

TERMS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means these terms of sale governing the sale and purchase of the Trailer, and includes all attachments or annexures, amendments, or variations to this Agreement.

Consumer Guarantees means the consumer guarantees contained in the Australian Consumer Law, which is contained in Schedule 2 of the *Competition and Consumer Act 2010*.

Customer means any persons, companies or entities or persons acting on behalf of and with the authority of the Customer who Orders a Trailer and/or takes Delivery of a Trailer.

Deliver or Delivery means delivery of the Trailer to the Customer (if required as part of the Order) to the delivery address nominated by the Customer in the Order.

Deposit means the deposit described in the Order.

FWR means FWR Pty Ltd ACN 162 239 116 the supplier of the Trailer in accordance with this Agreement.

GST means Goods and Services Tax as defined under the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Intellectual Property includes but is not limited to trademarks and tradenames of FWR, regardless of whether such legal protection has been formally obtained.

Invoice means an invoice for the Purchase Price of the Trailer that complies with the taxation and other applicable laws of the country in which the invoice is issued. Where issued by FWR to the Customer, the invoice excludes GST.

Law means all applicable legislation, Acts, rules, regulations and by-laws current in the territory together with all amendments and replacing laws.

Notice means a notice in writing including those sent by facsimile, letter, email and conveyed in accordance with this Agreement.

Order means an order placed by the Customer for the Trailer which order must be in the form from time to time specified by FWR.

Party or Parties means the parties to this Agreement as specified in the Order, and includes their lawful successors and assigns. Any reference to a party will include, where applicable, any subsidiary controlled by a Party or by the same persons who control that Party.

Purchase Price means the amount payable by the Customer to FWR for the Trailer excluding GST and freight and delivery charges (if any).

Quote means the Purchase Price advise by FWR to the Customer which if accepted is binding on the Customer.

Trailer means the trailer sold to the Customer by pursuant to the terms of this Agreement with the details in the Order.

Warranty means the manufacturer's warranty, a copy of which is available on FWR website.

1.2 Interpretation

In this Agreement:

- (a) words importing any genders include all genders;
- (b) words importing the singular include the plural and vice versa;

- (c) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (d) a reference to a person includes anybody that is recognised by Law in the territory as such, whether as a natural person or a body corporate;
- (e) a reference to a party to this Agreement or another agreement or document includes the party's successors and permitted substitutes or assigns (and, where applicable, the party's legal representatives);
- (f) a reference to currency shall mean AUD exclusive of any taxes; and
- (g) a reference to legislation or regulations shall include all amendments and re-enactments.

1.3 Applicability

This Agreement applies to all Trailers supplied or to be supplied by FWR to the Customer. Unless expressly agreed to otherwise by FWR in writing, this Agreement overrides and supersedes any agreement or understanding between the parties and any other documents, including any terms and conditions contained in an Order.

2. QUOTES AND ORDERS

2.1 The Customer has requested and FWR has agreed to provide a Quote for the Trailer.

2.2 The Quote is only capable of acceptance in writing for 14 days from the date it is given to the Customer.

2.3 If the Customer accepts the Quote, FWR will email a confirmation of the Order to the Customer and include a direction to pay the Deposit.

2.4 If the Customer does not accept the Quote or the acceptance date for the Quote has lapsed, the Quote will be deemed expired. If the Customer later requests an Order based on an expired Quote, FWR may issue a new Quote with the updated Purchase Price.

2.5 Unless otherwise stated all specifications, drawings and particulars of weights, dimensions and performance characteristics submitted are approximate only. Descriptions and illustrations contained in catalogues, FWR website, price lists and other written material are intended merely to present a general idea of the goods described therein and none of these shall form part of this Agreement.

3. PRICES, ORDERS AND PAYMENTS TERMS

3.1 Once the Customer has confirmed and accepted the Order or Quote, the Customer can no longer cancel it.

3.2 The Customer must pay the balance of Purchase Price (the Purchase Price minus the Deposit) in the manner on the due date set out in the Order. This is an essential term.

3.3 The Customer must not set off against the Purchase Price any amounts due from FWR.

3.4 The prices for the Trailer are exclusive of GST, any other taxes, duties, charges, and delivery and freight costs. GST and any other applicable taxes, freight, duties, charges and costs will be payable by the Customer in addition to the Purchase Price.

