

THREESIXTY COLLISION LTD
TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1. "Company" shall mean **THREESIXTY COLLISION LTD** and any company, which is directly, or indirectly a subsidiary of **THREESIXTY COLLISION LTD** and any duly authorised agent.
- 1.2. "Client" shall mean the person, authorised agent or legal entity described in the application, or stated on the invoice or order form, buying goods and/or engaging the Company for services from **THREESIXTY COLLISION LTD**
- 1.3. "Services" shall mean all services supplied by the Company to the Client and includes any recommendations or advice.
- 1.4. "Goods" means the goods being purchased by the Client from the Company which are the subject of any contract and "personal property" has the same meaning or, goods which are provided to the Company from the Client in accordance with the services.
- 1.5. "Price" shall mean the purchase price of the goods, services and any other costs incurred by the Company in providing the services.

2. ACCEPTANCE

- 2.1. Any instructions received by the Company from the Client for the supply of services shall constitute acceptance of the terms and conditions contained herein.
- 2.2. No agent or representative of the Company is permitted to make any such agreements, representations, conditions or warranties not expressly confirmed by the Company in writing.

3. PRIVACY ACT 1993

- 3.1. The Client permits the Company to collect, use and retain any information concerning the Client, for the purpose of assessing the Client's credit worthiness, to enforce any rights under this contract, or for the marketing of any services provided by the Company to any other party.
- 3.2. The Client permits the Company to disclose information obtained to any person for the purposes set out in clause 3.1.

4. PAYMENT TERMS

- 4.1. Payment terms will be stated on each invoice. Accounts are strictly to be paid in full on or before the 20th day of the month following the date of invoice.
- 4.2. The Company reserves the right to request payment for any services prior to commencement of works.
- 4.3. If full payment for any services is not made to the Company by the due date for payment, then the Client shall be in default and the Client shall at the Company's discretion (and without affecting any other rights the Company may have), pay default penalty interest at the rate of 15% per annum calculated on a daily basis.
- 4.4. The Client shall also be liable to pay all expenses and costs (including legal costs as between solicitor and Client) in relation to the Company obtaining or attempting to obtain a remedy for the failure to pay. During any period of time while the Client is in default on any account with the Company, the Company may suspend or withhold the provision of services and/or withhold any of the Client's goods until payment in full is made to the Company.
- 4.5. Any overdue account can be forwarded to a debt collection company with such information being loaded on their database and, that information may be provided to a third party such as but not limited to credit reference companies who may in turn provide credit default information to other parties.
- 4.6. An administration fee of the greater amount of either \$25.00 or, 10% of the amount overdue will be charged on any overdue accounts.

5. PRICE

- 5.1. Price(s) unless otherwise stated, do not include goods and services tax (GST), other taxes, levies or tariffs, freight or insurance charges, which if applicable, will be an extra charge to the Client and are expressly excluded from the price.
- 5.2. The Company's prices are subject to alteration without notice and the price payable by the Client for the goods and services ordered shall be the price current at the date the goods and services are received from or, provided to the Client.
- 5.3. The Company's prices are based upon rates and costs associated with materials, labour unit(s), customs duty, complexity, urgency and any other costs and/or rates incurred by the Company in providing the services.
- 5.4. A travel charge of \$1.30 (plus GST) per kilometre travelled to and from any job will be added to all invoices produced by the Company, unless otherwise agreed. This charge covers costs associated with the Company's vehicle fleet including but not limited to; fuel, road user charges, general warranty and maintenance costs and, insurances.

6. QUOTED WORK

- 6.1. Quotations are valid for 30 days from the date of quotation unless otherwise stated.
- 6.2. Prices current at the date of quote are subject to alteration after 30 days.

- 6.3. Quotations exclude Goods and Services Tax, unless otherwise stated.
- 6.4. Any quotes prepared by the Company for the Client are based on the cost at quotation date of materials, labour unit(s), insurance, complexity, urgency, taxes and other cost items over which the Company has no control. Any increase in price caused by these factors will be added to the price and become payable by the Client unless the Company has agreed in writing to waive this provision.
- 6.5. Any quotes issued by the Company affected by any price variations may require a price review, and increases caused by these variations may be passed on to the Client.
- 6.6. Any materials purchased will be charged to the Client at the end of the month of purchase and payment shall be due as per the payment terms stated above.
- 6.7. Quotations are not inclusive of travel time and travel costs.

7. LIMITATION OF LIABILITY

- 7.1. The Company shall not be liable for any loss of profits, or any consequential indirect loss, or damage of any kind arising directly or indirectly from any breach of the Company's obligation under this contract or any action in tort.
- 7.2. Where the Company is liable to the Client, the maximum cost of any liability shall not exceed the value of the goods or services provided by the Company to the Client.
- 7.3. The Company's liability for any loss (including consequential loss & loss of profits), damage or expense arising out of the services provided is limited at the Company's option, to either:
- re-do any part of the work which the Client is entitled to reject; or
 - refund the price of the work which the Client is entitled to reject.
 - the Company will not be liable in any event if:
 - the work has been altered or repaired by any person other than the Company.
 - In any event, the Company will not be liable in respect of any claim unless the claim is notified to the Company within:
 - 14 days of completion of the work; and
 - 5 days of the alleged defect becoming apparent; and
 - the Company is given a reasonable opportunity to investigate the claim.

