

The 1770 Towing Service Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "1770" means The 1770 Towing Service Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of The 1770 Towing Service Pty Ltd
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting 1770 to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Parts" means all Parts (including parts, goods, oils, fuels, etc.) or Services supplied by 1770 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 "Vehicle" shall mean any road or off-road vehicle described in any documentation supplied by 1770 to the Client.
- 1.5 "Cargo" means any vehicle, machinery, heavy equipment, shipping container, tractors, forklifts and scissor lifts, etc. to be moved from one place to another by way of 1770.
- 1.6 "Price" means the Price payable (plus any GST where applicable) for the Parts as agreed between 1770 and the Client in accordance with clause 5 below.
- 1.7 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

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 delivery of the Parts.
- 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 1770.
- 2.3 In the event that the Parts and/or Services provided by 1770 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 1770 and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.4 The Client acknowledges and understands that (subject to Clause 5.2):
- (a) onsite repairs shall incur 1770's current labour rates plus kilometres travelled; and
 - (b) in the event the Vehicle requires towing, then any fees incurred for such towing shall be for the Client's account.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that 1770 shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by 1770 in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by 1770 in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of 1770; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give 1770 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 and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by 1770 as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At 1770's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by 1770 to the Client; or
 - (b) 1770's estimated Price (subject to clause 5.2) which shall not be deemed binding upon 1770 as the actual Price can only be determined upon completion of the Services. 1770 undertakes to keep the Client informed should the actual Price look likely to exceed the original estimate;
 - (c) 1770's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 1770 reserves the right to change the Price:
- (a) if a variation to the Parts which are to be supplied as requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, discovery of additional faults on inspection or testing of the vehicle or any delay due to any action or inaction of the Client, or obstructed access to the site, etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to 1770 in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond 1770's control.
- 5.3 Variations will be charged for on the basis of 1770's quotation, and will be detailed in writing, and shown as variations on 1770's invoice. The Client shall be required to respond to any variation submitted by 1770 within ten (10) working days. Failure to do so will entitle 1770 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.
- 5.4 At 1770's sole discretion, a non-refundable deposit may be required.

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- 5.5 Time for payment for the Parts being of the essence, the Price will be payable by the Client on the date/s determined by 1770, which may be:
- (a) on delivery of the Parts;
 - (b) for certain approved Clients, fourteen (14) days following the date of any invoice given to the Client by 1770;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by 1770.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and 1770.
- 5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by 1770 nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to 1770 an amount equal to any GST 1770 must pay for any supply by 1770 under this or any other contract for the sale of the Parts. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. After Hours Call-Out Fee**
- 6.1 The Client accepts and acknowledges that an after-hours call-out fee, equal to four (4) hours standard labour rates, will be applicable (and which will be treated as a variation to the Price as per clause 5.2) for Services provided during the timeframes as follows:
- (a) after 7pm and before 5am, Monday to Friday;
 - (b) after 12pm and before 5am, Saturday;
 - (c) all hours, Sunday and public holidays.
- 7. Provision of Services**
- 7.1 Delivery ("**Delivery**") of the Parts is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Parts at 1770's address; or
 - (b) 1770 (or 1770's nominated carrier) delivers the Parts to the Client's nominated address even if the Client is not present at the address.
- 7.2 At 1770's sole discretion, the cost of delivery is either included in the Price (provided the distance is within fifty kilometres (50kms) from 1770's depot) or is in addition to the Price.
- 7.3 Any time specified by 1770 for delivery of the Parts is an estimate only. The Client must take delivery by receipt or collection of the Parts whenever they are tendered for delivery. 1770 will not be liable for any loss or damage incurred by the Client as a result of delivery being late. In the event that the Client is unable to take delivery of the Parts as arranged then 1770 shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8. General 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, 1770 is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by 1770 is sufficient evidence of 1770's rights to receive the insurance proceeds without the need for any person dealing with 1770 to make further enquiries.
- 8.3 If the Client requests 1770 to leave Parts outside 1770's premises for collection or to deliver the Parts to an unattended location, then such Parts shall be left at the Client's sole risk.
- 8.4 In the event the Client requests 1770 to work on a Vehicle, and leaves the Vehicle and/or the keys at 1770's premises whilst the site is unattended, then 1770 shall not be responsible for the security of the Vehicle or the keys, and shall not be held liable for any loss, damages or costs howsoever resulting.
- 8.5 The Client acknowledges and agree that where 1770 has performed temporary repairs on the Vehicle that:
- (a) 1770 offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) 1770 will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
- 8.6 The Client acknowledges that 1770 is only responsible for Parts that are replaced by 1770 and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify 1770 against any loss or damage to the Parts, or caused by the Parts, or any part thereof howsoever arising.
- 8.7 The Client acknowledges that it is their sole responsibility to ensure the Vehicle is insured adequately or at all.
- 8.8 Any third-party certification that may be required can be arranged by 1770 on the Client's behalf and at the Client's expense.
- 9. Towing Risk**
- 9.1 The Client shall ensure that 1770 has clear and free access to the Cargo to enable them to provide the Services. 1770 shall not be liable for any loss or damage to any site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of 1770.
- 9.2 It is the responsibility of the Client to ensure that access to the Cargo is suitable to accept the weight of laden trucks. The Client agrees to indemnify 1770 against all costs incurred by 1770 in recovering such vehicles in the event they become bogged or otherwise immovable.
- 9.3 Subject to clause 10, in the event that a police officer or authorised enforcement officer directs 1770 to tow and store the Cargo, the owner of the Cargo is liable to pay the fees and charges for towage and storage.
- 9.4 Should any further damage occur to the Cargo whilst not physically secured to 1770's vehicle on a public roadway then 1770 shall accept no liability for the same, unless such damage is due to the negligence of 1770.
- 9.5 If applicable, the Client acknowledges that:
- (a) it is not always possible for 1770 to be aware of the total extent of any damage to the Cargo and that further damage may occur when attempting to either move, lift upright or prepare the Cargo for towing. Whilst 1770 will take all due care to avoid such damage 1770 shall accept no liability for the same and the Client agrees to indemnify 1770 against any claims howsoever arising should such damage occur;

