

# Standard Terms

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Tow.com.au Pty Ltd (**Tow.com.au**)

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## 1. Defined terms & interpretation

### 1.1 Definitions

In these terms unless the contrary intention appears:

**Agreement** means any agreement entered into that incorporates these terms and conditions.

**Body Corporate** has the meaning given to it by the relevant Body Corporate Act applicable to the State or Territory where the Customer Premises are located, and includes references to "owners corporation", "strata corporation" and "strata company".

**Body Corporate Act** means whichever of the *Body Corporate and Community Management Act 1997* (Qld), the *Strata Schemes Management Act 1996* (NSW), the *Owners Corporation Act 2006* (Vic), the *Strata Titles Act 1988* (SA), *Titles Act 1985* (WA), the *Strata Titles Act 1998* (Tas), the *Unit Titles (Management) Act 2011* (ACT) or the *Unit Titles Act* (NT), as amended and in force from time to time that Territory in which the Customer Premises are located.

**Business Day** means a day that is not a Saturday, Sunday, bank holiday or public holiday in the State or Territory in which the Agreement is sought to be enforced.

**Claim** includes actions, suits, causes of action, proceedings, debts, dues, costs, claims, liabilities, demands, damages, losses, costs and expenses of any description, decisions, judgments and orders either at law or in equity or arising under any statute.

**Commencement Date** means the date that the Agreement is signed by the last party.

**Consequential Loss** means any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity, or cost of finance.

**Contractor** means Tow.com.au

**Customer** means the customer to an Agreement.

**Customer's Obligations** means the matters set out at clause 3 of these terms.

**Customer Premises** includes any part that does not form a Private Parking Lot and includes a regulated parking area within the meaning of the Body Corporate Act.

**Customer Representative** means a person nominated as such by the Customer.

**Driver** has the meaning given to it by the relevant Transport Act applicable to the State or Territory where the Customer Premises are located.

**Law** includes all present and future:

- (a) statutes of the Commonwealth of Australia, statutes of the States and Territories of Australia, statutes of any other State, territory or foreign

country having jurisdiction over the subject matter of this Agreement and the Services; and

- (b) regulations, by-laws, statutory interests and orders made under any of those statutes.

**Loss** includes any loss, damage, liability or obligation, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense on a full indemnity basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Motor Vehicle** means all motor vehicles as that term is defined by the relevant Transport Act applicable to the State or Territory where the Customer Premises are located and, to avoid doubt, includes motorbikes.

**Motor Vehicle Collection Release** means the release signed by the Motor Vehicle Owner or Driver upon collection of the Motor Vehicle from the Contractor, which may include the wording provided for at Schedule 4.

**Motor Vehicle Towing Services** means the services as set out in the Service Schedule.

**Occupier of a Private Parking Lot** means—

- (a) a resident owner or resident lessee of a Private Parking Lot, or someone else authorised to occupy a Private Parking Lot; or
- (b) a person who occupies a Private Parking Lot for business purposes.

**Owner of a Private Parking Lot** means the person who is, or is entitled to be, the registered owner of a Private Parking Lot, and includes a mortgagee in possession of the Private Parking Lot.

**Owner** when used in relation to a Motor Vehicle, has the meaning given to it by the relevant Transport Act applicable to the State or Territory where the Customer Premises are located.

**Private Parking Lot** means a parking lot not owned, occupied and/or under the control of the Customer and does not form part of a regulated parking area under the Body Corporate Act.

**Services** means the Motor Vehicle Towing Services carried out by the Contractor as set out in the Service Schedule, and any ancillary services that can be reasonably inferred as necessary to satisfy the Contractor's obligations under this Agreement but excludes any services expressly excluded under this Agreement.

**Service Schedule** means the manner of delivery of the Services as described in Schedule 1.

**Contractor Personnel** means any of the Contractor's employees or sub-contractors.

**Contractor's Representative** means Dominic Holland.

**Third Party** means a person who is not an Owner or Occupier, but whose Motor Vehicle is located on the Customer's Premises.

**Tow** has the meaning given to it by the relevant Towing Laws applicable to the State or Territory where the Customer Premises are located. **Tow Truck** has the

meaning given to it by the relevant Towing Laws applicable to the State or Territory where the Customer Premises are located.

