

1. Definitions

- 1.1 "Hawker Trucks" means Hawker Trucks 2015 Limited, its successors and assigns or any person acting on behalf of and with the authority of Hawker Trucks 2015 Limited.
- 1.2 "Client" means the person/s buying the Parts as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally (where the context so permits, the term 'Client' shall also mean the Client's duly authorised representative).
- 1.3 "Parts" means all Parts or Services supplied by Hawker Trucks to the Client at the Client's request from time to time (where the context so permits the terms 'Parts' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Parts as agreed between Hawker Trucks and the Client in accordance with clause 2 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by Hawker Trucks.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Hawker Trucks.
- 2.3 The Client acknowledges that the supply of Parts/Services on credit shall not take effect until the Client has completed a credit application with Hawker Trucks and it has been approved with a credit limit established for the account.
- 2.4 In the event that the supply of Parts request exceeds the Clients credit limit and/or the account exceeds the payment terms, Hawker Trucks reserves the right to refuse delivery.
- 2.5 Hawker Trucks reserves the right to substitute comparable Parts (or components of the Parts), and in all such cases Hawker Trucks will notify the Client in advance of any such substitution.
- 2.6 The Client acknowledges and accepts that the supply of Parts for accepted orders may be subject to availability and if, for any reason, Parts are not or cease to be available, Hawker Trucks reserves the right to vary the Price with alternative Parts as per clause 2.5.
- 2.7 In the event that the Parts and/or Services provided by Hawker Trucks are the subject of an insurance claim that the Client has made, then the Client shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by Hawker Trucks and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to Hawker Trucks as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Parts or Services on the Client's behalf and/or to request any variation to the Parts/Services on the Client's behalf (such authority to continue until all requested Parts/Services have been supplied or the Client otherwise notifies Hawker Trucks in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise Hawker Trucks in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to Hawker Trucks for all additional costs incurred by Hawker Trucks (including Hawker Trucks' profit margin) in providing any Parts/Services or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

- 4.1 The Client shall give Hawker Trucks not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Hawker Trucks as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At Hawker Trucks' sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Hawker Trucks to the Client in respect of the Services supplied; or
 - (b) Hawker Trucks' estimated Price (subject to clause 6) which shall not be deemed binding upon Hawker Trucks as the actual Price can only be determined upon completion of the Services. Hawker Trucks undertakes to keep the Client informed should the actual Price look likely to exceed the original estimate.
 - (c) Hawker Trucks' quoted Price (subject to clause 6 which shall be binding upon Hawker Trucks provided that the Client shall accept Hawker Trucks' quotation in writing within thirty (30) days of issue.
- 5.2 At Hawker Trucks' sole discretion a deposit may be required, the amount or percentage of which will be stipulated at the time of the Client's order and shall become immediately due and payable.
- 5.3 Where Hawker Trucks is requested to store the Client's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four hours of advice to the Client that they are ready for collection, then Hawker Trucks (at its sole discretion) may charge a reasonable fee for storage.
- 5.4 Time for payment for the Services shall be of the essence; at Hawker Trucks' sole discretion payment shall be due:
- (a) upon completion of the Services;
 - (b) twenty (20) days following the end of the month in which a statement is delivered to the Client's address or address for notices;
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Hawker Trucks.
- 5.5 Payment will be made by cash, cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction) of the Price), or by any other method as agreed to between the Client and Hawker Trucks.
- 5.6 Receipt by Hawker Trucks 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.

6. Additional Charges

- 6.1 Hawker Trucks reserves the right to change the Price:
- (a) if a variation to the Services which are to be provided is requested; or
 - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, further faults which are found upon disassembly and/or further inspection) which are only discovered upon commencement of the Services; or

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(c) in the event of increases to Hawker Trucks in the cost of labour or Parts, or fluctuations in currency exchange rates etc., which are beyond Hawker Trucks' control.

6.2 Any variations will be charged for on the basis of Hawker Trucks' quotation, and will be detailed in writing, and shown as variations on Hawker Trucks' invoice. The Client shall be required to respond to any variation submitted by Hawker Trucks within ten (10) working days. Failure to do so will entitle Hawker Trucks 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.

6.3 Where Hawker Trucks is requested to store the Client's vehicle, or where the vehicle is not collected within twenty-four (24) hours of advice to the Client that it is ready for collection, then Hawker Trucks (at its sole discretion) may charge a fee of (\$75.00 per day) for storage.

6.4 All tow and/or salvage fees will be charged to the Client, and will be added to the Price.

6.5 If Hawker Trucks has been requested by the Client to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.

6.6 The Client acknowledges and agrees that Hawker Trucks shall be entitled to:

(a) retain any components replaced during the provision of the Services; and

(b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.

7. Delivery

7.1 At Hawker Trucks' sole discretion delivery of the Services shall take place when:

(a) Hawker Trucks provides the Services at Hawker Trucks' address; or

(b) Hawker Trucks provides the Services at the Client's nominated address.