8. FORCE MAJEURE

- 8.1. The Company shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its control.

9. RISK

- 9.1. Risk of any loss, damage or deterioration of or, to any of the Client's goods provided to the Company under any provision of services shall be borne by the Client from the date the provision of services starts.

10. TOWING, RECOVERY OR REPOSSESSION

- 10.1. If the services being provided to the Client are any services associated with the towing, repossession, recovery or, collection of any vehicle, the Client expressly acknowledges that they are bound by these Terms and Conditions of Trade and, that a binding contract exists between the Company and the party that owns the vehicle that is being towed, repossessed, collected or recovered under the Company's services.
- 10.2. Any services associated with the towing, repossessing, recovery or collection of any vehicle will be in conjunction with the 'Tow Authority' issued to the Company by an authorised person, agent, officer or entity.
- 10.3. The Company acknowledges that it is bound by the Land Transport Rules: Operator Licencing 2007 and the relevant provisions of the Land Transport Act 1998.
- 10.4. If any services are provided in accordance with this clause 10, the Client agrees to make payment in accordance with clause 4 of these Terms and Conditions of Trade.
- 10.5. If any vehicle is towed, repossessed, collected or recovered under the Company's services and the Client (being the owner of the vehicle) fails to collect the vehicle from the Company's premises within one month of the vehicle being towed, repossessed, collected or recovered, the Company shall be entitled to recover its reasonable expenses and costs associated with vehicle storage in accordance with clause 4.4 of these Terms and Conditions of Trade.
- 10.6. If any vehicle is towed, repossessed, collected or recovered under this clause 10 and the vehicle is not re-claimed by the Client within three months of the vehicle being towed, repossessed, collected or recovered, the Company shall be entitled to sell the vehicle to a third party Purchaser. Before selling any vehicle under clause 10.6, the Company will notify the Client of its intention to sell the vehicle. If the vehicle is not re-claimed within ten working days of the Client being notified in writing of the Company's intention to sell the vehicle, the Company shall be entitled to sell the vehicle in order to recover all expenses and costs incurred by storing the vehicle on the Company's premises and to recover any outstanding amounts owing by the Client to the Company.

