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## Tow and Blow (2017) Ltd – Terms & Conditions of Trade

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- (b) if during the course of the Services, the Goods cease to be available from the Supplier's third party suppliers, then the Supplier reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
  - (c) or any increase in currency rates of exchange and the cost of materials, labour, transport, insurance, taxes, legislation or any other items as at the date of order.
- 5.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At the Supplier's sole discretion, a bond and/or deposit may be required prior to Delivery, the amount of which shall be stated on the quotation, order, hire Contract, or any other authorisation form as provided by the Supplier to the Client.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
- (a) on Delivery;
  - (b) by way of instalments/progress payments in accordance with the Supplier's payment schedule;
  - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is delivered to the Client's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 5.6 Payment may be made by cash, cheque, bank cheque, direct debit, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Supplier.
- 5.7 The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.
- 6. Delivery**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at the Supplier's address; or
  - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At the Supplier's sole discretion the cost of delivery is included in the Price.
- 6.3 The Supplier 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.
- 6.4 Any time specified by the Supplier for delivery of the Goods is an estimate only. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. The Supplier will not be liable for any loss or damage incurred by the Client as a result of delivery being late. In the event that the Client is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. Title**
- 7.1 Where this is a hire Contract:
- (a) the Goods is and will at all times remain the absolute property of the Supplier, however the Client accepts full responsibility for:
    - (i) the safekeeping of the Goods and indemnifies the Supplier for all loss, theft, or damage to the Goods howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client; and
    - (ii) shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Goods during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons;
    - (iii) any associated costs or liability due to the Goods obstructing any person/s, being in a location that they shouldn't, or if the Goods or the Supplier incurs any fines, towage costs or seizure costs or impoundment costs while the Goods are in the custody of the Client. Furthermore, the Client will insure, or self-insure, the Supplier's interest in the Goods against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Goods. Further the Client will not use the Goods nor permit it to be used in such a manner as would permit an insurer to decline any claim.
  - (b) If the Client fails to return the Goods to the Supplier then the Supplier or the Supplier's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods is situated and take possession of the Goods, without being responsible for any damage thereby caused.
  - (c) The Client is not authorised to pledge the Supplier's credit for repairs to the Goods or to create a lien over the Goods in respect of any repairs.
- 7.2 Where this is a Contract for the purchase of the Goods:
- (a) The Supplier and the Client agree that ownership of the Goods shall not pass until:



**11. Consumer Guarantees Act 1993**

11.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Supplier to the Client.

**12. Default and Consequences of Default**

12.1 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 the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

12.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 12 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

12.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by the Supplier;
- (c) the Client 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**13. Cancellation**

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

13.2 The Supplier 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 Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

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

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

**14. Privacy Policy**

14.1 All emails, documents, images or other recorded information held or used by the Supplier is personal information as defined and referred to in clause 14.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of personal information pursuant to the Privacy Acts 1993 and 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's personal information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act. Any release of such personal information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.

14.2 Notwithstanding clause 14.1 privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of personal information such as the Client's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively personal information")

If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

14.3 The Client authorises the Supplier or the Supplier's agent to:

- (a) access, collect, retain and use any information about the Client;
  - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by the Supplier from the Client directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.



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- 14.4 Where the Client is an individual the authorities under clause 14.3 are authorities or consents for the purposes of the Privacy Acts 1993 and 2020.
- 14.5 The Client shall have the right to request (by e-mail) from the Supplier, a copy of the personal information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect personal information.
- 14.6 The Supplier will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 14.7 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

### 15. General

- 15.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's 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.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 15.3 The Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 15.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 15.5 The Client cannot licence or assign without the written approval of the Supplier.
- 15.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 15.7 The Client agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods to the Client.
- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Supplier.
- 15.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

### 16. Terms Applicable to the Hire of Goods Only

- 16.1 The Client shall take Delivery notwithstanding that the specifications may differ from the specifications originally agreed to, provided that the Price shall be adjusted pro rata to the discrepancy.
- 16.2 The Supplier does not undertake as to the quality or fitness for any particular purposes of Goods supplied under this Contract except as follows:
- (a) in the event that the Client requires quality or fitness for a particular purpose according to the usage of trade then the Client shall set forth the Client's requirements as to such quality or fitness for such particular purpose hereunder;
  - (b) subsequent exchange of Goods shall entail additional charges. The Goods do not purport to be new stock or equal to new but all Goods are understood to be in good order for normal full load working at the stated capacity under ordinary conditions.
  - (c) the Supplier may from time to time make changes in the specifications of the Goods which are required to comply with safety or statutory requirements, or which do not materially affect the quality or fitness for purpose of the Goods.
- 16.3 Hire charges shall commence from the time the Goods leave the Supplier's premises and continue until the Supplier is notified by the Client that the Goods are available for collection. At that time the Supplier will give an "OFF-HIRE" number as verification of receipt of notification. Notification shall be given by the Client in time for the Goods to be picked up and returned to the Supplier's premises by the required time on the day the hire ceases. Notification is to be made by telephone when the Client has finished with the Goods, and not by prior arrangement. Required return times are no later than 5.00pm weekdays, or such earlier time as the hire period may terminate. If insufficient notification is given the Supplier shall be entitled to charge another full day's hire at current rates. Delivery and collection shall be to and from the company yard.
- 16.4 The Client shall be responsible for free access by the Supplier to the site that the Goods are located. If there are any delays due to free access not being available then the Client shall be responsible and shall reimburse the Supplier for all lost hire fees associated with the Goods being unavailable. The Client shall also be responsible for all other expenses and costs incurred by the Supplier due to delays in access to the Goods.
- 16.5 The responsibility of the Client for the security of the Goods continues until the Goods are returned or collected.
- 16.6 Where the Client requests collection of the Goods at, or after, the Supplier's close of business, sufficient notice must be given to the Supplier. Such notice will typically be at least four (4) hour within the Hastings Industrial Area, but may vary at the Supplier's absolute discretion based upon distance, site complexity or the nature of the Goods. If sufficient notice is not given, the Client will be responsible for security of the Goods, together with any additional towing or transportation costs.
- 16.7 No allowance whatever can be made for time during which the Goods are not in use for any reason, unless prior special arrangements are confirmed in writing by the Supplier. In the event of breakdown of the Goods, and provided the Client notifies the Supplier immediately and

