

KASHY

PIONEERING A MECHANICAL REVOLUTION

Dual Marketplace Terms and Conditions

KASHY AUSTRALIA PTY LTD ACN 628 448 359



CUBED BY LAW SQUARED™

STARTUP LEGAL MADE EASY.

MELBOURNE

Level 19, 114 William St
Melbourne, VIC 3000
Telephone (03) 9008 5954
melbourne@cubed.lawsquared.co

SYDNEY

Level 13, 50 Carrington St
Sydney, NSW 2000
Telephone (02) 8315 3236
sydney@cubed.lawsquared.co

BRISBANE

Level 6, 140 Creek St
Brisbane, QLD 4000
Telephone (03) 9008 5954
brisbane@cubed.lawsquared.co

Cubed.LawSquared.co

1. Overview

- (a) Welcome and thank you for using Kashy! We are excited to have you on board.
- (b) Kashy offers its customers access to mechanics at a competitive rate while allowing mechanics to earn more and improving the satisfaction of both parties (collectively referred to as “Members”, “you”, “your”).
- (c) Our online platform located at www.kashy.com.au (“Site”) and our services (collectively, “Service”) are owned and operated by Kashy Australia (ACN 628 448 359) (“we”, “us”, “our”). Please read these terms and conditions (“Terms”) carefully as they form a contract between Site users and us (“Agreement”). By using the Site, you agree with and accept the Terms in this Agreement.
- (d) This Agreement and all policies and guidelines related to the Service, together with the Australian Consumer Law contained within Schedule 2 to the Competition and Consumer Act 2010 (“Australian Consumer Law”), form the entire agreement between you and us. If you do not accept any Terms of the Agreement, you may cease to use the Site immediately.
- (e) We reserve the right to amend the Terms at any time, and by continuing to use the Site, you accept the Terms as they apply from time to time.

2. Scope of Our Services

- (a) Our platform is a digital marketplace that connects customers with mechanics and apprentices (“Providers”) who offer mechanical servicing and repairs.
- (b) We act as an intermediary between Members and our role is limited to facilitating access to the Site and products or services offered by Providers (“Provider’s Service”) on the Site.
- (c) We do not own, create, sell, resell, provide, control, manage, guarantee, deliver or supply any Provider’s Service on the Site. When the customer connects and makes a booking with a Provider on the Site (“Booking”), the customer is directly entering into a binding contract with the Provider. We do not become a party to or participant in any contractual relationship between Members. We are not acting as a partner or agent in any capacity for any Member, except as specified in the Payment Terms in accordance with clause 6.

3. Registration and Access to Service

- (a) To obtain access to our Service, you must register for an account with us (“Account”) and accept these Terms and our [Privacy Policy](#) (*insert link to Privacy Policy when available*) which forms a contractual relationship between you and us.
- (b) To use our Service, you must provide us with current, complete and accurate identification, and other information (some of which is not mandatory) including, but not limited to, your name, phone number, a valid email address, and password (“Registration Information”).
- (c) If your Registration Information changes, you must promptly update your Account to reflect those changes.
- (d) By accessing the Site and using our Service as a Member, you agree and acknowledge that:
 - (i) we have no control of the conduct of our Members and your interactions with other Members (whether in person or online) and your obtaining of any Provider’s Service is at your own risk. You



- should always verify a Provider's details and exercise due diligence and care when making a Booking;
- (ii) we do not guarantee the existence, availability, suitability, legality or safety of any Provider's Service;
 - (iii) you are responsible for maintaining the confidentiality of your Registration Information at all times;
 - (iv) your access to and use of the Site is non-transferable;
 - (v) we may deny anyone access to an Account, our Service or the Site at any time and for any reason without notice;
 - (vi) we reserve the right, but are not obliged, to monitor, review, verify, edit, modify or delete material, content, data or information created, generated or transmitted by Registered Users through the Application ("User Content") and we do not control the accuracy of User Content; and
 - (vii) we are not obliged to confirm the identity of the Site users, including our Members.
- (e) By registering for an Account, you agree that we may send you text (SMS) messages as part of the normal business operation of your use of the Service. You may opt-out of receiving SMS messages from us by contacting us and you acknowledge that opting out of receiving SMS messages may impact your use of our Service.

