

M2 Overland Limited – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 **"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.
 - 1.2 **"M2 Overland"** means M2 Overland Limited, its successors and assigns or any person acting on behalf of and with the authority of M2 Overland Limited.
 - 1.3 **"Client"** means the Distributor's (where the context so permits the terms 'Distributor' or 'Client' shall be interchangeable for the other), persons/s, entities or any person acting on behalf of and with the authority of the Client requesting M2 Overland 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.
 - 1.4 **"Goods"** means all Goods or Services supplied by M2 Overland 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 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: 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) and pricing details.
 - 1.6 **"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 M2 Overland'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.
 - 1.7 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between M2 Overland and the Client in accordance with clause 8 below.
 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 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 that:
 - (a) the supply of Goods on credit shall not take effect until the Client has completed a credit application with M2 Overland and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, M2 Overland reserves the right to refuse Delivery; and
 - (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, M2 Overland reserves the right to vary the Price with alternative Goods as per clause 8.2 subject to prior confirmation and agreement of both parties; and
 - (d) M2 Overland also reserves the right to halt all Services until such time as M2 Overland and the Client agree to such changes. M2 Overland shall not be liable to the Client for any loss or damage the Client suffers due to M2 Overland exercising its rights under this clause.
 - 2.5 None of M2 Overland's Distributor's, agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by M2 Overland or M2 Overland's official spokesperson in writing, nor is M2 Overland bound by any such unauthorised statements.
 - 2.6 Any advice, recommendation, information, assistance or service provided by M2 Overland in relation to Goods or Services supplied is given in good faith to the Client, or the Client's agent and is based on the M2 Overland's own knowledge and experience and shall be accepted without liability on the part of M2 Overland.
 - 2.7 Where such advice or recommendations are not acted upon then M2 Overland shall require the Client or their agent to authorise commencement of the Services in writing. M2 Overland shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
 - 2.8 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. **Errors and Omissions**
 - 3.1 The Client acknowledges and accepts that M2 Overland 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 M2 Overland 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 M2 Overland in respect of the Services.
 - 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of M2 Overland; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Authorised Representatives**
 - 4.1 The Client acknowledges that M2 Overland shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to M2 Overland, that person shall have the full authority of the Client to order any Services, and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to M2 Overland for all additional costs incurred by M2 Overland (including M2 Overland's profit margin) in providing any Services, or variation/s requested thereto by the Client's duly authorised representative.
5. **Change in Control**
 - 5.1 The Client shall give M2 Overland 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 M2 Overland as a result of the Client's failure to comply with this clause.
6. **Distribution of Goods via an Approved Distributor**
 - 6.1 The Client agrees that until they are authorised as a distributor by M2 Overland, (and hereinafter the Client shall be referred to as "Distributor" for the purposes of this clause) the Distributor shall not be able to sell the Goods on as a Distributor for M2 Overland or represent to any third parties that the Distributor is in any way acting for M2 Overland. M2 Overland shall not accept responsibility or agree to be bound in any way by any contracts with third parties to whom the Distributor is a party.
 - 6.2 At M2 Overland's sole discretion the Distributor acknowledges that only approved Distributor's shall have the authority to accept internet orders via their respective website and/or any alternative online auction sites (including but not limited to Trademe, Amazon, Ebay etc).
 - 6.3 Orders from a Distributor are accepted on the basis that:
 - (a) unless otherwise agreed by prior approval between M2 Overland and the Distributor, Goods may only be resold to consumers at retail level and may not be sold at wholesale level or to any other trader that is known or is suspected to be purchasing for resale; and
 - (b) Goods are to be sold for retail or displayed for sale at only the nominated locations advised by the Distributor to M2 Overland; and
 - (c) sale of Goods by mail order, internet or any other method outside of the traditional display and sell at the approved location is prohibited without prior written consent of M2 Overland; and
 - (d) Goods are to be displayed, presented and marketed in the manner that is in the best interest of the brand name.
 - 6.4 Any default of clauses 6.1-6.3 may at M2 Overland's sole discretion be subject to immediate and permanent closure of account facilities, with any account balances payable immediately on demand.
