

BTR International Limited – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Contractor" means BTR International Limited, its successors and assigns or any person acting on behalf of and with the authority of BTR International Limited.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Contractor to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
- (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Cargo" means any vehicle, machinery, heavy equipment, shipping container, tractors, forklifts and scissor lifts, etc. to be moved from one place to another by way of the Contractor.
- 1.5 "Services" means all Services supplied by the Contractor to the Customer at the Customer's request from time to time.
- 1.6 "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Contractor in the course of it conducting, or supplying to the Customer, any Services.
- 1.7 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: 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) and pricing details.
- 1.8 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Services via the website.**
- 1.9 "Price" means the price payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between the Contractor and the Customer in accordance with clause 6 of this Contract.
- 2. Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by the Contractor.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Services on credit shall not take effect until the Customer has completed a credit application with the Contractor and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services request exceeds the Customers credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.
- 2.6 None of the Contractor agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Contractor in writing nor is the Contractor bound by any such unauthorised statements.
- 2.7 The Contractor shall only be responsible for their performance to the party that contracts them to undertake the Services and shall not be responsible to any third party irrespective of their relationship to the Customer.
- 2.8 Where the Customer requesting or organising the Contractor to provide Services is acting with or on behalf of any third party and that third party is intended to be responsible for the payment (or any part thereof) of the Price then in the event that the third party does not pay for the Services when due, the Customer acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.
- 2.9 The Customer acknowledges and understands that (subject to Clause 6.2):
- (a) onsite repairs shall incur the Contractor's current labour rates plus kilometres travelled; and
- (b) in the event the Cargo requires towing, then any fees incurred for such towing shall be for the Customer's account.
- 2.10 After Hours / Callouts / Weekends / Callout fee**
- (a) In the event that the Contractor is required to provide the Services urgently, that may require the Contractor's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Customer a minimum **call out fee** based on the Contractor's standard hourly labour rate, plus travel, plus Incidental Items, unless otherwise agreed between the Contractor and the Customer.
- 2.11 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 3. Errors and Omissions**
- 3.1 The Customer acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4. Authorised Representatives**
- 4.1 Unless otherwise limited as per clause 4.2 the Customer agrees that should the Customer introduce any third party to the Contractor as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Services on the Customer's behalf and/or to request any variation to the works on the Customer's behalf (such authority to continue until all requested works have been completed or the Customer otherwise notifies the Contractor in writing that said person is no longer the Customer's duly authorised representative).
- 4.2 In the event that the Customer's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Services or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).
- Change in Control**
5. The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax numbers, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.
- 6. Price and Payment**
- 6.1 At the Contractor's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Contractor to the Customer; or
- (b) the Contractor's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Contractor reserves the right to change the Price if a variation to the Contractor's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Cargo (including, but not limited to, any variation due to hidden or unidentifiable difficulties not evident prior to the commencement of the Services (e.g. any delay due to any action or inaction of the Customer, or obstructed access to the site) will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice.
- 6.3 At the Contractor's sole discretion a deposit may be required.
- 6.4 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:
- (a) on delivery of the Services;
- (b) before delivery of the Services;
- (c) by way of instalments/progress payments in accordance with the Contractor's payment schedule;
- (d) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
- (e) the date specified on any invoice or other form as being the date for payment; or
- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Contractor.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction, which may include an additional penalty fee (as per clause 21.2) in the event the transaction is declined, furthermore it shall be the Customer's responsibility to ensure that there is sufficient funds available for the Contractor to charge their card in accordance with any payment agreement made between the parties), or by any other method as agreed to between the Customer and the Contractor.
- 6.6 The Contractor may in its discretion allocate any payment received from the Customer towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Services.
- 6.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for providing the Contractor's Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.
- 7. Provision of the Services**
- 7.1 Any time specified by the Contractor for delivery of the Services is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be delivered at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Services as agreed solely due to any action or inaction of the Customer, then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8. Risk**
- 8.1 The Customer shall ensure that the Contractor has clear and free access to the Cargo to enable them to provide the Services. The Contractor shall not be liable for any loss or damage to any site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.
- 8.2 It is the responsibility of the Customer to ensure that access to the Cargo is suitable to accept the weight of laden trucks. The Customer agrees to indemnify the Contractor against all costs incurred by the Contractor in recovering such vehicles in the event they become bogged or otherwise immovable.
- 8.3 Subject to clause 11, in the event that a police officer or authorised enforcement officer directs the Contractor to tow and store the Cargo, the owner of the Cargo is liable to pay the fees and charges for towage and storage.
