

Supply of Goods Terms and Conditions

1 Background

- 1.1** The Seller is the owner and supplier of the Goods and Services.
- 1.2** The Customer wants to purchase the Goods and Services from the Seller and has made an Order for the Goods and Services.
- 1.3** The parties agree that the Goods and Services will be supplied in accordance with this Agreement.

2 Definitions and Interpretation

2.1 In this document:

- (a) Agreement:** means this document, any order, or any document that is incorporated into this Agreement by reference.
- (b) Australian Consumer Law:** has the meaning given to it under the *Competition and Consumer Act 2010* (Cth) as implemented under State legislation.
- (c) Balance Purchase Price:** means the Purchase Price less the Deposit. Balance Purchase Price is commonly referred to as the Total Balance.
- (d) Business Day:** means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday at the Seller's principal place of business;
- (e) Customer:** means the person or company who places an order for the Goods and Services.
- (f) Claim:** includes any claim, action, demand, application, proceeding, judgment, enforcement hearing and enforcement order.
- (g) Default Rate:** means the Contract Rate applicable on the date this Agreement commences as published by the Queensland Law Society (currently 9.3%).
- (h) Delivery Date:** means the date the Seller notifies the Customer the Goods will be available for delivery.
- (i) Deposit:** means any deposit for the Goods and Services that is included in the Order.
- (j) Finance Date:** means the finance date as described in the Order.
- (k) Goods:** means goods sold or supplied by the Seller as requested by the Customer through the making of an Order.
- (l) GST:** means goods and services tax imposed through GST Law.
- (m) GST Law:** means A New Tax System (Goods and Services Tax) Act 1999 (Cth), any regulations passed under this Act, or any statutory instrument amending, consolidating or replacing it.
- (n) Law:** includes common law, equity, legislation, by-law an international law (to the extent it is applicable).
- (o) Loss:** includes any loss, liability, tax, prohibition, penalty, fine, cost or expense.
- (p) Order:** means an offer or application to purchase made by the Customer and may include written orders, over the counter orders, telephone orders or other methods for making orders as accepted by the Seller.
- (q) Payment Date:** means seven days from the date the Seller advises the Customer that the goods and services are able to be provided by the Seller.
- (r) PPSA:** means the *Personal Property Securities Act 2009* (Cth).
- (s) Purchase Price:** means the price or the method of calculation for the Goods or Services (including GST plus any delivery and on road costs) as set out in the Order including the Deposit.
- (t) Reasonable Refusal:** for Goods means Goods that:

- i.** are faulty or defective;
- ii.** are not of an acceptable quantity or quality; or
- iii.** do not comply with the relevant description.

- (u) Seller:** means Wandana Enterprises Pty Ltd A.C.N. 102 288 826 trading as Caravan World (Sunshine Coast) and as the context requires, includes its officers, employees, agents and contractors.
- (v) Services:** means any other services provided by the Seller to the Customer under the *Motor Dealers and Chattel Auctioneers Act 2014* (Qld) including consignment.
- (w) Settlement Date:** means the date in the Order when the Balance Purchase Price is due and payable.

2.2 In this Agreement, unless the context otherwise requires:

- (a)** words importing a gender include any other gender;
- (b)** words in the singular include the plural and vice versa;
- (c)** all dollar amounts refer to Australian currency;
- (d)** a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (e)** a reference to an individual or person includes a corporation or other legal entity;
- (f)** a reference to "consent" means prior written consent;
- (g)** clause headings have been included for convenience only and are not intended to affect the meaning or interpretation of this Agreement;
- (h)** if any expression is defined, other grammatical forms of that expression will have corresponding meanings; and
- (i)** if a party includes two or more persons, this Agreement will bind them jointly and each of them severally.

3 Supply of Services

3.1 Clause 3 applies when the Agreement involves the Seller providing Services to the Customer.

3.2 The Seller must:

- (a)** ensure that all Services are provided at times, at intervals and in accordance with any reasonable instructions given by the Customer;
- (b)** ensure that due care, professional skill, expertise and diligence is exercised in connection with the Services.

