

# Terms and Conditions

From the Contract Start Date, the Customer is entitled to the services elected by the Customer and detailed in the “Contract for service contract product” details (“Details”) on the following terms and conditions:

## 1. Definitions

1.1 In this Agreement the following terms shall have the following meanings:

- (a) *Agreement* means the information contained in the Details and these Terms and Conditions.
- (b) *Contract Start Date* means the contract start date as specified in the Details.
- (c) *Contract Term* means the period beginning on the Contract Start Date and ending on:
  - i. the attainment of the contracted number of months in the Service Plan or total mileage kilometre allowance whichever occurs first (e.g. 3 years or 75,000 kms, whichever occurs first);
  - ii. MBAuP's obligation to carry out the standard Scheduled Servicing ceasing in accordance with the terms and conditions of this Agreement; or
  - iii. subject to any retraction of the Customer's offer or withdrawal rights permitted by law or under this Agreement.
- (d) *Eligible Vehicle* means the passenger car purchased by the Customer and to which this Agreement applies as provided for in the Details.
- (e) *Fee* means the payment specified to be payable by the Customer as an upfront total payment for the Customer's Service Solutions Service Plan as detailed in in the Service rate section of the Details.
- (f) *Service Solutions Service Plan* means the service plan detailed in clause 2.
- (g) *MBAuP Administration Costs* means the cost to MBAuP of implementation and withdrawal/cancellation of the Agreement.
- (h) *MBAuP Expenditure* means the cost to MBAuP of any standard Scheduled Services provided (or standard Scheduled Services that ought to have been provided in accordance with the Mercedes-Benz Service Booklet) under the Service Solutions Service Plan that the Customer has (or ought to have) received. For the avoidance of doubt, this definition means that where a Customer fails to undertake any standard Scheduled Servicing in accordance with the Customer's obligations under clause 5.1(a), the cost attributable to the missed standard Scheduled Servicing will be deemed to be a cost incurred by MBAuP.
- (i) *MBAuP Income* means the Fee received from the Customer for the relevant Service Solutions Service Plan
- (j) *Mercedes-Benz Retailer* means the service workshop of any Authorised Mercedes-Benz Retailer approved by MBAuP to sell and/or service Mercedes-Benz Passenger Cars.
- (k) *Scheduled Service and Scheduled Servicing* means the fundamental technically essential maintenance work carried out at particular intervals as outlined in the Mercedes-Benz Service Booklet provided with the Eligible Vehicle.

## 2. Service Solutions Service Plan

2.1 The Scheduled Servicing Service Solutions Service Plan includes applicable safety checks and service work as stipulated in the Mercedes-Benz Service Plan Booklet for the Eligible Vehicle and may include the following:

Standard Scheduled Servicing Inclusions	
Applicable Safety Checks, Service and Maintenance Work in accordance with Mercedes-Benz Service Booklet for the Eligible Vehicle	
All work as stipulated in the relevant Mercedes-Benz Service Booklet for the Eligible Vehicle	✓
Additional operations carried out at MBAuP predetermined intervals	
Replace brake fluid	✓
Replace air filter	✓
Replace fuel filter	✓
Replace spark plugs	✓
Replace coolant	✓
Automatic transmission: oil and filter change	✓
Replace dust / cabin filter	✓

2.2 All standard Scheduled Servicing does not include:

Standard Scheduled Servicing Exclusions	
Workshop mobility	X
Damage repairs resulting from: misuse, improper operation, accidents	X
Modifications to the vehicle not approved by MBAuP	X
Updates to the series model including map upgrades	X
Failures traced to permissible gross vehicle mass or permissible axle mass having been exceeded	X
Glass	X
Drive belts	X
All petrol, toll charges, parking or speeding infringements and insurance	X
Climatic conditions such as hail or flood	X
Damage due to plant or animal substances	X
Industrial pollution damage	X
Damage due to cleaning materials and cleaning methods not recommended by MBAuP	X
Damage due to the use of service products not recommended by MBAuP	X
Damage or injuries to person or property	X
Transportation and travel expenses	X
Hotel expenses	X
Loss of income	X
Vehicle down time	X
Tyres	X
Engine tuning etc, if required between services	X

### 3. Road Care

All Service Plans with either a 4 or 5 year Contract Term, also include extended roadside assistance provided under Mercedes-Benz Road Care for the 4th and 5th year of the Contract Term (as applicable). Mercedes-Benz Road Care provided subject to terms and conditions available at [www.mercedes-benz.com.au](http://www.mercedes-benz.com.au)

### 4. MBAuP's Obligations

- 4.1 MBAuP agrees that the services to be provided under the Customer's Service Solutions Plan will be carried out and performed by a Mercedes-Benz Retailer during the Contract Term at a date to be agreed by the Customer and the Mercedes-Benz Retailer.
- 4.2 MBAuP agrees to pay the Mercedes-Benz Retailer for all services that form part of the Customer's Service Solutions Plan on behalf of the Customer and for which MBAuP has received the Fee.
- 4.3 Subject to clauses 5.1 (a) and 5.1(e), should any additional work be required, above and beyond that provided within a Service Solutions Service Plan, the Mercedes-Benz Retailer shall contact the Customer with the details of this and request the Customer's authorisation before any additional work is carried out.
- 4.4 MBAuP's total liability under this Agreement is limited to the total amount of the Fee paid by the Customer in advance for the Customer's elected Service Plan term.