3.5 Prices for freight and delivery fees will be determined once the Order or Quote is confirmed and will be indicated on the Invoice and are payable at the same time as the Purchase Price.

3.6 The Customer must pay GST and any other taxes, duties, and government charges imposed or levied on the Trailer in connection with this Agreement.

3.7 The Customer's liability to pay for the Trailer will not be offset, reduced or affected in any way as a result of any returns of, or credits or rebates relating to the Trailer unless otherwise agreed to in writing by FWR.

- 3.8 If the Customer fails to make a payment when it is due, FWR shall, in addition to all other rights and remedies available under this Agreement at law or in equity, be entitled to charge default interest at the rate of 4% per annum plus the interest rate set by the Reserve Bank of Australia calculated monthly on all amounts outstanding from the due date until payment is made.
- 3.9 Default Interest pursuant to clause 3.8 shall be:
- (a) payable on demand; and
 - (b) calculated daily from the date the payment was due to the actual date that the payment is made in full.
- 3.10 Any payment the Customer makes to FWR shall first be credited against any default interest accrued pursuant to this 3 to the actual date of payment.
- 3.11 FWR reserves the right to pass any debts incurred under this Agreement to a collection agency, where by debt collection fees will be added. In addition to any outstanding amounts, the Customer agrees to indemnify FWR for all legal costs (on a solicitor and client or full indemnity basis, whichever is greater) and other expenses incurred by FWR in connection with a demand, action, or other proceeding (including mediation, out of court settlement or any action taken for recovery of the debts from the Customer) arising out of a breach of the terms of this Agreement, including the failure by the Customer to pay an amount by the due date.
- 3.12 Without prejudice to FWR's right to refuse consent for the Customer to cancel an Order under clause 3.11, as a condition of giving such consent FWR may require that the Customer pay any and all costs reasonably incurred by FWR in relation to the cancelled Order or the cancelled part of the Order plus a reasonable profit to the date of cancellation.
- 3.13 FWR may in writing cancel an Order without liability to the Customer (save as required by relevant laws) if:
- (a) FWR reasonably forms the opinion that the Customer is insolvent or at material risk of insolvency;
 - (b) the Customer fails to pay any amount for the Trailer on the due date; or
 - (c) FWR reasonably forms the opinion that supplying the Trailer to the Customer may have a negative impact upon FWR's business or commercial reputation or image.
- 3.14 The Customer hereby gives FWR the authority to make inquiries from credit reporting agencies as to the credit and financial responsibility of the Customer and or its partners or directors as required by FWR from time to time.
- 3.15 Any director of the Customer (which is a company) shall be personally liable for the performance of the Customer's obligations under these terms and conditions.
- 3.16 A statement in writing signed by an authorised officer of FWR setting out the moneys due and owing to FWR at the date of the statement shall be sufficient evidence of the amount so due and owing until the contrary is proven.
- 4. DEPOSIT**
- 4.1 If the Order includes provision for payment of a Deposit, then:
- (a) FWR is not required to commence work or Deliver the Trailer until the Deposit has been paid in full; and
 - (b) the Deposit is immediately released to FWR and the Customer is not entitled to refund of the Deposit unless the Customer makes a valid claim for its return under the Warranty or claim under the Consumer Guarantees.
- 5. DELIVERY, TRANSFER OF TITLE AND RISK**
- 5.1 If requested by the Customer, FWR will deliver the Trailer to the Customers' address as specified in the Order or the Invoice. The Customer must make all arrangements necessary to take delivery of the Trailer whenever they are tendered for Delivery. FWR is not liable or responsible for any damage to the Trailer during Delivery.
- 5.2 Upon Delivery of the Trailer:
- (a) the Customer must promptly visually inspect the Trailer;
 - (b) within 14 days of such receipt, give FWR Notice of any defects in the Trailer;
 - (c) if there are defects arrange for the Trailer to be delivered to FWR at the Customer's expense; and
 - (d) if no Notice is given in that time, the Trailer will be deemed to be of an acceptable quality.
- 5.3 Risk in the Trailer passes to the Customer upon the Trailer being dispatched for Delivery. The Customer accepts all risk involved in the use and possession of the Trailer.
- 5.4 From the date the Trailer is dispatched for Delivery up to the date the Customer takes Delivery of the Trailer, the Customer must insure the Trailer against all loss and damage and FWR's interest must be noted on such insurance policy.
- 5.5 Title to the Trailer transfers from FWR to the Customer upon full payment of the Purchase Price for the Trailer. Until the Trailer is paid in full, the Customer must:
- (a) keep the Trailer safe and free from deterioration, destruction, loss or harm, clearly designate the Trailer is the property of FWR;
 - (b) store the Trailer in such a way that it is clearly identified as the property of FWR; and
 - (c) keep full and complete records of the physical location of the Trailer and the ownership of the Trailer by FWR.
- 5.6 This reservation of title and ownership is effective whether or not the Trailer have been altered from their supplied form, or commingled with other goods.
- 5.7 Should the Customer default in payment of all or part of the Purchase Price, FWR may enter the Customer's premises and retake possession of and permanently retain the Trailer for which full payment has not been received by FWR and may revoke all liability of the Customer on the contract of sale and delivery of the Trailer.
- 5.8 Without in any way being liable to the Customer or any person claiming through the Customer, FWR shall have the right to sell or dispose of the Trailer removed under clause 5.7 or otherwise in its sole discretion and shall not be responsible for any loss occasioned by the Customer for doing so.
- 5.9 FWR will use all reasonable endeavours to comply with the Customer's particular Delivery requirements. Where changes are made to the specifications of the Trailer, the Customer must not cancel the whole or part of an Order or claim compensation due to FWR's failure to comply with its delivery requirements or minor variations to the Trailer.
- 5.10 If for any reason beyond the control of FWR, including without limitation, strike, trade dispute, fire, flood, accident, tempest, earthquake, war declared or undeclared, blockade, governmental or quasi-governmental restraint, unavailability of goods used in the manufacture of the Trailer, loss or destruction of the Trailer, delays in transport or an act of God, an Order cannot be fulfilled at the time required by the Customer or at all, FWR is not required to supply the Trailer to the extent and for the period that it is so unable to supply the Trailer and FWR is not liable to the Customer in respect of any inability on its part to perform its obligations.
- 6. CUSTOMER'S OBLIGATIONS, CLAIMS**
- 6.1 The Customer agrees that it will undertake its own due diligence as to the suitability of the Trailer to their needs and requirements.
- 6.2 The Customer will not intentionally deface, obscure or remove from any of FWR Intellectual Property from the Trailer. This is an essential term.
- 6.3 The Customer is bound by the Warranty and must promptly notify FWR of any defects in the Trailer and must return the defective Trailer to FWR in the event of a Warranty claim or claim under the Consumer Guarantees.
- 7. INTELLECUTAL PROPERTY**