3.3 The Seller warrants that:

- (a)** all services will be provided to a professional standard and in accordance with applicable Laws; and
- (b)** all persons engaged to carry out the Services on its behalf are competent, and have the necessary and appropriate qualifications, licenses, admissions, memberships, skills and expertise to successfully perform the Services.

3.4 The Customer also agrees to:

- (a)** do all things and execute all documents;
- (b)** provide such information and assistance reasonably required;
- (c)** comply with all protocols for communication (as advised by Seller),

to ensure the Services can be properly performed by Seller.

4 Supply of Goods

4.1 Clause 4 applies when the Seller agrees to supply Goods to the Customer.

Title

4.2 Legal and equitable title in the Goods passes to the Customer upon payment of the full Purchase Price to the Seller.

4.3 Subject to full payment of the Purchase Price, title of the Goods will be supplied free of any encumbrances and other adverse interests.

4.4 The Customer acknowledges that until full payment of the Purchase Price is received by the Seller, and in circumstances where the Customer receives early delivery of the Goods:

- (a)** the Customer holds the goods as bailee for the Seller;
- (b)** a fiduciary relationship exists between the Customer and the Seller for the Goods; and
- (c)** subject to any express agreement which enables the Customer to use the Goods for the intended purpose before title passes, the Customer keeping the Goods in the condition which they were in when provided by the Seller, until such a time that title passes to the Customer.

Risk

4.5 Risk in the Goods passes to the Customer upon the earlier of the following:

- (a)** the Customer collects the Goods from the Seller;
- (b)** the Seller actually or constructively delivers the Goods to the Customer or the Customer's agent; or
- (c)** upon legal and equitable title in the Goods passing to the Customer.

Acceptance

4.6 Upon receiving the Goods from Seller, the Customer must:

- (a)** carry out a physical inspection of the Goods; and
- (b)** notify the Seller if the Goods do not comply with the description, conditions or warranties set out in this Agreement.

4.7 To the fullest extent permitted by Law, the Goods are accepted by the Customer when:

- (a)** the Customer collects the Goods from the Seller; or
- (b)** the Seller delivers the Goods to the Customer or the Customer's agent,

regardless of whether a physical inspection is carried out or not.

Use

4.8 The Customer agrees that to the fullest extent permitted by Law, they will only use the Goods:

- (a)** for the intended purpose for which they are designed;
- (b)** in the correct way; and
- (c)** in accordance with any relevant specifications, professional advice or user documents.

4.9 To the fullest extent permitted by Law, if the Customer:

- (a)** uses the Goods in a way that is inconsistent with 4.8, or
- (b)** damages the goods through their own negligence or failure to properly maintain the goods,

then all Customer warranties and all statutory warranties under the Australian Consumer Law will be invalidated.

4.10 To the fullest extent permitted by Law, the Customer fully releases the Seller from all Loss suffered by the Customer (or any person claiming through the Customer) as a consequence of any breach of clauses 4.8 and 4.9.

Delivery

4.11 The Seller agrees to use its best endeavours to deliver the Goods to the Customer by the Delivery Date.

4.12 The Goods will be deemed to be delivered when:

- (a) in circumstances where the Seller has agreed to deliver the Goods, at the time the Goods are received by the Customer or the Customer's agent; or
- (b) in circumstances where the Seller has not agreed to deliver the Goods, at the time the goods are retrieved by or for the Customer.

4.13 Where Seller has agreed to deliver the Goods:

- (a) the Customer will pay the Seller for all delivery costs and expenses incurred by the Seller; and
- (b) the Seller will make all reasonable efforts to have the Goods delivered to the Customer in accordance with the Customer's instructions.