 - 6.5 M2 Overland has sole discretion
 - (a) on which brands or Goods are made available to any approved Distributor and M2 Overland does not guarantee continuing supply of any specific brand or Goods; and
 - (b) over which geographical locations it chooses to supply its Goods and will not be limited by any given number of Distributors in any given location.
 7. **Online Ordering**
 - 7.1 The Client acknowledges and agrees that:
 - (a) M2 Overland does not guarantee the website's performance or availability of any of its Goods; and
 - (b) 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 M2 Overland; and
 - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
 - (d) there are inherent hazards in electronic distribution and as such M2 Overland cannot warrant against delays or errors in transmitting data between the Client and M2 Overland including orders. The Client agrees that to the maximum extent permitted by law, M2 Overland 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; and
 - (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 M2 Overland 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, M2 Overland 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 M2 Overland reserves the right to terminate the Client's order in the event that M2 Overland learns that the Client has provided false or misleading information, interfered with other users or the administration of M2 Overland's Services, or violated these terms and conditions.
 8. **Price and Payment**
 - 8.1 At M2 Overland's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by M2 Overland to the Client; or
 - (b) the Price as at the date of Delivery of the Goods according to M2 Overland's current price list; or
 - (c) M2 Overland's quoted price (subject to clause 8.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
 - 8.2 M2 Overland reserves the right to change the Price if a variation to M2 Overland's quotation is requested. Variations will be charged for on the basis of M2 Overland's quotation, and will be detailed in writing, and shown as variations on M2 Overland's invoice. The Client shall be required to respond to any variation submitted by M2 Overland within ten (10) working days. Failure to do so will entitle M2 Overland 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.
 - 8.3 At M2 Overland's sole discretion a non-refundable deposit may be required.
 - 8.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by M2 Overland, which may be:
 - (a) on Delivery of the Goods;
 - (b) 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;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by M2 Overland.
 - 8.5 Payment may be made by cash, cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and M2 Overland.
 - 8.6 M2 Overland may in its discretion allocate any payment received from the Client towards any invoice that M2 Overland determines and may do so at the time of receipt or at any time afterwards. On any default by the Client M2 Overland may re-allocate any payments previously received and allocated. In the absence of any payment allocation by M2 Overland, payment will be deemed to be allocated in such manner as preserves the maximum value of M2 Overland's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
 - 8.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by M2 Overland nor to withhold payment of any invoice because part of that invoice is in dispute. Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to M2 Overland an amount equal to any GST M2 Overland must pay for any supply by M2 Overland 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. **Delivery of Goods**
 - 9.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Goods at M2 Overland's address; or
 - (b) M2 Overland (or M2 Overland's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
 - 9.2 At M2 Overland's sole discretion the cost of Delivery is included in the Price.
 - 9.3 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that M2 Overland claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond M2 Overland's control, including but not limited to any failure by the Client to:
 - (a) make a selection; or
 - (b) have the site/vehicle ready for the Services; or
 - (c) notify M2 Overland that the site/vehicle is ready.
 - 9.4 M2 Overland may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 9.5 Any time specified by M2 Overland for Delivery of the Goods is an estimate only and M2 Overland will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that M2 Overland is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then M2 Overland shall be entitled to charge a reasonable fee for redelivery and/or storage.
 10. **Product Specifications**
 - 10.1 The Client acknowledges that:
 - (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in M2 Overland's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by M2 Overland;
 - (b) while M2 Overland may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that M2 Overland has given these in good faith, and are estimates based on industry prescribed estimates.
 - 10.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
 11. **Accuracy Of Plans**
 - 11.1 M2 Overland 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, M2 Overland accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information. Where the Client is to supply M2 Overland with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. M2 Overland shall not be liable whatsoever for any errors in the Services that are caused by incorrect or inaccurate data being supplied by the Client.
 - 11.2 In the event the Client gives information relating to measurements and quantities of Goods required in completing the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or M2 Overland places an order based on these measurements and quantities. M2 Overland accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
 12. **Risk**
 - 12.1 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.
 - 12.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, M2 Overland is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by M2 Overland is sufficient evidence of M2 Overland's rights to receive the insurance proceeds without the need for any person dealing with M2 Overland to make further enquiries.
 - 12.3 If the Client requests M2 Overland to leave Goods outside M2 Overland'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.
