

EQC Service Solutions: 'Pay upfront' Service Plan

Terms and Conditions

These terms and conditions govern the Mercedes-Benz EQC Service Solutions "Pay upfront" Service Plan (the "**Plan**") offered by Mercedes-Benz Australia/Pacific Pty Ltd (ABN 23 004 411 410) of 44 Lexia Place, Mulgrave, Victoria, 3170 ("**MBAuP**"). These terms and conditions are to be read in conjunction with the Schedule attached.

For a current list of Authorised Mercedes-Benz EQ Retailer please visit www.mercedes-benz.com.au

1. Definitions

1.1 In the context of these terms and conditions, the following terms shall have the following meanings:

- (a) **Agreement** means the information detailed in these terms and conditions and the Schedule.
- (b) **Authorised Mercedes-Benz EQ Retailer** means a Mercedes-Benz Retailer appointed by MBAuP to sell Mercedes-Benz EQC vehicles, EQC service plans and associated services and which can be found on www.mercedes-benz.com.au;
- (c) **Authorised Mercedes-Benz EQ Service and Parts Centre** means a Mercedes-Benz Retailer appointed by to service Mercedes-Benz EQC vehicles and which can be found on www.mercedes-benz.com.au;
- (d) **Contract Start Date** means the contract start date specified in the Schedule to these terms and conditions.
- (e) **Contract Term** means the period beginning on the Contract Start Date detailed in the Schedule and ending on:
 - (i) The attainment of the contracted number of months in the Service Plan or the total kilometre allowance whichever occurs first (e.g. 3 years or 75,000 kilometres);
 - (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.
- (f) **Customer** means the individual/entity detailed in the Schedule to these terms and conditions;
- (g) **DSB** means the digital booklet issued by Mercedes-Benz Australia/Pacific Pty Ltd outlining the standard scheduled servicing requirements of Mercedes-Benz vehicles.
- (h) **Eligible Vehicle** means the vehicle detailed in the schedule to these terms and conditions;
- (i) **EQC Vehicle** means a Mercedes-Benz electric vehicle;
- (j) **Fee** means the amount specified as payable by the Customer to MBAuP as an upfront total payment for the Service Plan as detailed in the Schedule to these terms and conditions;
- (k) **GST** means goods and services tax imposed under the GST Act;
- (l) **GST Act** means *A New Tax System (Goods & Services Tax) Act 1999 (Cth)* as amended from time to time;
- (m) **MBAuP** means Mercedes-Benz Australia/Pacific Pty Ltd (ABN 23 004 411 410) having its registered address at 44 Lexia Place, Mulgrave, Victoria, 3170, Australia;
- (n) **MBAuP Administration Costs** means the cost to MBAuP of implementation and withdrawal/cancellation of the Agreement.

- (o) **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 Digital Service Booklet) under the 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 4.1(a), the cost attributable to the missed standard Scheduled Servicing will be deemed to be a cost incurred by MBAuP and not refundable.
- (p) **MBAuP Income** means the Fee received from the Customer for the Service Plan;
- (q) **Scheduled Service and Scheduled Servicing** means the fundamental technically essential maintenance work carried out at particular intervals as outlined in the DSB relating to the Eligible Vehicle; and
- (r) **Service Plan** means the EQC Service Solutions Pay upfront Service Plan purchased by the Customer, as detailed in these terms and conditions and in the Schedule.

2. Service Plan Inclusions and Exclusions

- 2.1 This Service Plan includes applicable safety checks and service work as stipulated in the DSB for the Eligible Vehicle and will include the following:

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

- 2.2 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
All 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
Tuning, if required between services	X
Brake pads, discs and wiper blade replacements	X

3. MBAuP's Obligations

- 3.1** MBAuP agrees that the services to be provided under this Service Plan will be carried out and performed by an Authorised Mercedes-Benz EQ Service and Parts Centre during the Contract Term at a date to be agreed and coordinated by the Customer and the Authorised Mercedes-Benz EQ Service and Parts Centre.
- 3.2** MBAuP agrees to pay the Authorised Mercedes-Benz EQ Service and Parts Centre for the services that form part of the Customer's Service Plan, on behalf of the Customer and for which MBAuP has received the Fee.
- 3.3** Subject to clauses 4.1(a) and 4.1(e), should any additional work be required, above and beyond that provided within a Service Plan, the Authorised Mercedes-Benz EQ Service and Parts Centre will advise the Customer of this and request the Customer's authorisation before any additional work is carried out.
- 3.4** 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, as outlined in the Details.