### 5. Customer's Obligations

5.1 The Customer agrees:

- (a) to deliver the Eligible Vehicle to a Mercedes-Benz Retailer at or within a reasonable period before the relevant service interval in accordance with the table below, and as indicated by the ASSYST PLUS Active Service System which automatically informs the driver of the Eligible Vehicle when the next service is due via the ASSYST PLUS service interval display in the instrument cluster, which is further outlined in the Mercedes-Benz Service Booklet.;

	1st Year / 12 months*	2nd Year / 24 months*	3rd Year / 36 months*
All models incl. AMG 43 variants	25,000 km	50,000 km	75,000 km
All AMG 45 and 63 variants	20,000 km	40,000 km	60,000 km
All G-Wagon (non-AMG), AMG 65 and 600 variants	15,000 km	30,000 km	45,000 km
All G Professionals	10,000 km	20,000 km	30,000 km

- (b) to make the Eligible Vehicle available at a Mercedes-Benz Retailer by prior appointment in a reasonably clean condition;
- (c) that all instructions for use of the Eligible Vehicle contained in the Mercedes-Benz Service Booklet shall be carried out accurately and fully;
- (d) that if any defect or failure occurs in the Eligible Vehicle that the Mercedes-Benz Retailer may take all reasonable measures to effect repairs without delay and to minimise the occurrence of any consequential damage to the Eligible Vehicle;
- (e) that the Mercedes-Benz Retailer may in its absolute discretion procure and fit to the Eligible Vehicle any replacement part or parts that it deems necessary for the efficient, safe and reliable operation of the Eligible Vehicle and the Customer shall pay the necessary cost of this;
- (f) that if an insurance company claims a deduction for any reason when reimbursing accident damage repairs within the scope of a fully comprehensive or a third-party insurance policy, the Customer shall make no claim against MBAuP except in the case of MBAuP's proven negligence.

## 6. Payment

- 6.1** The Customer shall pay MBAuP, in full and in advance, for the Service Solutions Service Plan at the time of purchase of the Eligible Vehicle.
- 6.2** The Customer is responsible for ensuring that, where the Customer seeks to finance a standard Service Solutions Service Plan under this Agreement, the Customer's financial institution permits the standard Scheduled Servicing Service Plan to be so financed.
- 6.3** In the event that the Service Plan is unable to be financed, the Customer at their option may either seek finance from a different financial institution, pay for their Service Solutions Service Plan outright and separately to the finance of their vehicle or retract their offer.
- 6.4** For the avoidance of doubt, in the event that the Customer retracts their offer in accordance with clause 6.3, the Customer will, unless otherwise entitled to by law, not be permitted to cancel their vehicle purchase.

## 7. Commission

- 7.1** Where a commission may be payable to a Mercedes-Benz Retailer the Customer consents to MBAuP paying a commission to any third party (which may include the Dealer Principal and/or salesperson at the Mercedes-Benz Retailer at which the Service Plan is purchased) with respect to the Service Plan purchased by the Customer. The Customer acknowledges that any third party who sold the Customer the Service Plan, or who conducted any prior negotiations with the Customer, is and was not the Customer's agent for any purpose.

## 8. Defects And Applications Outside The Agreement

- 8.1 When, in the reasonable opinion of the Mercedes-Benz Retailer any part or component of the Eligible Vehicle is defective beyond repair or is impairing, or likely to impair, its efficient, safe and reliable operation or likely to cause consequential damage to the Eligible Vehicle and the rectification of such defect is outside the scope of the services under the Service Solutions Service Plan the Mercedes-Benz Retailer may notify the Customer in writing of such opinion and recommend the replacement of the part or component.
- 8.2 If the Customer unreasonably refuses or fails to have the recommended work carried out within thirty (30) days of receiving this notification then MBAuP shall, until the work is undertaken, be absolved from all obligations under this Agreement in relation to the Eligible Vehicle.

