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## Total Wireless Limited – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier 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 partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.2 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.3 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. If the Client does not wish to allow Cookies to operate in the background when using the Supplier’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.4 **“Goods”** means all Goods (which includes any goods, hardware, files, information, printed or virtual material, data or software) or Services (which includes any installation and/or repair of Goods or components, advice or recommendations, support services, assessment and treatment planning, reporting, technical service and support, analysis, training, and project management or service sourcing) supplied by the Supplier to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between the Supplier and the Client in accordance with clause 8 below.
- 1.6 **“Supplier”** means Total Wireless Limited and Total Wireless Limited T/A Pro Auto, its successors and assigns.

### 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 Goods.
- 2.2 These terms and conditions are meant to be read in conjunction with the terms and conditions posted on the Supplier’s website. In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account;
  - (b) in the event that the supply of Goods request exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery;
  - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Supplier reserves the right to alternate Goods and vary the Price as per clause 8.2, subject to prior confirmation and agreement of both parties. In all such cases the Supplier will notify the Client in advance of any such substitution, and also reserves the right to place the Client’s order on hold until such time as the Supplier and the Client agree to such changes. The Supplier shall not be liable to the Client for any loss or damage the Client suffers due to the Supplier exercising its rights under this clause; and
  - (d) the Client will ensure that the Supplier is given such information and assistance (including remote access (where required) to any computer systems plus usernames and passwords or any other locations) as the Supplier reasonably requires to enable the Supplier to complete any necessary Services. Failure to provide these prior to the provision of the Services by the Supplier, may incur additional time delay and surcharge added to the initial quoted cost or estimate.
- 2.5 If the Supplier has been requested by the Client to:
- (a) prepare a quotation that involves multiple worksite visits or third party involvement (including but not limited to engineers, surveyor or local councils) all costs involved will be charged to the Client irrespective of whether or not the Services go ahead; or
  - (b) diagnose a fault that requires disassembly and/or testing all costs involved (including a call-out fee where such a request is received outside the Supplier’s normal working hours and/or a physical visit is required) will be charged to the Client.
- 2.6 The Client acknowledges and agrees that where the Supplier has performed temporary repairs on the Goods that the Supplier:
- (a) offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - (b) will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair of the Goods.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Fixed Term Contracts

- 3.1 The commencement date shall be the date of the first delivery of the Services under a Service Agreement, or from the date of signing, whichever, is the earlier. A Service Agreement shall be for the period (**“Initial Term”**) as agreed between both parties and shall revert to an annual roll over month to month basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least one (1) months’ required notice as defined in the Service Agreement prior to the expiration date of the Initial Term or any additional term.

### 4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to the Supplier as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client’s behalf and/or to request any variation to the Services on the Client’s behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies the Supplier in writing that said person is no longer the Client’s duly authorised representative).

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## Total Wireless Limited – Terms & Conditions of Trade