7.2 Where Hawker Trucks is to provide any Services at the Client's nominated address then the Client shall be liable for all costs incurred by Hawker Trucks from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at Hawker Trucks standard rates and any Parts purchased for the Services).

7.3 Any time or date given by Hawker Trucks to the Client is an estimate only. The Client must still accept delivery of the Parts even if late and Hawker Trucks will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

8. Risk

8.1 Risk of damage to or loss of the Parts passes to the Client on Delivery and the Client must insure the Parts on or before Delivery.

8.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Client, Hawker Trucks is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by Hawker Trucks is sufficient evidence of Hawker Trucks' rights to receive the insurance proceeds without the need for any person dealing with Hawker Trucks to make further enquiries.

8.3 The Client acknowledges and agrees that where Hawker Trucks has performed temporary repairs on the vehicle that:

(a) Hawker Trucks offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and

(b) Hawker Trucks will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair of the vehicle.

8.4 The Client acknowledges that Hawker Trucks is only responsible for Parts that are replaced/repared by Hawker Trucks, and that in the event that other components subsequently fail, the Client agrees to indemnify Hawker Trucks against any loss or damage to the Parts or the Client's vehicle, or caused by the components, or any part thereof howsoever arising.

8.5 Hawker Trucks shall not be liable for the loss of or damage to the Client's vehicle, its accessories or contents while being repaired or operated in connection with the authorised Services (including in the event of a call-out: it shall be the Client's responsibility to remain with the vehicle to ensure security of the same), unless caused by the negligence of Hawker Trucks, or Hawker Trucks' employees.

8.6 Hawker Trucks will accept no responsibility for valuables or other items left in the Client's vehicle. It is the Client's responsibility to remove any valuables from the Client's vehicle prior to servicing/repair.

8.7 It is the Client's responsibility to ensure that the Client's vehicle is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at Hawker Trucks' premises. The vehicle is at all times stored and repaired at the Client's sole risk.

8.8 In the event Hawker Trucks perform any modifications that may render the vehicle non-compliant with relevant legislation; the Client warrants that the vehicle will not be used in any such way that contravenes law and indemnifies Hawker Trucks from any damage, loss, claims etc.

9. Title

9.1 Hawker Trucks and the Client agree that ownership of the Parts shall not pass until:

(a) the Client has paid Hawker Trucks all amounts owing to Hawker Trucks; and

(b) the Client has met all of its other obligations to Hawker Trucks.

9.2 It is further agreed that:

(a) until ownership of the Parts passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Parts and must return the Parts to Hawker Trucks on request.

(b) the Client holds the benefit of the Client's insurance of the Parts on trust for Hawker Trucks and must pay to Hawker Trucks the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed.

(c) the Client must not sell, dispose, or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Parts then the Client must hold the proceeds of any such act on trust for Hawker Trucks and must pay or deliver the proceeds to Hawker Trucks on demand.

(d) the Client should not convert or process the Parts or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Hawker Trucks and must sell, dispose of or return the resulting product to Hawker Trucks as it so directs.

(e) the Client irrevocably authorises Hawker Trucks to enter any premises where Hawker Trucks believes the Parts are kept and recover possession of the Parts.

(f) Hawker Trucks may recover possession of any Parts in transit whether or not delivery has occurred.

(g) the Client shall not charge or grant an encumbrance over the Parts nor grant nor otherwise give away any interest in the Parts while they remain the property of Hawker Trucks.

(h) Hawker Trucks may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Client.

10. Personal Property Securities Act 1999 ("PPSA")

10.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

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- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Parts previously supplied by Hawker Trucks to the Client (if any) and all Parts that will be supplied in the future by Hawker Trucks to the Client.

10.2 The Client 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 Hawker Trucks may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Hawker Trucks for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Parts charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of Hawker Trucks; and
- (d) immediately advise Hawker Trucks of any material change in its business practices of selling the Parts which would result in a change in the nature of proceeds derived from such sales.

10.3 Hawker Trucks and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

10.5 Unless otherwise agreed to in writing by Hawker Trucks, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

10.6 The Client shall unconditionally ratify any actions taken by Hawker Trucks under clauses 10.1 to 10.5.

11. Client's Disclaimer

11.1 The Client hereby disclaims any right to rescind, or cancel any contract with Hawker Trucks or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Hawker Trucks and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgement.

12. Defects and Returns

12.1 The Client shall inspect the Services/Parts on delivery and shall within seven (7) days of delivery (time being of the essence) notify Hawker Trucks of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote and. The Client shall immediately cease using the vehicle and shall afford Hawker Trucks an opportunity to inspect the Services/Parts within a reasonable time following delivery if the Client believes the Services/Parts are defective in any way. If the Client shall fail to comply with these provisions the Services/Parts shall be presumed to be free from any defect or damage. For defective Services/Parts, which Hawker Trucks has agreed in writing that the Client is entitled to reject, Hawker Trucks' liability is limited to either (at Hawker Trucks' discretion) replacing the Services/Parts or repairing the Services/Parts.