- 10.7 The Client (being the owner of the vehicle) irrevocably appoints the Company and each Director of the Company as the Client's true and lawful attorney(s) to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.
- 11. CONSUMER GUARANTEES ACT 1993**
- 11.1. The guarantees contained in the Consumer Guarantees Act 1993 are excluded if the Client acquires goods or services from the Company for the purposes of a business.
- 11.2 If the Client on sells the goods to a third party, the Client shall indemnify the Company for any losses incurred due to third party claims against the Company.
- 12. HEALTH AND SAFETY**
- 12.1. Any employees or sub-contractors contracted to the Company are required to comply with the Company's Health and Safety Policies and Procedures and the Health and Safety at Work Act 2015. This is available for review on request.
- 13. DISPUTES**
- 13.1. In the event that any part of an invoice is disputed the amount not in dispute will be paid promptly in accordance with the payment terms. Thereafter, the parties agree to use their best endeavours to promptly resolve any dispute of difference between them and the Company may, at its discretion, require the Client to submit to mediation with the assistance of a qualified mediator.
- 13.2. The Client must advise the Company of any dispute relating to their invoice within 7 days of receiving the invoice by giving written notice to the Company.
- 13.3. If any dispute is not resolved pursuant to the above clauses, any party may refer the dispute to arbitration in accordance with the Arbitration Act 1996. The arbitration will take place in New Zealand and the award in the arbitration will be final and binding on the parties.
- 14. NON-WAIVER**
- 14.1. Failure by the Company to enforce any of the terms & conditions contained in this contract shall not be deemed to be a waiver of any of the rights the Company has in this contract and is not liable for any indirect loss or expense to the Client.
- 15. JURISDICTION**
- 15.1. These Terms and Conditions of Trade shall in all respects be deemed to be a contract made in New Zealand and New Zealand law shall govern the validity, construction and performance of the contract.
- 16. ASSIGNMENT**
- 16.1. The Client shall not assign all or any of its rights or obligations under this contract.
- 17. SUSPENSION, CANCELLATION OR ALTERATION**
- 17.1. If the Client requests suspension or cancellation of the work or supply of services, the Company may increase the agreed price to cover any resulting extra expense should this apply or, any out of pocket expenses incurred by the Company.
- 17.2. Four weeks written notice is to be given by the Client to the Company in the event of suspending or cancelling contracted regular services. The Company will give the Client two weeks written notice of the intention to cancel contracted services; however immediate suspension or cancellation of a contract by the Company may result if default of payment for goods and services by the Client occurs.
- 18. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**
- 18.1. If the Client is a company, partnership or trust, the director(s), partners or trustee(s) agree, in consideration for the Company agreeing to supply services and credit to the Client at their request, that in their personal capacity and jointly and severally personally undertake as principal debtors to the Company, the payment of any and all monies now or hereafter owed by the Client to the Company and indemnify the Company against non-payment by the Client. Any personal liability hereto shall not exclude the Client in any way whatsoever from the liabilities and obligations contained in this contract. The individual and Client shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.
- 19. RETENTION OF TITLE**
- 19.1 The legal and equitable ownership of any goods supplied will remain with the Company until payment has been made in full of the purchase price for the goods, and of all moneys for the time being due and owing to the Company.
- 19.2 If the goods have been mixed with or incorporated into other goods or products so that it is impossible or impracticable to remove the goods supplied then the Company will be co-owner of the mixed goods or new products in proportion to the contribution made by the Company's goods to the mixed goods or new products.
- 19.3 If the Client resells the goods, regardless of any period of credit, before payment is made of all sums owing (or payment simply incorporating those goods) to the Company, then:
- a. As between the Client and its purchaser, the Client is a principal and not the agent of the Company.
 - b. The Client will pay all proceeds of sale of the goods to its account with the Company, and the Client will pay or deal with the proceeds in accordance with any directions given by the Company. This will occur whether the account is in credit or debit at the relevant time.
 - c. Until the Client accounts to the Company, the proceeds of sale are deemed to be held by the Client in trust for the Company.
 - d. The Company is entitled to demand that the Client exercise all of its available rights to enforce payment by the person or persons to whom the goods have been or will be sold or supplied. However, that will not affect any other rights and remedies of the Company as against the Client.
- 19.4 If default is made in the payment of the purchase price of the goods or of the other money referred to, the Company may repossess the goods and dispose of them as it sees fit, may stop any further deliveries, and may cancel any contract with the Client. For the purposes of repossession the Company and its agents are irrevocably authorised to enter any premises of the Client or any third party and the Client agrees to indemnify the Company and its agents for any liability arising from any act or trespass committed by such entry. If before or after default the goods are incorporated in other goods, but in either case remain identifiable and can be removed (with or without damage to the goods or other things) the Company's right of removal shall not be extinguished by their being so incorporated or attached.
- 19.5 The Client will store the goods, until payment or their resale, in such a way as clearly to indicate that they are the Company's goods.
- 20. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**
- 20.1. The Client acknowledges that clause 19 creates a security interest ("Security Interest") (as that term is defined in the PPSA) in the goods. The Client agrees that the Security Interest is in all personal property supplied by the Company to the Client from time to time and all after acquired property as security for all amounts payable by the Client to the Company, including but not limited to amounts owed in respect of personal property supplied and credit facilities provided by the Company to the Client from time to time.
- 20.2. The Client acknowledges and agrees (or is deemed to acknowledge and agree) that where title in goods passes to the Client, for any reason whatsoever, these terms and conditions constitute a security agreement providing for both future advances and a security in favour of the Company in all the Client's present and after acquired property, but excluding property not supplied by the Company.
- 20.3. The Client:
- a) Must, upon request, promptly give the Company all assistance and information (which the Client warrants is complete, accurate and up to date in all respects) as is necessary to register a financing statement and to meet all other requirements under the PPSA in respect of the personal property to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA) including executing any variations to these terms and conditions of sale reasonably requested by the Company;
 - b) Agrees to the Company registering a financing statement to protect its security interest under these terms and conditions;
 - c) Must not register a financing change statement or a change demand in respect of the personal property (as those terms are defined in the PPSA);
 - d) Must give the Company not less than 14 days prior written notice of any change or proposed change in the Client's name, or any other details including but not limited to changes in the Client's address, trading name, type of business or contact phone or facsimile numbers;
 - e) Must pay to the Company promptly on request the cost of registering or subsequently amending the financing statement and the costs of enforcing or attempting to enforce the contract evidenced by these terms and conditions;
 - f) Agrees that Sections 114(1)(a), 133, and 134 of the PPSA will not apply to the Security Interests created by these terms and conditions, and agrees to contract out of the Client's rights referred to in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, 132 of the PPSA;
 - g) Waives its right to receive a verification statement under Section 148 of the PPSA.
- 21. MISCELLANEOUS**
- 21.1. If anything in this agreement is unenforceable, illegal or void it is severed and the rest of this agreement remains in force.
- 21.2. The Client may not claim any counter claim or set-off against any payments due by it to the Company.
- 21.3. Under no circumstances shall the liability of the Company exceed the price of the goods in the event of a breach of this contract.