4.14 Despite clause 4.11, the Seller is not liable for:

- (a) any failure to deliver, or any delay in delivery for any reason;
- (b) any damage or loss due to unloading or packaging;
- (c) except to the extent that such damage was caused by the Seller's own negligent act or omission, damage to property caused upon entering premises to deliver the Goods; or
- (d) any damage that is caused by the Customer or the Customer's agent if the Customer has agreed to coordinate the full or partial delivery of the Goods.

4.15 Any costs incurred by the Seller through any failure by the Customer to accept the Goods at the time of delivery other than by way of a Reasonable Refusal will be reimbursed by the Customer to the Seller.

4.16 The Customer acknowledges that where the Seller coordinates delivery of the Goods other than by way of a Reasonable Refusal:

- (a) delivery charges and estimated delivery times depend on where the Goods are being delivered; and
- (b) it is the Customer's responsibility to ensure that all delivery information is correct.

Representations and Fitness for Purpose

4.17 To the fullest extent permitted by Law, all representations, warranties, guarantees and implied terms in relation to the Goods are hereby excluded.

4.18 The Customer agrees that if it is aware (or should be aware) that the Goods are for a particular purpose that is not clearly identifiable or obvious (having regard to the nature of the Goods), the Customer must clearly specify that purpose at the time of ordering the Goods.

4.19 The Customer also acknowledges that:

- (a) it has made its own enquiries in relation to the suitability and fitness of the Goods; and
- (b) it does not rely on any warranty, condition, description or representation by the Seller in relation to their suitability and fitness of the Goods for a particular purpose.

5 Payment and Review

Payment

5.1 Subject to clause 8 (GST) and in consideration for the Goods and Services provided under this Agreement, the Customer will pay the Seller the Purchase Price for the Goods and Services.

Method of Payment

5.2 The Customer must:

- (a) pay the Purchase Price for the Goods and Services as cleared funds without any deduction or set off; and
- (b) pay any stamp duty assessed on this document or fee to register or maintain any security interest held by the Seller in respect of Goods and Services supplied to the Customer.

5.3 If the Customer pays all or any part of the Purchase Price by cheque and the cheque is dishonoured, the Seller is entitled to treat the dishonour as a repudiation of this Agreement.

Deposit and Balance Purchase Price

5.4 Where the Order specifies the Customer is required to pay a Deposit, the Customer must:

- (a) pay that Deposit at the time the Order is placed; and

(b) pay the Balance Purchase Price on the Payment Date, as received by the Seller.

5.5 The Customer will be in default if they do not pay the Deposit and the Balance Purchase Price when required.

5.6 The Seller may recover from the Customer as a liquidated debt any part of the Deposit which is not paid when required.

Interest

5.7 If all or any part of Purchase Price is not paid by the date it is due, the Seller may charge the Customer with interest at the Default Rate.

Review

5.8 The Customer acknowledges that the Purchase Price for the Goods may change before the Delivery Date due to factors beyond the Seller's reasonable control which may affect price.

5.9 Notwithstanding clauses 5.4 - 5.6, if clause 5.8 applies the Seller may review and adjust the Purchase Price before the Delivery Date by:

- (a) notifying the Customer of the of the change;
- (b) providing evidence as to the reasons for the change; and
- (c) providing the Customer with an adjusted tax invoice for the difference owing.

5.10 If the Customer receives an adjusted tax invoice under clause 5.9(c), the Customer may:

- (a) accept the variation to the Purchase Price; or
- (b) terminate this Agreement,

by giving the Seller written notice to this effect.

5.11 If the Customer wishes to terminate this Agreement under clause 5.10(b), the notice to terminate must be given to the Seller no later than three days after the Customer receives the adjusted tax invoice from the Seller.

5.12 If the Customer gives a notice under clause 5.11, the Seller must refund all monies paid by the Customer fourteen days of receiving the notice.

5.13 If the Customer gives notice accepting the price variation under clause 5.10(a) or does not provide notice under clause 5.10(b) as prescribed, the Customer:

- (a) is deemed to have accepted the variation to the Purchase Price; and
- (b) must pay the adjusted tax invoice by the date on the invoice or the Delivery Date (whichever is earlier).