4. Use of Site and Service

By accessing the Site, you shall:

- (a) use the Site for lawful purposes only;
- (b) not commit any act or engage in any practice that:
 - (i) is harmful to our systems, reputation or goodwill; or
 - (ii) interferes with the integrity of the Site, including, but not limited to, by hacking, transmitting any viruses, spyware, malware or any other code of a destructive or disruptive nature;
- (c) not create Accounts with us through unauthorised means, including by using an automated device, script, bot or other similar means;
- (d) not restrict, or attempt to restrict, another user from using the Site;
- (e) not encourage or facilitate violations of the Terms;
- (f) not distribute or send communications that contain spam, chain letters, or pyramid schemes;
- (g) not harvest or otherwise collect information about others, including Registration Information, without their consent;
- (h) not bypass measures used to prevent or restrict access to our Service;
- (i) not interfere with the privacy of, harass, intimidate, act violently or inappropriate towards or be discriminatory against another Member; and
- (j) not infringe any intellectual property rights or any other contractual or proprietary rights of another person.

5. User Content

- (a) You are solely responsible for User Content:
 - (i) you post, publish or otherwise transmit through the Site; and
 - (ii) you obtain through accessing or using the Site.
- (b) You grant us a royalty free, worldwide, perpetual, irrevocable, non-exclusive, transferable, assignable, sub-licensable licence to use, reproduce, modify, copy, store and exploit your User Content for our business or commercial purposes.



- (c) The views expressed in any User Content are the views of users and not those of us unless specified otherwise. We are not responsible for and disclaim all liability in respect of any comments, views or remarks expressed in any User Content. We encourage you to report problems, offensive content, comments and malicious use of the Site.

6. Payment Terms

6.1 Service fees

- (a) In this clause 6, “Payment Method” means a financial instrument that Members have added to their Account, such as a credit card, debit card, or PayPal account.
- (b) We may charge fees to Members in consideration for the use of our Service (“Service Fees”). All Service Fees are in Australian Dollars (AUD). Service Fees may be converted to your local currency at the time of payment. We will be entitled to add on GST for any supply in Australia.
- (c) We will inform you of any applicable Service Fees (including any applicable GST) prior to completion of your Booking.
- (d) We reserve the right to change the Service Fees at any time and we will provide Members adequate notice of any fee changes before they become effective.
- (e) You as a Member are responsible for paying any Service Fees that you owe to us. Except as otherwise provided on the Site, Service Fees are non-refundable.

6.2 Provider fees

- (a) Generally speaking, we will collect the total fees from a customer at the time a Booking is accepted by the Provider.
- (b) In order to receive the fee for the Provider’s Service (“Provider Fee”), you as a Provider must have a valid Payment Method linked to your Account. The time it takes to receive the Provider Fee once released by us may depend upon the Payment Method you select.
- (c) The Provider Fee for a Booking will be the total fee less applicable Service Fees and taxes.

6.3 Payment method

- (a) Members may pay for the fees payable under this Agreement by way of Payment Method.
- (b) You must provide accurate, current, and complete information when adding a Payment Method to your Account and it is your obligation to keep your Payment Method up-to-date at all times. The information required for Payment Method will include your address, name on the account, account type and account number.
- (c) Members are responsible for ensuring their Payment Method details are correct. Changes to Payment Method details can be made by contacting us at our contact details in clause 20. If your credit card expires or your Payment Method is invalid, delivery of the Service may be cancelled or revoked.
- (d) Please note that the Payment Method may involve the use of third-party payment service providers. These service providers may charge you additional fees when processing payments in connection with a Provider’s Service, and we are not responsible for any such fees and disclaim all liability in this regard. Your Payment Method may also be subject to additional terms and conditions imposed by the applicable third-party payment service provider. Please review these terms and conditions before using your Payment Method.
- (e) We reserve the right to delay or cancel any payment for purposes of preventing unlawful activity, fraud, risk assessment, security or investigation.
- (f) We will take steps to rectify any payment processing errors that we become aware of. These steps may include crediting or debiting (as appropriate) the same Payment Method used for the original payment by



you, so that you end up receiving or paying the correct amount.

