

Terms of Trade 1

INTERPRETATION

1. Definitions:

- 1.1. Delivery means the date you receive our supply of goods or services.
- 1.2. Force Majeure means an event that is beyond the reasonable control of us, including but not limited to, disputes with sub-contractors, weather, shortage of labour and/or materials, difficulties with Variations, acts of God, requirements of any Local Authority or similar body.
- 1.3. Goods or services means any goods or services which we supply to you.
- 1.4. PPSA means the Personal Property Securities Act 1999.
- 1.5. Price means the price indicated on our invoice provided to you in respect of goods and / or services supplied by us to you in respect of a Vehicle.
- 1.6. Terms means these terms of trade.
- 1.7. Vehicle includes (but is not limited to) any automobile, aircraft, boat, motorcycle, or any auxiliary equipment or industrial equipment that you ask us to carry out our services on.

2. Interpretation:

- 2.1. References to 'you' or 'your' means the Customer.
- 2.2. References to 'we', 'us' or 'our' means Mighty Kiwi Limited.
- 2.3. Words in the singular include the plural and vice versa.

QUOTE

3. Unless otherwise notified in advance by written Quote, our charges applying to the supply of any goods or services will be our usual charges of the same, details of which can be provided on request.
4. On acceptance by you of our Quote, or receipt by us of your instruction for the supply of goods or services, you confirm acceptance of these Terms of Trade.
5. If you request a variation to a Quote we will advise you whether or not we agree to such request and the terms on which we would agree to such variation of the Quote. If no agreement is reached between you and us as to such variation, then the original terms of the Quote will continue to apply. If we advise you that a variation is required for example (but not limited to) due to a previously unforeseen issue then you authorise us to update our Quote accordingly.
6. Where we have given an 'estimate' as opposed to a 'Quote' for any goods or services supplied to you, we will not be bound to charge a price which corresponds to that estimate where the cost of any products to be used are in excess of our earlier understanding for the purpose of providing you with an estimate. Similarly, if any work undertaken by us is more than originally estimated and this was not reasonably foreseeable or could not be more exactly determined without further investigation then we are not bound to charge a price which corresponds to our estimate. Any estimate of price we may give is simply an opinion as to what the price may be. We cannot give any assurance that the final price will correspond to an estimate given.

DELIVERY / TITLE / RISK

7. We give no warranties regarding any estimated time for completion for any goods or services undertaken by us for you.
8. We will provide you with a GST tax invoice for the Price at Delivery.
 - 8.1. If we state in our invoice the GST exclusive price for any goods or services supplied (despite the charges, as a result of a reasonable mistake, being indicated as GST inclusive) then we may add GST to the charges payable by you.
 - 8.2. If we overlook charging you for any goods or services supplied, as a result of a reasonable mistake on our part, we may invoice you for those items overlooked.
9. The legal and beneficial ownership of any goods used in services we deliver to you remains with us until we have received payment of the Price in full.
 - 9.1. We may at our option claim a general lien over your Vehicle, retain possession of your vehicle, and despite any non-mandatory law to the contrary retain possession until all costs incurred by, together with the Price and storage charges for your Vehicle (including any penalty interest) are paid in full.
 - 9.2. We may at our option charge storage costs and / or remove your Vehicle or property from our premises which has not been uplifted within one week of our notifying you (or making a reasonable attempt to notify you) that your Vehicle or property is available for collection.
10. If you fail to pay the Price in full to us, you agree that without prejudice to any other rights we have at law or in equity, we may enter the location where your Vehicle or property is stored (and will obtain any third-party access consent required) for the purpose of recovering and taking possession of the goods or products used in

services we have delivered to you. You will be responsible for payment of all costs associated with repossession.

- 10.1. You must not sell, dispose, or charge the goods or products used in services we have delivered to you in any way, or do any act that may affect or defeat our title to the goods, provided that you may with our prior consent deal or dispose of the goods in the normal course of trade on the basis that your account directly to us for the proceeds of such disposition.