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- obtains an "OFF-HIRE" number as verification, hire charges will not be payable during the time the Goods are not working, unless the condition is due to negligence or misuse on the part of, or attributable to, the Client.
- 16.8 The Client shall:
- (a) satisfy itself at commencement that the Goods are suitable for its purposes;
  - (b) maintain and keep (at their own expense) the Goods in proper working order as is required by the Supplier (including, but not limited to, cleaning, lubrication and operating adjustments, maintaining petrol, fuel, water, oil and fluid levels and tyre condition and pressures (and only fuel and lubricating oils approved by the Supplier shall be used) and inspect fuel, oil and other levels every day prior to operating the Goods). The Client shall be responsible for any damage occurring due to overloading mistakes or neglect in handling, operation, etc. during the hire period;
  - (c) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Goods by giving such notification;
  - (d) operate the Goods safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Goods;
  - (e) ensure that all persons operating the Goods are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Goods and shall provide evidence of the same to the Supplier upon request;
  - (f) comply with all occupational health and safety laws relating to the Goods and its operation;
  - (g) on termination of the hire, deliver up the Goods complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Supplier;
  - (h) keep the Goods in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Goods;
  - (i) not alter or make any additions to the Goods including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Goods or in any other manner interfere with the Goods;
  - (j) employ the Goods solely in its own work and shall not permit the Goods or any part thereof to be used by any other party for any other work;
  - (k) not exceed the recommended or legal load and capacity limits of the Goods;
  - (l) not use or carry any illegal, prohibited or dangerous substance in or on the Goods;
  - (m) not fix any of the Goods in such a manner as to make it legally a fixture forming part of any freehold;
- 16.9 Immediately on request by the Supplier the Client will pay:
- (a) the new list price of any Goods that is for whatever reason destroyed, written off or not returned to the Supplier;
  - (b) all costs incurred in cleaning the Goods;
  - (c) all costs of repairing any damage caused by:
    - (i) the ordinary use of the Goods up to an amount equal to ten percent (10%) of the new list price of the Goods;
    - (ii) the negligence of the Client or the Client's agent;
    - (iii) vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Goods by the Client;
  - (d) any lost hire fees the Supplier would have otherwise been entitled to for the Goods, under this, or any other hire Contract;
  - (e) the cost of fuels and consumables (including the cost of reconditioning item's blunted by use, or otherwise rendered unfit for further service without repair, such as concrete breaker steels, chisels, cutting blades and tips and the like, etc.) provided by the Supplier and used by the Client.
- 16.10 Only to the extent that the hire of the Goods exceeds a twelve (12) month hire period (or a six (6) month hire period with the right of renewal), shall clause 8 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 8 will apply generally for the purposes of the PPSA.
- 16.11 Without prejudice to any other remedies available to the Supplier, and notwithstanding any period of hire specified, the Supplier may terminate the hire of the Goods without payment of compensation:
- (a) at any time by giving the Client two (2) hours (or if the Supplier deems it appropriate such lesser period) notice of their intention to terminate. Such notice need not be in writing and shall be deemed sufficiently given if made to the Hirer, the operator for the time being of the Goods, the occupier for the time being of the premises at which the Goods are located, or if the Goods are removed from the site where no person in attendance.
  - (b) without notice if the Client commits any breach of these terms and conditions, in the case of clause 12.4, if any execution or distress shall be levied upon the Goods, or if any judgment against the Client shall remain unsatisfied for seven (7) days or more.
- 17. Terms and Conditions applicable to the Sale of Goods Only**
- 17.1 If this Contract is conditional upon the Client obtaining a loan from a financial institution, then they shall provide the Supplier with written confirmation of the loan approval. Such written confirmation is to include confirmation from the financial institution that the Supplier may supply the Goods. The Client shall authorise the Client's lender to, and the Client's lender may then pay, all monies advanced to the Client for payment of the Price (or any part thereof) and approved by the Client direct to the Supplier. In the event any such loan application is declined then the Client shall have the right to withdraw from this Contract subject to the Client providing the Supplier with written evidence that the loan was declined. Upon receipt of such evidence, the Supplier shall refund the Client any deposit paid in accordance with clause 13.
- 17.2 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 17.3 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 17.4 If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 17.5 Subject to the conditions of warranty set out in clause 17.6, the Supplier warrants that component/s deemed (at the Supplier's sole discretion) to be defective will be repaired or replaced at no charge to the Client, provided such defect is reported to the Supplier within one hundred and eighty (180) days of the date of Delivery (time being of the essence).