12.2 Parts will not be accepted for return other than in accordance with 12.1 above, and provided that:

- (a) the Client has complied with the provisions of clause 12.1; and
- (b) Hawker Trucks has agreed in writing to accept the return of the Parts; and
- (c) the Parts are returned at the Client's cost within seven (7) days of the delivery date; and
- (d) Hawker Trucks will not be liable for Parts which have not been stored or used in a proper manner; and
- (e) the Parts are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

13. Warranty

13.1 For Parts not manufactured by Hawker Trucks, the warranty shall be the current warranty provided by the manufacturer of the Parts. Hawker Trucks shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Parts.

13.2 Unless expressly agreed in writing, any manufacturer's warranty does not cover those items considered consumables such as belts, oil, gaskets etc.

13.3 In the case of second hand Parts, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults, as is and acknowledges that no warranty is given by Hawker Trucks as to the quality or suitability of the Part(s) for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Hawker Trucks shall not be responsible for any consequential loss or damage howsoever arising out of the use of second hand Parts.

14. Consumer Guarantees Act 1993

14.1 If the Client is acquiring Parts 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 Parts by Hawker Trucks to the Client.

15. Default and Consequences of Default

15.1 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 Hawker Trucks' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

15.3 Further to any other rights or remedies Hawker Trucks may have under this contract, if a Client has made payment to Hawker Trucks by credit card, 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 Hawker Trucks under this clause 10, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

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

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

- (a) any money payable to Hawker Trucks becomes overdue, or in Hawker Trucks' opinion the Client will be unable to make a payment when it falls due;

- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

16. Security And Charge

- 16.1 In consideration of the Hawker Trucks agreeing to supply Services, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies the Hawker Trucks from and against all the Hawker Trucks' costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising the Hawker Trucks' rights under this clause.
- 16.3 The Client irrevocably appoints the Hawker Trucks and each director of the Hawker Trucks as the Client'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 Client's behalf.

17. Cancellation

- 17.1 Without prejudice to any other remedies Hawker Trucks may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Hawker Trucks may suspend or terminate the supply of Parts/Services to the Client. Hawker Trucks will not be liable to the Client for any loss or damage the Client suffers because Hawker Trucks has exercised its rights under this clause.
- 17.2 Hawker Trucks may cancel any contract to which these terms and conditions apply or cancel delivery of Parts/Services at any time before the Parts/Services are delivered by giving written notice to the Client. On giving such notice Hawker Trucks shall repay to the Client any money paid by the Client for the Parts/Services. Hawker Trucks shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Client cancels delivery of Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by Hawker Trucks as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.4 Cancellation of orders for Parts 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.

18. Privacy Act 1993

- 18.1 The Client authorises Hawker Trucks or Hawker Trucks' agent to:
 - (a) access, collect, retain and use any information about the Client;
 - (i) (including 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 Hawker Trucks from the Client directly or obtained by Hawker Trucks 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.
- 18.2 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Client shall have the right to request Hawker Trucks for a copy of the information about the Client retained by Hawker Trucks and the right to request Hawker Trucks to correct any incorrect information about the Client held by Hawker Trucks.

19. Unpaid Seller's Rights

- 19.1 Where the Client has left any vehicle or item with Hawker Trucks for repair, modification, exchange or for Hawker Trucks to perform any other Services in relation to the vehicle and Hawker Trucks has not received or been tendered the whole of the Price, or the payment has been dishonoured, Hawker Trucks shall have:
 - (a) a lien on the vehicle or item;
 - (b) the right to retain the vehicle or item for the Price while Hawker Trucks is in possession of the vehicle;
 - (c) a right to sell the vehicle or item in accordance with the provisions of the Wages Protection and Contractor's Lien Act Repeal Act 1987 and may claim from the Client any monies that remain owing to Hawker Trucks after such disposal.
- 19.2 The lien of Hawker Trucks shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

20. General

- 20.1 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.
- 20.2 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 Rotorua Courts of New Zealand.
- 20.3 Hawker Trucks 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 Hawker Trucks of these terms and conditions (alternatively Hawker Trucks' liability shall be limited to damages which under no circumstances shall exceed the Price of the Parts).
- 20.4 Hawker Trucks may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 20.5 Hawker Trucks may sub-contract all or any part of its rights and/or obligations under this contract with the written consent of the Client, which shall not be unreasonably withheld. Where Hawker Trucks elects to sub-contract out any part of the Services, it shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and accepts that it has no authority to give any instruction to any of Hawker Trucks' sub-contractors without the authority of Hawker Trucks.
- 20.6 The Client agrees that Hawker Trucks may amend these terms and conditions by notifying 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 Hawker Trucks to provide Goods to the Client.
- 20.7 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.
- 20.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.