4. Customer's Obligations

4.1 The Customer agrees:

- (a) to deliver the Eligible Vehicle to an Authorised Mercedes-Benz EQ Service and Parts Centre 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 also outlined in the Mercedes-Benz Digital Service Booklet:

	1 st Year / 12 months*	2 nd Year / 24 months*	3 rd Year / 36 months*	4 th Year / 48 months*	5 th Year / 60 months*
All EQC models	25,000 km	50,000 km	75,000 km	100,00 km	125,000 km

*from the date of first registration, whichever occurs first

- (b) to make the Eligible Vehicle available at an Authorised Mercedes-Benz EQ Service and Parts Centre by prior appointment in a reasonably clean condition;
- (c) that all instructions for use of the Eligible Vehicle contained in the Mercedes-Benz Digital Service Booklet will be carried out accurately and fully;
- (d) that if any defect or failure occurs in the Eligible Vehicle, that the Authorised Mercedes-Benz EQ Service and Parts Centre is authorised to 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 Authorised Mercedes-Benz EQ Service and Parts Centre 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; and
- (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.

5. Payment

- 5.1** The Customer shall pay MBAuP, in full and in advance, for the Service Plan at the time of the purchase of the Eligible Vehicle, being the amount detailed in the Schedule to these terms and conditions.
- 5.2** The Customer is responsible for ensuring that, where the Customer seeks to finance the Service Plan under this Agreement, the Customer's financial institution permits this.
- 5.3** In the event that the Service Plan is unable to be financed, the Customer at their option may:
- 5.3.1** seek finance from a different financial institution; and/or
 - 5.3.2** pay for their Service Plan outright separately to the vehicle finance;
- 5.4** For the avoidance of doubt, in the event that the Customer wishes to terminate this Service Plan, unless otherwise entitled to by law, the Customer will not be permitted to cancel their vehicle purchase.

6. Commission

- 6.1** Where a commission may be payable to a third party such as an Authorised Mercedes-Benz EQ Retailer, the Customer consents to MBAuP paying a commission to Authorised Mercedes-Benz EQ Retailer and/or its staff, with respect to the Service Plan purchased by the Customer.
- 6.2** The Customer acknowledges that the Authorised Mercedes-Benz EQ Retailer or its staff 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.

7. Defects and Applications Outside the Agreement

- 7.1** When, in the reasonable opinion of the Authorised Mercedes-Benz EQ Service and Parts Centre 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 Service Plan, the Authorised Mercedes-Benz EQ Service and Parts Centre may notify the Customer in writing of such opinion and recommend the replacement of the part or component.
- 7.2** If the Customer unreasonably refuses or fails to have the recommended work carried out within thirty (30) days of receiving the notification referenced in clause 7.1, then MBAuP shall, until the work is undertaken, be absolved from all obligations under this Agreement in relation to the Eligible Vehicle.

8. Term and Termination

- 8.1** This Agreement shall be effective from the Contract Start Date and shall continue in force for the Term unless terminated by mutual written consent of the parties.
- 8.2** 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 8.7), may recover from MBAuP a proportionate rebate of the consideration paid under this Agreement for the Service Plan.
- 8.3** Subject to clause 8.2 applying, the proportionate rebate of the consideration will be calculated as follows:

"Withdrawal Charge" = MBAuP Income - (MBAuP Expenditure + MBAuP Administration Costs)

- 8.4** 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 8.7), provide the Customer with a proportionate rebate of the consideration that the Customer paid under this Agreement for the Service Plan.
- 8.5** 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 8.3.
- 8.6** The termination of a Service Plan 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 the termination.
- 8.7** The Customer agrees that, if the Customer's finance company claims the Fee (or what remains thereof after applying clause 8.3) 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.
- 8.8** Whenever a Service Plan is terminated and the Customer, or other party so entitled, seeks a proportionate rebate of the consideration paid under this Agreement, 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.

9. Severance

- 9.1** 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

10. Assignment

- 10.1** Save as expressly set out in this Agreement, and subject to clause 10.2, 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.
- 10.2** 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.

11. Force Majeure

- 11.1** The Customer acknowledges and agrees that MBAuP and/or any Authorised Mercedes-Benz EQ Service and Parts Centre shall be excused from the performance of its obligations under this Agreement if MBAuP and/or the Authorised Mercedes-Benz EQ Service and Parts Centre is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of MBAuP and/or the Authorised Mercedes-Benz EQ Service and Parts Centre 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).
- 11.2** 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.

12. Amendments

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

13. Third Party Rights

13.1 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).

14. Governing Law and Jurisdiction

14.2 The Agreement is governed by the laws of the State of Victoria.

14.3 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.

15. GST

15.1 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.

15.2 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.

15.3 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.

15.4 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.

15.5 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.

15.6 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.