

# TERMS AND CONDITIONS

1. **DEFINITIONS**
  - 1.1 "amount owing" shall mean the price of the goods plus all applicable costs and taxes, and any other amount you are liable to pay us.
  - 1.2 "applicable costs and taxes" shall mean all of those costs and taxes payable by you as indicated in the schedule and if not recorded or otherwise clear all fluctuations in the exchange rate to the detriment and as determined by us, GST, duties, insurance, transport, road user charges and any other cost directly relating to the supply of the goods.
  - 1.3 "UDT" "UD Trucks" "Dealer" "we" "us" or "our" shall mean UD Truck Distributors (NZ) Limited or any associated division, company, employee or agent. "Purchaser" "you" or "your" shall mean the purchaser of any goods or service from us
  - 1.4 "goods" means all goods and services supplied or manufactured by us to you including any goods specified in the schedule.
  - 1.5 "GST" means goods and services tax under the Goods and Services Tax Act 1985.
  - 1.6 "PPSA" means the Personal Properties Securities Act 1999 as amended or substituted from time to time. Unless the context requires otherwise, words and phrases herein shall have the meanings given to them in, or by virtue of, the PPSA.
  - 1.7 "schedule" means any schedule attached to these terms containing variables or further terms relating to specific goods being supplied to you by us.
  - 1.8 "vehicle" means a vehicle and where that vehicle is goods for the purposes of these terms shall include any accessory, installation or other addition at the time of delivery and "vehicles" shall have the same meaning.
2. **ACCEPTANCE AND GENERAL**
  - 2.1 All goods are supplied on the basis of these terms and conditions ("terms") and any order received by us from you and/or use of your credit account with us (if any) shall constitute acceptance of these terms.
  - 2.2 These terms may be amended by us from time to time and unless expressly altered, modified or waived in writing by us in our quotation or service order form, shall:
    - (a) constitute the entire understanding and agreement between you and us;
    - (b) prevail and replace any other agreement, understanding or arrangement including, but not limited to, promotional material, brochures or purchase orders; and
    - (c) remain in full force notwithstanding any neglect, forbearance or delay by us in enforcing them.
  - 2.3 These terms are to be read subject to relevant statutory provisions having effect in New Zealand that by law cannot be excluded, restricted or modified. Each term is severable and independent of each other and any such term which is inconsistent with or repugnant to that legislation shall be null and void to the extent (and no further) of such inconsistency or repugnance. The remaining provisions shall not be affected, prejudiced or impaired.
  - 2.4 You shall not assign your rights and obligations under these terms without our consent such consent to be given or withheld in our sole discretion. Any revocation of an agent's authority shall not be deemed delivered and accepted by us unless we confirm the same in writing. You shall advise us of any alteration to your entity structure and/or of any revocation of an agent's authority to purchase.
  - 2.5 Any notice provided by us to you, including notification of any alterations of these terms, shall be deemed to be delivered and received by you five days after posting to your last known mailing address or immediately in the event of hand delivery.
  - 2.6 You and we consent to the use, provision and acceptance of information in electronic form and acceptance of this agreement by electronic signature.
3. **OFFER**
  - 3.1 Unless specifically stated otherwise, all quotes are stated in New Zealand dollars and are plus applicable costs and taxes which shall be paid by you. Each quote is subject to stock availability at the time of acceptance and open for the period stated in the quote or a maximum of 30 days, unless we have withdrawn the quote earlier.
4. **PAYMENT TERMS**
  - 4.1 Unless otherwise agreed by us in the schedule, the price of the goods shall be our price ruling at the date we supply the goods plus applicable costs and taxes (if any).
  - 4.2 All accounts shall be payable on the earlier of delivery of the goods or the date of invoice. In such case we may refuse to deliver the goods where the amount owing has not been paid in full. Where credit facilities have been granted, all accounts shall be paid no later than the dates specified in the credit arrangement or if not specified the 20th of the month following either date of invoice or delivery of goods, whichever is the earlier.
  - 4.3 You acknowledge that:
    - (a) we supply all goods to you on condition that all payments made to us from you are valid and in the ordinary course of business. Any payment is agreed to be received in good faith and in the reasonably held belief that the payments are valid;
    - (b) by accepting payment from you, we alter our position in reliance on the validity of that payment;
    - (c) we may allocate payments as we see fit notwithstanding any specific tender by you;
    - (d) payment shall be free of any counterclaim, condition, set-off, deduction or any other claim whatsoever;
    - (e) interest may be charged on overdue amounts at the rate of 2.5% per month; and
    - (f) you shall be liable for ALL costs incurred by us in recovering the amount owing including debt collection agency fees and full indemnity legal costs.