7. Currency Conversion

- (a) We may, at our sole discretion, round up or round down amounts that are payable from or to Members to the nearest whole functional base unit in which the currency is denominated.
 - (b) Our Site facilitates dealings between Members who may prefer to pay and handle payments in a currency different from their destination currency, which may require currency conversions to accommodate these differing currency preferences.
 - (c) When you as a Member obtain a Provider's Service, and such Provider's Service will be subject to a currency conversion, you will be able to view the exchange rate applied to do the currency conversion before you make your Booking.
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8. Cancellations and Refunds

- (a) By accepting a Provider's Service on the Site, you accept and agree to the relevant cancellation and refunds policy of that Provider and to any additional terms and conditions of the Provider's Service that may apply to you.
 - (a) Please check the terms and conditions of a Provider's Service thoroughly for any such conditions prior to making a Booking. If you would like to change or cancel a Provider's Service, please review and keep a record of any correspondence regarding that change or cancellation.
 - (b) You agree that we have no control of any Provider's cancellation and refunds policy and that you will not hold us responsible for any result or consequence of your request of cancellation or refund from a Provider.
 - (c) We handle and process refunds in accordance with the Australian Consumer Law:
 - (i) should you wish to obtain a refund, you may contact us within 14 calendar days of completion of the Service to report any discrepancies or faults to make a claim otherwise you will be deemed to have accepted the Service;
 - (ii) returns or refunds are made in our discretion subject to any guarantees that cannot be excluded under the Australian Consumer Law; and
 - (iii) except as required by the Australian Consumer Law, we will only facilitate a refund if we are unable to facilitate the completion of the Service or, if we determine, in our absolute discretion, it is reasonable to do so.
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9. Intellectual Property Rights

- (a) In these Terms, "Intellectual Property (Rights)" means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, circuit layouts, domain names, know-how and other rights of a similar nature worldwide, whether registered or not, and any applications for registration or rights to make such an application.
- (b) We own or are the licensee of all rights, title and interest (including Intellectual Property Rights) in the Site or to the material (including all text information and content, graphics, logos, type forms and software) made available to you on the Site (collectively, "Site Content"). Your use and access of the Site does not grant or transfer any rights, title or interest to you in relation to the Site Content.



- (c) You may view the Site using a web browser or mobile device, and electronically copy and print hardcopy the Site Content solely for your personal, non-commercial use.
- (d) You must not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, commercially exploit, reverse engineer, create derivative works from, transfer, or sell any Site Content or any other material in whatever form contained within the Site unless expressly stated otherwise in these Terms.

10. Third Party Links

The Site may contain links and other pointers to Internet websites or applications operated by third parties. We do not control these linked websites and are not responsible for the contents of any linked website. Your access to any such website is entirely at your own risk. You should contact the relevant third-party directly to enquire on that information prior to entering into a transaction in relation to the third-party products and services.

11. Disclaimer

To the fullest extent permitted by law, you agree and acknowledge that:

- (a) our Service is provided “as is” and “as available” and the entire risk arising out of your use of our Service remains solely with you;
- (b) we are not responsible for any damage caused to your vehicle in the course of you receiving the Provider’s Service;
- (c) we do not control, endorse and are not responsible for any User Content;
- (d) we retain complete control over the Site and may alter, amend or cease the operation of the Site in our sole discretion;
- (e) we make no warranty or representation that any result or objective can or will be achieved or attained by accessing the Site;
- (f) we make no warranty or representation that the Site will be fit for purpose, continuous, uninterrupted, accurate, fault-free, virus-free, secure or accessible at all times; and
- (g) we may remove any content, material and/or information, including any User Content, without giving any explanation or justification for removing the material and/or information.