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- 4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Goods, Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).
- 5. Errors and Omissions**
- 5.1 The Client acknowledges and accepts that the Supplier 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 the Supplier 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 the Supplier in respect of the Services.
- 5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of the Supplier; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 6. Change in Control**
- 6.1 The Client shall give the Supplier 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 the Supplier as a result of the Client's failure to comply with this clause.
- 7. Online Ordering**
- 7.1 The Client acknowledges and agrees that:
- (a) the Supplier does not guarantee the websites performance or availability of any of its Goods;
  - (b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
  - (c) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by the Supplier;
  - (d) there are inherent hazards in electronic distribution, and as such the Supplier cannot warrant against delays or errors in transmitting data between the Client and the Supplier including orders, and you agree that to the maximum extent permitted by law, the Supplier will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
  - (e) when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by the Supplier and/or displayed on the website. The encryption process ensures that the Client's information cannot be read by or altered by outside influences; and
  - (f) if the Client is not the cardholder for any credit card being used to pay for the Goods, the Supplier shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.
- 7.2 The Supplier reserves the right to terminate your order if it learns that you have provided false or misleading information, interfered with other users or the administration of the Supplier's Services, or violated these terms and conditions.
- 8. Price and Payment**
- 8.1 At the Supplier's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Supplier to the Client in respect of Services performed or Goods supplied; or
  - (b) the Supplier's estimated Price (subject to clause 8.2). The final Price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than ten percent (10%) will be subject to Client approval before proceeding with the Services; or
  - (c) the Supplier's quoted Price (subject to clause 8.2), which shall be binding upon the Supplier provided that the Client shall accept the Supplier's quotation in writing within thirty (30) days.
- 8.2 The Supplier reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested, including any additional costs incurred by the Supplier where the Client requests the acceleration of the existing work schedule (as per clause 9.4); or
  - (c) if during the course of the Services, the Goods are not or cease to be available from the Supplier's third party suppliers, then the Supplier reserves the right to provide alternative Goods; or
  - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to, poor weather conditions, obscured building defects which require remedial work, limitations to accessing the worksite and/or crawl spaces, Client's fixings are not fit for purpose and require repairs to enable installation of the Goods, availability of machinery, scaffolding required, safety considerations and/or health hazards (such as the discovery of asbestos or other hazardous materials), prerequisite work by any third party not being completed or code compliant, delays caused by third party contractors or hidden pipes or wiring in walls etc.) which are only discovered on commencement of the Services; or
  - (e) in the event of increases to the Supplier 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, or travel charges where there is more than one (1) worksite location) which are beyond the Supplier's control.
- 8.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier 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.
- 8.4 At the Supplier's sole discretion a non-refundable deposit may be required.

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## Total Wireless Limited – Terms & Conditions of Trade

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- 8.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
- (a) before delivery of the Goods;
  - (b) on completion of the Services;
  - (c) by way of progress payments in accordance with the Supplier's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the worksite but not yet installed;
  - (d) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 8.6 Payment for any custom non-stocklist Goods from the Supplier's third party suppliers is due a payable at the time the Client places an order with the Supplier.
- 8.7 Payment may be made by eftpos, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Supplier.
- 8.8 The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 8.9 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 the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 8.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract for the sale of the Goods. 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.

### 9. Provision of the Services

- 9.1 Subject to clause 9.2 it is the Supplier's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 9.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Supplier's control, including but not limited to:
- (a) forecast weather conditions (including without limitation, extreme temperatures); or
  - (b) delays caused by any other third party contractor engaged by the Client; or
  - (c) failure by the Client to:
    - (i) make a selection; or
    - (ii) notify the Supplier:
      - (A) of any changes to the worksite/location; or
      - (B) that the worksite/location or vehicle is available to commence the Services.
- 9.3 At the Supplier's sole discretion the cost of delivery is in addition to the Price.
- 9.4 In the event that the Supplier is required to provide the Services urgently, that may require the Supplier staff to work outside normal working hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then the Supplier reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between the Supplier and the Client.
- 9.5 Any time specified by the Supplier for delivery of the Services is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of delivery being late subject to clause 9.2. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Services as agreed solely due to any action or inaction of the Client (including where the Client provides less than twenty-four (24) hours' written notice to delay the agreed commencement date), then the Supplier shall be entitled to:
- (a) charge a reasonable fee for redelivery and/or storage; or
  - (b) subject to clause 22, terminate the Contract.

### 10. Risk

- 10.1 Risk of damage to or loss of the Goods passes to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at the Supplier's address; or
  - (b) the Goods are delivered by the Supplier or the Supplier's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- 10.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 10.3 If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 10.4 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Goods or Services supplied is given in good faith to the Client, or the Client's agent and is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier. Where such advice or recommendations are not acted upon, then the Supplier shall require the Client or their agent to authorise commencement of the Services in writing. The Supplier shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services, nor will such losses or damages be deemed a defect.