  - 4.4 We may at any time and without reason or notice to you:
    - (a) terminate or suspend any credit arrangement we have with you in which case any amount owing shall be immediately due and payable;
    - (b) in our sole discretion increase, decrease, suspend or revoke the amount of credit supplied to you; and
    - (c) request additional security for payment for the goods.
5. **OWNERSHIP, DELIVERY AND RISK**
  - 5.1 Where goods are supplied by us:
    - (a) delivery shall be deemed complete when we notify you the goods are available for collection, give possession of the goods to you or to a carrier for delivery to you, or otherwise give possession as you have directed. We reserve the right to deliver the goods by instalments and each instalment shall be deemed to be a separate contract subject to the same conditions as the main contract. Failure by us to deliver one or more instalment, shall not entitle you to cancel the main contract;
    - (b) unless otherwise specified in the schedule the place of delivery shall be our premises or such other premises we determine;
    - (c) risk shall pass to you when the goods are delivered. If you request and we agree to a delay in delivery, risk shall pass upon the date of your request for such delay;
    - (d) title shall pass upon full payment for the goods and we retain title until we receive payment in full; and
    - (e) we give no warranty or guarantee as to the timing of delivery of the goods and expressly record that delivery time is not a condition of these terms.
  - 5.2 Where we service your vehicle:
    - (a) whilst all care is exercised, risk shall remain with you at all times, including if applicable where we gratuitously collect and deliver your vehicle to and from our premises;
    - (b) you agree to indemnify us fully for any losses or costs we incur as a result of us collecting or delivering your vehicle to you.
  - 5.3 You agree to promptly take delivery of goods when you are so entitled and to collect your vehicle where we service the same. If you fail to do so you agree that without prejudice to any of our rights and remedies, to pay on demand any storage fee we determine for each day or part thereof that we store the same and/or we are entitled to sell the goods and or vehicle on reasonable terms to recover our costs and charge you for any shortfall.
6. **PPSA**
  - 6.1 You acknowledge and agree that:
    - (a) you grant a security interest to us in each and every part of the goods and any proceeds as security for payment for any amount owing and the performance by you of all of your obligations to us from time to time ("Buyer Indebtedness and Obligations"). You further grant us a security interest in all of your present and after acquired property for your Buyer Indebtedness and Obligations;
    - (b) you will not allow any goods to become an accession to any property that is not subject to the security interest granted pursuant to these terms; and
    - (c) you will not do, or omit to do, or allow to be done or omitted to be done, anything which might adversely affect any security interest in goods granted in our favour including, but not limited to, the creation of any lien, other security interest, sale of the goods, transportation of goods outside New Zealand.
  - 6.2 You acknowledge, agree and undertake (as the case may be) to:
    - (a) sign any further documents and/or provide any further information (which information you warrant to be complete accurate and up to date in all respects) which we may reasonably require to register a financing statement or financing change statement on the register;
    - (b) irrevocably appoint us to be your attorney to do anything which you agree to do under these terms and anything which the attorney thinks desirable to protect our interest under these terms and you ratify anything done by the attorney under this clause;
    - (c) not register a change demand without our prior written consent, which may be given or withheld at our absolute discretion;
    - (d) upon demand, meet our costs:
      - (i) in relation to registering a financial statement or financing change statement, or releasing any financing statement on the register;
      - (ii) in enforcing our security interest including our legal costs on a full indemnity basis; and
    - (e) give us not less than 14 days prior written notice of any proposed change in your name, and/or any other change in your details including, but not limited to, a change in your place of incorporation, address, location, nature of business, ownership, facsimile or phone number, or business practice.
  - 6.3 You and we agree that to the maximum extent permitted by law:
    - (a) you waive your rights and, with our agreement, contract out of your rights referred to in section 107(2)(a) to (i) of the PPSA; and
    - (b) nothing in the sections 114(1)(a), 122, 133, 134 and 148 (your right to receive a verification statement) shall apply to you.
7. **AVAILABILITY AND OTHER ALTERATIONS**
  - 7.1 The obligation on us to supply you the goods is conditional upon us having sufficient stock presently available, or becoming available, to enable us to supply to you such goods. Such condition is for our sole benefit and we may in our sole discretion at any time prior to delivery of such goods either satisfy or waive that condition, or if in our opinion such goods are not readily available we may notify you of this and we then shall have no obligation to you to deliver such goods, aside from refunding your deposit or other amounts received by us, or have any liability that arises from the lack of availability of such goods.