**Towing Laws** means whichever of the *Tow Truck Act 1973* (Qld), the *Tow Truck Regulation 2009* (Qld), the *Transport Operations (Road Use Management) Act 1995* (Qld), the *Road Transport Act 2013* (NSW), the *Tow Truck Industry Act 1998* (NSW), the *Road Safety Act 1986* (Vic), the *Accident Towing Services Act 2007* (Vic), the *Accident Towing Services Regulation 2008* (Vic), the *Road Traffic Act 1961* (SA), the *Motor Vehicles Act 1959* (SA), the *Road Traffic (Administration) Act 2008*, the *Road Traffic (Tow Truck) Regulations 1975* (WA), the *Traffic (Road Rules) Regulations 1999* (Tas), the *Traffic (Road Rules) Regulations 1999* (Tas), the *Road Transport (General) Act 1999* (ACT), the *Road Transport (Vehicle Registration) Regulations 2000* (ACT), the *Motor Vehicles Act* (NT) or the *Road Traffic Tow Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice Regulations)* (NT), as amended and in force from time to time that applies in the State or Territory in which the Customer Premises are located.

**Towing Notice** means the notice on display at the Customer's Premises, and at a minimum must include the wording provided at Schedule 2.

**Towing Request** means a request that the Customer places with the Contractor for the Motor Vehicle Towing Services and which includes, at a minimum the Motor Vehicle's details, including make, model, colour and registration number, the time the infringement or obstruction occurred, if it is a special circumstance or emergency towing and if a Towing Warning has been issued, and if so, at what time.

**Tow Warning Sign** means a warning notice which may be placed at the discretion of a Customer on a Motor Vehicle prior to making a Towing Request, and if issued must at a minimum include the wording provided at Schedule 3.

**Transport Act** means whichever of the *Transport Operations (Road Use Management) Act 1995* (Qld), *Road Transport Act 2013* (NSW), *Road Safety Act 1986* (Vic), *Road Traffic Act 1961* (SA), of the *Road Traffic (Administration) Act 2008* (WA), *Traffic (Road Rules) Regulations 1999* (Tas), *Motor Vehicles Act* (NT), or the *Road Transport (General) Act 1999* (ACT), as amended and in force from time to time that applies in the State or Territory in which the Customer Premises are located.

**Unlawful Interference, Use or Possession** means an act that would contravene whichever of section 135 of the *Transport Operations (Road Use Management) Act 1995* (Qld), section 25 of the *Summary Offences Act 2005* (Qld), s408A of the *Criminal Code Act 1899* (Cth), section 651C of the *Local Government Act 1993* (NSW), section 147 of the *Road Transport Act 2013* (NSW), section 38 of the *Summary Offences Act 1996* (Vic), s 273(14) of the *Crimes Act* (Vic), sections 70 and 90C of the *Road Safety Act 1986* (Vic), sections 86A and 134A of the *Criminal Law Consolidation Act 1935* (SA), section 371A of the *Criminal Code Act Compilation Act 1913* (WA), section 37B of the *Police Offences Act 1935* (Tas), section 318 of the *Criminal Code 2002* (ACT), section 82 of the *Road Transport (General) Act 1999* or sections 210, 218 of the *Criminal Code Act 1983* (NT), as amended and in force from time to time that applies in the State or Territory in which the Customer Premises are located.

## 1.2 Interpretation

In these terms and conditions, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of the Agreement;
- (b) the singular includes the plural and vice versa;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) where there are two or more persons bound or to be bound an Agreement or obligation binds those persons severally and any two or more of them jointly;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns;
- (f) a reference to a document or Agreement, including this Agreement, includes a reference to that document or Agreement as novated, altered or replaced from time to time;
- (g) a reference to any thing includes the whole or part of that thing and a reference to a group of things or persons includes each thing or person in that group;
- (h) a reference to dollars or \$ is a reference to Australian dollars;
- (i) the Agreement may be executed in any number of counterparts; and
- (j) words and expressions importing natural persons include partnerships, bodies corporate, associations and public authorities.

## 2. Contractor's obligations

### 2.1 Appointment

The Customer appoints the Contractor to provide:

- (a) the Services; and
- (b) such other functions or services as the parties may from time to time agree in advance in writing,

on the terms set out in the Agreement, and the Contractor accepts the appointment.

### 2.2 Service Schedule

- (a) The Contractor agrees that it will provide the Services (where relevant) to the Customer in accordance with the Service Schedule.
- (b) Unless stated otherwise in the Agreement, the Contractor must provide the Services to the Customer when requested.

### 2.3 Compliance

- (a) The Contractor must use reasonable endeavours, and must ensure that the Contractor's Personnel use reasonable endeavours, to comply with all applicable Laws and the Customer's conduct, personnel, privacy and security policies as current from time to time and notified in writing to the

Contractor's Personnel (collectively, 'Policies'), save to the extent that the Policies are inconsistent with the express terms of this agreement.

