

**KIMBER TRAILERS PTY LTD  
TERMS AND CONDITIONS OF SALE**

**1. INTERPRETATION**

In this agreement:

“Purchaser” means the person named as the Purchaser on the Purchase Order and/or Tax Invoice.

“Delivery Date” means the date of delivery as agreed between the Purchaser and Kimber Trailers Pty Ltd (KT) and set out on the Purchase Order and/or Tax Invoice.

“Goods” means the goods KT has agreed to supply to the Purchaser as described on the Purchase Order and/or Tax Invoice and listed Specifications.

“KT” means Kimber Trailers Pty Ltd ABN 67 640 734 809

“Purchase Price” means the (tax inclusive) amount the Purchaser must pay to KT for the goods as set out on the Tax Invoice.

“Specifications” means the specifications of the Goods as described on the Tax Invoice.

“Terms and Conditions” means the terms and conditions of sale set out in this agreement and includes any additional terms and conditions agreed in writing between KT and the Purchaser.

**2. PRICE / PAYMENT / LATE PAYMENT**

2.1 The Purchaser agrees to pay KT the Purchase Price in accordance with the terms of payment.

2.2 Purchaser agrees to pay deposit to secure build dates

2.3 Payment is to be made within fourteen (14) days from the completion of works.

2.4 Late payment will incur a 3% interest charge monthly and is compounded daily.

**3. CANCELLATION OR DEFERRAL**

3.1 Once an order is accepted by KT, the Purchaser is bound by the order, and will, at KT’s discretion, pay all costs, losses, charges and expenses incurred by KT associated with any cancellation or deferral of the order by the Purchaser, including, but not limited to KT’s costs of: Purchasing the materials to manufacture the Goods; Labour Costs; Manufacturing the Goods; Re-working the Goods in order to re-sell the Goods; Selling the Goods at a lower price than the price in KT’s quote to the Purchaser as set out on the Tax Invoice; Disposing of the Goods; and Any combination of these costs.

3.2 Kimber Trailers will provide the Purchaser with a Tax Invoice setting out the costs associated with the cancellation or deferral and the Purchaser will pay the amount set out on the invoice.

**4. CHANGES TO THE SPECIFICATIONS**

4.1 The Purchaser may request a change to the Specifications by submitting a request to KT.

4.2 KT will review the request and, if approved, will inform the Purchaser of any changes to the Purchase Price, Delivery Date and/or Specifications of the Goods.

**5. DELIVERY**

5.1 Kimber Trailers will deliver the Goods in accordance with the delivery details set out on the Tax Invoice or as agreed with the Purchaser. KT is under no liability whatsoever if it does not deliver the Goods on the Delivery Date due to reasons beyond the company’s control, including but not limited to freight delays and unforeseen supplier issues.

5.2 If the Purchaser does not collect the Goods, or the Purchaser does not provide KT with forwarding instructions sufficient to enable it to deliver the Goods within 14 days of notification by KT to the Purchaser that they are ready for delivery (Deemed Delivery Date), the Purchaser is deemed to have taken delivery of the Goods and any amount stated on the Tax Invoice to be due on the Delivery Date will be due on the Deemed Delivery Date.

The Purchaser will reimburse KT for any storage charges for the Goods within 14 days of receiving an invoice from KT. Any delays incurred by the purchaser for delivery beyond 14 days will incur a storage fee of no less than \$200 per week until the Purchaser can collect the Goods.

**6. TITLE**

6.1 Title to the Goods will not pass to the Purchaser until the Purchase Price is paid in full.

6.2 All Goods that are not financed must be paid for in full before leaving the premises of KT.

6.3 All Goods that are financed and leave the premises of KT before payment is received will see the goods registered on the Personal Properties Security Register as a Purchase Money Security Interest (PMSI). Once payment is received in full for the Goods, the PMSI will be deregistered and the security interest of KT over the Goods will cease.

6.4 Until title to the Goods has passed to the Purchaser in accordance with this clause, the Purchaser holds the Goods as fiduciary bailee of KT and the Purchaser agrees to store the Goods separately so that the Goods are identifiable as KT's property. The Purchaser has the right to sell the Goods in the ordinary course of trade if the Purchaser accounts to KT for all payments, including payments by third parties, in accordance with the Purchaser's fiduciary relationship.

6.5 The risk of loss or damage to the Goods passes to the Purchaser on delivery to, or collection by, the Purchaser of the Goods.