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- (b) braking systems and mechanical components (including, but not limited to, air fittings from air tanks, valves or lines, interconnecting air supply and service brake lines) may be removed during towing and must be inspected for serviceability before putting the towed Cargo back into use.
- (c) 1770 may, where necessary:
 - (i) remove drive shaft and axle(s) from the differential to ensure safe towing;
 - (ii) collect oil from the Cargo to be towed. All oil and fluid levels must be checked before putting the Cargo back into use;
 - (iii) remove any equipment from the Cargo to reduce overall height, length or width of the load.
- 9.6 1770 shall not accept any liability or responsibility for:
 - (a) any additional load with the Cargo. Securing such load is the responsibility of the owner/driver;
 - (b) the safety of the Cargo if the owner/driver travels with 1770 either to or from the site.
- 9.7 Where recovery of the Cargo is off-road, or where the recovery is deemed by 1770 to be extreme, the Client agrees to indemnify 1770 against any damage to the equipment of 1770, added costs (including the salvage of the salvage vehicle) and the replacement costs of any equipment of 1770 that is lost or damaged.

10. Storage

- 10.1 All Cargo that is to be stored under this contract shall be checked into and out of storage and if the Client (or the Client's representative) is not present at the time of receipt or delivery of said Cargo, as the case may be, then 1770's record shall be accepted as final.
- 10.2 The Client shall immediately notify 1770 of any change of the ownership of any Cargo which is stored on the Client's behalf under this contract.
- 10.3 1770 reserves the right at any time to require the removal of any Cargo held in storage on the Client's behalf by giving not less than one (1) weeks' notice to the Client that they wish them to do so.
- 10.4 The Client shall on request by 1770 provide samples of the signature(s) of any person(s) entitled to uplift the Cargo from storage.
- 10.5 The Client agrees to give 1770 at least forty-eight (48) hours of their intent to remove the Cargo from storage. In the event the Client fails to give such notice then 1770 may at its sole discretion agree to facilitate the immediate removal of the Cargo but shall be entitled to charge the Client an additional fee for so doing.
- 10.6 An inward receipt in relation to Cargo stored by 1770 shall not constitute a document of title to that Cargo, or be negotiable, nor shall any right of the Client storing the Cargo be assignable.
- 10.7 The Client shall be liable to 1770 on demand and at any rate before removal of the Cargo from storage, for all charges or fees in connection handling, loading or unloading, re-packing and/or delivery of the Cargo, as the case may require, in addition to any storage fees.

