



## Terms of Trade

### 1. Terms of Trade

- 1.1. The terms and conditions set out below apply to every supply of Goods and Services made by BTR Limited to the Customer. By placing an Order with BTR Limited to provide a service or equipment the Customer agrees that it is bound by these Terms of Trade and that the Customer's own terms and conditions do not apply.
- 1.2. Where the Customer has entered into a separate written supply agreement with BTR Limited, these Terms shall also apply except to the extent that there is any inconsistency between these Terms and the separate supply agreement, in which case the relevant provisions of the supply agreement shall prevail.

### 2. Definitions

- 2.1. **BTR Limited** means BTR Limited & Machinery Moving Specialists.
- 2.2. **Customer** means the person or Company who purchases Goods or Services from BTR Limited and includes the Customer's employees, contractors, subcontractors and agents. Where the Customer comprises two or more persons, means, those persons jointly and severally.
- 2.3. **Goods** means any vehicles and items of equipment provided and/or manufactured by BTR Limited, or delivered on behalf of the Customer.
- 2.4. **PPSA** means the Personal Property Securities Act 1999
- 2.5. **Order** means an agreement between BTR Limited and the Customer for BTR Limited to supply Goods and Services to the Customer.
- 2.6. **Quote** means a written or verbal offer from BTR Limited to the Customer to supply Goods and/or Services for a specified price subject to the terms and conditions of such offer.
- 2.7. **Services** means any services performed by BTR Limited.
- 2.8. **Terms** means the terms and conditions of the supply set out in this document, including any variations to these Terms.

### 3. Orders and Quotes

- 3.1. These Terms apply to all Goods and Services supplied by BTR Limited. These Terms may be modified or added to by specific terms specified by BTR Limited in a Quote or other Order. A Customer's acceptance of a Quote constitutes an agreement to purchase Goods or Services on the terms of that Quote and these Terms.
- 3.2. All Quotes are based on rates and charges in effect at the date of the Quote. Any increase in rates or charges will result in an equivalent increase in the quoted price. A Quote may be withdrawn at any time. A Quote will be valid for the term specified on the Quote. If no term is specified, the Quote is valid for 30 days.
- 3.3. Quotes are prepared in accordance with information provided to BTR Limited by the Customer. BTR Limited will not be liable nor will it be bound by the Quote where:

- a) such information is inaccurate or any information omitted;
- b) the Customer makes any variations to the work quoted for.

- 3.4. BTR Limited may decline any Order on its sole discretion.

### 4. Price

- 4.1. The price of Goods and Services shall be as specified in BTR Limited's rates list (as amended from time to time) or in an Order or accepted Quote, as applicable. Unless otherwise stated, prices stated do not include GST, other taxes or levies, transport or insurance charges.

### 5. Payments, Discounts and Rebates

- 5.1. Payment for Goods and Services must be made in accordance with this clause 5.
- 5.2. Where the Customer receives a volume based discount on Goods and/or Services and the Customer fails to purchase the total volume of such Goods and Services, BTR Limited reserves the right to withdraw such discount and charge the Customer for the full price of the Goods and Services without applying the discount.
- 5.3. Unless requester otherwise, invoices shall be sent electronically. All accounts must be paid by the 20<sup>th</sup> of the month following the date on the invoice. If any item in an invoice is disputed, the Customer shall notify BTR Limited within seven days of the invoice date specifying the item in dispute. Payment of a disputed invoice may be deferred only in respect of the disputed part of the invoice.
- 5.4. BTR Limited reserves the right to suspend any discount or rebate and to restrict or withhold the supply of further Goods and Services and to retain any property belonging to the Customer on BTR Limited's premises, if these payment terms are not strictly adhered to. If the Customer defaults in making payment BTR Limited may:
  - a) Charge interest on all overdue invoices at BTR Limited's cost of borrowing plus 5% calculated from the due date to the date of payment or monthly until payment is made.
  - b) Charge the Customer all costs including legal fees (as between solicitor and client), debt collection charges and court costs incurred by BTR Limited in recovering outstanding monies; and
  - c) Cancel this agreement and/or the Customer's right to hold a Credit Account.

### 6. Security Interest

- 6.1. The Customer grants to BTR Limited a security interest in the Goods or Services as security for all amounts owing to BTR Limited and the performance of the Customer's obligations under these Terms.
- 6.2. Title in the Goods or Services shall remain with BTR Limited until there are no longer any amounts owing to BTR Limited for those Goods or Services. The Customer acknowledges receipt of these Terms of Trade and agrees that it will execute all documents

required by BTR Limited to maintain, register and enforce BTR Limited's security interest in respect of the Goods or Services.