## **7. ACCEPTANCE**

7.1 The Purchaser must examine the Goods. Unless the Purchaser gives written notice to KT of any defects in the Goods or their failure to correspond with specifications within seven days of the Delivery Date, the Purchaser is deemed to have accepted the Goods as being of merchantable quality, corresponding with Specifications and free of defects.

## **8. EXCUSABLE DELAYS**

8.1 KT is not liable for any delay in or failure to comply with these Terms and Conditions where such delay or failure was due to any cause beyond KT's reasonable control.

## **9. WARRANTY**

9.1 Kimber Trailers Pty Ltd ABN 67 640 734 809 (the KT) expressly warrants that Kimber Trailer's truck bodies and trailers and their component parts (the products) will be free from defects in material and workmanship for one (1) year from the date of delivery to the customer or the date of invoice to the customer, whichever is earlier (the warranty period).

9.2 Warranty work is to be performed by KT at KT premises.

9.3 This warranty shall only apply to the original purchaser of the goods and will not be transferrable to any third party.

9.4 This warranty does not apply to proprietary items as tyres, brakes, rims, wheels, suspensions, tarps, hoists and similar equipment which is covered by individual manufacturers and our direct supplier warranties.

9.5 This manufacturer warranty shall only apply during the Warranty period so long as the following conditions are met:

- a) The products were manufactured by the KT and were new at the date of delivery.
- b) The products have been used in accordance with legal loading and speed limits, correctly coupled and operated in such a manner as may be prescribed by KT or if KT does not prescribe such condition then in such manner as is normal for such products;
- c) The purchaser has submitted the products for testing and inspection during the warranty period in accordance with KT's owner service policy dealing with adjustments and inspections.
- d) No replacement part has been used in relation to the products other than one manufactured and supplied or approved by KT;
- e) The products have not been repaired, altered or modified in anyway whatsoever by person other than KT or its authorized service representatives;
- f) The products (or affected component parts) have been returned to KT's authorised dealer for rectification or replacement within the warranty period (the cost of transportation of the products to and from the dealer shall be paid by the purchaser).
- g) The products have been fully paid for; and
- h) The products have been maintained and serviced in accordance with the owner service policy.

9.6 This manufacturer warranty shall not make KT liable in any way for defects arising directly or indirectly from:

- a) Accidents
- b) Fair wear and tear of the products (for instance: tarps, tyres, rims, bumpers, body, paintwork)
- c) Incorrect, faulty or negligent operation or maintenance of the products including coating or cleaning of tarps, aluminium or steel work with any preparation not approved in writing by the KT;
- d) Misuse or other unsuitable operation of the products, including overloading;
- e) Negligence or error in storing, maintaining or handling the products including the use of unsuitable cleaning agents;
- f) Use of the products following discovery of a deficiency which has not been rectified;
- g) Any cause not directly attributable to the KT.

9.7 Except as provided in this manufacturer warranty, the KT makes no express warranties in respect of the products. Kimber Trailers Pty Ltd shall, in no circumstances, be liable for any damage, whether direct, indirect, special or consequential, arising in any way out of the use of or in relation to the products, whether as a result of the KT's negligence or otherwise. This included loss of freight, loss of earning or loss or contracts.

**10. WARRANTIES IMPLIED BY LAW**

10.1 Neither this clause (6) nor clause (7) excludes or limits the application of any provision of any statute (including the Trade Practices Act 1974)

where to do so would:

- a) Contravene that statute; or
- b) Cause any part of this clause to be void.
- c) KT excludes all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void.

**11. LIMITATION OF LIABILITY**

11.1 This clause operates to limit KT's liability for a breach of:

- a) The manufacturer warranty; or
- b) An implied condition or warranty (to the extent permitted by law) to any one or more of the following as determined by the KT:
  - (i) The replacement of the products or the supply of equivalent products; or
  - (ii) The repair of the products; or
  - (iii) The payment of the cost of replacing the products or of acquiring equivalent products; or
  - (iv) The payment of the cost of having the products repaired;
  - (v) In the case of goods, to any one or more of the above as determined by the KT.

11.2 Replaced parts become the property of the KT. If parts are returned under this warranty the purchaser is not thereby entitled to make any deduction from remittances or current accounts without the KT's consent.

**12. EXCLUSIONS AND LIMITATIONS**

Any error or omission in any sales literature, quotation, invoice or other document or information issued by KT is subject to correction without any liability on KT's part.

- a) This clause does not exclude or limit the application of any provision of any statute (including the Trade Practices Act 1974) where to do so would contravene that statute or cause any part of this clause to be void.
- b) KT excludes all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void (Non-excludable Condition).

Please sign to accept these Terms and Conditions:

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Full Name:

Date:     /     /

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