  - 7.2 In the event of any alteration in the design or specification of any goods we shall have no liability howsoever arising and will be entitled to either:
    - (a) deliver the goods conforming to the altered design or specification in fulfilment of any order; or
    - (b) cancel the terms relating to the relevant supply of goods.
8. **DEPOSIT**
  - 8.1 If any deposit is paid under these terms the deposit shall be held by us as stakeholder until the goods are available for delivery and the terms relating to the supply of the relevant goods are otherwise unconditional or cancelled. Upon the terms relating to the relevant supply of goods becoming unconditional or being cancelled other than because of our default, then the deposit will be released to us. If the terms relating to the relevant supply of goods are cancelled for non-satisfaction of any explicit condition or solely because of our default then the deposit shall be released to you.
9. **DEFAULT**
  - 9.1 You will be in default if any goods are at risk or you are otherwise in breach of any of these terms.
  - 9.2 At any time after a default occurs, we may (whether or not we have exercised any other rights) appoint any person to be a receiver of all or any of the goods. In addition to, and without limiting or affecting any powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the goods as if the receiver has absolute ownership of the goods.
10. **RECEIPT AND RETURN OF GOODS OR CANCELLATION OF ORDERS**
  - 10.1 All goods must be carefully checked upon receipt. You must check that all goods are correct in name, colour, quantity, size, length, finish, and faults, etc.
  - 10.2 You may not cancel any order for goods or part of it without our written consent. Except as required by law return of vehicles by you is not permitted in any circumstances. Returns of goods other than vehicles will only be accepted if not in accordance with your order and are returned within 7 days of sale with all supporting documentation. No claims will be accepted once goods have been converted in any way. We shall be at liberty to decline or refuse such a return as we think fit.
11. **DISPUTES**
  - 11.1 Should you dispute any portion of an invoice/account:
    - (a) you must notify us in writing within seven days of receipt of that invoice;
    - (b) supply us with full documentation in support of the disputed portion; and
    - (c) pay the undisputed portion immediately.
  - 11.2 For the avoidance of doubt the dispute process in clause 11.1 shall not apply to vehicles.
  - 11.3 Should you fail to adhere to clause 11.1 above (time being of the essence) then you are deemed to have waived any right to dispute any invoice/account and the invoice/account amount shall become immediately due and payable.
12. **PRIVACY AND AUTHORISATION TO RECEIPT OF PROMOTIONAL MATERIALS**
  - 12.1 You authorise us to collect and hold personal information and other technical information, including but not limited to telemetry, location and performance tracking information, about any vehicle, from any source we consider appropriate for the purposes of considering your trade-ins, credit worthiness, marketing activities, debt collection purposes, maintenance, servicing and repair purposes and any other purpose related to us providing goods to you. You further authorise us to disclose personal and technical information held by us to any third party (including, but not limited to any transferee or assignee of us) for the purposes set out above. You understand that you have a right of access and may request correction of personal information held about you.
  - 12.2 If you have so indicated in the schedule, you confirm you have consented to receiving promotional material from us from time to time by electronic message.
13. **WARRANTY AND LIABILITY**
  - 13.1 Without limitation to clause 13.4 we give no warranty and have no liability if any of the goods are used including used vehicles. Any used goods are sold "as is where is".
  - 13.2 Any remedial work may take place, at our election, under and to the extent of any manufacturer's warranty applicable and you will comply with the reasonable requirements of the manufacturer's warranty. To the extent that any manufacturer's warranty is applicable this is a warranty effected direct between the relevant manufacturer and you and we shall have no liability for the same howsoever arising but will use reasonable endeavours to enable you to have the benefit of such warranty.
  - 13.3 You acknowledge and agree that additions may affect the manufacturer's warranty and you shall be responsible to make your own enquiries as to the effect of any additions on any manufacturer's warranty.
  - 13.4 Any goods supplied in remedying any defects shall not extend our liability.
  - 13.5 Nothing in these terms excludes limits restricts or is intended to prejudice any conditions, warranties and limitations implied by law however:
    - (a) where permitted by law, if we are able to exclude such warranties, such exclusions shall apply; and
    - (b) no guarantees, conditions, warranties, representations or agreements made on our behalf shall be binding on us unless made in writing.
  - 13.6 We reserve the right to withhold or refuse warranty service until you correct any arrears.
  - 13.7 To the maximum extent permitted, we shall not be liable to you or any agents or employees howsoever arising and whether in contract, tort or otherwise for:
    - (a) any minor variation in product specifications including but not limited to colour or design, which may occur from time to time;
    - (b) any loss of profits, consequential, indirect or special loss; or
    - (c) any delay in delivery or damage, injury, cost or loss of any kind arising directly or indirectly (including force majeure) from any breach of our obligations to you.