12. Exclusion and Limitation of Liability

- (a) To the fullest extent permitted by law, we are not liable to you, or to anyone else for any direct or indirect loss or damage, including consequential loss, reputation, goodwill and opportunity, arising out of or in connection with our Service or this Agreement. We exclude all representations, warranties or terms (whether express or implied) other than those set out in these Terms.
- (b) Pursuant to s64A of Schedule 2 of the Australian Consumer Law, this clause 12(c) applies in respect of services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption. Our liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by s51 to s53 of the Australian Consumer Law) is limited at our option to:
 - (i) the re-supply of the services or products; or
 - (ii) the payment of the direct cost of having the services or products resupplied.



13. Privacy

We will collect, use and disclose any personal information you provide us when accessing using the Site in accordance with our Privacy Policy. For more information on our information collection and handling practices, please view our [Privacy Policy](#) (insert link to Privacy Policy when available).

14. Indemnity

- (a) You agree to indemnify us for all losses, damages, liabilities, claims and expenses (including reasonable legal costs) incurred by us arising out of or in connection with your use of the Site, User Content, your breach of the Terms or any rights of third parties, except to the extent we directly caused or contributed to the loss, damage, liability, claim or expense.
 - (b) We reserve the right, at our own expense, to assume the exclusive control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defence of such claim.
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15. Termination

- (a) Both us and our Members have a right to terminate this Agreement at any time.
 - (b) Members shall remain obligated to complete any outstanding payment for any Service Fee and Provider Fee incurred before the Agreement termination date.
 - (c) We reserve the right to:
 - (i) cease operating the Site, without notice and for any reason; or
 - (ii) terminate our relationship with you without notice and with immediate effect if you, in any way, breach the Terms;
 - (d) If one of the events described in clause 15(c) occurs, then:
 - (i) you will not have any access to the Site or your Account; and
 - (ii) we will not be liable for any costs, losses or damages arising as a result of terminating your access to the Site.
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16. Dispute Resolution

- (a) We reserve the right, but have no obligation, to monitor disputes between Members.
- (b) *Compulsory process.* If a dispute arises out of or relates to this Agreement as between us and a Member, either party may not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement (“Dispute”) unless it has complied with this clause 16. A party claiming that a Dispute has arisen must notify the other party to the Dispute giving details of the Dispute.
- (c) *Initial Period.* During the 15-Business Day period after notice is given (or any longer period agreed in writing by the parties to the Dispute) (Initial Period) each party to the Dispute (Disputant) must cooperate and take all reasonable steps necessary to resolve the Dispute.
- (d) *Mediation.*
 - (i) If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees



- that the Dispute must be referred for mediation to a mediator agreed on by the Disputant.
- (ii) If the Disputants are unable to agree on a mediator within 7 days after the end of the Initial Period, then the parties must submit the dispute for mediation through the Law Society of Queensland and have the President of that Law Society appoint a Mediator and set the matter for mediation.
 - (iii) The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.
 - (iv) Each Disputant must pay its own costs of complying with this clause 10(c). The Disputants must pay equally the costs of any mediator engaged.
 - (v) The mediation will be held in Queensland, Australia.
- (e) *Failure to Resolve.* After the Initial Period, a Disputant that has complied with this section may terminate the dispute resolution process by giving notice to each other Disputant. A party to a Dispute will only be entitled to pursue other remedies available to it at law or otherwise, if the parties have failed to resolve the dispute within 30 Business Days after commencement of dispute resolution.
- (f) *Confidentiality.* All communications concerning negotiations made by the Disputants in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as “without prejudice” negotiations for the purpose of applicable law of evidence.
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17. No Waiver

No waiver of rights under this Agreement shall constitute a subsequent waiver of this or any other right under this agreement. Any failure on our part to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision.

18. Severability

If any provision of our Terms is unenforceable or invalid, it will be ineffective to the extent it is unenforceable or invalid and will not affect the enforceability or validity of the remaining provisions.

19. Law and Jurisdiction

These Terms are governed by and construed in accordance with the laws of Queensland, Australia. You submit to the non-exclusive jurisdiction of the Courts of Queensland and Courts of Appeal from them for determining any dispute concerning these Terms.

20. Feedback and Contact

Your feedback is important to us and our community. We welcome and encourage you to provide feedback, reviews, comments and suggestions for improvements to the Site and our Service (“Feedback”). You may submit Feedback by contacting us at info@kashy.com.au.

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