 - 12.4 The Client warrants that the structure of the vehicle or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and Services incidental thereto and M2 Overland shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the vehicle or equipment be unable to accommodate the installation.
 - 12.5 The Client acknowledges that:
 - (a) stainless steel is a textured material and can be of a porous nature. The Client accepts that products made from this material can rust and mark easily. The Client accepts that care should be taken to maintain the finish of and longevity of stainless steel products;
 - (b) where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods; and
 - (c) Goods supplied may:
 - (i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. M2 Overland will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur;
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather;
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.
 - 12.6 M2 Overland shall not be liable for any defect, deterioration and/or damage to the Goods:
 - (a) if the Client does not follow M2 Overland's recommendations;
 - (b) where Goods are stored off site for extended periods of time as a result of any action/inaction by the Client;
 - (c) resulting from incorrect use and/or installation of the Goods by the Client or any other third party; and
 - (d) where welding, galvanising (or any other heat related process) has caused distortion or any other damage.
 - 12.7 M2 Overland can only provide its Services on a vehicle in its current state as supplied to M2 Overland therefore M2 Overland shall not accept any responsibility for the workmanship of any third party that has worked on a Client's vehicle prior to Services being undertaken by M2 Overland (including, but not limited to, poor paintwork, corrosion or other repairs).
 13. **Compliance With Laws**
 - 13.1 The Client and M2 Overland shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.
 - 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services if applicable.
 - 13.3 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") M2 Overland agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety.
 14. **Title**
 - 14.1 M2 Overland and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid M2 Overland all amounts owing to M2 Overland; and
 - (b) the Client has met all of its other obligations to M2 Overland.
 - 14.2 Receipt by M2 Overland 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:

M2 Overland Limited – Terms & Conditions of Trade

- (a) the Client is only a bailee of the Goods and must return the Goods to M2 Overland on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for M2 Overland and must pay to M2 Overland 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 M2 Overland and must pay or deliver the proceeds to M2 Overland 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 M2 Overland and must sell, dispose of or return the resulting product to M2 Overland as it so directs;
- (e) the Client irrevocably authorises M2 Overland to enter any premises where M2 Overland believes the Goods are kept and recover possession of the Goods;
- (f) M2 Overland 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 M2 Overland; and
- (h) M2 Overland 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 and/or collateral (account) – being a monetary obligation of the Client to M2 Overland for Services – that have previously been supplied and that will be supplied in the future by M2 Overland to the Client.
- 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 M2 Overland may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, M2 Overland 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 and/or collateral (account) in favour of a third party without the prior written consent of M2 Overland; and
- (d) immediately advise M2 Overland 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 M2 Overland 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 M2 Overland, 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 M2 Overland 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 M2 Overland 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, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies M2 Overland from and against all M2 Overland's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising M2 Overland's rights under this clause.
- 16.3 The Client irrevocably appoints M2 Overland and each director of M2 Overland 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 and shall within forty eight (48) hours of Delivery (time being of the essence) notify M2 Overland of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford M2 Overland an opportunity to inspect the Goods 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 M2 Overland has agreed in writing that the Client is entitled to reject, M2 Overland's liability is limited to either (at M2 Overland's discretion) replacing the Goods or repairing the Goods.
- 17.2 Goods will not be accepted for return other than in accordance with 17.1 above, and provided that:
- (a) M2 Overland 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) M2 Overland 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.
- 17.3 M2 Overland may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty five percent (25%) of the value of the returned Goods plus any freight.
18. **Warranty**
- 18.1 Subject to the conditions of warranty set out in clause 18.2 M2 Overland warrants that if any defect in any workmanship of M2 Overland becomes apparent and is reported to M2 Overland within three (3) months of the date of Delivery (time being of the essence) then M2 Overland will either (at M2 Overland's sole discretion) replace or remedy the workmanship.
- 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 including corrosion due to damage to the powder coating; or
- (ii) failure on the part of the Client to follow any instructions or guidelines provided by M2 Overland; or
- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods 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 M2 Overland shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without M2 Overland's consent.
- (c) in respect of all claims M2 Overland shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 18.3 For Goods not manufactured by M2 Overland, the warranty shall be the current warranty provided by the manufacturer of the Goods. M2 Overland 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.
