



ELITE TRAILERS AND FLOATS LTD TERMS AND CONDITIONS

Elite Trailers and Floats Ltd – (referred to herein as “we” or “us”) agree to supply goods (“the Goods”) to you, the Customer, in return for the payment of the price for those

Goods and according to these General Terms and Conditions. Acceptance of delivery or receipt of any Goods will (notwithstanding any statement to the contrary by you or your employees or agents) constitute acceptance of these General Terms and Conditions.

1 Price

1.1 All prices include GST (if any, unless otherwise stated), any other applicable taxes and duties and insurance/freight/delivery/handling charges not expressly included in the price.

You agree to pay these items (as applicable) in addition to the price, whether they are imposed before or after your order.

1.2 All amounts are quoted in New Zealand Dollars unless expressly provided to the contrary.

2 Payment and Default

2.1 Payment must be made in cash, credit card, bank transfer or eftpos prior to delivery of your order unless we agree otherwise in writing.

2.2 If we allow you credit, payment is due by the 20th day of the month following the date of invoice. You must not withhold payment or make any deductions of any nature whether by way of set off, counterclaim or otherwise from any amount you owe us.

We can alter the terms of payment with effect from the date that we notify you of such change.

2.3 We can impose a credit limit on you at any time, and alter it at our sole discretion with effect from the date that we notify you of such change. If you exceed your credit limit, we can refuse to supply Goods to you. If we at any time consider your credit worthiness to be unsatisfactory, we can require security for payment.

3 Delivery and Risk

3.1 Risk in any Goods sold to you will pass to you on Delivery.

3.2 “Delivery” shall be the time the Goods are dispatched to you, whether or not the Goods are to be uplifted by you or by a carrier arranged by you or us.

3.3 Any time stated for delivery is an estimate only, but we will use all reasonable endeavours to deliver at the date agreed between us. Time is not of the essence.

4 Return of Goods

4.1 No returns will be accepted unless we have previously agreed in writing. If we agree to the return of Goods, they must be unsoiled, undamaged and in a resaleable condition, or you will pay for all costs of replacement or repair, and delivered free to our premises unless otherwise agreed by us in writing.

5 Warranties

5.1 We warrant that for the duration of:

Trailer Warranty:

12 Month Replacement of Parts & 24 Month Structural Warranty

Float Warranty:

24 Months

from the date of Delivery that the Goods, will be free from any manufacturers faults or defects arising out of reasonable and normal use. The following provisions apply to this warranty:

- (a) It covers parts or labour, but not freight;
- (b) It applies only to the original purchaser;
- (c) It does not cover any damage caused by incorrect or inappropriate use or attempt to repair or alter the Goods;
- (d) It does not cover damage or wear caused by accident, neglect, vandalism or environmental damage.

Exclusion of Warranties

5.2 If you are acquiring the Goods for business purposes, the guarantees under the Consumer Guarantees Act 1993 do not apply.

5.3 Unless you have rights under the Consumer Guarantees Act 1993 or other legislation, which cannot be excluded or limited, there are no warranties express or implied apart from that listed in clause 5.1. This disclaimer includes implied warranties as to merchantability and fitness for a particular purpose.

5.4 Except as provided in clause 5.1, to the maximum extent permitted by law all terms, warranties or representations whether statutory or otherwise and whether express or implied, oral or written as to the state, merchantability, description, quality, purpose or fitness of the Goods are hereby expressly excluded.

6 Discrepancies and Defective Goods

6.1 You agree to let us know in writing within 7 days of delivery of any discrepancy in your order when delivered or any damage or defect (“your claim”) in the Goods. After that time you agree you have accepted that the order as delivered is correct.

6.2 If we receive notice of your claim within 7 days of delivery of the Goods (but not otherwise) and the Goods are damaged or defective then we will make every endeavour to remedy the problem at our sole option by repairing the Goods or relevant parts thereof, replacing the Goods or relevant parts thereof, refunding you the price paid for the particular defective or damaged Goods or relevant parts thereof the subject of your claim, provided however that we will not be responsible for any damage or defect where you or people you are responsible for have caused it.

7 Security Interest

7.1 Ownership of all Goods supplied to you by us will not pass upon delivery, but will remain with us until we have received total payment in clear funds of all moneys owing by you to us (whether relating to those Goods, or services, or to any other personal property supplied). We hold a Security Interest in all Goods supplied to you for payment of those moneys.

7.2 Until all moneys due to us are paid by you, you agree to act as a fiduciary of us and that you will:

- (a) Not sell, charge or part with possession of the Goods, otherwise than for their full values in the ordinary course of business;
- (b) Not alter, obliterate, or deface the Goods and will not alter, obliterate, deface, cover up, or remove any identity mark indicating that the Goods are our property;
- (c) Store the Goods in such manner that they are clearly identifiable as our property and must keep separate records of the Goods;
- (d) Hold the proceeds of the resale of the Goods in trust for us, in a separate and identifiable manner.

