RHINO MANUFACTURING - TERMS OF TRADE

1. **Acceptance**
   (a) These terms and conditions ("Terms") govern the purchase of any Goods or Services you ("the Buyer" or "you") make from Rhino Manufacturing Limited ("Rhino") from time to time. By placing an order for Goods, or engaging Rhino to provide Services, you are deemed to have read and accept these Terms and agree to be bound by them. These Terms apply in preference to any terms supplied by you.
   (b) Rhino reserves the right to amend these Terms from time to time, including by way of replacing these Terms in their entirety with new terms. Amendments will be effective immediately upon being placed on Rhino's website at www.rhinogroup.co.nz ("Website"). Placing an order for Goods or engaging Rhino to provide Services following such amendments being placed on the Website will represent an agreement by you to be bound by the Terms as amended.

2. **Contract, Ordering, Delivery and Price**
   (a) These Terms shall be included in every contract between Rhino and the Buyer relating to Goods sold or Services provided to the Buyer.
   (b) Where a quote is provided the quote shall be valid for 30 days from the date of the quote unless otherwise stated on the quote or withdrawn by Rhino prior to acceptance.
   (c) Orders may be placed with Rhino:
      (i) By telephone; or
      (ii) By email; or
      (iii) Via the Website.
   (d) All orders must specify:
      (i) Your name;
      (ii) Your delivery address;
      (iii) Your contact phone number and email address;
      (iv) The type, quantity and other particulars of Goods and/or the required Services;
      (v) Any quote reference number supplied.
   (e) Rhino shall confirm your order either verbally or in writing. No order is binding upon Rhino until its acceptance has been confirmed.
   (f) The Buyer may not cancel an order once it has been confirmed by Rhino.
   (g) A target delivery date will be agreed at the time an order is confirmed. Rhino will use all reasonable endeavours to deliver the Goods to the address notified at the time of order in accordance with the agreed target delivery date but shall not be liable for any delay in delivery.
   (h) Rhino may cancel an order after it has been accepted where due to circumstances beyond its control it is impossible or materially impractical to fulfil the order. In such cases, any amount paid by the Buyer will be refunded.
   (i) The Buyer is responsible for examining the Goods upon delivery and must notify Rhino of any defects, whether as to quantity or quality within 7 days of delivery.
   (j) Prices for the Goods are as advised by Rhino. All prices are expressed in New Zealand dollars and are exclusive of goods and services tax chargeable under the Goods and Services Tax Act 1985, as well as any other applicable sales tax or duty ("GST"). GST will be added to the price and is payable by the Buyer in accordance with the payment provisions set out in these Terms.
   (k) Prices also exclude freight charges. Freight charges are additional and are payable by the Buyer in accordance with the payment provisions set out in these Terms.

3. **Payment**
   (a) Payment terms are as specified in the quote provided, or if not specified, for first orders payment is required upfront and for subsequent orders, payment is required by the 20th of the month following the date of invoice. In addition:
      (i) Payment is to be made in full, without setoff or deduction of any kind, on or before the due date specified in Rhino's invoice.
      (ii) Rhino reserves the right to treat each separate delivery as a separate contract for the purposes of payment.
   (b) Payment is to be made in cleared funds, by electronic bank transfer into the bank account noted on the invoice, or such other method as agreed between Rhino and the Buyer.
   (c) Any dispute in relation to the price payable must be notified to Rhino prior to the due date for payment and the parties will endeavour to resolve the dispute in good faith.
   (d) If the Buyer fails to make any payment due to Rhino by the due date for payment it is liable to pay Rhino interest on the amount in default at the rate of 15% per annum for the period from the due date for payment until payment in full is received by Rhino, with such interest to accrue on a daily basis. The Buyer is also liable to pay all expenses and legal costs of Rhino (calculated as between solicitor and client) in relation to the failure to comply. This provision is not a waiver of the Buyer's default and the interest rate is not an extension of credit to the Buyer but is a genuine pre-estimate of Rhino's loss caused by the Buyer's failure to pay on due date.
   (e) In addition to the right to charge interest, where there is any default in payment Rhino reserves the right to decline supply of any future orders.
   (f) Where a default in payment exceeds 2 months Rhino is entitled to repossess the Goods.

