

# TERMS AND CONDITIONS

## 1 INTRODUCTION

In these conditions:-

- 1.1. "Mayfair" – means Mayfair Gearbox (Pty) Ltd, registration number 2005/041040/07, the entity supplying the goods and/or rendering the services, and will also be referred to as "we";
- 1.2. "the Consumer" – means the individual, firm, company or other legal persona with whom Mayfair contracts;
- 1.3. "the services" – means the gearbox repair and fitment services rendered by Mayfair to the Consumer, and includes the supply of parts or equipment required in the execution of such services;
- 1.4. "commencement date" – means the date from which these Terms and Conditions shall be applicable, being the date the Consumer approaches Mayfair for its services. These Terms and Conditions, and/or any invoices and/or written instructions for the rendering of services by the Consumer, and/or any other document Mayfair deems relevant, constitutes the whole agreement, and no variation or amendment thereto shall be of any force or effect, unless reduced to writing, and signed by both parties. The Consumer herewith declares not having been induced to enter into any agreement by any undertaking, promise, warranty or representation not recorded in these Terms and Conditions. These Terms and Conditions further supersede any other agreements concluded between the parties, and shall be applicable to each and every transaction between the parties, whether such transaction is in credit or cash.

## 2 COSTS & PAYMENT

- 2.1. Costs for repairs or services as quoted by Mayfair are based upon the damage to the Consumer's gearbox, alternatively the extent and nature of the services required by the Consumer, whether the gearbox needs to be replaced, the parts that have to be fitted, the equipment needed, material, transportation etc.
- 2.2. Payment for such services shall be made in cash upon receipt of the invoice, except if the Consumer has applied for and successfully qualified for credit, in which instance the Credit Facility Application Form as completed and approved by Mayfair, should be read in conjunction herewith.
- 2.3. The quote given to the Consumer for the anticipated cost of Mayfair's services, may exclude any unforeseen repairs once fitment commences, for example: hydraulics, electrical, air or mechanical work; and once the gearbox is fitted, the external parts like wiring, solenoids, valves, air pipes, switches, air pressure, oil coolers etc.
- 2.4. The final cost of the services will be contained on the invoice rendered to the Consumer after the services have been rendered and shall be payable before collection of the Consumer's motor vehicle.
- 2.5. All payments, whether for cash or credit transactions are payable without any deduction or set-off, by way of EFT or into such bank account as stipulated on Mayfair's invoice submitted to the Consumer.
- 2.6. Mayfair and the Consumer hereby agree that interest at the rate of 2.5% per month will become payable on all overdue accounts which are not settled immediately and on the date of the invoice.
- 2.7. In the event of credit transactions, invoices will be addressed to the Consumer every 30 days reflecting the amount due and owing for the services rendered to the Consumer.
- 2.8. If the Consumer fails to pay any overdue amounts, or if the Consumer and Mayfair agree in writing to defer the payment, then Mayfair will be entitled to recover all charges incurred in the collection of overdue amounts and all finance charges, which shall be calculated in terms of the following:
  - 2.8.1. the total unpaid amount which is due and payable with interest at 2.5% per month;
  - 2.8.2. the period during which the Consumer continues to fail to pay the overdue amounts; or
  - 2.8.3. the period for which payment is deferred as above; and
  - 2.8.4. the overdue amounts will be calculated with compound interest on the date that payment of such amounts is made.

## 3 DELIVERY AND ACCEPTANCE

- 3.1. It is agreed that Mayfair shall endeavour to render the services to the Consumer within a reasonable time and without unnecessary delay. Should Mayfair take longer as anticipated, such delay, however caused, shall not give rise to any claim for damages or consequential loss for any cause whatsoever arising and shall not entitle the Consumer to withhold payment.
- 3.2. The Consumer must check the motor vehicle in respect of which the services have been rendered, or in the event of a gearbox, the gearbox upon collection. The Consumer shall be deemed to have accepted the goods to its/their satisfaction should it not raise any query within 7 days. The Consumer confirms that the services by Mayfair shall be deemed to have been rendered and accepted by the Consumer to its satisfaction should it not raise a query within 7 days.
- 3.3. The signature of any employee or agent of the Consumer, which appears on Mayfair's invoice, will constitute evidence of collection of the motor vehicle, gearbox or parts by the Consumer.
- 3.4. Mayfair's invoices and statements shall be deemed to be *prima facie* proof of the services rendered to the Consumer as reflected thereon. In the event of a dispute, the onus shall be upon the Consumer.
- 3.5. When the Consumer fails to collect the motor vehicle or gearbox, parts or goods, Mayfair may either cancel the agreement and claim from the Consumer any damages it may sustain, alternatively at its option it may enforce the agreement tendering the motor vehicle or gearbox or parts in question only against immediate payment, notwithstanding any previous terms agreed.