- (b) The Contractor must use reasonable endeavours, and must ensure that the Contractor's Personnel use reasonable endeavours, when entering upon the Customer's Premises, dealing with the Customer Representative or members of the public, Owners, Occupiers, or using the Customer's facilities, equipment or resources, to comply with all applicable rules, policies, standards, codes of conduct, by-laws, directions and procedures of the Customer, including those relating to security, workplace health and safety.

### 3. Customer's Obligations

#### 3.1 Authority and notice

##### **[If a Body Corporate]**

The Customer must:

- (a) take the necessary steps pursuant to the Body Corporate Act to enable the Contractor to carry out the Services on the Customer's Premises;
- (b) ensure any of its By-Laws, policies and procedures are complied with prior to making a Towing Request, including if necessary the cancellation of approval provided under the relevant Body Corporate Act or be satisfied that there is a special circumstance or emergency which requires a Motor Vehicle obstruction to be removed immediately;
- (c) display and maintain a Towing Notice on each carpark so that Third Party consent is obtained for the Contractor to provide the Services;
- (d) if the Towing Notice is one supplied by the Contractor, ensure that the Contractor is informed prior to removal or alteration, or if it becomes damaged; and
- (e) obtain written consent from the Owner of a Private Parking Lot or the Occupier of a Private Parking Lot to engage the Contractor to provide the Services to a Private Parking Lot.

The Customer may issue a Towing Warning on a Motor Vehicle prior to making a Towing Request if it chooses.

##### **[If not a Body Corporate]**

The Customer must:

- (a) take the necessary steps to enable the Contractor to carry out the Services on the Customer's Premises;
- (b) ensure its policies and procedures are complied with prior to making a Towing Request or be satisfied that there is a special circumstance or emergency which requires a Motor Vehicle obstruction to be removed immediately;
- (c) display and maintain a Towing Notice on each car park so that Third Party consent is obtained for the Contractor to provide the Services;

- (d) if the Towing Notice is one supplied by the Contractor, ensure that the Contractor is informed prior to removal or alteration, or if it becomes damaged; and
- (e) obtain written consent from the Owner of a Private Parking Lot or the Occupier of a Private Parking Lot to engage the Contractor to provide the Services to a Private Parking Lot.

The Customer may issue a Towing Warning on a Motor Vehicle prior to making a Towing Request if it chooses.

### **3.2 Access**

The Customer must ensure that the Contractor has clear and free access to the Customer's Premises at all times to enable them to undertake the Services. The Contractor shall not be liable for any loss or damage to the Customer's Premises or a Private Parking Lot (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.

### **3.3 Exclusivity**

- (a) The Customer acknowledges and agrees that, by entering into the Agreement, it is conferring exclusive rights to the Contractor to provide the Services.
- (b) The Customer will not engage any other person, business or entity in a similar business to that of the Contractor without express written authority of the Contractor.
- (c) The Customer is prevented from directly contacting any Contractor Personnel with a Towing Request.
- (d) The Contractor acknowledges that the Customer does not guarantee the volume of Towing Requests that will be issued.

## **4. Term**

### **4.1 Initial Term**

The Agreement commences on the Commencement Date and continues:

- (a) for a period of one year from the date of execution of the Agreement by the Customer unless the Agreement is extended in accordance with clause 4.2; or
- (b) it is terminated earlier in accordance with clause 10.

### **4.2 Extension of Term**

- (a) Without limiting clause 4.2(b) but subject to clause 4.2(b), at the end of the term set out in clause 4.1, this Agreement will continue on a month-to-month basis, while the Contractor is still providing Services to the Customer with the Customer's approval, until either party gives the other notice in writing that it does not wish to continue the Agreement.
- (b) The parties agree that the Customer may, at its option, renew the Agreement on the same terms by giving the Contractor at least 10 Business Days notice in writing. This option may be exercised while the Agreement is in force.



- (c) Nothing in clause 4.2(a) relieves the Contractor of any obligation under this Agreement to provide the Services within any timeframes set out in this Agreement or otherwise agreed with the Customer.

## 5. Payment

### 5.1 No fees for the Services

The parties acknowledge and agree that, in consideration of the exclusive agreement to provide the Services, no fees, charges or costs are payable by the Customer for the Contractor's performance of the Services and its other obligations under this Agreement.

### 5.2 Recovery of costs from Owner or Driver

The Contractor acknowledges and agrees that it must:

- (a) claim all of the costs and expenses it incurs in relation to the Services from the Motor Vehicle's Owner or Driver; and
- (b) have the Motor Vehicle Owner or Driver execute a Motor Vehicle Collection Release at the time the Motor Vehicle is collected from the Contractor.

