



# MAGILL LOCKSMITHS

• AUTOMOTIVE • DOMESTIC • COMMERCIAL • A.B.N. 34 090 523 461

*"Your Key to Security"*

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## R&M Gibbs Pty Ltd T/A Magill Locksmiths – Terms & Conditions of Trade

### 1. Definitions

1.1 "Magill Locksmiths" means Magill Locksmiths Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Magill Locksmiths Pty Ltd.

1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.

1.3 "Goods" means all Goods or Services supplied by Magill Locksmiths to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).

1.4 "Price" means the Price payable for the Goods as agreed between Magill Locksmiths and the Customer in accordance with clause 4 below.

### 2. Acceptance

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.

2.2 These terms and conditions may only be amended with Magill Locksmiths' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Magill Locksmiths.

### 3. Change in Control

3.1 The Customer shall give Magill Locksmiths not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Magill Locksmiths as a result of the Customer's failure to comply with this clause.

### 4. Price and Payment

4.1 At Magill Locksmiths sole discretion the Price shall be either:

(a) as indicated on any invoice provided by Magill Locksmiths to the Customer; or

(b) Magill Locksmiths. quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of ninety (90) days.

4.2 Magill Locksmiths reserves the right to change the Price if a variation to Magill Locksmiths quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties such as the site is unprepared for installation or as a result of increases to Magill Locksmiths in the cost of materials and labour) will be charged for on the basis of Magill Locksmiths quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

4.3 At Magill Locksmiths sole discretion a deposit may be required.

4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Magill Locksmiths, which may be:

- (a) on delivery/completion of the Goods;
- (b) by way of instalments/progress payments in accordance with Magill Locksmiths payment schedule;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days for non-account Customers and thirty (30) days for account Customers following the date of any invoice given to the Customer by Magill Locksmiths.

4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to five percent (5%) of the Price), or by any other method as agreed to between the Customer and Magill Locksmiths.

4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Magill Locksmiths an amount equal to any GST Magill Locksmiths must pay for any supply by Magill Locksmiths under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## **5. Delivery of Goods**

5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:

- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Magill Locksmiths address; or
- (b) Magill Locksmiths (or Magill Locksmiths nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

5.2 At Magill Locksmiths' sole discretion the cost of delivery is in addition to the Price.

5.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Magill Locksmiths shall be entitled to charge a reasonable fee for redelivery and/or storage.

5.4 Magill Locksmiths may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.5 Any time or date given by Magill Locksmiths to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Magill Locksmiths will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

## **6. Risk**

6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Magill Locksmiths is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Magill Locksmiths is sufficient evidence of Magill Locksmiths rights to receive the insurance proceeds without the need for any person dealing with Magill Locksmiths to make further enquiries.

6.3 If the Customer requests Magill Locksmiths to leave Goods outside Magill Locksmiths premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

## **7. Access**

7.1 The Customer shall ensure that Magill Locksmiths has clear and free access to the work site at all times to enable them to undertake the works. Magill Locksmiths shall not be liable for any loss or damage to the site

(including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Magill Locksmiths.

## **8. Title**

8.1 Magill Locksmiths and the Customer agree that ownership of the Goods shall not pass until:

(a) the Customer has paid Magill Locksmiths all amounts owing to Magill Locksmiths; and

(b) the Customer has met all of its other obligations to Magill Locksmiths.

8.2 Receipt by Magill Locksmiths of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

8.3 It is further agreed that:

(a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to Magill Locksmiths on request.

(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Magill Locksmiths and must pay to Magill Locksmiths the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Magill Locksmiths and must pay or deliver the proceeds to Magill Locksmiths on demand.

(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Magill Locksmiths and must sell, dispose of or return the resulting product to Magill Locksmiths as it so directs.

(e) the Customer irrevocably authorises Magill Locksmiths to enter any premises where Magill Locksmiths believes the Goods are kept and recover possession of the Goods.

(f) Magill Locksmiths may recover possession of any Goods in transit whether or not delivery has occurred.

(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Magill Locksmiths.

(h) Magill Locksmiths may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

## **9. Security Interests:**

9.1 Terms that are defined in the Personal Property Securities Act 2009 ("PPSA") have the same meaning in this clause.

9.2 The Customer agrees and acknowledges that, for the purposes of the PPSA, Magill Locksmiths has a security interest in the Goods and in any right in relation to or derived from the Goods and such other undertaking, property and assets of the Customer.

9.3 Magill Locksmiths may register its security interests under clause 9, 10 and 11.

9.4 The Customer waives the right to receive a verification statement under the PPSA.

9.5 The Customer agrees that, if Chapter 4 of the PPSA applies to the enforcement of Magill Locksmiths' security interests, the following provisions of the PPSA will not apply to that enforcement: section 95 to the extent that it requires Magill Locksmiths to give a notice to the Customer; section 96; section 130, to the extent that it requires Magill Locksmiths to give a notice to the Company; subsection 132(3)(d); subsection 132(4); section 135; section 142 and section 143.