11. The risk of loss of or damage to goods or products supplied will pass from us to you as soon as they leave our premises, or within 48 hours of our notifying you (or making a reasonable attempt to notify you) that your Vehicle or property is available for collection. However, the risk will not pass through the temporary removal of the goods from our premises for non-delivery purposes (e.g. test drive); OR

PAYMENT

12. Time for payment of the Price shall be of the essence and will be stated on our Quote and / or invoice. If no time is stated then payment must be made in full, at the time of Delivery.
 - 12.1. We reserve the right to recover reasonable costs incurred in processing any credit card transactions.
 - 12.2. No credit or refund of goods or services supplied will be given unless we agree in writing or are lawfully required.
13. You must not withhold payment, or make deductions from the Price, or set off any amount owed by you to us whether by equitable set-off or otherwise, without our prior written consent.
14. Interest at the rate of 5% per annum must be paid by you to us on all money owing by you to us for any reason from the date payment is due until the date all money and interest payable by you to us is paid. In addition, you will pay us a fee of \$200.00 being a processing fee for the administrative costs with your payment default. You agree that the interest rate and fee specified in this clause is not penal, or unreasonable but is to defer you from breaching our payment terms.
15. Interest payable shall be calculated:
 - 15.1. As accruing from day to day; and
 - 15.2. May be compounded to and become part of the principal debt at the end of each month of default; and
 - 15.3. May be claimed in the same manner both before and after any judgment is obtained.
16. You will also be liable to pay all actual expenses and legal costs we incur in relation to taking any steps to enforce these Terms and in obtaining payment from you if you breach your payment obligations to us.

PERSONAL PROPERTY SECURITIES ACT 1999

17. You acknowledge these Terms and specifically clause 9.1 of the PPSA grant to us a security interest ("Security Interest") (as that term is defined in the PPSA in goods or services supplied to you).
18. You will at our request promptly execute any documents, provide all necessary information and do anything else required by us to ensure the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA) and which will have priority over all other Security Interests in the Products.
 - 18.1. Should you default in granting such securities then you agree that under these Terms you irrevocably appoint us as your attorney to enter into and sign all documents necessary.
19. You agree, to the extent permitted by law, that you shall waive any rights you may have under sections 116, 119, 120(2), 121, 125, 126, 127, 131 and 132 of the PPSA and enforcement of any Security Interest.
20. You agree that nothing in sections 113, 114(1)(a), 117, 133 and 134 of the PPSA apply to these Terms.
21. You waive the right to receive a copy of any Verification Statement (as that term is defined in the PPSA) confirming registration of a financing statement as that term is defined in the PPSA.
22. Where we have rights in addition to those in Part 9 of the PPSA, those rights will continue to apply and in particular will not be limited by section 109 of the PPSA. You must pay the costs, charges and expenses of and incidental to registration of a financing statement or any action taken by us to comply with the PPSA (including complying with a demand given under section 162 of the PPSA) or to protect our position under the PPSA. You must pay any costs incurred by us including legal costs arising from any dispute or negotiation with third parties claiming an interest in any goods supplied by us to you. You will not

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change your name without first notifying us in writing of the proposed name change and the new name at least seven days before the change takes effect.