- 8.4 Where the Contractor gives advice or recommendations to the Customer, or the Customer's agent, regarding any aspect of the scope of the Services (including but not limited to, a particular course of action, equipment selection or the situation of the Cargo being perilous) and such advice or recommendations are not acted upon, then the Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 9. Towing Risk**
- 9.1 Should any further damage occur to the Cargo whilst not physically secured to the Contractor's vehicle on a public roadway then the Contractor shall accept no liability for the same, unless such damage is due to the negligence of the Contractor.
- 9.2 If applicable, the Customer acknowledges that:
- (a) it is not always possible for the Contractor to be aware of the total extent of any damage to the Cargo and that further damage may occur when attempting to either move, lift upright or prepare the Cargo for towing. Whilst the Contractor will take all due care to avoid such damage the Contractor shall accept no liability for the same and the Customer agrees to indemnify the Contractor against any claims howsoever arising should such damage occur;
- (b) braking systems and mechanical components (including, but not limited to, air fittings from air tanks, valves or lines, interconnecting air supply and service brake lines) may be removed during towing and must be inspected for serviceability before putting the towed Cargo back into use.
- (c) the Contractor may, where necessary:
- (i) remove drive shaft and axle(s) from the differential to ensure safe towing;
- (ii) collect oil from the Cargo to be towed. All oil and fluid levels must be checked before putting the Cargo back into use;
- (iii) remove any equipment from the Cargo to reduce overall height, length or width of the load.
- 9.3 the Contractor shall not accept any liability or responsibility for:
- (a) any additional load with the Cargo. Securing such load is the responsibility of the owner/driver;
- (b) the safety of the Cargo if the owner/driver travels with the Contractor either to or from the site.
- 9.4 Where recovery of the Cargo is off-road, or where the recovery is deemed by the Contractor to be extreme, the Customer agrees to indemnify the Contractor against any damage to the equipment of the Contractor, added costs (including the salvage of the salvage vehicle or the requirement for additional equipment such as a crane) and the replacement costs of any equipment of the Contractor that is lost or damaged.
- 10. Access**
- 10.1 The Customer shall ensure that the Contractor has clear and free access to the site at all times to enable them to deliver the Services. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.
- 11. Storage**
- 11.1 All Cargo that is to be stored under this Contract shall be checked into and out of storage and if the Customer (or the Customer's representative) is not present at the time of receipt or delivery of said Cargo, as the case may be, then the Contractor's record shall be accepted as final.
- 11.2 The Customer shall immediately notify the Contractor of any change of the ownership of any Cargo which is stored on the Customer's behalf under this Contract.
- 11.3 The Contractor reserves the right at any time to require the removal of any Cargo held in storage on the Customer's behalf by giving not less than one (1) weeks' notice to the Customer that they wish them to do so.
- 11.4 The Customer shall on request by the Contractor provide samples of the signature(s) of any person(s) entitled to uplift the Cargo from storage.
- 11.5 The Customer agrees to give the Contractor at least forty-eight (48) hours of their intent to remove the Cargo from storage. In the event the Customer fails to give such notice then the Contractor may at its sole discretion agree to facilitate the immediate removal of the Cargo but shall be entitled to charge the Customer an additional fee for so doing.
- 11.6 An inward receipt in relation to Cargo stored by the Contractor shall not constitute a document of title to that Cargo, or be negotiable, nor shall any right of the Customer storing the Cargo be assignable.
- 11.7 The Customer shall be liable to the Contractor on demand and at any rate before removal of the Cargo from storage, for all charges or fees in connection handling, loading or unloading, re-packing and/or delivery of the Cargo, as the case may require, in addition to any storage fees.
- 12. Applicable Legislation: Carriage of Goods Act 1979, Consumer Guarantees Act 1993, section 10 of the Land Transport (Operator Licensing) Rule 1999, Health & Safety at Work Act 2015 and the Fair Trading Act ("FTA").**
- 12.1 If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by the Contractor to the Customer.
- 12.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the above legislation, except to the extent permitted by those Acts/Regulations where applicable.
- 12.3 The Contractor has not and will not at any time assume any obligation as the Customer's agent or otherwise which may be imposed upon the Customer from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of this Contract. The parties agree that for the purposes of the HSW Act, the Contractor shall not be the person who controls the place of work in terms of the HSW Act.
- 13. Insurance**
- 13.1 The Contractor shall take out, and maintain at its own expense, at all times during the Contract, Public Liability Insurance of no less than \$5 million.
- 13.2 The Customer shall take out, and maintain at its own expense, at all times during the Contract, Public Liability Insurance of no less than \$1 million.
- 14. Title**
- 14.1 The Contractor and the Customer agree that where it is intended that the ownership of Incidental Items is to pass to the Customer that such ownership shall not pass until:
- (a) the Customer has paid the Contractor all amounts owing for the Services; and

BTR International Limited – Terms & Conditions of Trade

- (b) the Customer has met all other obligations due by the Customer to the Contractor in respect of all contracts between the Contractor and the Customer.