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## Total Wireless Limited – Terms & Conditions of Trade

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- 10.5 The Client acknowledges and agrees that any cost incurred by the Supplier with any subsequent repair Services that are required as a result of such advice or recommendations not being followed (at the Client's request) will be on-charged to the Client in accordance with clause 8.2.
- 10.6 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including but not limited to, discovery of asbestos, defective or unsafe wiring, dangerous access to crawl spaces and/or roofing or fixings are found to not be suitable for their intended use the structure not being watertight, etc), the Supplier reasonably forms the opinion that the Client's property is not safe for the installation of Materials to proceed then the Supplier shall be entitled to delay installation of the Materials (in accordance with clause 9.2) until the Supplier is satisfied that it is safe for the installation to proceed. The Supplier may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 10.7 The Supplier shall upon installation ensure that all Goods are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Goods to be installed in any way which goes against the Supplier's recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to the Supplier. Accordingly, the Supplier offers no warranty in regards to the aforementioned.
- 10.8 The Client acknowledges and accepts that:
- (a) the Supplier is only responsible for parts that are repaired by the Supplier, and in the event that other parts/goods, subsequently fail, the Client agrees to indemnify the Supplier against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising;
  - (b) the Supplier does not guarantee the performance or transmission speed or quality of any data;
  - (c) transmission of data may be unavailable from time to time due to scheduled maintenance and/or upgrades to websites, servers or networks by third parties;
  - (d) there are inherent hazards in electronic distribution (including, but not limited to electrical interference, surges or spikes, high traffic volume affecting speed, etc.) and as such the Supplier cannot warrant against delays or errors in transmitting data between the Client and any person or entity the Client conducts communications with including orders, and you agree that the Supplier will not be liable for any losses which the Client suffers as a result of delays or errors in transmitting orders or other communications and/or documents;
  - (e) they are (for all purposes) solely responsible for the migration of all files and data (regardless of their format). The Supplier shall not be held responsible or liable for any loss, corruption, or deletion of files or data (including, but not limited to the software) resulting from illegal hacking or mislabelling or misfiling;
  - (f) where CCTV systems, intrusion alarms and/or access control systems are installed to/at their premises that they are for monitoring and detection purposes only and the Supplier does not represent that the Goods will protect the Client against break and enter, theft and/or burglary and therefore accepts no liability if such is to occur after installation;
  - (g) the Supplier cannot guarantee performance and/or the quality of any CCTV footage and/or discrepancies in camera motion detection and the Supplier shall not be liable for the failure of the equipment to be triggered to record due to the equipment being either under or over sensitive; and
  - (h) accepts that the Goods shall comply with all applicable standards and/or regulations and that it shall be the Client's responsibility to ensure correct operating procedures are followed so as to not interfere with other communications operators within the transmitting/receiving area;
  - (i) all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in the Supplier's or the manufacturer's fact sheets, Price lists or advertising material are indicative only and that they have not relied on such information; and
  - (j) while the Supplier may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that the Supplier has given these in good faith, and are estimates based on optimal operating conditions. The coverage range may be less than estimates due to factors out of the Supplier's control including, but not limited to, atmospheric conditions, the location (geographical or otherwise) of the Goods and the location of surrounding structures and flora.
- 10.9 the Supplier:
- (a) shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information;
  - (b) accepts no responsibility for:
    - (i) any damage or performance related problems with any Goods where they have not been used and/or maintained in accordance with the Supplier's and/or the manufacturers' recommendations;
    - (ii) any damage or defects in any Goods caused by movement and/or interference of the said Goods; and
    - (iii) painting, re-decorating, re-sealing, carpentry or any other Services required for the restoration or making good of any surface/area where any Services have been carried out.
  - (c) shall not be liable whatsoever for:
    - (i) any loss or damage to the Services that is caused by any other tradesman during and after the completion of the Services;
    - (ii) delays caused by any other third party contractors that impacts on the provision of the Services by the Supplier;
    - (iii) products and/or Services supplied by the Client and/or any other third party; and
    - (iv) any defect or damage resulting from incorrect or faulty installation carried out by any other third party.
- 10.10 If the Client instructs the Supplier to rectify any damage caused by any other tradesman, this will become a variation to the original quotation and will be charged at the Supplier normal hourly rate.
- 10.11 Unless otherwise agreed, Goods which the Supplier brings to the worksite which are surplus remain the property of the Supplier.

