

Standard Terms of Trade

These terms of trade (**Terms**) are the standard terms which will apply in respect of all products and/or services supplied by AW Trucks Ltd, except to the extent otherwise agreed by us in writing. AWT may vary these Terms at any time by written notice. Such variations will be effective and deemed accepted by the Customer 30 days after the dispatch of the Terms to the Customer.

These Terms apply regardless of any terms specified in any document by the Customer. If any other term or condition is to apply or prevail over these Terms, it must be agreed to in writing by AWT in each case.

1. Interpretation and Definitions

1.1 In these Terms (unless the context requires otherwise):

"Agreement" means this agreement between AWT and the Customer comprising the Specific Terms, these Terms and any variations agreed between the parties in writing.

"AWT" or **"AW Trucks"** means AW Trucks Limited and its successors and assigns

"Customer" means the person or entity named in the Specific Terms and includes the Customer's successors and personal representatives.

"Collection" or **"Collection Date"** means the date the Products are collected by the Customer from the Collection Point as specified in the Sales Agreement.

"Intellectual Property Rights" means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights, know-how, improvements made to the Products, registered and unregistered trademarks, trade secrets, registered designs, and all other proprietary rights resulting from intellectual activity relating to the Products.

"Price" means the price for the Products as specified in the Sales Agreement.

"Product", "Products" or **"Services"** means the products and/or services to be supplied by AWT to the Customer in accordance with the Specifications as described in the Sales Agreement.

"Specific Terms" means the Specific Terms agreed between AWT and the Customer to form part of the Agreement.

"Third Party Vehicle Supplier" means the supplier of any Vehicle as specified in the Sales Agreement.

"Working Day" means a day on which registered banks are open for business in Auckland which is not a Saturday, Sunday or Public Holiday or any day within the period between and including 24 December to 5 January, irrespective of the days on which work is carried out.

1.2 Unless the context otherwise requires:

- (a) words which refer to the singular include the plural and vice versa;
- (b) any gender include the other genders;
- (c) headings used are for convenience only and shall not affect the interpretation of these Terms;
- (d) '\$', 'dollars' or 'NZD' is a reference to New Zealand currency and unless otherwise specified, all amounts payable under these Terms are payable in New Zealand dollars;
- (e) the word "person" includes an individual, company, corporation, firm, partnership, joint venture, syndicate, the Crown, any central or local government department, authority, association or group, and any other entity or any other association of persons either corporate or unincorporated;
- (f) references to a "month" or a "year" is a reference to a calendar month or year as the case may be
- (g) references to all or any part of a statute, rule or regulation ("**statute**") are to New Zealand statutes and include that statute as amended, consolidated, re-enacted or replaced at any time
- (h) "written" and "in writing" include any means of reproducing words, figures, or symbols in a tangible and visible form

- (i) where two or more persons are named as the Customer, the obligations under the Agreement will apply to and bind those persons jointly and each of them severally;
- (j) a reference to a party includes that party's successors and permitted assigns;
- (k) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (l) in the event of inconsistency between these Terms and the Specific Terms, the Specific Terms will prevail.

2. Quotations and estimates

- 2.1 Every statement or indication of price given by AWT to the Customer is deemed to be an estimate only, in respect of which AWT has no liability or responsibility to the Customer or any other person except if it is a fixed price, in writing, specifically described as a quotation, dated, and signed by AWT, and accepted by the Customer.
- 2.2 All quotations contain an estimate as to freight and mounting costs as these cannot be determined until orders are received by AWT's workshop. AWT will issue the final quote with the adjustment (if any) for freight and mounting costs once the order is received by AWT's workshop.
- 2.3 AWT may at any time before the Customer's acceptance, withdraw any quotation notwithstanding acceptance.
- 2.4 Any quotation (unless withdrawn) will expire after the specified period.
- 2.5 Any estimate that has been accepted by a Customer will be subject to adjustment and will not be finalised until AWT has received and accepted the Customer's order.

3. Price and Deposit

- 3.1 The Price for the supply and installation of the Products is set out in the Sales Agreement.
- 3.2 Notwithstanding that the Price is intended to be fixed, AWT will be entitled to be reimbursed any additional costs which it incurs because of:
 - (a) an increase in the cost of foreign currency or freight; and/or
 - (b) any adjustment to the mounting cost; and/or
 - (c) any change in law, regulations, (including any new orders made under existing lawyers), bylaws or the imposition by the government or any relevant authority of any taxes, levies, royalties, surcharges, tariffs, duties, fees, tolls, or other such payments, which increases the cost of performing AWT's obligations in the Agreement.
- 3.3 Unless otherwise specified in the Sales Agreement, a non-refundable deposit of 10% of the Price is payable upon signing of the Agreement.