7.1 All drawings, illustrations, display material, specifications and other literature and materials for or relating to the Trailer and whether or not supplied by or on behalf of FWR to the Customer shall remain the exclusive property of FWR and shall not be transferred to any other party without the previous written consent of FWR.

7.2 The Customer acknowledges that no rights to any intellectual property in the Trailer (including, without limitation, pattern, trademark, design, copyright or plant breeders rights) are transferred to the Customer.

7.3 The Customer must notify FWR immediately if the Customer's use of the Trailer results in an actual or alleged infringement of a third party's intellectual property rights.

7.4 The Customer is solely responsible for any infringement of the intellectual property rights of any third party resulting from the Customer's use of the Trailer and the Customer must indemnify FWR for any costs, expenses, damages or liability incurred by FWR arising from any such infringement.

8. PERSONAL PROPERTY SECURITIES ACTY 2009 (PPSA)

8.1 The Customer acknowledge that these terms constitute a Security Agreement which creates (or may create) a Security Interest in favour of FWR and in all Personal Property previously supplied by FWR to the Customer and all after acquired Personal Property supplied to the Customer by FWR (or for the Customer's account) to secure the payment from time to time and at a time of any money outstanding. The Customer agrees to grant to FWR a Purchase Money Security Interest.

8.2 The Customer accepts, acknowledges and agrees that:

- (a) pursuant to the retention of title clause in clause 8.1, FWR obtains a Security Interest in the Trailer supplied by FWR to the Customer on credit, including any commingled goods; and
- (b) FWR can, without notice to the Customer, seek Registration of its Security Interest on the PPSR.

8.3 Pursuant to section 275(6) of the PPSA, the Customer agrees FWR is not required to disclose to an interested person information pertaining to FWR's Security Interest unless required to do so pursuant to the PPSA or at law generally.