9.6 Subject to subsection 275(7) of the PPSA, neither party may disclose information of the kind referred to in subsection 275(1) of the PPSA.

#### **10. Security and Charge**

10.1 In consideration of Magill Locksmiths agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

10.2 The Customer indemnifies Magill Locksmiths from and against all Magill Locksmiths costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Magill Locksmiths rights under this clause.

10.3 The Customer irrevocably appoints Magill Locksmiths and each director of Magill Locksmiths as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

#### **11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

11.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Magill Locksmiths in writing of a ny evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Magill Locksmiths to inspect the Goods.

11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

11.3 Magill Locksmiths acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Magill Locksmiths makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Magill Locksmiths liability in respect of these warranties is limited to the fullest extent permitted by law.

11.5 If the Customer is a consumer within the meaning of the CCA, Magill Locksmiths liability is limited to the extent permitted by section 64A of Schedule 2.

11.6 If Magill Locksmiths is required to replace the Goods under this clause or the CCA, but is unable to do so, Magill Locksmiths may refund any money the Customer has paid for the Goods.

11.7 If the Customer is not a consumer within the meaning of the CCA, Magill Locksmiths liability for any defect or damage in the Goods is:

- (a) limited to the value of any express warranty or warranty card provided to the Customer by Magill Locksmiths at Magill Locksmiths sole discretion;
- (b) limited to any warranty to which Magill Locksmiths is entitled, if Magill Locksmiths did not manufacture the Goods;
- (c) otherwise negated absolutely.

11.8 Subject to this clause 11, returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 11.1; and
- (b) Magill Locksmiths has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and

(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Magill Locksmiths shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by Magill Locksmiths;
- (e) fair wear and tear, any accident, or act of God.

11.10 Magill Locksmiths may in its absolute discretion accept non-defective Goods for return in which case Magill Locksmiths may require the Customer to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.

11.11 Notwithstanding anything contained in this clause if Magill Locksmiths is required by a law to accept a return then Magill Locksmiths will only accept a return on the conditions imposed by that law.

## **12. Intellectual Property**

12.1 The Customer warrants that all designs, specifications or instructions given to Magill Locksmiths will not cause Magill Locksmiths to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Magill Locksmiths against any action taken by a third party against Magill Locksmiths in respect of any such infringement.

12.2 The Customer agrees that Magill Locksmiths may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Magill Locksmiths has created for the Customer.

## **13. Default and Consequences of Default**

13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Magill Locksmiths sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

13.2 If the Customer owes Magill Locksmiths any money the Customer shall indemnify Magill Locksmiths from and against all costs and disbursements incurred by Magill Locksmiths in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Magill Locksmiths collection agency costs, and bank dishonour fees).

13.3 Without prejudice to any other remedies Magill Locksmiths may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Magill Locksmiths may suspend or terminate the supply of Goods to the Customer. Magill Locksmiths will not be liable to the Customer for any loss or damage the Customer suffers because Magill Locksmiths has exercised its rights under this clause.

13.4 Without prejudice to Magill Locksmiths other remedies at law Magill Locksmiths shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Magill Locksmiths shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Magill Locksmiths becomes overdue, or in Magill Locksmiths' opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

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

#### **14. Cancellation**

14.1 Magill Locksmiths may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Magill Locksmiths shall repay to the Customer any money paid by the Customer for the Goods. Magill Locksmiths shall not be liable for any loss or damage whatsoever arising from such cancellation.

14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Magill Locksmiths as a direct result of the cancellation (including, but not limited to, any loss of profits).

14.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

#### **15. Privacy Act 1988**

15.1 The Customer agrees for Magill Locksmiths to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Magill Locksmiths.

15.2 The Customer agrees that Magill Locksmiths may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer.

The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

15.3 The Customer consents to Magill Locksmiths being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

15.4 The Customer agrees that personal credit information provided may be used and retained by Magill Locksmiths for the following purposes (and for other purposes as shall be agreed between the Customer and Magill Locksmiths or required by law from time to time):

- (a) the provision of Goods; and/or
- (b) the marketing of Goods by Magill Locksmiths, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

15.5 Magill Locksmiths may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer;

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

15.6 The information given to the credit reporting agency may include:

(a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);

(b) details concerning the Customer's application for credit or commercial credit and the amount requested;

(c) advice that Magill Locksmiths is a current credit provider to the Customer;

(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;

(e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;

(f) information that, in the opinion of Magill Locksmiths, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);

(g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;

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

## **16. General**

16.1 The failure by Magill Locksmiths to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Magill Locksmiths right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which Magill Locksmiths has its principal place of business, and are subject to the jurisdiction of the courts in that state.

16.3 Subject to clause 11 Magill Locksmiths shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Magill Locksmiths of these terms and conditions (alternatively Magill Locksmiths' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

16.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Magill Locksmiths nor to withhold payment of any invoice because part of that invoice is in dispute.

16.5 Magill Locksmiths may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

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

16.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

16.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.