4. **Risk**
   (a) Where the Buyer arranges transport for the Goods, or wishes to collect the Goods from Rhino, the risk of any loss or damage to or deterioration of the Goods supplied by Rhino to the Buyer shall pass and be borne by the Buyer upon delivery of the Goods Ex Works (Incoterms 2020) from Rhino's premises located at 23 View Road, Rotorua. Where Rhino arranges transport of the Goods to the Buyer, risk shall pass upon delivery to the Buyer's delivery address agreed at the time of order.

5. **Ownership of the Goods**

(a) Notwithstanding clause 4, ownership in any Goods delivered by Rhino to the Buyer does not pass until payment in full has been received by Rhino.

(b) You acknowledge that until such time as payment in full has been received by Rhino, Rhino has a Security Interest in the Goods (as that term is defined in the Personal Property Securities Act 1999 (PPSA)) and that these Terms constitute a Security Agreement for the purpose of the PPSA in respect of the Goods supplied to the Buyer and their proceeds for the purpose of securing payment of all amounts owed by the Buyer to Rhino from time to time, and at any time. You agree that you will, when requested by Rhino, promptly execute any documents and do anything else required by Rhino to ensure the Security Interest created under these Terms constitutes a first ranking Security Interest over the relevant Goods and their proceeds, including any information Rhino reasonably requires to complete a Financing Statement or Financing Change Statement.

(c) The Buyer agrees that nothing in sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA shall apply to these terms, or the security under these terms.

(d) The Buyer waives its rights under the PPSA to receive a copy of any verification statement or financing change statement.

6. **Liability and Warranty**

(a) No warranties in relation to the Goods or Services are provided unless specified in a separate written agreement. All guarantees, warranties and representations which are or might be implied by law, trade, custom or otherwise, that are capable of being legally excluded, are expressly excluded.

(b) The Buyer agrees that the Buyer is acquiring the goods from Rhino for business purposes and accordingly the guarantees and rights expressed or implied in the Consumer Guarantees 1993 Act in favour of the Buyer do not apply.

(c) To the maximum extent permitted by law Rhino, its employees or agents will not be liable to the Buyer in contract, tort, equity, statute, regulation or otherwise for any loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Buyer or by any other third party, whether direct or consequential which relates to the purchase and/or use of the Goods.

(d) To the extent Rhino is found liable for any reason for any loss, damages or costs suffered or incurred by the Buyer arising from any breach of these Terms or for any other reason, to the maximum extent permitted by law any such liability of Rhino to the Buyer is limited to the lesser of:

(i) The price paid for the relevant Goods or Services to which the liability relates; and

(ii) The actual loss, damage or cost suffered by the Buyer.

(e) The Buyer agrees to assume all responsibility for any third party claims that may arise in connection with the use of the Goods where the Buyer has a relationship with that third party and has supplied the Goods to that third party for use.

(f) Any defects in Goods or Services supplied must be notified to Rhino within 7 days of the date the relevant Good is delivered or the Services are supplied.

(g) Rhino may, in its discretion, repair or replace any defective Goods or re-perform any defective Services, or refund the amount of those Goods or Services, provided that clause 6(f) has been complied with and further provided that:

(i) The Buyer must supply the date and number of any invoice relating to the Goods or Services;

(ii) Rhino must have a reasonable opportunity to inspect the Goods or Services complained of;

(iii) The Goods must not have been installed on a truck or trailer;

(iv) Rhino shall have no obligation to remedy any damage or defect caused by:

- Any willful act or negligence of the Buyer or any other person other than Rhino or its agents, employees or subcontractors;
- Faulty materials or workmanship other than the work or materials provided by Rhino;
- Design faults, errors or discrepancies where Rhino was not responsible for design;
- Unintended use of the Goods or failure to maintain and/or handle and/or use the Goods in accordance with the stated or recommended instructions or requirements provided by Rhino.
- Usual wear and tear.
- Any alteration of the Goods.

7. **Setoff**

(a) Rhino shall have the right without prior notice to the Buyer to setoff in discharge or reduction of any debt payable to it by the Buyer, any monies payable on whatever account by Rhino to the Buyer.

8. **Use of goods**

(a) The Buyer will use the Goods for either the purpose specified by Rhino or in accordance with the provisions of any agreement or contract the Buyer has with Rhino. The Buyer shall not use the Goods in any manner which breaches the intellectual property rights attaching to the Goods.