8.4 The Customer will:

- (a) sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which FWR may reasonably require to enable perfection of its Security Interest or registration of a Financing Statement or Financing Change Statement on the PPSR;
- (b) not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Trailer, without the prior written consent of FWR;
- (c) give FWR not less than 14 days written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business practice); indemnify FWR against any costs FWR incurs in perfecting and maintaining its perfected Security Interest in the Trailer or such other Personal Property under the PPSA and any costs FWR may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at law generally; procure from any persons considered by FWR to be relevant to its security position, such agreement and waivers as FWR may at any time reasonably require.

8.5 To the extent permitted by the PPSA the Customer waives its rights to:

- (a) receive a notice under any of subsections 95(1), 121(4), 129(2) and 130(1) and sections 135 and 157 of the PPSA;
- (b) receive a statement that includes the information referred to in paragraph 132 (3)(d) of the PPSA ;
- (c) receive a statement under subsection 132(4) of the PPSA; redeem Collateral after default under section 142 of the PPSA unless the lessor agrees in writing to such redemption;

(d) reinstate the Security Agreement under section 143 of the PPSA ; and give a Notice of Objection under section 137 of the PPSA.

9. PRODUCT DEFECTS AND GENERAL LIABILITY

9.1 The Trailer will be of an acceptable quality at the time it is delivered, and will meet and be in accordance with the applicable standards and Laws in the territory; and if the Trailer is defective, then the Customer must notify FWR in writing within fourteen days of the Delivery. If notice is received within this timeframe, FWR may either replace or repair or pay the cost of repair or replacing the defective Trailer at its own cost.

9.2 The Customer must return the defective Trailer to FWR and FWR will effect the refund or replacement within a reasonable time of the receipt and inspection of the returned the Trailer. The Customer is responsible for all associated costs in returning the defective Trailer. FWR is not liable for returning any Trailer lost in transit.

9.3 Credit notes are offered for any refunds. Refunds are provided using the same method of the original payment method used for the Order.

9.4 FWR is not required to provide a refund or replacement if the Trailer is not defective.

10. GENERAL INDEMNITY

10.1 Except as provided by these terms, FWR shall not be under any liability, whether in contract or otherwise in respect of defects in The Trailer delivered or for any injury, damage or loss resulting from such a defect or from any work done in connection there with except to the extent that any statute applicable to these conditions prevents the exclusion, restriction or modification of such condition or warranties.

10.2 Notwithstanding any other provisions of the contract FWR shall not be liable to the Customer for any loss of profit or of contract howsoever arising nor shall FWR be under any liability whether in contract or otherwise nor for any injury, damage or loss whether consequential or otherwise save as is expressly provided in these conditions.

11. LIMITATION OF LIABILITY UNDER ACL

11.1 To the extent that goods supplied by FWR are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Customer agrees that FWR's liability for a failure to comply with a Consumer Guarantee that the Customer may have a benefit under the Australian Consumer Law (other than a guarantee under s 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of FWR, one or more of the following:

- (a) replacement of the Trailer or the supply of an equivalent Trailer;
- (b) the repair of the Trailer;
- (c) the payment of the cost of replacing the Trailer or of acquiring an equivalent Trailer; or
- (d) the payment of the cost of having the Trailer repaired.

12. UNPAID RIGHTS

12.1 Where the Customer has left the Trailer with FWR for repair, modification, exchange or for FWR to perform any other service in relation to the Trailer and FWR has not received or been tendered the whole of the price, or the payment has been dishonoured, FWR shall have:

- (a) a lien on the Trailer;
- (b) the right to retain the item for the price while FWR is in possession of the Trailer;
- (c) a right to sell the Trailer.

12.2 The lien of FWR shall continue despite the commencement of proceedings, or judgment for the price having been obtained.

13. TERMINATION

13.1 Customer's Breach

FWR is entitled to terminate this Agreement by giving Notice to that effect to the Customer if any of the following events occur:

- (a) The Customer fails to pay any amount owing to FWR within 60 days of the date of a written request by FWR to make payment.
- (b) The Customer becomes insolvent.
- (c) The Customer commits any breach of this Agreement and fails to remedy that breach within 30 days of the date of a written request from FWR to do so.
- (d) The Customer fails to follow any reasonable and lawful direction given by FWR for the purposes of safe guarding FWR's Intellectual Property or Confidential Information.
- (e) The Customer breaches any term of this Agreement that is expressed to be an essential term.

