

# TMC TRAILERS LTD STANDARD TERMS AND CONDITIONS OF SALE V5.0

The following terms shall be incorporated into each contract entered into between the Customer and TMC Trailers Ltd for the supply of Goods or Services.

## 1. PRICE

1.1 The price shall be increased by:

- (a) the amount of any GST and other taxes and duties which may be applicable; and
- (b) the amount of any increase in the cost of any items (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods or provision of the Services prior to the date of Delivery.

1.2 A contract is created and the Customer is bound to pay the price when TMC accepts the Customer's order in writing, or confirms the order electronically, including via the TMC Online Store. Each accepted order shall constitute a separate contract. A quotation does not create a binding contract until the Customer places an order which is then accepted by TMC.

1.3 All quotes, estimates and pricing, unless otherwise specified, are valid for 30 days from the date of issue.

1.4 Alterations to any price list shall be effective from the date specified by TMC and shall apply to all orders accepted by TMC on or after that date.

1.5 An order placed via the Online Store constitutes an offer by the Customer to purchase the Goods or Services subject to these Terms. TMC may accept or reject any Online Store order in its discretion, including where pricing or stock errors occur.

## 2. PAYMENT

2.1 Unless TMC have agreed to extend credit to the Customer, the Customer must pay in cash before supply.

2.2 Where TMC have agreed in writing to extend credit to the Customer, payment in full is due by the 20<sup>th</sup> of the month following delivery/collection of the Goods or completion of Services.

2.3 The Customer may not withhold payment or make any deductions from or set off any amount against any Amount Owing without TMC's prior written consent.

2.4 Any disputes or credit requests by the Customer relating to an invoice issued by TMC for Goods or Services supplied must be received in writing within 14 days from the date of invoice.

## 3. DRAWINGS & SPECIFICATIONS

3.1 All illustrations, drawings and specifications accompanying TMC quotations, advertising or specified on our website are approximate only, and are not binding unless specifically agreed by TMC in writing.

3.2 Certified dimension drawings will be supplied by arrangement.

3.3 TMC will use all reasonable efforts to ensure all weights & measurements and other particulars of the Goods or Services are approximately correct. Small deviations from weights or measurements cannot invalidate the agreement formed by these Terms nor be the subject of any claim by the Customer.

3.4 TMC accepts no liability for defects or performance issues arising from designs, specifications or instructions supplied by the Customer.

3.5 All drawings, CAD models, specifications, and technical documentation provided by TMC remain the exclusive intellectual property of TMC. No intellectual property rights are transferred to the Customer through the sale of Goods. Reproduction, modification, or disclosure of TMC's proprietary designs without prior written consent is strictly prohibited.

## 4. RISK AND SECURITY

4.1 The Customer grants to TMC a security interest under the Personal Property Securities Act 1999 ("PPSA") in all the Goods TMC agrees to sell to the Customer under any contract or any other goods including any vehicle, trailer or other personal property owned by the Customer that have been worked on or installed by TMC in performing the Services as security for payment of the Amount Owing and for the performance from time to time of the Customer's other obligations to TMC under the relevant contract, and such security shall continue until all sums owing by the Customer to TMC in respect of any Goods or Services supplied have been paid in full.

4.2 TMC may allocate all monies received from the Customer in any manner it determines including any manner required to preserve any purchase money security interest in the Goods or other goods or personal property owned by the Customer that have been worked on or installed by TMC in performing the Services.

4.3 The Customer agrees that to the extent permissible under the PPSA, TMC excludes its obligation to the Customer under the PPSA in respect of any contract for the sale of Goods or performance of Services, or the security under such contracts, and the Customer waives all its rights against TMC to the extent permissible under the PPSA.

4.4 Subject to clause 4.1 and the following provisions, legal and equitable ownership of the Goods or goods or personal property owned by the Customer that have been worked on or installed by TMC in performing the Services remains with TMC and does not pass to the Customer until the Customer pays the Amount Owing and any other monies owing by the Customer to TMC from time to time, whether in relation to any contract entered into under these Terms or on any other account whatsoever.