9. **Force Majeure**

(a) Rhino does not breach these Terms if its breach is caused by any matter beyond the reasonable control of Rhino, not including financial difficulty (“force majeure”).

(b) Where Rhino is unable, wholly or in part, by reason of a force majeure event to carry out any obligation under these Terms and:

(i) Gives the Buyer immediate notice of the force majeure event;

(ii) Uses all reasonable diligence to remove the force majeure event as quickly as possible;

that obligation is suspended so far as it is affected by the force majeure event during its continuance.

10. **Intellectual Property**

(a) The Buyer acknowledges that all intellectual property in the Goods belong to Rhino, or Rhino is otherwise entitled to such intellectual property rights under licence. The Buyer further acknowledges that all intellectual property arising out of the provision of the Services shall be the exclusive property of Rhino unless otherwise agreed in writing and signed by the parties.

11. **Buyer Default and Termination**

(a) If Rhino has reasonable grounds to believe the Buyer is in material breach of these Terms; or the Buyer commits an act of bankruptcy or is placed into liquidation, or a receiver or manager is appointed in respect of any part or the whole of the Buyer's assets, Rhino may withhold delivery of the Goods or Services; or treat any order for Goods or Services to have been cancelled and enforce its security interest.

(b) Termination or cancellation of any order will not affect the rights, powers, remedies, obligations, duties and liabilities of either party which have accrued before termination.

12. **Privacy**

(a) The Buyer authorises Rhino to:

(i) Collect, retain and use information about the Buyer from any person for the purpose of assessing the Buyer's creditworthiness;

(ii) Disclose information about the Buyer to such persons as may be necessary or desirable to enable Rhino to exercise any power or attempt to enforce any of its rights, remedies and powers under these Terms.

(b) The Buyer acknowledges and consents to phone conversations with Rhino and its employees being recorded.

13. **Health and Safety**

(a) To the extent any employee, contractor or agent of Rhino is required to enter onto any property owned or occupied by the Buyer, for the purposes of providing Services, you agree to comply with all obligations imposed on you as a PCBU under the Health and Safety at Work Act 2015 and shall advise any such employee, contractor or agent of any hazards on the property.

14. **General**

(a) If any of these Terms are held to be invalid, void, unenforceable or illegal for any reason, such provision shall be deemed to be severed from these Terms and the remaining Terms shall continue in force.

(b) If Rhino delays or does not exercise any of its rights or remedies under these Terms that will not be a waiver of the right or remedy.

(c) Any notice may be given in person, posted or sent by fax or email. Where a notice is given in person delivery occurs at the time of physical delivery; where a notice is sent by fax or email, delivery occurs at the time of transmission without any notification of error or failed delivery.

(d) The Buyer may not assign or subcontract its rights or obligations under these Terms without the prior written consent of Rhino.

(e) These Terms apply in preference to any terms supplied by the Buyer. Except as may be set out in a separate written and signed agreement between Rhino and the Buyer, these Terms, together with the quote provided, represent the entire agreement of Rhino and the Buyer in relation to the supply of Goods and Services.

15. **Governing Law**

(a) These Terms are governed by, and are to be construed in accordance with the laws of New Zealand and the Buyer agrees to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

16. **Interpretation**

(a) In these Terms:

"Rhino" means Rhino Manufacturing Limited together with its successors and permitted assigns.

"The Buyer" means the person, firm or company buying Goods or Services from Rhino together with that person, firm or company's executors, administrators, successors and permitted assigns.

"Goods" means all truck and trailer mud guards, accessories and other products Rhino agrees to supply the Buyer from time to time, including any components or spare parts Rhino agrees to supply.

"Services" means all services Rhino may agree to provide the Buyer from time to time, including installation and/or after sales support services in respect of the Goods.

(b) Headings are used as a matter of convenience only and shall not affect the interpretation of these Terms.

(c) Words referring to the singular include the plural and vice versa.

(d) A reference to a person includes any other entity or association recognised by law.

(e) A reference to "$" and "dollars" are references to New Zealand currency unless otherwise stated.

(f) Everything expressed or implied in these terms which involves more than one person binds and benefits those people jointly and severally.