## 9. Vehicles Withdrawn From This Agreement

- 9.1 This Agreement shall be effective from the Contract Start Date and shall continue in force for the Contract Term unless withdrawn earlier by mutual written consent of the parties.
- 9.2 If, in accordance with law, the Customer's finance arrangement is terminated before the end of the Customer's finance period, then the Customer or the Customer's finance company (subject to each satisfying clause 9.7), may recover from MBAuP a proportionate rebate of the consideration paid under this Agreement for the Service Solutions Service Plan.
- 9.3 Subject to clause 9.2 applying, the proportionate rebate of the consideration will be calculated as follows:
- “Withdrawal Charge” = MBAuP Income - (MBAuP Expenditure + MBAuP Administration Costs)**
- 9.4 Where a customer wishes to withdraw an Eligible Vehicle for whatever reason, MBAuP may in its sole and unfettered discretion, after the Customer has satisfied certain conditions (particularly clause 10.7), provide the Customer with a proportionate rebate of the consideration that the Customer paid under this Agreement for the Service Solutions Service Plan Where MBAuP exercises its discretion to provide the Customer with a proportionate rebate, MBAuP will be under no obligation to provide any more than is contemplated by clause 9.3.
- 9.5 Withdrawal of an Eligible Vehicle under this Agreement shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of withdrawal.
- 9.6 The Customer agrees that, if the Customer's finance company claims the Fee (or what remains thereof after applying clause 9.3) under the Customer's finance arrangement, MBAuP may pay the finance company the remaining amount that the Customer may otherwise be entitled to where such amount is due and owing to the finance company and that the Customer shall make no claim against MBAuP.
- 9.7 Whenever a Service Plan contract is eligible to be withdrawn and the Customer, or other party so entitled, seeks a proportionate rebate of the consideration paid under this Agreement for their Service Plan, MBAuP will require the Customer, or such other party so entitled, to complete a declaration that the Customer or the entitled party has not received any financial benefit in return for the sale or otherwise of the Service Plan associated with the Eligible Vehicle. For the avoidance of doubt, this clause will operate to prevent a Customer or entitled from deriving a double benefit from the sale of the Service Plan to a third party and a rebate from MBAuP.

## 10. Severence

- 10.1 If any provision of this Agreement is held by a court of competent jurisdiction to be void, invalid or unenforceable for any reason, that provision will be deemed deleted from this Agreement and the remainder of this Agreement will continue to have full force and effect.

## 11. Assignment

- 11.1 Save as expressly set out in this Agreement, and subject to clause 11.2, neither party may assign, sub-contract or transfer this Agreement or any rights or obligations under it in whole or in part without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 11.2 MBAuP may, upon proving the Customer with written notice, novate or assign its rights and obligations under this Agreement to a Related Body Corporate without the consent of the Customer.

## 12. Force Majeure

- 12.1 The Customer acknowledges and agrees that MBAuP and/or any Mercedes-Benz Retailer shall be excused from the performance of its obligations under this Agreement if MBAuP and/or the Mercedes-Benz Retailer is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of MBAuP and/or the Mercedes-Benz Retailer including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce).
- 12.2 Provided that, if the event in question continues for a continuous period in excess of 30 days, either party shall be entitled to give 7 days' notice in writing to the other to cancel the Agreement.

## 13. Amendments

- 13.1 This Agreement may only be varied by a document signed by or on behalf of each party.

## 14. Third Party Rights

- 14.1 Save as expressly provided in this Agreement, no terms of this Agreement shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

## 15. Governing Law And Jurisdiction


- 15.1** The Agreement must be governed by the laws of the State of Victoria.
- 15.2** The parties submit to the exclusive jurisdiction of the courts of the State of Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with the Agreement.

## 16. G.S.T.

- 16.1** Terms in this clause 16 have the same meaning as in the GST Act unless otherwise provided
- 17.2** If a party (“GST Supplier”) makes a supply to another party (“GST Recipient”) in connection with this Agreement, the GST Recipient must pay the GST Supplier an amount equal to any GST payable by the GST Supplier in relation to that supply (“GST Amount”), unless the amount payable by the GST Recipient for that supply is already expressed to be inclusive of GST.
- 16.3** The GST Amount must be paid at the same time and in the same manner as making payment of any monetary consideration on which GST is calculated. If the GST Amount is not calculated on monetary consideration, the GST Recipient must pay the GST Amount within 7 days of receipt of a written demand from the GST Supplier.
- 16.4** The GST Recipient’s obligation to pay the GST Amount is conditional on the GST Supplier providing the GST Recipient with a tax invoice that complies with the GST Law.
- 16.5** The GST Supplier must do all other things reasonably requested by the GST Recipient to enable the GST Recipient to obtain any input tax credit or other statutory set-off to which it is entitled.
- 16.6** If in relation to a supply made under this Agreement an adjustment event occurs that gives rise to an adjustment, the price of that supply (including any GST Amount) will alter accordingly and the GST Supplier must issue an adjustment note to the GST Recipient.
- 16.7** If a party to this Agreement is required to pay, reimburse or indemnify another party to this Agreement for any cost, expense or other amount that the other party has incurred or will incur in connection with this Agreement, that amount will be reduced by any part thereof for which the other party (or representative member of this other party) can claim an input tax credit, partial input tax credit or other like offset.

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