7.3 At our request, you will promptly deliver, execute or do (or cause to be executed, delivered or done) any documents, contracts, agreements, deeds or other action that we may require from time to time to give effect to these General Terms and Conditions, including without limitation doing all such things as we may require to ensure that the Security Interest created under these General Terms and Conditions constitutes a perfected Security Interest over the Goods. This includes, but is not limited to, providing any information we request to complete a financing statement or a financing change statement for the Personal Property Securities Register.

7.4 You waive any right to receive a verification statement under the Personal Property Securities Act 1999 (“PPSA”).

7.5 Nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these General Terms and Conditions. Your rights as a debtor in sections 116, 120(2), 121, 125, 129 and 131 of the PPSA shall not apply to these General Terms and Conditions.

8 Limitation of Liability

8.1 We shall not be liable to you for any loss or damage arising from any delay or failure to perform our obligations due to a matter beyond our control.

8.2 Your sole remedy against us shall be limited to breach of contract and notwithstanding any relief or remedy to which you or any other person may have been entitled under the Contractual Remedies Act 1979 or at law or in equity, the extent of any such liability shall be limited to an amount equal to the price charged for the particular Goods to which the breach relates. We will not, in any case, be liable for any other losses or damages whether general, exemplary, punitive, direct, indirect or consequential, including loss of business profits.

8.3 No action may be brought against us unless notice of such claim is given to us within 48 hours of discovery by you or your agents of the matters which give rise to the claim.

8.4 We shall be released from all or any liability unless proceedings are brought in a Court of competent jurisdiction within one year of the date of delivery or of provision of the Goods as the case may be.

8.5 Notwithstanding anything herein no employee, agent or director of ours will be liable to you for breach of any duty of care in Tort (including negligence), Contract, Equity or otherwise in relation to the performance of obligations under these General Terms and Conditions or in relation to the subject matter of this agreement.

9 Default

9.1 If you do not pay any monies owed to us (“the unpaid monies”) within 10 days of the due date, we may (without prejudice to any of our other rights):

- (a) Demand immediate payment of all or any part of any monies owing (whether or not then due);
- (b) Charge penalty interest at a rate of 2.5% per month calculated on a daily basis on the unpaid monies from the due date until payment in full is made;
- (c) Withhold without notice delivery or supply of Goods ordered by you;
- (d) Cancel this agreement and seek damages;
- (e) Recover any Goods delivered to you. You agree we may enter your premises or any other place where the Goods are stored, or where we reasonably believe the Goods may be stored, and take possession of and sell the Goods, even if we do not have priority over other persons having a Security Interest in the Goods. Sections 108, 109 and 120 of the PPSA do not apply to the extent that they are inconsistent with this clause.

9.2 Where you have only partly paid for the Goods and we recover them from you, we will refund the amounts you have paid from the proceeds of resale (if any) after deducting all or any other moneys owing to us (whether or not then due) and all costs incurred by us in accordance with clause 9.3.

9.3 You agree to pay, on demand, all costs incurred by us (including legal costs on a solicitor-client basis and debt collection costs) in the recovery or attempted recovery of unpaid moneys and/or the enforcement of these General Terms and Conditions or the Security Interest contained in these General Terms and Conditions.

10 Use of Information

10.1 You agree that we may obtain information about you from you or any other person (including any credit or debt collection agencies) in the course of our business, and your consent to any person providing us with such information.

10.2 You agree that we may give any information we have about you relating to your credit worthiness to any other person, including any credit or debt collection agency, for credit assessment and debt collection purposes.

10.3 If you are an individual, i.e. a natural person, you have rights under the Privacy Act 1993 to access and request the correction of any personal information that we hold about you.

11 Miscellaneous

11.1 These terms apply to all transactions where we supply Goods to you. If there is any inconsistency between these terms and any order submitted by you or any other arrangement with us, these terms prevail unless otherwise agreed by us in writing.

11.2 You may not transfer or assign all or any of your rights or obligations under this contract without our prior written consent.

11.3 In the event that any part or parts of these General Terms and Conditions shall be held illegal or null and void by any court or administrative body of competent jurisdiction, such determination shall not affect the remaining terms which shall remain in full force and effect as if such part or parts held to be illegal or void had not been included in these General Terms and Conditions.

11.4 Our contract with you and its terms are governed by, and shall be construed in accordance with, the laws of New Zealand. You agree to submit to the exclusive jurisdiction of the New Zealand Courts.

(e) In order to validate any warranty claim you must have carried regular and reasonable maintenance checks on your trailer, as set out in How to care for information/ warranty procedures attached to invoice. This includes checking all wheel bearings at least every 2-6 months. Consequential damages will not be covered under the terms of the warranty.