## 4 STORAGE OF VEHICLE WITH MAYFAIR

- 4.1. To the extent that the Consumer fails to collect the motor vehicle, and in addition to the remedies available to Mayfair as set out hereinabove, Mayfair has the right to charge storage fees in respect of the vehicle remaining at Mayfair's premises and not being collected.
- 4.2. The storage fees payable to Mayfair by any Consumer will be in accordance with the standard scale of charges levied by Mayfair, which scale will be subject to variation by Mayfair.
- 4.3. The maximum time allowed for a vehicle to be in storage is 48 (forty eight) hours at Mayfair's cost and thereafter a parking fee of R100.00 a day will be charged. This cost will be added to the total cost at the collection of the vehicle.
- 4.4. Should a Consumer fail to arrange the collection of their vehicle after a period of 30 (thirty) days, the vehicle will be moved to a pounding station at an additional cost of R2 400.00 per day and if a period of 30 days passes thereafter, the vehicle will be sold to cover the cost.
- 4.5. The storage fees due to Mayfair will be paid by not later than the 7th day of each and every month during which the vehicles remain in storage into Mayfair's nominated bank account.
- 4.6. Mayfair has and exercises a lien on all vehicles in storage for any sum due to it by any Consumer and unpaid in respect of said Consumer's vehicles.
- 4.7. Mayfair will give the Consumer 30 (thirty) days' written notice to pay any such sum and if payment is not made accordingly, Mayfair will, without further notice, have the right to open and examine and/or dismantle the whole or any part of the vehicles and at its sole discretion, to sell the whole or any part thereof either by public auction or by private treaty. Mayfair may use the proceeds of such sale, after deducting all expenses thereof, in payment towards any sum due to Mayfair Gearbox by the Consumer.
- 4.8. Any surplus will be paid over to the Consumer by Mayfair, without interest, within 30 (thirty) days after such sale, or in the event of Mayfair being unaware of the contact particulars of the Consumer, on application of the Consumer, save therefore, Mayfair will be released from all liability whatsoever in respect of the vehicles stored.
- 4.9. Where Mayfair has, in accordance with the conditions above, sold part only of the vehicles stored and the proceeds of such sale are sufficient to pay to Mayfair all monies due to it by the Consumer up to the date thereof, the Consumer will be entitled to take delivery of the remainder of such vehicles. Mayfair will have the right to charge for the storage of any such remaining vehicles if the Consumer does not take delivery of these. Storage fees will be charged in accordance with these conditions and without notice to the Consumer, to recover any such storage fees in accordance with these conditions, which will apply *mutatis mutandis*.
- 4.10. The exercise of Mayfair's rights afforded to it by these conditions will be without prejudice to any other rights it may have or the common law.
- 4.11. Mayfair does not accept any liability for the vehicles stored with it or any damage caused to the vehicles during the storage thereof caused by any means, or if the vehicle is stolen.
- 4.12. By booking your vehicle into storage with Mayfair a Consumer expressly agrees that same is entirely at their own risk. The Consumer indemnifies Mayfair, its employees and agents and keep them fully indemnified from and against any loss or damage suffered or liability incurred in respect of any third party, which arises from the storage of the Consumer's vehicle with Mayfair Gearbox.

## 5 WARRANTIES

- 5.1. Mayfair warrants its services for a period of 1 year, with unlimited mileage accumulated in that one year period, except if Mayfair specifically records a different period or mileage on the invoice submitted to the Consumer, which Mayfair will reasonably substantiate.
- 5.2. For this purpose, Mayfair has the right to record the odometer reading of the motor vehicle in respect of which motor vehicle's gearbox the services are to be rendered, and request proof of the new reading upon return of the motor vehicle in terms of this warranty.
- 5.3. Mayfair agrees to, in the event of a warranty claim, replace certain parts of the gearbox if found to be faulty, and subject to there being no negligence by the Consumer in the handling, use, application or maintenance of the gearbox.
- 5.4. This warranty does not apply:
  - 5.4.1. To any oil leaks from the power take off ("PTO"). The Consumer has a duty to regularly check the PTO and gearbox for any oil leaks;
  - 5.4.2. To any PTO fitment not done by Mayfair;
- 5.5. Mayfair retains the right to use any parts during the repair process or services rendered by Mayfair, and the warranty extends in respect of such parts.
- 5.6. Mayfair will only use brand specific parts when requested by the Consumer and when it is viable to do so, given that the costing of certain brand parts, are excessive and will cause the costs of repair services by Mayfair to increase dramatically.