**11. Client's Responsibilities**

- 11.1 It is the Client's responsibility to:
- (a) provide all necessary services and amenities to enable the Supplier to provide the Services;
  - (b) make the premises available on the agreed date/s and time/s and ensure that the Supplier has clear and free access to the worksite (which may include, providing access codes and/or keys to the Supplier where applicable) at all times to enable them to undertake the Services, and:
    - (i) the Supplier shall not be liable for any loss or damage to the address (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier;
    - (ii) if installation is interrupted by the failure of the Client to adhere to the schedule of Services agreed to between the Supplier and the Client, any additional costs will be invoiced to the Client as in accordance with clause 8.2.
  - (c) provide any heavy equipment and have erected scaffolding to enable the Services to be undertaken (where in the Supplier's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed. In the event the Client fails to provide the scaffolding or it is not code compliant and the responsibility then falls onto the Supplier, the costs associated will be charged to the Client in accordance with clause 8.2; and
  - (d) remove any furniture or personal items from the vicinity of the Services, and agrees that the Supplier shall not be liable for any damage caused to those items through the Client's failure to comply with this clause.
- 11.2 The Client acknowledges that they shall:
- (a) not be entitled to withhold any payment due under this Contract because of any delay in the connection of, or the supply of electricity to the Goods by an electrical distributor or any other third party; and
  - (b) be wholly responsible for the removal of rubbish from or clean-up of the worksite.
- 11.3 In the event asbestos or any other toxic substances are discovered at the property, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify the Supplier against any costs incurred by the Supplier as a consequence of such discovery. Under no circumstances will the Supplier handle removal of asbestos product.

**12. Hidden Amenities**

- 12.1 Prior to the Supplier commencing any work the Client must advise the Supplier of the precise location of all hidden amenities on the worksite and clearly mark the same. The hidden amenities the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the worksite.
- 12.2 Whilst the Supplier will take all care to avoid damage to any hidden amenities the Client agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

**13. Compliance with Laws**

- 13.1 The Client and the Supplier 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, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 13.2 Both parties acknowledge and agree:
- (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and building products to be supplied during the course of the Services; and
  - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 13.3 Where the Client has supplied products for the Supplier to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the intended use and any faults inherent in those products. However, if in the Supplier's opinion, it is believed that the materials supplied are non-conforming products and will not conform with New Zealand regulations, then the Supplier shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 8.2.
- 13.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 13.5 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.
- 13.6 If during the course of installation when the Services are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Supplier, then the Supplier shall notify the Client immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be to the Client's account.
- 13.7 Any live Services or Services undertaken near live conductors where it is safe to do so shall be dealt with in accordance with New Zealand and Australian Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Statutory Acts and Work Place Regulations". The Supplier's live Services procedures are designed to eliminate risk of injury to the Supplier's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Services for which additional charges may be applicable. This shall be invoiced in accordance with clause 8.1(a).
- 13.8 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), the Supplier agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.