11. Insurance

- 11.1 1770 shall take out, and maintain at its own expense, at all times during the contract, Public Liability Insurance of no less than \$10 million.
- 11.2 The Client shall take out, and maintain at its own expense, at all times during the contract, Public Liability Insurance of no less than \$1 million.

12. Specifications

- 12.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in 1770's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by 1770.
- 12.2 The Client shall be responsible for ensuring that the Parts ordered are suitable for their intended use.

13. Testing of Vehicles

- 13.1 1770 or its employees may test drive or carry out tests on the Vehicle at 1770's discretion. 1770 will not be liable for (and the Client indemnifies 1770 against) any damages caused to, or by, the Vehicle during such tests, collecting or delivery unless it arises from the recklessness or wilful misconduct of 1770 or its employees.

14. Title

- 14.1 1770 and the Client agree that ownership of the Parts shall not pass until:
 - (a) the Client has paid 1770 all amounts owing to 1770; and
 - (b) the Client has met all of its other obligations to 1770.
- 14.2 Receipt by 1770 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.
- 14.3 It is further agreed that, until ownership of the Parts passes to the Client in accordance with clause 14.1:
 - (a) the Client is only a bailee of the Parts and must return the Parts to 1770 on request.
 - (b) the Client holds the benefit of the Client's insurance of the Parts on trust for 1770 and must pay to 1770 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 1770 and must pay or deliver the proceeds to 1770 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 1770 and must sell, dispose of or return the resulting product to 1770 as it so directs.
 - (e) the Client irrevocably authorises 1770 to enter any premises where 1770 believes the Parts are kept and recover possession of the Parts.
 - (f) 1770 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 1770.

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- (h) 1770 may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Client.
- 15. Personal Property Securities Act 2009 (“PPSA”)**
- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Parts and/or collateral (account) – being a monetary obligation of the Client to 1770 for Services – that have previously been supplied and that will be supplied in the future by 1770 to the Client.
- 15.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which 1770 may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, 1770 for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Parts charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of 1770;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Parts and/or collateral (account) in favour of a third party without the prior written consent of 1770;
 - (e) immediately advise 1770 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.
- 15.4 1770 and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by 1770, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client must unconditionally ratify any actions taken by 1770 under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of 1770 agreeing to supply the Parts, 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 1770 from and against all 1770's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising 1770's rights under this clause.
- 16.3 The Client irrevocably appoints 1770 and each director of 1770 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. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 17.1 The Client must inspect the Parts on delivery and must within forty-eight (48) hours of delivery notify 1770 in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Parts as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Client must allow 1770 to inspect the Parts.
- 17.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 17.3 1770 acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, 1770 makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Parts. 1770's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Client is a consumer within the meaning of the CCA, 1770's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If 1770 is required to replace the Parts under this clause or the CCA, but is unable to do so, 1770 may refund any money the Client has paid for the Parts.
- 17.7 If the Client is not a consumer within the meaning of the CCA, 1770's liability for any defect or damage in the Parts is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by 1770 at 1770's sole discretion;
 - (b) limited to any warranty to which 1770 is entitled, if 1770 did not manufacture the Parts;
 - (c) otherwise negated absolutely.
- 17.8 Subject to this clause 17, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
 - (b) 1770 has agreed that the Parts are defective; and
 - (c) the Parts are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Parts are returned in as close a condition to that in which they were delivered as is possible.
- 17.9 Notwithstanding clauses 17.1 to 17.8 but subject to the CCA, 1770 shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Parts;

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- (b) the Client using the Parts for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Parts after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by 1770;
 - (e) fair wear and tear, any accident, or act of God.
- 17.10 1770 may in its absolute discretion accept non-defective Parts for return in which case 1770 may require the Client to pay handling fees of up to thirty percent (30%) of the value of the returned Parts plus any freight costs.
- 17.11 Notwithstanding anything contained in this clause if 1770 is required by a law to accept a return then 1770 will only accept a return on the conditions imposed by that law.