## 6 RISK

- 6.1. Mayfair will not accept liability for any loss and/or damage to the motor vehicle while on Mayfair's premises.
- 6.2. Mayfair will not be liable to the Consumer for any loss or damage, consequential or otherwise, caused by any defect in the gearbox associated with the misuse thereof and/or negligence by the Consumer.
- 6.3. To the extent that the Consumer can prove that there is damage to the gearbox, that occurred while in Mayfair's possession, Mayfair is insured for such purposes and the Consumer is to approach Mayfair in this regard.
- 6.4. Mayfair undertakes to, should there be negligence on Mayfair's behalf, submit a claim to their insurance, but makes no warranties and/or guarantees as to payment thereof or the success of such claims.
- 6.5. The full of risk of loss or damage to any gearbox, whether attributable to irresistible force inevitable accident or any other cause, whether foreseeable or unforeseeable, will pass to the Consumer upon collection of the motor vehicle by the Consumer.
- 6.6. The parts supplied if any for the gearbox, will be utilised for the purposes for which it has been made or manufactured. The Consumer assumes responsibility to ensure that the gearbox is used in accordance with the instruction manuals if any, and for its intended purpose.

## 7 BREACH

- 7.1. The Consumer will be in breach of this agreement if the Consumer:
  - 7.1.1. fails to make any payment in terms of this agreement;
  - 7.1.2. fails to comply with any other provision of this agreement;
  - 7.1.3. fails to satisfy any judgment for the payment of money obtained against it within 7 (seven) days of such judgment or fails to lodge an appeal within the prescribed period; or
  - 7.1.4. provides false information, or fails to reveal negative information in the Credit Facility application (to the extent applicable).
- 7.2. In the event of any breach of this agreement, Mayfair may, in addition to any other remedies that it may have in terms of this agreement or at law:
  - 7.2.1. terminate this agreement; and/or
  - 7.2.2. claim, at the Consumer's cost, payment of its invoice; and/or
  - 7.2.3. claim damages or
  - 7.2.4. Claim the balance of any overdue amount.

## 8 CERTIFICATE

A certificate signed by a manager or credit controller or director of Mayfair (no proof of this appointment or position is necessary) setting out any overdue amount by the Consumer to Mayfair in terms of this agreement will be sufficient evidence of the particulars included therein for purposes of judgment, including provisional sentence or summary judgment, and the burden of proof rests on the Consumer to prove otherwise.

## 9 JURISDICTION

The Consumer hereby consents to jurisdiction of the Magistrate Court of any district for any legal proceedings arising from this agreement. The Consumer selects as its *domicilium citandi et executandi* the address submitted by it to Mayfair, at which address and/or legal documents and processes may be served unless the Consumer notifies Mayfair in writing of any other address selected as *domicilium citandi et executandi*.

## 10 CONCESSIONS

Any extension of time, relaxation, indulgence or condonation extended by Mayfair to the Consumer will not be regarded as a waiver of any of Mayfair's rights in terms of this agreement. Acceptance by Mayfair of any payment made by the Consumer after termination of this agreement will not be a waiver of Mayfair's rights in terms of this agreement nor regarded as a novation thereof, and Mayfair's prior termination of this agreement will remain in full force notwithstanding such acceptance.

## 11 AMENDMENTS

This agreement, any invoices or quotes, (in conjunction with the Credit Facility Application Form if applicable), comprises the full agreement between the parties on the subject matter and no amendment or cancellation of this agreement, including this provision, will be valid unless it has been reduced to writing and signed by both Mayfair and the Consumer.

## 12 DISCLOSURE OF INFORMATION

- 12.1. Mayfair may:
  - 12.1.1. disclose all information relating to any of the Consumer's accounts with Mayfair to all divisions and entities of and associated with Mayfair; and
  - 12.1.2. disclose information about the Consumer's accounts and the conduct by the Consumer of its accounts to other banks and credit bureaus when asked for such information; as provided for on the Credit Facility Application Form, do credit checks in respect of the Consumer, to establish the Consumer's credit record, and contact the Consumer's trade references, whether the Consumer engages in a credit or cash (COD) transaction with Mayfair or not.
- 12.2. The Consumer acknowledges that the financing for credit transactions, has been approved on the basis of information supplied by the Consumer.
- 12.3. To the extent that the information provided by the consumer is incorrect or false, Mayfair reserves the right to cancel the agreement and claim damages for misrepresentation.

## 13 RESERVATION OF OWNERSHIP:

Until such time as the Consumer has paid the invoice in full in respect of any services rendered or parts produced, ownership in and to all such products shall remain vested in Mayfair. Mayfair shall, in its sole discretion, be entitled to take possession of any such products which have not been paid for.

## 14 FAILURE TO OBJECT:

Should the Consumer fail to object to any product appearing on Mayfair's statement of account or invoice within 14 (fourteen) days of the date of the statement or invoice, the account shall be deemed to be in order and the Consumer shall be deemed to have received delivery of each and every product appearing on such statement in good order and condition.