## 6. Contractor's warranties and representations

The Contractor warrants and represents to the Customer that:

- (a) the Services will be of the standard expected of an ordinary and capable person carrying out like Services, will be carried out promptly with all due skill, care and diligence;
- (b) the Contractor and the Contractor's Personnel will not otherwise act in any manner which could unreasonably disrupt the Customer's operations, reputation, interests or goodwill;
- (c) the Contractor and the Contractor's Personnel are suitably qualified and licensed to provide the Services in accordance with the terms of this Agreement.

## 7. Customer's warranties and representations

The Customer warrants and represents to the Contractor that:

- (a) it is duly authorised to contract with the Contractor to carry out the Services; and
- (b) the Customer will comply with all Laws, By-Laws and codes of conduct that may apply to the provision of the Services and in particular (but without limitation) must ensure strict compliance with the Body Corporate Act, if applicable.

## 8. Customer Representative's delegated authority

The Customer warrants that:

- (a) the Customer Representative is authorised to do all things on behalf of the Customer necessary or desirable to facilitate provision of the Services, and perform its functions and duties under this Agreement;

- (b) the Customer Representative is authorised to give instructions, directions, consents and notices, including Towing Requests, to the Contractor as required by and pursuant to this Agreement on behalf of the Customer;
- (c) where the consent of the Customer is required under this Agreement in respect of any matter, the Contractor may obtain such consent from the Customer Representative;
- (d) the Customer must notify the Contractor in writing of any change in the identity of the Customer Representative.

## 9. Liability and indemnities

### 9.1 Customer's indemnities

The Customer indemnifies the Contractor against any Claims, damages, expenses (including legal costs on an indemnity basis) Losses or liabilities which the Contractor suffers or incurs (including through the negligence of the Contractor or Contractor Personnel) in relation to:

- (a) any claim against the Contractor by the Owner or Driver of a Motor Vehicle;
- (b) any Claim made by an Owner of a Private Parking Lot or the Occupier of a Private Parking Lot against the Contractor relating to the Towing Request, Unlawful Interference, Use or Possession with, or general detainment of, the Motor Vehicle at law, the Towing Laws or otherwise;
- (c) any penalties, writs, enforcement orders, or judgments imposed resulting from a Towing Request; and
- (d) without limitation to the other provisions of this clause, any liability arising from the absence of a Towing Notice or Towing Notices on the Customer's premises.

### 9.2 Consequential Loss

Neither party is liable to the other party under this Agreement for any Consequential Loss.

### 9.3 Other terms and representations excluded

The parties agree that

- (a) this agreement includes all of the terms of their relationship;
- (b) all other terms are, to the extent permitted by law, excluded; and
- (c) each party has entered into this agreement on the basis of its own enquires and has not relied upon any representation made or information provided by the other party.

## 10. Termination by a party

### 10.1 Termination

The Contractor may terminate this Agreement with immediate effect by giving notice to the Customer if:

- (a) the Customer breaches any provision of this Agreement and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or

- (b) the Customer breaches a material provision of this Agreement where that breach is not capable of remedy.

## **10.2 Notification of events**

The Customer must notify the Contractor immediately if:

- (a) there is any change in the direct or indirect beneficial ownership or control of the Customer Premises;
- (b) there is any change in the direct or indirect beneficial ownership or control of the Customer;
- (c) it disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (d) it ceases to carry on business;
- (e) it ceases to be able to pay its debts as they become due;
- (f) any step is taken by a mortgagee to take possession or dispose of the whole or any part of its assets, operations or business;
- (g) any step is taken to enter into any arrangement between the Customer and its creditors;
- (h) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of its assets or business; or
- (i) where the Customer is a partnership, any step is taken to dissolve that partnership.

## **10.3 Accrued rights and remedies**

Termination of this Agreement under this clause 10 does not affect any accrued rights or remedies of either party.

## **11. General**

### **11.1 Assignment**

The Contractor may only assign, encumber, declare a trust over or otherwise deal with its rights under this Agreement with the written consent of the Customer.

### **11.2 Relationship of the parties**

The relationship of the parties under this Agreement is one of principal and contractor and the Customer is not by virtue of this Agreement in partnership or joint venture with the Contractor and must not represent itself or allow itself to be represented as a partner, joint venturer, officer or employee of the Contractor.

### **11.3 Governing law**

This Agreement is governed by the laws of the State or Territory of Australia where the Customer Premises are located.

### **11.4 Costs**

Each party must pay its own costs of negotiating, preparing and executing this agreement.

### **11.5 Entire Agreement**

The Agreement embodies the entire Agreement between the parties to this Agreement in respect of the subject matter of the Agreement.

