

CODE PARTICIPATION AGREEMENT

DATE:

PARTIES

BETWEEN THE CODE ADMINISTRATION BODY

AND: *Insert Business Name, Address, and Australian Business Number*

RECITALS

- A. You wish to become a Code compliant business.
- B. The parties have entered into this Agreement in order to record the terms of your participation as a Code compliant business under this Agreement.

PURPOSE

- A. The purpose of this Agreement is to reduce the trade in stolen vehicles and used vehicle components, and to help protect consumers from receiving stolen used auto parts.

DEFINITIONS

- A. The following definitions apply in this document.

“Appeals Committee” means the Code Appeals Committee constituted by the Code Administration Body in accordance with Clause 16.

“Approved jurisdiction” (definition to be developed if required—see clause 5 (a)(iii)).

“Auto Part” means any vehicle component, and is not limited to those listed in Schedule 1.

“Breach Investigation Notice” means a breach investigation notice issued under Clause 13.

“Breach Notice” means a breach notice issued under Clause 14.

“Business Day” means a day other than Saturday, Sunday or a public holiday.

“Compliant Business” means a person who has an agreement with the Code Administration Body that is similar to this Agreement.

“Police Record Document” means an original or certified extract of your National Criminal History Record or equivalent document issued by the Police Service of your State or Territory or by the Federal Police.

“Schedule” means a schedule to this Agreement.

“Termination Notice” means a notice issued under Clause 15.

“Vehicle Component” means a component described in Schedule 1.

“We” means the Code Administration Body.

“You” means the Code compliant business named above.

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OPERATIVE PROVISIONS

PART A – TERMS OF PARTICIPATION
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1. ADMISSION TO CODE

- (a) We agree to admit you as a Code compliant supplier of used auto parts.
- (b) You agree to accept the terms of this Agreement.

2. TERM

- (a) This agreement will commence on the date of this Agreement and will end on the earlier of:
 - (i) five years from the date of this Agreement; or
 - (ii) the date of any earlier termination allowable under this Agreement.

3. FEES

- (a) There will be no subscription fees for participating businesses for the period <<date to be inserted>>.

PART B - YOUR OBLIGATIONS - OBTAINING AND SELLING USED AUTO PARTS
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4. GENERAL UNDERTAKINGS

- (a) You must:
 - (i) do everything reasonably possible to ensure that you do not receive into your possession a vehicle or auto part that is stolen;
 - (ii) comply with all laws and regulations applicable to the operation of your auto parts recycling business including, without limitation, legislation in relation to environmental protection and taxation;
 - (iii) provide to us upon request Police Record Documents that are true, complete, accurate, and not misleading, signed by each of the following persons:
 - (A) you (if you are a natural person); and
 - (B) your company officers and shareholders if you are a company.

None of the persons described is to have been convicted of a crime of violence or dishonesty within the three years prior to the date of this Agreement, and must not be convicted of a crime of violence or dishonesty after the commencement of this Agreement;

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- (iv) advise us immediately should any criminal charges be laid against any person described in Clause 4 (a) (iii);
- (v) provide full and courteous assistance at all times to our employees, contractors and agents involved in the administration of this Agreement including, but not limited to, the provision of unhindered access to your premises and relevant records during normal business hours in order to audit your compliance with the terms of this Agreement;
- (vi) be responsible for any failure by your company, employees, contractors or agents in meeting the requirements of this Agreement;
- (vii) prominently display details of the Code of Practice at your business shop-front in a form provided by us from time to time, and make available that information to any customer that requests it;
- (viii) obtain our agreement before using our business mark, including Code logos, in your own marketing material;
- (ix) not purchase any used auto part from a person under 18 years of age;
- (x) not pay more than \$100 in cash within a seven day period to a seller of used auto parts;
- (xi) not pay to the seller of a whole vehicle more than 50 per cent of the purchase price in cash;
- (xii) advise us of any encounter you have with used auto parts or sellers of used auto parts that you consider may involve stolen goods;
- (xiii) use your best endeavours to source prescribed components that you do not have in stock from other Code compliant businesses;
- (xiv) advise us immediately should you become aware of any failure to meet your obligations under this Agreement.