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## Total Wireless Limited – Terms & Conditions of Trade

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### 14. Title

- 14.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Supplier all amounts owing to the Supplier; and
  - (b) the Client has met all of its other obligations to the Supplier.
- 14.2 Receipt by the Supplier 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 Goods passes to the Client in accordance with clause 14.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
  - (d) the Client should not convert or process the Goods 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 the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
  - (e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
  - (f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred;
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier; and
  - (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 15. Personal Property Securities Act 1999 ("PPSA")

- 15.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by the Supplier to the Client, and the proceeds from such Goods as listed by the Supplier to the Client in invoices rendered from time to time.
- 15.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of the Supplier; and
  - (d) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.3 The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 15.1 to 15.5.
- 15.7 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 the Supplier agreeing to supply the Goods, 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, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 16.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 16.3 The Client irrevocably appoints the Supplier and each director of the Supplier 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

- 17.1 The Client shall inspect the Goods on delivery (Services on completion) and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to first inspect the Goods or to review the Services within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods.
- 17.2 Notwithstanding the provisions of clause 17.1, in the event where the Client fails to comply with the right to the Supplier to have first refusal to inspect any alleged claim and engages another third party to rectify, this will void any warranty previously offered.

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## Total Wireless Limited – Terms & Conditions of Trade

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- 17.3 Goods will not be accepted for return other than in accordance with 17.1 above, and provided that:
- (a) the Supplier has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and
  - (c) the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and
  - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 17.4 The Supplier will not accept the return of Goods for credit.
- 17.5 Subject to clause 17.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

### 18. Warranty

- 18.1 Subject to the conditions of warranty set out in clause 18.2 the Supplier warrants that if any defect in any workmanship provided by the Supplier becomes apparent and is reported to the Supplier within thirty (30) days of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the defect.
- 18.2 The conditions applicable to the warranty given by clause 18.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Client to properly maintain any Goods or serviced item; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines in the Client Responsibility Sheet provided by the Supplier; or
    - (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Goods or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled without the Supplier's consent.
  - (c) in respect of all claims the Supplier shall not be liable to compensate the Client for any delay in either replacing or remedying the defective Goods or Services or in properly assessing the Client's claim.
- 18.3 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 18.4 In the case of second hand Goods, the Supplier acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. the Supplier shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

### 19. Consumer Guarantees Act 1993

- 19.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by the Supplier to the Client.

### 20. Intellectual Property

- 20.1 Where the Supplier has designed, drawn, written plans or a schedule of Services, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Supplier, and shall only be used by the Client at the Supplier's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- 20.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 20.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Client.

### 21. Default and Consequences of Default

- 21.1 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 the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Client has made payment to the Supplier, 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 the Supplier under this clause 21 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.
- 21.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier'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 the Supplier;
  - (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.

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## Total Wireless Limited – Terms & Conditions of Trade

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### 22. Cancellation

- 22.1 Without prejudice to any other rights or remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then the Supplier may suspend the Services immediately. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 22.2 The Supplier may cancel any Contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Where the Client is connected to the Supplier's network on a fixed term Contract, one (1) months' notice must be provided by the Client in writing to the Supplier and a Network Disconnection Fee will be charged and where applicable, all products must be returned.
- 22.5 Cancellation of orders for products 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.

### 23. Privacy Policy

- 23.1 All emails, documents, images or other recorded information held or used by the Supplier is "**Personal Information**" as defined and referred to in clause 23.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")
- If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Client authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by the Supplier from the Client directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 23.5 The Client shall have the right to request (by e-mail) from the Supplier, a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information.
- 23.6 The Supplier 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.
- 23.7 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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 twenty (20) 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 Privacy Commissioner at <http://www.privacy.org.nz>.

### 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 the Supplier may have notice of the Trust, the Client covenants with the Supplier 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;



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## Total Wireless Limited – Terms & Conditions of Trade

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- (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 the Supplier (the Supplier 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.

### 26. General

- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 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.
- 26.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Christchurch Courts of New Zealand.
- 26.4 Subject to the CGA, the Supplier 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 the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.5 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of the Supplier.
- 26.7 The Supplier 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 the Supplier's sub-contractors without the authority of the Supplier.
- 26.8 The Client agrees that the Supplier may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to 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 the Supplier to provide Goods to the Client.
- 26.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Supplier.
- 26.10 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.