  - 13.8 Where it is found we are liable to you, unless otherwise agreed in writing, the maximum cost of our liability, however arising, shall not exceed the lesser of:
    - (a) the amount owing; or
    - (b) the value of the goods or service which are the subject of the claim.
  - 13.9 Unless otherwise agreed in writing any maintenance, insurance, road side or similar programme, finance arrangements or other agreements between you and third parties are direct agreements between the parties concerned and do not affect these terms and we shall have no liability for the same howsoever arising but will use reasonable endeavours to assist you where appropriate. All illustrations are not binding as to detail.
14. **ADDITIONS**
  - 14.1 Where any items are listed under the heading of additions in the schedule then:
    - (a) such additions are further improvements to the vehicle requested by you and such additions are to be provided by third parties ("installer") at your request. Our obligation to you is limited to the provision of the information detailed in that schedule to the installer;
    - (b) we are not responsible for the work or materials related to those additions or the suitability of the additions for your particular use, even though we may have paid such installer for the cost of the additions;
    - (c) you are responsible for the provision of detailed written instructions and all technical information to enable the installer to install the additions in accordance with your requirements, you acknowledge and agree that the installer has been selected by you and accept that we give no warranties whatsoever including as to timing, quality of workmanship or fitness for purpose;
    - (d) we will at your cost use reasonable endeavours to enable you to have the benefit of any warranty we may have with the installer, except where an installer provides a warranty document directly to you;
    - (e) the cost of additions may be amended by us to reflect the actual cost but shall not be less than the amount specified in the schedule, if the costs of the installer increase as above then you will meet such costs on demand which shall increase the amount owing accordingly, and we shall not be obliged to instruct any installer to proceed with the additions unless and until we are in satisfied that we hold sufficient funds to cover the entire amount owing;
    - (f) you are responsible for any matters arising from the additions including safety, familiarisation and training, compliance with all licensing and other lawful requirements, manuals, warranty documentation and instructions.
15. **CONSUMER AND OTHER LEGISLATION**
  - 15.1 If the Consumer Guarantees Act 1993 ("CGA") applies, these terms shall be read subject to the CGA, provided that where you acquire the goods for business purposes the CGA shall not apply and you agree it is fair and reasonable in the circumstances to contract out of the CGA
  - 15.2 If you on sell the goods to a third party, you hereby agree where permitted by law, to contract out of the CGA and further agree to neither give or make any assertion or representation in relation to the goods without our prior written approval nor hold yourself out to be our agent. You further agree to indemnify us for any losses incurred due to third party claims against us as manufacturer/importer (if applicable).
  - 15.3 You indemnify us against any actions, claims, costs or liability incurred by us under the CGA as a result of any breach by you of the obligations contained in clause 15.2.
  - 15.4 Where you and we are acting in trade for the purposes of the Fair Trading Act 1986 ("FTA") then all parties agree to contract out of s 9, 12A and 13 of the FTA and the parties agree that it is fair and reasonable for the parties to so agree.
  - 15.5 All information not originating from us has been given gratuitously and without liability and you acknowledge that it may not be feasible or practical to verify the accuracy of that information. We take no responsibility nor shall we have any liability, for any information provided by third parties.
16. **TRADE-IN**
  - 16.1 If the schedule provides for a trade-in vehicle then the trade-in allowance recorded therein will be deducted from the amount owing upon satisfaction in our sole discretion of the following occurring prior to delivery of the goods by us or otherwise at the time indicated in the schedule:
    - (a) we are provided with unencumbered title and are recorded as the registered owner of the trade-in vehicle;
    - (b) the trade-in vehicle is delivered to us in the same or better condition as when last inspected by us;
    - (c) a properly functioning and accurate hubometer has been installed where appropriate to the vehicle and if otherwise required by us;
    - (d) the trade-in vehicle's WOF or COF and registration has been issued not more than 30 days prior to the date of its delivery to us; and
    - (e) road user charges where applicable to the vehicle type shall be in credit on delivery of the vehicle to us.
  - 16.2 If you do not comply with the above in our sole discretion then we may do any or all of the following:
    - (a) cancel these terms as it relates to the particular goods in question or demand that you immediately pay a monetary sum equivalent to the trade-in allowance recorded;
    - (b) make good the trade-in vehicle with any costs incurred by us in doing so increasing the amount owing accordingly;
    - (c) fully discharge any encumbrance which will increase the amount owing accordingly and you authorise us to effect this.
  - 16.3 Where the schedule records an allowance for discharge of encumbrances then any variance to the discharge amount actually payable will adjust the amount owing accordingly and you authorise us to do all things to discharge any encumbrance.