6 Finance

6.1 If this Agreement is subject to finance:

- (a) it is conditional upon the Customer getting a loan approval to pay all or part of the Purchase Price by the Finance Date; and
- (b) the Customer must use their best efforts to get a reasonably satisfactory financial approval by the Finance Date.

6.2 The Customer must give the Seller notice that:

- (a) approval has not been obtained by the Finance Date and the Customer terminates this Agreement; or
- (b) the finance condition has been satisfied or waived by the Customer.

6.3 The Seller may terminate this Agreement by notice to the Customer if notice is not given under clause 6.2 by 5.00pm on the Finance Date.

6.4 The Seller's rights under clause 6.3 are subject to the Customer's continuing right to give written notice to the Customer's satisfaction, termination or waiver under clause 6.2.

6.5 The Customer requires the Seller to assist it in procuring finance:

- (a) the Customer must notify the Seller of this at the time the Order is placed; and
- (b) the Seller must notify the Customer of whether the Customer's finance application is successful or unsuccessful as soon as it is notified.

7 Trade-Ins

7.1 Where the Order says the Purchase Price is to be paid in whole or in part through traded goods belonging to the Customer:

(a) the Customer must deliver the trade-in to the Seller free of any encumbrances on or before the Delivery Date; and

(b) the Seller must credit the agreed amount for the traded goods off the Purchase Price.

7.2 The Customer agrees that if the Seller offers a value for a trade-in without having the benefit of performing a physical inspection of the goods:

- (a) that value is subject to the Seller performing a physical inspection of the trade-in goods; and
- (b) the Seller reserves the right to adjust the value offered for the trade-in goods if a physical inspection reveals that the trade-in goods is inconsistent with the condition and description provided to the Seller before the physical inspection.

7.3 If the Agreement is also subject to finance under clause 6 but the Seller receives early possession of the traded goods before the Finance Date, the Seller cannot sell, dispose of or accepted the trade-in until the Finance condition is satisfied.

7.4 If the traded goods are materially different in condition to what they were when they were inspected by the Seller when calculating the value of the trade-in, the Seller may:

- (a) terminate the Agreement; or
- (b) reduce the amount the Seller is prepared to allow for the trade-in and adjust the Purchase Price accordingly.

7.5 If there is a dispute in respect of any adjustment made under this clause 7, the parties agree to:

- (a) have their dispute resolved by a dispute resolution practitioner appointed by the Chief Executive Officer of the Caravan Trade and Industries Association of Queensland; and
- (b) share and pay the cost associated with engaging the dispute resolution practitioner in equal shares.

8 Good and Services Tax

8.1 Terms used in this clause have the meaning given to them in GST Law and all amounts payable under this Agreement are excluding GST.

8.2 Where Goods and Services provided under this Agreement are:

- (a) a taxable supply; and
- (b) the consideration for that supply excludes GST,

the recipient must pay an amount equal to the GST in addition to the consideration payable for the supply.

8.3 The amount of GST will be calculated at the prevailing GST rate.

8.4 If the GST rate is varied, the consideration payable for any supply under this Agreement will be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.

8.5 Where GST applies to a supply made under this Agreement, the supplier will deliver to the recipient a valid tax invoice or adjustment note at, or before the time payment for the supply is required.

8.6 If an adjustment event occurs in connection with any taxable supply made under this Agreement:

- (a) the amount payable by the recipient will be recalculated to reflect the adjustment event; and
- (b) payment for the adjustment event will be made by the recipient to the supplier or by the supplier to the recipient (as the case requires).

8.7 Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits for the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

9 Representations and Fitness for Purpose

9.1 To the fullest extent permitted by Law, all representations, warranties, guarantees and implied terms in relation to the Goods and Services (whether implied or otherwise) are hereby excluded.

9.2 The Customer agrees that if it is aware (or should be aware) that the Goods and Services are for a particular purpose, the Customer must clearly specify that purpose at the time of making the Order.