- 14.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Incidental Items shall continue.
- 14.3 It is further agreed that:
- (a) the Customer is only a bailee of the Incidental Items and must return the Incidental Items to the Contractor immediately upon request by the Contractor;
- (b) the Customer holds the benefit of the Customer's insurance of the Incidental Items on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Customer sells, disposes or parts with possession of the Incidental Items then the Customer must hold the proceeds of sale of the Incidental Items on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;
- (d) the Customer should not convert or process the Incidental Items or intermix them with other goods, but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Contractor and must dispose of or return the resulting product to the Contractor as the Contractor so directs;
- (e) the Customer shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of the Contractor;
- (f) the Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Incidental Items are kept and recover possession of the Incidental Items.
15. **Personal Property Securities Act 1999 ("PPSA")**
- 15.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Incidental Items and/or collateral (account) – being a monetary obligation of the Customer to the Contractor for Services – that have previously been supplied and that will be supplied in the future by the Contractor to the Customer.
- 15.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of the Contractor.
- 15.3 The Contractor and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 15.1 to 15.5.
- 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
16. **Security and Charge**
- 16.1 In consideration of the Contractor agreeing to supply Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 16.3 The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.
17. **Consumer Guarantees Act 1993**
- 17.1 If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by the Contractor to the Customer.
18. **Intellectual Property**
- 18.1 Where the Contractor has designed, drawn or developed Incidental Items for the Customer, then the copyright in any Incidental Items shall remain the property of the Contractor. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
- 18.2 The Customer warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 18.3 The Customer agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which the Contractor has created for the Customer.
19. **Limitation to Liabilities**
- 19.1 The Contractor has no liability to the Customer for loss or damage to the extent that the loss or damage:
- (a) arises from an event outside of the Contractor's control;
- (b) is unavoidable damage to a third party vehicle or property during the provision of Services;
- (c) that occurs after delivery; and
- (d) result from any act or omission by the Customer, including a breach of the Customer's obligation under this Contract.
20. **Confidentiality**
- 20.1 The Customer agrees to keep confidential, and not to disclose to any third party without the prior written consent of the Contractor, any information, data, designs, specifications, drawings, reports or other documents provided, made available, or brought into existence, by the Contractor for the purpose of providing the Services, and shall take reasonable precautions to maintain the secrecy and confidentiality, and prevent disclosure, of all such information.
21. **Default and Consequences of Default**
- 21.1 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 Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Customer owes the Contractor any money the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies the Contractor may have under this Contract, if a Customer has made payment to the Contractor, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Contractor's obligations under this Contract.
- 21.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by the Contractor;
- (c) the Customer 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 Customer or any asset of the Customer.
22. **Cancellation**
- 22.1 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Services to the Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.
- 22.2 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any money paid by the Customer for the Services. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Customer cancels delivery of the Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
23. **Dispute Resolution**
- 23.1 All disputes and differences between the Customer and the Contractor touching and concerning this Contract shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.
24. **Privacy Policy**
- 24.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information as defined and referred to in clause 24.3 and therefore considered confidential. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by the Contractor that may result in serious harm to the Customer, the Contractor will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 24.2 Notwithstanding clause 24.1, privacy limitations will extend to the Contractor in respect of Cookies where transactions for purchases/orders transpire directly from the Contractor's website. The Contractor 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 Customers:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the Contractor when the Contractor sends an email to the Customer, so the Contractor may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Contractor's website.
- 24.3 The Customer authorises the Contractor or the Contractor's agent to:
- (a) access, collect, retain and use any information about the Customer;
- (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 Customer's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by the Contractor from the Customer directly or obtained by the Contractor 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 Customer.
- 24.4 Where the Customer is an individual the authorities under clause 24.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 24.5 The Customer shall have the right to request the Contractor for a copy of the Personal Information about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Customer held by the Contractor.
25. **Service of Notices**
- 25.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 25.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
26. **Lien**
- 26.1 Where the Customer has left Cargo with the Contractor for storage purposes, or for the Contractor to perform any other service in relation thereto, and the Contractor has not received or been tendered the whole of any monies owing to it by the Customer, the Contractor shall have, until all monies owing to the Contractor are paid:
- (a) a lien on the Cargo; and
- (b) the right to retain or sell the Cargo, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 26.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for any monies owing to the Contractor having been obtained against the Customer.
27. **Trusts**
- 27.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Customer covenants with the Contractor as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Customer will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
28. **General**
- 28.1 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.
- 28.2 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 Christchurch courts.
- 28.3 The Contractor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 28.4 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 28.5 The Customer cannot licence or assign without the written approval of the Contractor.
- 28.6 The Contractor 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 Customer agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 28.7 The Customer agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Contractor to provide Services to the Customer.
- 28.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 28.9 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.