



# Terms & Conditions of Trade



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100% SATISFACTION

If you are not 100% satisfied with your equipment, Treadway Equipped will repair, replace or refund the equipment free of charge within the first 100 days.

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## TERMS AND CONDITIONS OF TRADE

### 1. Applicability

1.1 It is agreed between TL and the Customer that these terms shall apply to any Goods or Services sold by TL to the Customer from time to time and shall not be deemed or construed to be modified, cancelled or waived in whole or in part except by TL.

### 2. Invoice

2.1 On each occasion the Customer wishes to purchase Goods or Services from TL, the Customer shall make an order, TL will generate an invoice in accordance with the order and deliver it to the Customer.

2.2 The agreement for the sale and purchase of the Goods or Services shall arise on the delivery of the invoice to the Customer and shall embody the terms of the relevant invoice and these terms. In the event of conflict these terms shall prevail over the terms of the invoice.

2.3 All figures in the invoice shall be plus GST calculated at the rate of 15% per annum. If the rate of GST increases then the price set out in the invoice shall also increase to cover the additional GST.

2.4 Any price for the Goods or Services quoted in the invoice shall lapse on the expiration of 28 days from the date of the invoice.

2.5 TL may request either a deposit or payment in advance at any time.

### 3. Payment

3.1 Payment of the invoice is to be made by the 20<sup>th</sup> day of the month following the month of the date of the invoice.

3.2 All sums payable by the Customer under these terms shall be made in full without set-off or counterclaim and, except to the extent required by law, free and clear of any deduction on account of tax or otherwise.

3.3 If the Customer fails to make payment of any amount due under these terms on the due date, TL may without prejudice to its other rights require:

- (a) The Customer to pay interest on the amount due from the due date until the date of payment, at the rate set out in the invoice (in addition to the Customer remaining liable for the full amount outstanding);
- (b) Recover from the Customer all costs and expenses of or incurred by TL collecting the overdue accounts including debt collection costs and legal costs (on a solicitor-client basis) on an indemnity basis.

### 4. Ownership of the Goods

4.1 Without prejudice to the liability of the Customer to pay for the Goods supplied, such Goods shall remain the property of TL as legal and equitable owner pending cleared payment in full of all monies due under these terms or in respect of any other debt owed by the Customer to TL. The Customer acknowledges that the Customer is a fiduciary in relation to the Goods and is in possession of such Goods as bailee for TL pending payment in full.

4.2 Until payment in full TL shall be entitled to retake possession of the Goods. To allow TL to do that, the Customer grants TL an irrevocable right to enter at any time any premises or place where the Goods are held or thought to be held and to remove the Goods. TL may then resell the Goods and retain the proceeds of such sale. Any shortfall shall be a debt owing by the Customer to TL.

4.3 The Customer shall maintain records, so that TL can readily identify the Goods, and if the Goods (whether as the goods or as constitutes of other goods) are sold by the Customer prior to payment of all sums due to TL:

- (a) The proceeds of sale of the Goods are to be maintained by the Customer in a separate account; and
- (b) The Customer shall forthwith account to TL for that part of the proceeds of sale as is equal to the amount payable by the Customer to TL in respect of such Goods.

4.4 If the Goods have been transformed into or have become constitutes of other goods, then the resulting product shall become the property of TL. The provisions of clauses 4.1 to 4.3 (inclusive) herein shall apply to any such resulting product.

4.5 The Customer will insure the Goods at full replacement value until legal and beneficial ownership of them has passed to the Customer. If the Goods are damaged or destroyed before legal and beneficial ownership of them has passed to the Customer, the Customer will hold the proceeds of such insurance in a separate fund and on trust for TL.

4.6 In consideration of TL agreeing to perform obligations under these terms, the Customer grants TL a security interest under the PPSA in all Goods supplied by TL to the Customer. The Customer agrees:

- (a) Any Goods or proceeds thereof coming into existence after the date which these terms are given to the Customer are subject to the security interest granted under these terms without the need for further action by any party; and
- (b) The security interest has attached and is in no way deferred or postponed from the date referred to in clause 4.6(a) above; and
- (c) The security interest secures all obligations of the Customer under these terms including all payments due by the Customer hereunder.

4.7 The Customer shall do all acts and execute all documents required to enable TL to register and maintain a financing statement on the PPSA Register and to ensure that its security interest is perfected and ranks first in priority.

4.8 The Customer waives its rights to receive any verification statement and all rights that it would otherwise have under Sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA and the parties agree that Sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA do not apply.

### 5. Risk

5.1 The Goods will be at the Customer's risk immediately on delivery to the delivery point set out in the invoice.

5.2 Where TL at its discretion, allows the Customer to return Goods other than defective Goods, TL reserves the right to charge a return fee equal to 10% of the price of the Goods. Goods must be returned within 14 days of receipt of order.