5. SPECIFIC UNDERTAKINGS RELATING TO THE ACQUISITION OF WHOLE VEHICLES

- (a) When obtaining a whole or substantially whole vehicle, you must have first obtained documentary evidence of the seller's entitlement to dispose of the vehicle by:
 - (i) ensuring that the person selling the vehicle is the owner indicated on the registration papers for the vehicle by checking that the seller's name and address corresponds with those on the seller's photo driver's licence (or other form of photo identification as approved by the Code Director); and,
 - (ii) obtaining a "REVS" certificate, or the equivalent in your State or Territory, and verifying that the seller is the owner listed on the certificate, ensuring that no other parties are listed as having a financial interest in the vehicle, and ensuring that it does not indicate that the vehicle has been reported stolen. A written REVS certificate (or equivalent) is to be obtained and retained for not less than five years;

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- (iii) or, in lieu of Clause 5 (a) (ii), if the vehicle is purchased in an approved jurisdiction [insert definition if required], recording and retaining the documentation and authorisation obtained under that system for a period of not less than five years (for example, the “serial number” provided by Transport SA).
- (b) Approval from the Code Director must be obtained if using a process other than that detailed in Clause 5 (a) above.
- (c) You must also collect the following minimum information and retain it in a readily locatable and identifiable form for not less than five years:
 - (i) the vehicle engine number and VIN number;
 - (ii) the last known registration number;
 - (iii) the seller’s name, address and driver licence number (or details of another form of photo identification approved by the Code Director);
 - (iv) date of purchase; and
 - (v) purchase price.
- (d) We accept that your responsibility under this agreement does not extend to circumstances in which you inadvertently receive stolen components that are contained within a vehicle in relation to which you have met your obligations of this Section.

6. SPECIFIC UNDERTAKINGS RELATING TO THE ACQUISITION OF ALREADY-SEPARATED PARTS

- (a) If a prescribed component is obtained from another Code compliant business, then you must:
 - (i) retain, for not less than five years, a record (such as an invoice from the supplier) that unequivocally associates the supplier’s Code compliance number with the unique part labelling identifier attached to the component in accordance with Clause 8 below.
- (b) If a prescribed component is obtained from any business that is not a Code compliant business, and the requirements of 4 (a) (xiii) have been met, then you must:
 - (i) verify the seller’s business name, Australian Business Number, and business address by sighting 2 forms of identification containing those details. At least one form of identification must be a business licence, or a motor vehicle or second hand dealer’s licence, or a record from a third party service provider (such as a telephone or electricity notice). The other form of identification may be in the form of a business or invoice letterhead from the supplier etc. It is not necessary to verify these details for subsequent transactions with the same business unless there is a change in the ownership or control of that business;
 - (ii) retain, for not less than five years, a record of the seller’s identification obtained pursuant to (b)1 above that unequivocally associates the supplier with the unique part labelling identifier attached to the component in accordance with Clause 8 below.

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- (c) If a prescribed component is to be obtained from a non-business seller (i.e. a private seller), and the requirements of Clause 4 (a) (xiii) above have been met, then you must:
- (i) obtain in person from the seller copies of three forms of identification, at least one of which must contain a photo, that substantiate the seller's name, date of birth and address; and
 - (ii) retain, for a period of not less than five years, copies of the seller's identification obtained pursuant to 6 (c) (i) above that unequivocally associates that supplier with the unique part labelling identifier attached to the component in accordance with Clause 8 below.

7. SPECIFIC UNDERTAKINGS RELATING TO IMPORTED VEHICLES AND COMPONENTS

- (a) If you import vehicles or prescribed components, you must keep records of the shipping details (including approvals from authorities) for a period of not less than five years.

8. SPECIFIC UNDERTAKINGS RELATING TO THE LABELLING OF COMPONENTS

- (a) Your obligations in relation to the labelling of components commence immediately upon your removal of prescribed components from the source vehicle, or upon receiving separated prescribed components into your business premises.
- (b) You must have, or put, in place a system of parts labelling that uniquely identifies prescribed components in stock that demonstrably meets the objective of:
- (i) readily and unequivocally associating each prescribed component with the records obtained and retained pursuant to Clauses 5-7 above.
- (c) So long as Clause 8 (b) above is met, you may determine a system that best suits the operational requirements of your business, including the use of existing inventory control systems or systems already in place to meet regulatory requirements.
- (d) Prescribed components must be marked in such a way as to be visible, clearly legible, and securely attached to the component while it is in your possession.
- (e) Businesses that require customers to remove prescribed components from vehicles themselves must have, or put, in place a system that ensures the vehicle from which the prescribed component is taken is accurately recorded.