9.3 The Customer also acknowledges that:

- (a) it has made its own enquiries in relation to the suitability of the Goods and Services; and
- (b) it does not rely on any warranty, condition, description or representation by Seller in relation to their suitability of the Goods and Services for a particular purpose.

10 Limitation of Liability

10.1 Subject to this clause 10 and to the fullest extent permitted by Law, the sole obligation of the Seller under this Agreement is to:

- (a) use its best endeavours to provide the Goods and Services; or
- (b) where statutory conditions or statutory warranties are applicable, to:
 - i. supply the Services again;
 - ii. repair or replace (at the Seller's discretion) any part of a Goods which is found to be defective during the relevant warranty period; or
 - iii. where (i) and (ii) are not capable of providing an adequate remedy, to provide a refund equal to the value of the Purchase Price payable under the Order for the relevant Goods and Services.

10.2 In no event shall the Seller be liable for any Loss that is the subject of any Claim related to:

- (a) faulty design;
- (b) the negligent or faulty installation, misuse or use of Goods supplied by the Seller;
- (c) using the Goods in a way that is inconsistent with the manufacturer's recommendations and specifications;
- (d) where the Goods involve the sale of a caravan, mobile home or boat, by towing the Goods with a vehicle or other equipment that is:
 - i. that is not within the legal towing limit (having regard to the nature, design and weight of the Goods);
 - ii. defective; and
 - iii. not otherwise suitable for the relevant purpose;
- (e) negligent or misleading advice;
- (f) direct Loss resulting from the Customer's actual, attempted or failure to use the relevant Goods to rely on the relevant Services; and
- (g) any indirect, special or consequential Loss or injury to any person, corporation or other entity that arises through the Seller's negligence, breach of contract or under any other theory of liability.

10.3 If any Goods and Services supplied under this Agreement are supplied to the Customer as a 'consumer' under the Australian Consumer Law:

- (a) the consumer will have the benefit of certain non-excludable rights and remedies for those goods or services; and
- (b) nothing in these terms and conditions excludes, restricts or modifies any condition, warranty, right or remedy available under the Australian Consumer Law.

10.4 If the Goods and Services are not acquired for ordinary personal, domestic or household use under the Australian Consumer Law, the Seller limits its liability for payment to the Customer (or any person claiming through the Customer) of an amount equal to the lowest of:

- (a) the supply of the Services again;
- (b) the cost of replacing the goods or supplying equivalent goods;
- (c) the cost of repair of the goods;
- (d) the cost of having the goods repaired or replaced; or
- (e) where 10.4(a)-(d) are not capable of providing an appropriate remedy, to provide a refund equal to the value of the Purchase Price under the Order for the relevant Goods and Services.

10.5 The Customer also acknowledges that if the Seller suffers a loss in connection with attending to and servicing a request from the Customer that is not covered by:

- (a) a voluntary warranty; or
 - (b) a statutory warranty under Australian Consumer Law,
- the Customer must reimburse the Seller for reasonable losses suffered and other costs incurred in connection with attending to such requests.

11 Confidential Information

11.1 If the Customer receives any confidential information belonging to the Seller that is not publicly known, the Customer must not use or disclose such information:

- (a) without the Seller's consent; or
- (b) unless the disclosure is required by Law.

12 Termination

12.1 The Seller may terminate this Agreement by giving written notice if:

- (a) the Customer breaches an essential term that cannot be remedied;
- (b) the Customer breaches any other term of this Agreement that is not remedied within 14 days of the Customer receiving written notice from the Seller about the breach; or
- (c) the Customer:
 - i. becomes bankrupt or insolvent;
 - ii. becomes subject to any form of external administration;
 - iii. enters into an arrangement with its creditors or takes advantage of any Laws in force in connection with insolvent debtors; or
 - iv. is wound up either voluntarily or involuntarily.