### **11.6 Severability**

Part or all of any provision of the Agreement that is illegal or unenforceable may be severed from the Agreement and the remaining provisions of the Agreement continue in force.

### **11.7 Counterparts**

The Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one instrument.

### **11.8 Execution**

The Agreement shall be binding when all parties to it have executed it or the one page Agreement, though it may be executed as counterparts.

**Executed by [insert]** in accordance with Section 127 of the *Corporations Act 2001*

\_\_\_\_\_  
Signature of director

< \_\_\_\_\_ <  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

**Executed by Tow.com.au Pty Ltd** in accordance with Section 127 of the *Corporations Act 2001*

\_\_\_\_\_  
Signature of director

< \_\_\_\_\_ <  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

# Schedule 1 – Service Schedule

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## 1. Introduction

- 1.1 This Schedule 1 sets out the intended scope of the Services to be provided by the Contractor and to provide a description of what each element of the Services entails.

## 2. Services

- 2.1 The Contractor will provide the Motor Vehicle Towing Services at the request of the Customer in circumstances where a Motor Vehicle is located on the Customer's Premises.
- 2.2 Upon request by the Customer, the Contractor will provide the Motor Vehicle Towing Services:
- (a) where the Motor Vehicle is located at the Customer's Premises;
  - (b) or where the Motor Vehicle is located on a Private Parking Lot, only with express written approval by the Owner or Occupier of the Private Parking Lot;
  - (c) 24 hours per day, seven days per week, 365 days per year; and
  - (d) for all Motor Vehicles.
- 2.3 Subject to clause 2.4 below, when providing the Motor Vehicle Towing Services, the Contractor must at all times comply with the Towing Laws.
- 2.4 When providing the Motor Vehicle Towing Services, the Contractor must use reasonable endeavours to comply with the Towing Laws including the minimum vehicle standards.
- 2.5 Without limiting clause 2.4 above, when providing the Motor Vehicle Towing Services, the Contractor must use reasonable endeavours to ensure that Motor Vehicles (and any personal property contained on or in the Motor Vehicle) are not destroyed, damaged, or lost.
- 2.6 When providing the Motor Vehicle Towing Services, the Customer and the Contractor must comply with the following process:
- (a) the Customer will only submit a Towing Request with the Contractor once any By-Laws, polices and procedures have been followed with respect to the infringement of any parking requirements; and
  - (b) the Contractor must then:
    - (i) contact the Customer to confirm its acceptance of the Towing Request and provide an estimated time of arrival at the Customer's Premises (the Customer may, in its sole discretion, cancel the Towing Request if the Towing estimated time of arrival is not suitable considering the circumstances); and
    - (ii) dispatch a Tow Truck to the Customer's Premises and tow the Motor Vehicle to the Contractor's holding yard when, and only when, the Customer has accepted the Towing Request.

# Schedule 2 – Towing Notice

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## **VISITOR PARKING ONLY [OR] BUSINESS PARKING ONLY**

Parking without approval is unlawful. Any obstructing vehicle, vehicles parked without approval, or parked in excess of the approved time will be towed.

By parking here you agree to these terms.

Towing Fees will apply.

Phone: **[insert Tow.com.au number]**

# Schedule 3 – Towing Warning

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## FINAL WARNING

This vehicle is unlawfully parked and obstructing the use of this property.

It will be towed without further notice and at your expense.

Date: [insert date]

[insert Customer]

[insert Premises]



# Schedule 4 – Motor Vehicle Collection Release

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## Motor Vehicle Collection Release & Indemnity

Date vehicle collected: [insert date of collection]

Collection Location: [insert Customer Premises]

Tow.com.au Job Number: [insert job number]

I, [insert name], of [insert address] acknowledge receipt of the motor vehicle detailed below. I release and indemnify Tow.com.au and [Customer] (including any employees or sub-contractors) from any and all action that may be taken with respect to the towing of the motor vehicle and its release to me.

I declare that I am entitled to take lawful possession of the motor vehicle and in the event this is found to be to the contrary, I undertake to release and indemnify Tow.com.au and [Customer] from any and all claims that may be made by any person, including by the owner of the motor vehicle.

Motor Vehicle Description	
Year:	[insert]
Make & Model:	[insert]
Colour:	[insert]
Body Shape	[insert]
Registration Number:	[insert]

Name of person taking possession of the motor vehicle: [insert]

Signature: [insert]

Identification (eg Drivers Licence and number): [insert]

Tow.com.au representative: [insert]

Signature: [insert]

Date & Time of collection: [insert]

Fee paid: \$[insert]