5.3 Any Goods accepted for return must be in the original packaging and in the same condition as when delivered/collected.

5.4 Any freight or delivery charges on Goods returned are non-refundable.

5.5 TL is not liable for any delay in delivery or non-delivery and may decline to deliver or deliver in installments.

### 6. Liability

6.1 The Customer agrees that the Consumer Guarantees Act 1993 does not apply.

6.2 The Customer agrees to indemnify TL against any liability or cost incurred by TL as a result of any breach by the Customer of the obligations contained in these terms.

6.3 Any right which the Customer may have to reject defective Goods shall only be effective if the Customer notifies TL in writing within seven days following delivery and TL is given the opportunity to inspect the Goods.

6.4 TL accepts no liability for any claim by the Customer or any other person, including without limitation, any claim relating to or arising from:

- (a) Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether expressed or implied by law, trade custom or otherwise;
- (b) Any representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by TL in writing, and the Customer agrees to indemnify TL against any such claim.

6.5 TL shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by TL of these terms. In the event of any breach of these terms by TL the remedies to the Customer shall be limited to damages which under no circumstances shall exceed the price of the Goods in the relevant invoice or the amount of monies paid to TL by the Customer, whichever is the lesser amount.

### 7. Cancellation

7.1 Notwithstanding any other agreement as to the terms of payment, the total amount owed by the Customer to TL shall immediately become due and payable and TL shall have the right to forthwith cancel these terms (without prejudice to any other of its rights) upon the occurrence of any of the following events:

- (a) The Customer becomes bankrupt or commits an available act of bankruptcy or proceedings are taken for liquidation of the Customer's affairs;
- (b) The Customer, being a company, goes into liquidation whether voluntary or compulsory or does anything or fails to do anything which would allow a receiver or manager to be appointed or a receiver or manager to take possession of any of the Customer's assets or which would entitle any person to present an application for winding up or is wound up or dissolved or placed under statutory management or enters into a scheme of arrangement with its creditors or any class thereof;
- (c) Breach by the Customer of any terms contained in these terms.

### 8. Intellectual Property

8.1 Where TL has designed or drawn good for the Customer (or in conjunction with the Customer), then the copyright in those designs and drawings will remain vested in TL and shall only be used by the Customer with TL's written consent. The Customer warrants that all designs or instructions to TL will not cause TL to infringe any patent, registered design, trademark or copyright.

### 9. Guarantee

9.1 If these terms are signed by a company or trust, then the directors and trustees signing for such company or trust personally guarantee the liability and obligations hereunder of the Customer to TL in addition to any other person that may sign as a guarantor.

### 10. Privacy

10.1 The Customer agrees that:

- (a) TL is entitled to seek further information of a private nature (including credit checks) about the Customer and entities in which the Customer has an interest to assess whether TL will grant credit;
- (b) Any personal information (whether contained in these terms or otherwise obtained) may be collected, held, used and disclosed for or in connection with the marketing of any goods or services.
- (c) They have the right under the Privacy Act 2020 to obtain access to and to request corrections of any personal information concerning it held by TL.

### 11. General

11.1 No exercise or failure to exercise or delay in exercising any right or remedy by a party shall constitute a waiver by that party of that or any other right or remedy available to it.

11.2 The invalidity of any term of these terms will not affect the validity of these terms other terms.

11.3 These terms shall be governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

11.4 TL reserves the right to update or correct the terms and/or information contained within these terms, such change to take effect from the date the change is made without the necessity of giving notice.

11.5 The Customer shall not assign any of its rights under these terms. TL may assign these terms (including any right or interest arising under it) by written notice to the Customer.

11.6 In the event either party is unable to perform its obligations under these terms by reason of a force majeure event (including but not limited to any pandemic), then each party shall be released from its obligations under these terms, but without prejudice to any pre-existing claim, liability or responsibility.

**12. Defined Terms**

12.1 Unless the context otherwise requires:

"Goods" means all goods supplied from time to time to the Customer by a member of TL, provided that:

(a) where the goods supplied are your Inventory, then all references to Goods in these terms shall be read as references to Inventory; and

(b) where the goods supplied are not Inventory then all references to Goods in these terms shall mean the goods described in any one or more of the

relevant order form, packing slip or invoice (or its equivalent, whatever called) relating to those goods, on the basis that each such document shall be deemed to be incorporated in, and form part of, these terms.

"TL" means Treadway Limited and each of its subsidiaries and related parties from time to time and includes Treadway Equipped Limited and Hoist & Garage.

"Inventory" has the meaning given to that term in the PPSA.

"PPSA" means the Personal Property Securities Act 1999 as amended or substituted from time to time.

"Services" means any service work, advice or other services provided to the Customer by TL.