12.2 Termination of this Agreement will not:

- (a) affect any claim or action the Seller has against the Customer by reason of any prior breach of this Agreement; or
- (b) relieve the Customer of any obligation under this Agreement which survives its early termination or expiry.

12.3 If this Agreement is terminated by the Seller then addition to any other right or remedy, the Seller may:

- (a) require the Customer to pay all legal costs on an indemnity basis;
- (b) require the Customer to pay any other expenses incurred in connection with the enforcement or attempted enforcement of any rights under this Agreement (including collection agent costs, entry and removal costs and dishonour fees);
- (c) withhold the future delivery of Goods regardless of whether they are in transit or not;
- (d) withhold the future supply of Services regardless of whether the supply has commenced or not;
- (e) enter the Customer's premises or any other premises where the Goods are stored for the purpose of repossessing those Goods;
- (f) dispose of any repossessed Goods and recovering the difference between the Purchase Price and the net proceeds following the sale of those Goods; or
- (g) perfect and register any security interest that is provided under this Agreement.

13 Indemnity

13.1 To the fullest extent permitted by Law, the Customer indemnifies the Seller from all Loss resulting from any Claim that arises because:

- (a) the Customer; or
- (b) any third party engaged by the Customer,

breaches any term of this Agreement.

13.2 Liability under clause 13.1 will be proportionately reduced to the extent that the Seller contributes to the Loss that is the subject of the Claim.

14 Delay

14.1 Subject to this Agreement, if the Seller is unable to perform any obligation under this Agreement for any reason, fact or circumstance beyond the Seller's reasonable control:

- (a) the Seller will notify the Customer of such circumstances that caused or contributed to the delay; and
- (b) the period for performing current and future obligations will be proportionately extended by a period that is equal to the period of delay.

15 Waiver

15.1 Any failure by a party at any time to enforce a clause of this Agreement, or any forbearance, delay or indulgence granted by a party to the other, will not constitute a waiver of the party's rights.

16 Severance

16.1 If any part of this Agreement is held to be invalid, unlawful or unenforceable for any reason, then to the full extent permitted by Law:

- (a) the offending provision will be severed from the rest of the Agreement; and
- (b) the remaining terms and conditions will continue to be valid and enforceable.

17 Applicable Law

17.1 This Agreement is governed by the Laws of Queensland and each party submits to the jurisdiction of the courts of Queensland.

18 Entire Agreement

18.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements and agreements between the parties.

19 Variation

19.1 This Agreement:

- (a) cannot be varied by the Customer; and
- (b) can be varied by the Seller subject to giving the Customer 14 days written notice.

20 Further Assurances

20.1 Each party must do all things and execute all documents reasonably required to give effect to this Agreement.

21 Personal Property Securities Act (PPSA)

21.1 To the extent that any reservation in favour of the Seller under this Agreement is a security interest under the PPSA the Seller may:

- (a) take steps to register their security interest on the personal property securities register; and
- (b) if the Customer is in default:
 - i. take possession of the Goods;
 - ii. enter the Customer's premises for that purpose;
 - iii. appoint any person to be a receiver of all or any of the Goods, subject to a security interest being created by this document.

21.2 Until legal and equitable title passes to the Customer, the Customer must not do anything:

- (a) to further encumber the Goods; or
- (b) that will result in the security interest granted in favour of the Seller as ranking in priority behind any other security interest.

21.3 The Customer:

- (a) waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under this Agreement; and
- (b) contracts out of its right to receive any other notice or statement under any other applicable provisions in the PPSA.

21.4 To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section

126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143, which sections (or parts of sections) will not apply.

22 **Electronic Transactions**

22.1 The parties consent to and agree that:

- (a)** the *Electronic Transactions (Queensland) Act 2001* (Qld) applies to this transaction;
- (b)** the Agreement can be formed through an exchange of counterparts; and
- (c)** in accordance with sections 11 and 12 of the *Electronic Transactions (Queensland) Act 2001* (Qld) each party gives their permission for communication that is relevant to the transaction to be exchanged electronically.