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 M2 Overland to the Client.
20. **Intellectual Property**
- 20.1 For the purposes of this clause 20 'Intellectual Property' shall mean all vested contingent and future intellectual property rights including, but not limited to, copyright, trademarks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.
- 20.2 Notwithstanding anything herein, the Intellectual Property rights in M2 Overland's Goods/Services do not vest in the Client and there is no assignment of these Intellectual Property rights to the Client. M2 Overland hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use the Goods/Services for the purposes of this Agreement only, and solely for the operation of the Client's business however, the Client shall not use nor make copies of such Intellectual Property (Goods) in connection with any work or business other than the work or business specified in writing to M2 Overland, unless express approval is given in advance by M2 Overland. If the Client is in breach of any obligation under these terms and conditions (including those relating to payment), M2 Overland may revoke the licence to use.
- 20.3 The Client shall indemnify M2 Overland against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Services or any other deficiency therein. Where the Client has supplied drawings, sketches, files or logo's to M2 Overland, the Client warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the Client agrees to indemnify M2 Overland against any action taken by a third party against M2 Overland.
- 20.4 M2 Overland may photograph, video or record by any and all means the Project for the duration thereof, and upon completion, for M2 Overland's own use and for use in exhibitions, or award competitions, or publication in journals.
- 20.5 If the Client requests to obtain the copyright to designs, drawings and documents, then M2 Overland may (at its sole discretion) supply the Client full copyright ownership of the materials subject to the Client agreeing to pay a fee as specified by M2 Overland. Any such agreement must be in writing between both parties.
- 20.6 If the Client publicises or permits the publication of the Project, M2 Overland must be given full credit for its role in the Project.
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 M2 Overland'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 M2 Overland any money the Client shall indemnify M2 Overland from and against all costs and disbursements incurred by M2 Overland in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, M2 Overland's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies M2 Overland may have under this Contract, if a Client has made payment to M2 Overland, 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 M2 Overland 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 M2 Overland's other remedies at law M2 Overland shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to M2 Overland shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to M2 Overland becomes overdue, or in M2 Overland'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 M2 Overland;
- (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.
22. **Cancellation**
- 22.1 Without prejudice to any other remedies M2 Overland may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions M2 Overland may suspend or terminate the supply of Goods to the Client. M2 Overland will not be liable to the Client for any loss or damage the Client suffers because M2 Overland has exercised its rights under this clause.
- 22.2 M2 Overland 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 M2 Overland shall repay to the Client any money paid by the Client for the Goods. M2 Overland 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 M2 Overland as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for Goods 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 M2 Overland is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. M2 Overland acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). M2 Overland acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by M2 Overland that may result in serious harm to the Client, M2 Overland will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) 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 M2 Overland in respect of Cookies where the Client utilises M2 Overland's website to make enquiries. M2 Overland 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 M2 Overland when M2 Overland sends an email to the Client, so M2 Overland may collect and review that information ("collectively Personal Information")
- If the Client consents to M2 Overland's use of Cookies on M2 Overland's website and later wishes to withdraw that consent, the Client may manage and control M2 Overland'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 M2 Overland or M2 Overland'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 M2 Overland from the Client directly or obtained by M2 Overland 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 1993.
- 23.5 The Client shall have the right to request (by e-mail) from M2 Overland, a copy of the Personal Information about the Client retained by M2 Overland and the right to request that M2 Overland correct any incorrect Personal Information.
- 23.6 M2 Overland 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 M2 Overland via e-mail. M2 Overland 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 Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.
24. **Service of Notices**
- 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.
- 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**
- 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 M2 Overland may have notice of the Trust, the Client covenants with M2 Overland as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of M2 Overland (M2 Overland 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 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Napier Courts. Except to the extent permitted by law "CGA", M2 Overland 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 M2 Overland of these terms and conditions (alternatively M2 Overland's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.4 M2 Overland may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.5 The Client cannot licence or assign without the written approval of M2 Overland.
- 26.6 M2 Overland 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 M2 Overland's sub-contractors without the authority of M2 Overland.
- 26.7 The Client agrees that M2 Overland 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 M2 Overland to provide Goods to the Client.
- 26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.