18. Intellectual Property

- 18.1 Where 1770 has designed, drawn or developed Parts for the Client, then the copyright in any designs and drawings and documents shall remain the property of 1770. Under no circumstances may such designs, drawings and documents be used without the express written approval of 1770.
- 18.2 The Client warrants that all designs, specifications or instructions given to 1770 will not cause 1770 to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify 1770 against any action taken by a third party against 1770 in respect of any such infringement.
- 18.3 The Client agrees that 1770 may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Parts which 1770 has created for the Client.

19. Default and Consequences of Default

- 19.1 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 1770's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes 1770 any money the Client shall indemnify 1770 from and against all costs and disbursements incurred by 1770 in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, 1770's contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies 1770 may have under this contract, if a Client has made payment to 1770, 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 1770 under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 19.4 Without prejudice to 1770's other remedies at law 1770 shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to 1770 shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to 1770 becomes overdue, or in 1770's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by 1770;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Without prejudice to any other remedies 1770 may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions 1770 may suspend or terminate the supply of Parts to the Client. 1770 will not be liable to the Client for any loss or damage the Client suffers because 1770 has exercised its rights under this clause.
- 20.2 1770 may cancel any contract to which these terms and conditions apply or cancel delivery of Parts at any time before the Parts are delivered by giving written notice to the Client. On giving such notice 1770 shall repay to the Client any money paid by the Client for the Parts. 1770 shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels delivery of Parts the Client shall be liable for any and all loss incurred (whether direct or indirect) by 1770 as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 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.

21. Privacy Act 1988

- 21.1 The Client agrees for 1770 to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by 1770.
- 21.2 The Client agrees that 1770 may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 21.3 The Client consents to 1770 being given a consumer credit report to collect overdue payment on commercial credit.
- 21.4 The Client agrees that personal credit information provided may be used and retained by 1770 for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Parts; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Parts; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Parts.
- 21.5 1770 may give information about the Client to a CRB for the following purposes:

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- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 21.6 The information given to the CRB may include:
- (a) personal information as outlined in 21.1 above;
- (b) name of the credit provider and that 1770 is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and 1770 has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of 1770, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.7 The Client shall have the right to request (by e-mail) from 1770:
- (a) a copy of the information about the Client retained by 1770 and the right to request that 1770 correct any incorrect information; and
- (b) that 1770 does not disclose any personal information about the Client for the purpose of direct marketing.
- 21.8 1770 will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 21.9 The Client can make a privacy complaint by contacting 1770 via e-mail. 1770 will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 22. Applicable Legislation: Tow Truck Act 1973 ("TTA") and the Tow Truck Regulation 2009 ("TTR")**
- 22.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TTA or the TTR, except to the extent permitted by those Acts/Regulations where applicable.
- 22.2 The Client and 1770 shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 23. Unpaid Seller's Rights**
- 23.1 Where the Client has left any item with 1770 for repair, modification, exchange or for 1770 to perform any other service in relation to the item and 1770 has not received or been tendered the whole of any monies owing to it by the Client, 1770 shall have, until all monies owing to 1770 are paid:
- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 23.2 The lien of 1770 shall continue despite the commencement of proceedings, or judgment for any monies owing to 1770 having been obtained against the Client.
- 24. Service of Notices**
- 24.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 25. Trusts**
- 25.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not 1770 may have notice of the Trust, the Client covenants with 1770 as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) The Client will not without consent in writing of 1770 (1770 will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.

The 1770 Towing Service Pty Ltd – Terms & Conditions of Trade

26. General

- 26.1 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.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which 1770 has its principal place of business, and are subject to the jurisdiction of the Bundaberg Court in Queensland.
- 26.3 Subject to clause 17, 1770 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 1770 of these terms and conditions (alternatively 1770's liability shall be limited to damages which under no circumstances shall exceed the Price of the Parts).
- 26.4 1770 may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 26.5 The Client cannot licence or assign without the written approval of 1770.
- 26.6 1770 may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of 1770's sub-contractors without the authority of 1770.
- 26.7 The Client agrees that 1770 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 1770 to provide Parts to the Client.
- 26.8 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.
- 26.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.