WARRANTIES and LIABILITY

23. You warrant that you have full power and authority to enter into and perform your obligations under these Terms.
24. Our warranties to you are only effective until the earlier of: 3 months from Delivery or 2,000 kilometres from the date we supplied you with the goods or services for your Vehicle ("the Warranty Period").
 - 24.1. Notwithstanding, if goods supplied to you by us have an extended manufacturer's warranty then the Warranty Period for the relevant goods will be extended to the date the manufacturer's warranty expires.
25. We will only be liable if:
 - 25.1. Your Vehicle and its parts are maintained and operated in accordance with each manufacturer's recommendations;
 - 25.2. Your Vehicle and its parts are not misused or neglected;
 - 25.3. You notify us of the defect as soon as you become aware of it, within the warranty period;
 - 25.4. You only use fuels, lubricants, fluids and parts in your vehicle which have been approved by the manufacturers;
 - 25.5. The Price (and any other costs owed by you to us) has been paid in full; and
 - 25.6. You are not in breach of any of your obligations under these Terms.
26. Our warranties to you do not cover:
 - 26.1. Maintenance or normal service items, unless a manufacturing defect is evident;
 - 26.2. Repairs or replacements necessary as a result of fair wear and tear;
 - 26.3. Losses or expenses such as loss of use, damage to property or person or expenses for tolls, travel, hire or accommodation.
 - 26.4. Vehicle or parts accessories not part of your Vehicle at the time of installation by us or the Vehicle's manufacturer.
 - 26.5. Damage caused by accident, collision, fire, flood, chemicals, industrial fallout, hail, salt, sand, stones or environmental elements.
27. Our warranties to you do not extend to any subsequent owner of the Vehicle during the Warranty Period.
28. Our warranties to you apply to any parts repaired or replaced under this warranty but only until the expiry of the Warranty Period.
29. We will not be liable to you under or in connection with these Terms or the goods or services provided for any:
 - 29.1. Loss of profit, revenue, savings, business, use, and/or goodwill; or 29.2. Consequential, indirect, incidental or special damage or loss of any kind.
30. We will not be responsible, liable, or held to be in breach of these Terms for any failure to perform our obligations under these Terms or otherwise, to the extent that the failure is caused by you failing to comply with your obligations under these Terms, or by the negligence or misconduct of you or your personnel.
31. If for any reason we are found liable to you, then such liability is limited to your rights under the Consumer Guarantee Act 1993 and the Fair-Trading Act 1986.
32. You acknowledge that we do not hold insurance cover for theft of Vehicles stored at our premises and accordingly if your Vehicle is stored at our premises then it is entirely at your risk.
33. Where you are acquiring the goods and services supplied, and accepting these Terms, for the purpose of trade then you acknowledge and agree that:
 - 33.1. To the maximum extent permitted by law our warranties are limited to those set out in these Terms, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under the Contract and Commercial Law Act 2017) are expressly excluded and, to the extent that they cannot be excluded or that we are in breach of any warranties given in these Terms, our liability is limited to:
 - 33.1.1. Supplying any non-complying goods or products again to you on the basis that the original supplied non-complying goods or products are returned to us; and
 - 33.1.2. Paying the costs of having the goods or products supplied again to you; or (and at our option)
 - 33.1.3. Refunding the portion of the Price of any non-complying goods or products on the basis that the original supplied non-complying goods or products are returned to us.
 - 33.1.4. Under no circumstances will our liability exceed the total sum of our invoice in respect of the goods or services supplied to you.

33.2. The Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the goods or services under these Terms.

33.3. We contract out of sections 9, 12A and 13 of the Fair-Trading Act 1986.

33.4. You indemnify us against any loss which we suffer, incur, or are liable for in connection with any breach of these Terms, or negligence by you, or with us exercising our rights under these Terms.

TERMINATION

If we consider that our services have become impossible to complete or the goods impossible to provide, or these Terms are otherwise frustrated, we may terminate these Terms immediately by notice to you.

35. Either you or we may terminate these Terms if the other is subject to an act of insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation.

36. If these Terms are terminated, you must pay to us:

- 36.1. any amounts invoiced to you for goods and / or services provided by us up to the date of termination;
- 36.2. any other amounts owing by you to us under these Terms including but not limited to interest owing and debt collection costs and legal costs.

37. Termination by us of these Terms is without prejudice to any other rights or remedies we may have at law or in equity.

GENERAL

38. We are not liable to you for any failure to perform our obligations under these Terms to the extent caused by Force Majeure.

39. No person or entity has any right to benefit under, or to enforce, these Terms, other than you.

40. For us to waive a right under these Terms, that waiver must be in writing and signed by us.

41. We are your independent contractor, and no other relationship exists under these Terms.

42. You authorise us to collect, retain, use, and provide to any third party any information about you for the purpose of assessing your credit background, enforcing any rights under these Terms, or marketing any goods or services provided by us to any other party.

43. If we need to contact you, we may do so by email. You agree that this satisfies all legal requirements in relation to written communications.

44. These Terms, and any dispute relating to these Terms or the goods or services supplied, are governed by and must be interpreted in accordance with the laws of New Zealand.

45. If any part of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.

46. These Terms set out everything agreed by you and us relating to the goods or services supplied and supersede or cancel anything discussed, exchanged or agreed prior to the date of your acceptance of our Quote, or receipt by us of your instruction for the supply of goods or services. You have not relied on any representation, warranty or agreement relating to the goods or services supplied that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the date of your acceptance of our Quote, or receipt by us of your instruction for the supply of goods or services.

47. You may not assign, novate, subcontract or transfer any right or obligation under these Terms without our prior written consent. We may assign, novate, subcontract or transfer any right or obligation under these Terms.

GUARANTEE

48. Where you are a Company or Trust or other entity, you agree to procure a personal guarantee from your director/s, trustees/s, or authorised person/s. Such Guarantor/s (and if more than one – jointly and severally) shall guarantee to us, as principal debtor, the due and punctual payment of all moneys owing to us by you and the performance by you of your obligations under these Terms. This guarantee will remain in full force and effect until all monies owing to us by you have been paid.