4. Payment

- 4.1 Each invoice will be payable in full without set off, deduction or withholding of any kind.
- 4.2 Unless otherwise agreed with AWT, payment will be due within 5 Working Days of the date of the relevant invoice (**Payment Due Date**).
- 4.3 If payment is not received by the relevant Payment Due Date, AWT is entitled to cancel the Agreement on giving to the Customer, no less than 5 Working Days' notice and clause 16.2 will apply.

- 5. GST and other taxes or charges**
- 5.1 Unless otherwise stated, all prices or other sums payable under or in accordance with the Agreement are exclusive of GST.
- 5.2 If GST is imposed on any supply made under or in accordance with the Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with the Agreement.
- 5.3 Unless otherwise stated, the Price for the Products includes any taxes (other than GST), duties, charges, fees, and other imposts of whatever kind that may be levied, assessed, charged, or collected in connection with Products supplied under the Agreement.
- 6. Late Payment Interest**
- 6.1 If the Customer defaults for any reason in payment of any amount to AWT on the Payment Due Date (time being strictly of the essence) the Customer will pay to AWT on demand interest at a rate equal to 2% above the current overdraft rate which AWT has with its principal bank, calculated by AWT on a daily basis on any overdue amount from the Payment Due Date until payment is made.
- 6.2 Charging of this interest will not limit any of AWT's other rights or remedies under the Agreement or otherwise in respect of the Customer's default.
- 6.3 The Customer will also pay any debt recovery costs in full including any legal costs incurred on a solicitor/client basis.
- 7. Specifications**
- 7.1 The Customer acknowledges that the Specifications for the Products to be purchased as specified in the Specific Terms are correct and unless AWT otherwise agrees, no changes to the Specifications may be made following AWT's acceptance of the Customer's order.
- 7.2 The Customer also acknowledges that AWT (including the Third Party Vehicle Supplier) may for the purpose of continuous improvement of the Products, at any time change the Specifications provided that such change will have no adverse impact on the Products to be supplied to the Customer under the Agreement. [The Customer will be notified of any changes in advance of such changes being implemented.]
- 8. Collection**
- 8.1 The Customer acknowledges that AWT will keep the Customer updated on the date for collection but such date is an estimate only.
- 8.2 AWT has no responsibility or liability for any loss or damage arising directly or indirectly from any changes to the date for collection howsoever caused.
- 8.3 Any carrier of the Products shall be deemed to be the Customer's agent.
- 9. Warranties**
- 9.1 Subject to clause 9.6, 9.7 and 9.8, to the fullest extent permitted by law, all conditions, warranties, guarantees, liabilities, representations, undertakings, descriptions, and conditions as to fitness, are expressly excluded.
- 9.2 The Customer agrees that it has purchased the Products solely in reliance of the Customer's own judgment.
- 9.3 The exclusions and liabilities in this clause 9 shall extend to AWT, its agents, employees, directors, and any person or entity who is associated with any of them.
- 9.4 AWT shall have no liability or responsibility for Products not manufactured or fabricated by them.
- 9.5 Subject at all times to the exclusions specified in this clause 9, for Products manufactured or fabricated by AWT to specifications provided by the Customer, AWT warrants that for 12 months from Collection the Products (excluding any consumable parts) will:
- substantially comply with the Specifications; and
 - be free from defective workmanship.
- 9.6 Full details of any warranty claim must be given to AWT in writing within 12 months after Collection and provided the price for the Products has been paid in full.
- 9.7 If notice is given under clause 9.6, the Customer shall allow AWT to fully inspect and test the Products.
- 9.8 A notice under clause 9.6 will not be accepted if:
- the Products have been used after any defect became apparent or would have become apparent to a reasonably prudent operator or user;
 - the defect is the result of misuse, negligence or error by the Customer; or
 - the defect is the result of reasonable wear and tear, wilful damage, negligence, or abnormal storage by the Customer.
- 9.9 In the event that the Purchaser issues an acceptable notice of defect under clause 9.6 and AWT agrees following its inspection that there are defects that require remediation, AWT will at no additional cost to the Customer, arrange for such defects to be remedied.
- 9.10 The warranty provided under this clause 9:
- only covers product defects caused by defective workmanship. All other costs are the responsibility of the Customer. Furthermore, AWT may specify the place at which any repairs may be carried out, and it remains the responsibility of the Customer to arrange collection of the Products to the required location for repairs to be undertaken;
 - is subject to the Product being regularly maintained in accordance with the maintenance requirements provided to the Customer on purchase of the Product;
 - will not apply:
 - if there is excessive wear and the Products are used under hard operating conditions; and/or
 - in relation to any consumable parts.
- 9.11 **Second hand products excluded:** The Customer acknowledges that any second hand used vehicles and pumps are purchased on an as is basis and AWT provides no warranty in relation to the Products in any circumstances including whether such second hand vehicles and pumps are suitable for use or any intended use by the Customer.
- 10. Truck Warranty**
- 10.1 For the avoidance of doubt the Customer acknowledges that AWT does not manufacture trucks and AWT does not provide any warranties in relation to any truck supplied as part of a Product.
- 10.2 AWT will supply or transfer to the Customer all warranties and guarantees provided to it by any Third Party Vehicle Supplier in relation to the vehicles supplied to the Customer as part of the Products.
- 11. Trade-in vehicles**
- 11.1 If AWT has agreed with the Customer to accept any trade-in vehicle, that trade-in vehicle:
- must be delivered to AWT or such person authorised by AWT to accept delivery of such trade-in vehicle;
 - must have a valid Certificate of Fitness (COF) issued 7 days prior to such delivery;
 - must have a valid vehicle registration with no less than 6 months until its expiry; and