9. SPECIFIC UNDERTAKINGS RELATING TO THE SALE OF PRESCRIBED COMPONENTS

- (a) You must provide a receipt with the sale of prescribed components that includes the following minimum information:
- (i) your Code participation number;
 - (ii) the component identification number applied to the part in accordance with Clause 8 above;
 - (iii) description of the component;
 - (iv) date of sale; and
 - (v) sale price.

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- (b) A duplicate copy of the receipt (either in electronic or paper form) must be retained by you for not less than five years and be stored in a manner conducive to being made readily available for audit and inspection purposes.
- (c) If a duplicate receipt retained pursuant to Clause 9 (b) is in electronic form, the date and time properties associated with the document must also be retained.

10. SPECIFIC UNDERTAKINGS RELATING TO SUSPICIOUS PARTS

- (a) You must, as soon as is practicable, advise the Code Director if:
 - (i) you are offered for purchase a vehicle or auto part which you suspect to be stolen; or
 - (ii) you form the opinion that a seller, or prospective seller, whether private or business, may be dealing in stolen goods.
- (b) If you suspect you may have in your possession a vehicle or used auto part that may have been obtained illegally by the supplier, the Code Director must be notified immediately, and the part quarantined at your premises until otherwise notified by the Code Director.
- (c) The requirements under this Agreement are in addition to any requirement to notify the police or other authorities as appropriate or as required by legislation in your State or Territory.

11. SPECIFIC UNDERTAKINGS RELATING TO CUSTOMERS

- (a) You must clearly display and make available to customers information regarding the Code of Practice, in the form provided by the Code Director (ie. brochures etc).
- (b) In the event that a purchaser of a prescribed component from you finds that:
 - (i) they have received a stolen part; or
 - (ii) they have received a part for which evidence of the legitimate origin of the part cannot be demonstrated by you

then you must:

- (iii) offer to refund the full purchase price, or replace the part, at the customer's discretion;
- (iv) advise the customer of their rights to report the matter to Code Administration Body; and
- (v) meet the obligations of Clause 10 above.

PART C - PERFORMANCE MANAGEMENT

12. PERFORMANCE AUDITS

- (a) We may conduct a review of your compliance with your obligations under this Agreement either:
- (i) as part of a program of random compliance audits of Code compliant businesses; and/or
 - (ii) in response to information we receive; and/or
 - (iii) to determine whether action has been taken to remedy previous breaches of this Agreement.

13. INVESTIGATION OF POSSIBLE BREACHES

- (a) We may form an opinion that you may be in breach of this Agreement as the result of, but not limited to, the following circumstances:
- (i) information resulting from a performance audit undertaken pursuant to Clause 12 above;
 - (ii) you inform us of a possible or known breach on your part;
 - (iii) information is received from third parties.
- (b) We may at our discretion, contact you by phone (or by any other means) in the first instance with a view to determining whether the possible breach warrants further investigation:
- (i) if you accept that there has been a breach, you shall provide that acknowledgement to the Code Director in writing within 5 business days.
- (c) If we form an opinion that you may have breached this Agreement, then we may:
- (i) issue you with a notice informing you of the nature of the possible breach and requiring you to provide us with a written response within five business days of receipt of the notice (a **Breach Investigation Notice**); and/or
 - (ii) arrange a compliance audit, either at a random date and time or with fore-warning, at our discretion.
- (d) We may, at any time, request information from you to establish whether or not a breach has occurred. You shall provide us with all relevant information including, but not limited to, any information that disproves the suspected breach, or indicates mitigating circumstances. You must respond within 5 business days of receiving of such a request.
- (e) You, your employees, contractors and agents must co-operate fully, promptly and courteously with us, our employees, contractors and agents in the investigation of any possible breach.

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14. BREACH NOTICES

- (a) We may issue you with a notice in writing that you have breached this Agreement (a **Breach Notice**) if:
 - (i) we find that a breach has occurred; and/or
 - (ii) you, or your employees, agents or contractors have not co-operated fully with the investigation of the breach.
- (b) You must, within 10 business days of receiving a Breach Notice, remedy any breach capable of being remedied.

PART D - TERMINATION OF THIS AGREEMENT

15. OUR RIGHT TO TERMINATE

- (a) We may terminate this Agreement immediately by written notice to you (a **Termination Notice**), if:
 - (i) you, or any of your employees, agents or contractors, engages in or threatens violence against us, our employees, contractors or agents; or
 - (ii) you, or any of your employees, agents or contractors, attempt to mislead or deceive us in relation to any aspect of this Agreement; or
 - (iii) we issue you a Breach Notice and you fail to remedy that breach within ten business days of receiving the Breach Notice; or
 - (iv) you are issued with three or more Breach Notices in a twenty-four month period; or
 - (v) you are issued with two or more Breach Notices in a twelve-month period for a breach of the same clause of this Agreement.
- (b) If this Agreement is terminated, we shall notify the public in a manner determined by us, including but not limited to the publication of the name and location of your business and the nature of the breaches that have caused the termination of the Agreement.