**6.3.** If BTR Limited registers the security interest created by these Terms under the PPSA, the Customer waives its rights to receive a copy of the verification statements in terms of section 148 of the PPSA and also waives its rights under sections 121 and 131 of the PPSA. BTR Limited and the Customer also contract out of Part 9 of the PPSA to the extent that the rights and obligations contained in sections 114, 125, 129, 132, 133 and 134 of that part of the PPSA do not apply as between BTR Limited and the Customer.

**6.4.** The Customer agrees that:

- a) The Customer will, upon receiving a written request from BTR Limited and at its own cost and expense, promptly deliver all or any Goods to BTR Limited. If the Customer fails to deliver the Goods upon request, BTR Limited may at any time enter into any place where the Goods are located and remove the Goods;
- b) BTR Limited may sell all or any of the Goods without giving prior notice of the sale to the Customer;
- c) It shall immediately notify BTR Limited of any change in the Customer's name address or contact person details.

## **7. Limitation of Liability**

**7.1.** The liability of BTR Limited in respect of all claims for loss, damage or injury arising from a breach of any of BTR Limited's obligations under these Terms or from any act or omission of BTR Limited is limited, in each case, to the lesser of:

- a) replacement or repair of the affected Goods;
- b) payment of the actual cost of replacing or repairing the affected Goods; or
- c) the price of the affected Goods or Services

**7.2.** BTR Limited shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect consequential loss or damage), however caused, arising out of or in connection with the supply of Goods or Services by BTR Limited, except as set out in clause 6.1.

**7.3.** No action arising out of the supply of Goods or Services by BTR Limited, regardless of form, may be brought more than six months after the Customer becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the action.

## **8. Intellectual Property**

**8.1.** All intellectual property rights arising out of the performance of the Services are and shall remain the property of BTR Limited. The Customer warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person.

## **9. Risk**

**9.1.** Risk in the Goods shall pass to the Customer upon delivery as set out in clause 8.2

**9.2.** Delivery of Goods shall be deemed to occur at the point specified in an Order or Quote, or if no delivery point is specified, then:

- a) When the Goods arrive at the address specified by the Customer (whether or not the Customer is present to acknowledge receipt), or
- b) When the Customer takes possession of the Goods, whichever occurs first.

**9.3.** BTR Limited may deliver and/or install Goods by instalments. If the Customer fails to pay for an instalment on the due date BTR Limited may suspend deliveries of future instalments.

**9.4.** Where BTR Limited delivers the Goods or Services, the Customer shall:

- a) Ensure BTR Limited has all-weather access to the site, to enable BTR Limited to deliver the Goods or Services safely;
- b) Obtain all necessary consents from the relevant local authority and inform BTR Limited of all matters relating to such consents;

c) Locate, mark and advise BTR Limited of all pipes, cabling and other utilities that are on, near or adjacent to the delivery point, and of any actual or possible hazard in the vicinity where the Goods or Services are to be delivered; and

d) Indemnify BTR Limited against any costs, claims or damages incurred in the delivery of the Goods and/or Services including repairing damage to the site or delivery equipment and returning the delivery vehicle to the road, providing BTR Limited has acted with reasonable care and skill.

**9.5.** The final decision on entry onto any site will be at BTR Limited's discretion. Failure to deliver pursuant to this clause will not be deemed to be a breach of contract by BTR Limited.

**9.6.** If the Customer collects the Goods from BTR Limited, the Customer agrees that it shall comply with BTR Limited's rules applicable to health and safety at BTR Limited's site, including ensuring that they are inducted to an appropriate induction standard at the site. The Customer shall also assist BTR Limited to provide and maintain a safe and healthy workplace where all hazards, unsafe acts and/or conditions are identified and analysed before being controlled by elimination/isolation/minimisation of the risk of harm.

**9.7.** The despatch docket will set out the specifications of the Goods/Services ordered by the Customer. The Customer shall be responsible for signing the despatch docket and for checking that such specifications are correct prior to the discharge of Goods/Services from BTR Limited's vehicle.

**9.8.** If the Customer refuses all or part of any Order upon delivery at a Customer's site, or if delivery is refused at a site appointed by the Customer, the Customer shall be bound to make full payment of all and any additional costs incurred in delivery to a different site or back to BTR Limited's own site.

## **10. Force Majeure**

**10.1.** No claim or liability will arise against BTR Limited under these Terms or any Order or Quote, if and to the extent that BTR Limited's failure or omission to carry out or observe any provisions of these Terms or any Order or Quote arises by reason of Force Majeure. "Force Majeure" means any event outside the reasonable control of BTR Limited.