- (d) if applicable, a valid road user charges licence with road user charges equal to or in excess of the distance shown on its odometer at delivery.
- 11.2 The Customer warrants that any trade-in vehicle will be free of all charges, encumbrances and security interests and AWT is authorised to obtain such information from credit reference agencies or similar to confirm the credit worthiness of the Customer and to confirm that any Personal Property and Securities Register (PPSR) security interests registered in relation to such trade-in vehicle have been released.
- 12. Title**
- 12.1 Title in the Products will automatically transfer to the Customer:
- (a) on full payment of the Price; and
- (b) if the sale and purchase of the Products includes the Customer trading in a vehicle, all requirements in clause 11 being satisfied.
- 13. Risk**
- Risk in the Products passes on Collection and the Customer is responsible for insuring the Product before requesting AWT deliver the Product to the Customer or collecting of the Product from AWT.
- 14. Termination**
- AWT may terminate the Agreement:
- (a) immediately if the Customer breaches any of these Terms and/or the Agreement (including payment of monies owing by the due date) and fails to remedy the breach within ten Working Days' of notice from AWT of the breach;
- (b) immediately without notice in the event of the liquidating, receivership or insolvency of the Customer.
- 15. Termination by Customer**
- The Customer may terminate the Agreement immediately at any time by the Customer giving written notice to AWT if AWT:
- (a) has not remedied a material breach of the Agreement within 10 Working Days of notice requiring the breach to be remedied; or
- (b) becomes insolvent or bankrupt, has a receiver appointed over all or some of its assets, or a resolution is passed for the liquidation of that party.
- 16. Consequences of Termination**
- 16.1 Termination of the Agreement shall not relieve either party of any rights, liabilities or obligations of either party which have accrued up to the date of termination. This clause together with any other provisions which expressly or by implication are intended to survive termination or expiry, will continue in force notwithstanding termination.
- 16.2 On termination where the Customer is in default, AWT will not be required to refund the Customer any payments already received under the Agreement (including any non-refundable deposit).
- 17. Intellectual Property**
- 17.1 Unless expressly agreed in writing AWT owns all Intellectual Property Rights in the Products.
- 17.2 All Intellectual Property Rights owned by the manufacturer of the Product, where the manufacturer is not AWT (including any manufacturer or Third Party Vehicle Supplier) remains the absolute property of the manufacturer or Third Party Vehicle Supplier (as relevant) and the Customer has no rights to use such Intellectual Property Rights unless specifically expressed in writing by AWT on behalf of the relevant manufacturer or Third Party Vehicle Supplier.
- 17.3 AWT grants the Customer a licence to use AWT's Intellectual Property Rights only in connection with the Products delivered.
- 17.4 If the Products are supplied to a design or specification provided by the Customer, the Customer warrants that in supplying the Products in accordance with the Customer supplied design or specification, AWT will not infringe any trademark, patent, copyright, registered design, or any other rights of a third party, and the Customer agrees to indemnify AWT against any liability, costs and claims arising from any such infringement or alleged infringement.
- 17.5 Where AWT creates customised products for the Customer the intellectual property in the designs, documents, drawings, or the Products is and remains at all times, the property of AWT.
- 18. Privacy**
- 18.1 The information supplied by you in connection with the supply of the Products, will be retained by AWT and held by AWT in accordance with the Privacy Act 2020 and will be used as required for the fulfilment of AWT's contractual obligations and for the purpose of credit checks if required.
- 18.2 You have the right to see all personal information relating to your business held by AWT.
- 18.3 You have the right to access your personal information at any time and if the information is inaccurate, you have the right to request a correction.
- 18.4 Subject to any compliance, statutory or regulatory requirements, the information held will not be disclosed without your consent to anyone outside of AWT.
- 19. Dispute Resolution**
- 19.1 If any dispute or difference (a **Dispute**) arises out of or in connection with the Agreement, the parties will endeavour to resolve the Dispute by agreement between them through good faith negotiations.
- 19.2 If a dispute cannot be resolved through good faith negotiations, the parties will, before taking any other action, refer the dispute to the mediation of a single mediator. The referral to mediation will be commenced by either party giving notice to the other party stating the subject matter and details of the dispute to be referred to a mediator to be appointed by the parties. Failing agreement within five Working Days after the giving of the notice, the mediator will be appointed at the request of either party by the president (or his or her nominee) for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc (**AMINZ**). The mediation will be conducted in accordance with the AMINZ mediation protocol.
- 19.3 If the Dispute is not resolved pursuant to clause 19.2 within 20 Working Days of the date of appointment of the mediator, either party may, by written notice to the other party, require that the Dispute be determined under the Arbitration Act 1996 by a sole arbitrator to be appointed by the parties. If the parties are unable to agree on the appointment within five Working Days of the written notice under this clause, the arbitrator will be appointed, on the application of either party, by the President for the time being of the New Zealand Law Society or his or her nominee. The costs of the arbitration will, subject to any contrary determination by the arbitrator (it being the intent that the party who is found to be at fault or incorrect in the arbitration will bear costs), be borne equally by the parties. The determination of the arbitrator will be final and binding on the parties and there will be no right of appeal.
- 20. Notices**
- 20.1 Any notice or other communication to be given to or by a party to the other party must be in writing, be served personally, by post or by email and addressed as shown below or to such other address (if any) as the addressee