16. YOUR RIGHT TO APPEAL A TERMINATION NOTICE

- (a) You can appeal a Termination Notice issued pursuant to Clause 15 (a) above by providing us with:
 - (i) written notification of your intention to appeal within five business days of receiving the Termination Notice;
 - (ii) written notification of the grounds for your appeal within ten business days of receiving the Termination Notice.
- (b) The appeal shall be considered by an Appeals Committee, the nature, membership and procedural operations of which shall be determined by us.

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- (c) Appeals against a Termination Notice may, without limitation, be upheld on the basis that some or all of the following grounds have been established:
- (i) the breaches are not indicative of a broader disregard of the provisions of this Agreement;
 - (ii) you brought the breach or breaches to our attention yourself;
 - (iii) you co-operated with the investigation of the breach or breaches;
 - (iv) you had insufficient time to fully implement the requirements of this Agreement;
 - (v) you genuinely misunderstood your obligations under this Agreement;
 - (vi) the evidence of a breach is not conclusive;
 - (vii) the breach or breaches are minor in the view of the Appeals Committee;
 - (viii) you have agreed to immediately remedy the breach or breaches.
- (d) The Code Appeals Committee may:
- (i) rescind the Termination Notice;
 - (ii) rescind the Termination Notice but issue a warning that failure to remedy the breach(es) and/or the occurrence of any further breaches will lead to a presumption of immediate termination of this Agreement; or
 - (iii) confirm the termination of this Agreement.
- (e) Appeals Committee decisions are final.

17. YOUR RIGHT TO TERMINATE

- (a) You may terminate this Agreement at any time by giving us 30 days written notice.

18. ASSIGNMENT

- (a) This Agreement is personal to you and is not assignable.
- (b) If there is to be a change of ownership or control of your business¹ this Agreement is terminated as of that date.

¹ Excludes managers and employees

PART E - MISCELLANEOUS PROVISIONS

19. LOGOS, TRADE MARKS AND SIGNAGE

- (a) We remain the owner of all posters, signs, forms and any other material that contains a business mark that we provide to you. You must return these promptly if the Agreement is terminated or if we so request.
- (b) Your right to use our business mark(s) or to in any way represent yourself as being a Code compliant supplier ceases immediately upon termination of this Agreement.

20. PRIVACY

- (a) You must not use any personal information collected under this Agreement for any purpose other than fulfilling your obligations under this Agreement.
- (b) You must indemnify us against any liability, loss or expense arising out of any interference with the privacy of an individual.

21. INDEMNITY

- (a) You must agree to indemnify us for any loss or claim in connection with or arising out of a breach of this Agreement.
- (b) This indemnity shall survive the termination or expiry of this Agreement.

22. CONFIDENTIALITY

- (a) You must not disclose, other than as required by law, any information about this Agreement that is not in the public domain.

23. VARIATIONS

- (a) The provisions of this Agreement may only be varied by written agreement by both parties.

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EXECUTED as an agreement.

SIGNED for an on behalf of the Code Administration Body

.....
(name of person)

.....
(signature of person)

in the presence of:

.....
(witness to sign here)

.....
(name of witness)

SIGNED for an on behalf of

.....
(Name of Company/Person)

.....
(Signature of authorised officer/person)

in the presence of:

.....
(witness to sign here)

.....
(name of witness)

SCHEDULE 1. PRESCRIBED VEHICLE COMPONENTS

Prescribed vehicle components means any of the following components of a vehicle that is no more than 10 years old.

Body Panels:

- body shells (and major sections)
- front fenders (left and right)
- doors (all)
- bootlids and tailgates
- bonnets (“hoods”)
- rear quarter panels (left and right)
- chassis (“frames”)

Mechanical:

- engines
- transmissions (both automatic and manual)
- radiators
- air-conditioning condensers

Other:

- airbags and pyrotechnic seatbelt pre-tensioners
- seats
- headlamp assemblies
- car audio/audio-visual/satellite navigation systems
- alloy wheels

SCHEDULE 2. SUBSCRIPTION FEES

[There will be no subscription fees for the period <<insert period>>.]