party's rights in terms of or arising from this agreement, or prevent such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision hereof.

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### **13. Governing Law**

This agreement shall be construed and interpreted in accordance with the Laws of the Republic of South Africa.

### **14. Interpretation**

14.1 The clause headings are for convenience only and shall be disregarded in construing this agreement.

14.2 Unless inconsistent with the context, an expression which denotes:

14.2.1 any gender includes the other genders;

14.2.2 a natural person includes an artificial person and the other way round;

14.2.3 the singular includes the plural and the other way round.

### **15. Processing of personal information**

Once the customer has disclosed his or her personal information (or its information in the case of a juristic person) to PCSA, the customer irrevocably consents to PCSA (and/or any of its associated entities, by law or otherwise) to process such personal information and utilize such information to engage with the customer as regards the various products, services, offerings and news events relevant to PCSA (and/or any of its associated entities).