- may notify to the sender by notice given in accordance with this clause:
- (a) if to AWT:
Postal address: PO Box 102, Te Kauwhata, 3741, New Zealand
Email: alex@awtrucks.co.nz
Attention: Managing Director
 - (b) if to the Client: to the address details specified in the Specific Terms.
- 20.2 Notices are deemed to be served at the following times:
- (a) when given personally, upon delivery;
 - (b) when sent by post within New Zealand, three Working Days after posting;
 - (c) when sent by post outside New Zealand (and in such circumstances, the notice must be sent by airmail), five Working Days after posting; and
 - (d) when sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee).
- 20.3 Any notice which has been served on a day that is not a Working Day will be deemed to be served on the first Working Day thereafter.
- 21. Assignment**
The Customer shall not assign all or any of its rights or obligations under the Agreement without the prior written consent of AWT.
- 22. Severance**
If any provision in the Agreement is found by any court of law to be invalid or otherwise not binding on the parties, or if the parties agree that a provision is no longer to have effect, the rest of the provisions in the Agreement shall continue in full force and effect.
- 23. Waiver**
No waiver of any breach, or failure to enforce any provision, of the Agreement at any time by either party will in any way affect, limit or waive that party's right thereafter to enforce and compel strict compliance with the provisions of the Agreement.
- 24. Variation**
AWT is entitled to change these Terms from time to time and will publish the changed terms on its website. The changes will be binding on the Customer in respect of any matters on which AWT accepts instructions after publication of the change.
- 25. Consumer Guarantees Act 1993**
The Services are being provided to the Client for business purposes and the Customer agrees that the Consumer Guarantees Act 1993 does not apply to the provision of the Products and/or the Agreement.
- 26. Warranties excluded**
To the fullest extent permitted by law, AWT disclaims all warranties, either express or implied, in relation to the Products other than any warranty made in the Agreement.
- 27. Entire Agreement**
The Agreement constitutes the entire agreement and understanding (express and implied) between the parties relating to the subject matter of the Agreement and supersedes and cancels all previous agreements and understandings between the parties relating thereto, whether written or oral.
- 28. Force Majeure**
AWT will not be liable for any act or omission or failure to fulfil its obligations under the Agreement if such act or omission or failure arises from any cause reasonably beyond its control. If the foregoing circumstances apply, AWT will promptly notify the Customer in writing of the reasons for its failure to fulfil its obligations and the effect of such failure.
- 29. Conflict**
- 29.1 If there is any inconsistency between these Terms and the Specific Terms, the Specific Terms shall prevail.
- 29.2 Some items of machinery that are incorporated into the Product may have additional terms and conditions specific to that specific item of machinery. Where there is a conflict between these Terms (including the Specific Terms) and any terms relating to that item of machinery, then the terms relating to that item of machinery will apply.
- 30. Counterparts**
The Agreement may be signed in any number of counterparts, including facsimile or scanned copies, all of which will together constitute one and the same instrument and a binding and enforceable agreement between the parties. Any party may execute the Agreement by signing any such counterpart.
- 31. Governing law**
The laws of New Zealand will govern the Agreement and the New Zealand courts will have exclusive jurisdiction in respect of the Agreement.