13.2 Notwithstanding termination of this Agreement, the obligations of this Agreement will continue to be binding on the Parties and fully enforceable in respect to the rights and obligations of each Party relating to:

- (a) the payment of any money outstanding;
- (b) the Warranty;
- (c) Confidential Information;
- (d) the transfer of Intellectual Property; and
- (e) obligations in this clause and otherwise in the Agreement that are expressly intended to apply after termination.

14. RELATIONSHIP

14.1 The Parties acknowledge that they are not in partnership, there is no joint venture between them or franchise arrangement, and that the only relationship between them is that of supplier of the Trailer (in the case of FWR) and as customer (in the case of the Customer) in respect of the Trailer on the terms in this Agreement. Neither Party may claim or hold itself out as having any other relationship, authority, right or entitlement to represent or act as agent of the other or to have any interest or shareholding in the other.

14.2 It is expressly agreed that nothing in this Agreement will give rise to any fiduciary relationship between FWR and the Customer and neither Party owes any fiduciary duty to the other in respect of its conduct.

14.3 It is expressly acknowledged that nothing in this Agreement confers upon FWR the right to direct the Customer to conduct its business in particular way. The Customer acknowledges that it has not paid any premium or other sum as consideration for entering into this Agreement nor has it been required as a precondition to entering into this Agreement to purchase any Trailer.

15. GENERAL

15.1 Sub-contract

FWR may subcontract all or any part of its rights and obligations under this Agreement without the Customer's consent.

15.2 Variations

FWR may change this Agreement at any time it has given to the Customer at least thirty (30) days notice in writing of the proposed change.

15.3 Waiver

- (a) The waiver by any Party of any right or entitlement or to claim in respect of any breach of this Agreement must be in writing signed by the Party so waiving. No purported waiver that is not in writing and signed by the waiving Party will have any effect whatsoever.
- (b) A waiver will not preclude that waiving Party from relying upon any such right or entitlement arising in the future or to claim in respect of any subsequent breach of this Agreement even if that future right, entitlement or subsequent is the same as that previously waived.

15.4 Notices

- (a) All Notices or requests given by either Party to the other are deemed to have been properly given if posted by mail or emailed to the email addresses set out in the Order.
- (b) Any Notice or request sent by email will be deemed served on the day after being emailed. An email record will be conclusive evidence of the date of emailing. Any Notice or request sent by mail will be deemed served 3 business days after the date of posting, not including the date of posting.
- (c) Any Notice or request sent by a Party to the other must be signed by a director or officer of the sending Party or appear on its face (where an email) to be so signed.
- (d) All Notices must be given in English.
- (e) Either Party may change its details for service of a Notice by serving a Notice on the other party setting out its new address for service or other contact address.

15.5 Force Majeure

Except for obligations to make payment, delay or non-performance by any Party will be excused if such delay or non-performance is due to an event or events outside the Party's reasonable control, including but not limited to:

- (a) acts of god;
- (b) natural disasters;
- (c) sabotage;
- (d) accident;
- (e) riot;
- (f) shortage of supplies, equipment, and materials;
- (g) strikes and lockouts;
- (h) civil unrest; or
- (i) malicious damage.

15.6 Severability

If any clause of this Agreement is invalid under any applicable such Law, the clause will be limited, narrowed, construed or altered as necessary to render it valid, but only to the extent necessary to achieve such validity. If necessary the invalid clause will be deleted from the Agreement and the remaining clauses will remain in full force and effect.

15.7 Counterparts

This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one instrument and Agreement.

15.8 Entire Agreement

- (a) This Agreement represents the entire agreement between the Parties relating to the subject matter of the Agreement and supersedes all prior agreements, understandings, representations and warranties relating to the subject matter of this Agreement.
- (b) Neither Party has relied on or been induced by any representations or promises made to it prior to entering into this Agreement in reaching its decision to enter into this Agreement on these terms.

15.9 Governing Law and Jurisdiction

It is agreed by the Parties that this Agreement is to be construed in accordance with the laws of Queensland and each Party covenants that it submits to the jurisdiction of the Courts of Queensland for the resolution of any dispute under this Agreement.