## **11. Termination**

**11.1.** All outstanding monies shall become immediately due and payable from the Customer, and BTR Limited reserves the right to immediately cancel any Order and/or the Customer's right to hold a Credit Account, if the Customer:

- a) Ceases or threatens to cease carrying on business;
- b) Becomes unable to pay its debts as they fall due or otherwise becomes insolvent or bankrupt;
- c) Has a receiver or a receiver and manager appointed in relation to all or part of its assets, commences liquidation or is placed in statutory management; or
- d) Breaches any of these Terms and fails to remedy the breach within 10 days of written notice requiring the breach to be remedied.

## **12. Privacy Act**

**12.1.** The Customer authorises BTR Limited to collect, retain and use personal information about the Customer for the following purposes:

- a) Assessing the Customer's creditworthiness;
- b) Administering the Customer's Orders;
- c) Receiving information from one or more credit reference agencies, concerning the credit history of the Customer;
- d) Disclosing credit-related information to, and using the credit services of, one or more credit reference agencies, on a continuing basis at any time and entirely at its discretion concerning the Customer's creditworthiness.

**12.2.** For the avoidance of doubt, all authorities given above are continuing authorities, to apply throughout the duration of the trading relationship regardless of the regularity or irregularity of Services provided.

**12.3.** The Customer, if an individual, has a right of access to personal information about the Customer held by BTR Limited and may request correction of the information.

### **13. Disputes**

**13.1.** The parties agree to use their best endeavours to promptly resolve any dispute or difference between them. If a dispute arises ("Dispute"), the party claiming that a Dispute has arisen shall serve notice on the other party stating the subject matter and details of the Dispute. After receipt of the notice, senior management of both parties shall meet within ten (10) working days and shall attempt in good faith to resolve the Dispute.

**13.2.** If the senior management fail to resolve the Dispute in twenty (20) working days of notice of the Dispute, either party may take such legal action including the commencement of legal proceedings as deemed appropriate or necessary to resolve or determine the Dispute.

### **14. Guarantee and Indemnity**

**14.1.** The Guarantor/s of the Customer jointly and severally unconditionally guarantee to BTR Limited the due and punctual payment by the Customer of all outstanding monies, and agree to keep BTR Limited fully indemnified against all damages, losses, costs and expenses arising from any failure of the Customer to pay the monies hereby guaranteed.

**14.2.** As between the Guarantor/s and BTR Limited the liability of the Guarantor/s shall be deemed to be that of the principal debtor. The guarantee is in addition to and not in substitution for any other security or right which BTR Limited may have in respect to the Customer's indebtedness and may be enforced against the Guarantor/s without first having recourse to any such securities or rights and without taking steps or proceedings against the Customer.

**14.3.** The liability of the Guarantor/s shall not be affected by the granting of time, credit or any indulgence or other concession to the Customer or to any person giving any similar guarantee.

**14.4.** The guarantee and indemnity in this clause 13 is an irrevocable and continuing guarantee and indemnity and shall remain in full force until all obligations under the Customers' credit account have been fully paid, satisfied or performed.

### **15. General**

**15.1. Waiver:** BTR Limited's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of BTR Limited's right to exercise or enforce such right or any other right in the future.

**15.2. Severance:** Should any part of these Terms be unenforceable such part shall be severed and the remainder of these Terms shall remain binding.

**15.3. Confidentiality:** Except as required by law both parties shall preserve as confidential any information of a confidential nature that they acquire in relation to the other.

**15.4. Variation:** BTR Limited may at any time and in its sole discretion vary these Terms with immediate effect, by posting the revised Terms of Trade on BTR Limited's website at [www.bustruckrecovery.co.nz](http://www.bustruckrecovery.co.nz). BTR Limited may notify the Customer by delivering the Customer an invoice with a notice of amendment and receipt of that invoice will be deemed acceptance by the Customer of these Terms as amended.

**15.5. No Partnership:** Notwithstanding any provision of these Terms, the parties agree that the relationship between them is not and shall not be construed to be a partnership.

**15.6. Further Acts:** The Customer shall execute all documents and do all acts and things as may reasonably be required by BTR Limited to carry into effect the matters contemplated by these Terms.

**15.7. Entire Agreement:** Except as otherwise agreed in writing, including in accordance with clause 1.2, these Terms constitute the entire agreement between the parties.

**15.8. Notice:** Any letter or notice given under these Terms will be validly and sufficiently given if sent by pre-paid post, facsimile or electronic mail to the address details notified by one party to the other from time to time. A notice sent by post shall be deemed to have been received on the fifth working day following the day of posting. A notice sent by facsimile or electronic mail shall be deemed to have been received on the date specified on the facsimile transmission receipt or email delivery receipt.

**15.9. Jurisdiction:** These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.

**Signed for and on behalf of the Customer**