4.5 While legal or equitable ownership of the Goods or goods or personal property owned by the Customer that have been worked on or installed by

TMC in performing the Services remains with TMC, TMC retains the right to enter the premises or land where the Goods are held or stored and remove them, as agent for the Customer, without being liable or responsible for any damage caused in doing so. The Customer is to allow access or procure access to TMC so it can exercise its rights in this clause 4.5.

4.6 The Customer's Goods and Equipment are stored at Owners Risk while on TMC Premises.

4.7 The security interest created by these Terms is not discharged nor the Customer's obligations affected by the administration of the Customer.

4.8 In relation to Services, risk in the goods to which the Services are being performed remains with the Customer at all times, including during collection and delivery.

4.9 Until full payment is received, the Customer must not sell, lease, or grant a security interest in any Goods without TMC's prior written consent

## 5. WARRANTIES

5.1 Provided the Customer complies promptly with the terms of payment and its obligations in this clause 5:

(a) TMC warrants to the original purchaser that new truck decks and trailers purchased from TMC are free from original defects and faulty workmanship, under proper and normal conditions of use for a maximum period of:

(i) 24 months unlimited kilometres on chassis and other components manufactured by TMC; or

(ii) the lesser of 12 months or the maximum supplier's warranty for components not manufactured by TMC.

(b) The warranty periods commence from:

(i) registration of the vehicle in relation to a new trailer; or

(ii) the date of the invoice in relation to truck bodies.

(c) The warranties in this clause do not apply if the purchaser has made any alterations or carried out any repairs without TMC's prior written approval.

(d) The warranties do not cover damage caused by misuse, overloading, neglect, accidents, operation in breach of applicable road laws, EBS braking system not operational, triggering of RSS interventions, Stage 2, or equipment which has been repaired or altered other than at TMC service centres or without our written consent.

5.2 TMC warrants to the original purchaser only repairs to second-hand equipment for a period of three months from the date of completion of the repair.

5.3 The following are pre-conditions to the Customer making any warranty claim:

(i) the Customer must be the original purchaser;

(ii) in relation to the warranties in clause 5.1, if the vehicle has done 5,000 km or more, the 5,000 km service has been completed at a TMC service centre or service agent. The Customer must provide a copy of the service documentation to TMC at the time of the warranty claim;

(iii) no works to rectify the issue are to be carried out by or on behalf of the Customer until the Customer has notified its closest TMC service centre of the issue;

(iv) the trailer has been operated within all applicable gross vehicle weight limits and legal load restrictions under NZTA regulations.

(v) the trailer has been operated in compliance with all applicable road laws, including any speed limits relevant to the vehicle combination and conditions.

(vi) the running gear has been serviced in accordance with the stated required intervals;

(vii) the Customer has provided TMC with reasonable access to the trailer or vehicle to retrieve Electronic Braking System (EBS) or other telematics data for the purpose of verifying compliance with these preconditions;

(viii) the trailer has not been operated in a manner that triggers rollover risk warnings or interventions recorded by the Electronic Braking System (EBS), including but not limited to RSS interventions, Stage 2. Any such recorded events may be deemed evidence of misuse and may void the warranty;

(ix) all parts replaced under warranty must be returned to TMC for inspection unless otherwise agreed in writing;

(x) undertaking any warranty repairs or services does not extend the original warranty period;

(xi) warranty issues must be reported immediately to TMC. If remote from a TMC service workshop, the Customer must provide photographs of the defect along with: Customer name, vehicle registration or serial number, and description of the fault;

(xii) for any third-party repairs, TMC must approve the repair quote in advance and issue a purchase order number before work commences. Invoices submitted without a valid TMC purchase order number will be rejected.

5.4 To the extent permitted by law, TMC excludes any liability for any Claim by the Customer or any other person, relating to or arising from the supply of Goods not confirmed by TMC in writing, and the Customer indemnifies TMC against any Claim.

5.5 TMC will not be liable for consequential, indirect or special damage or loss of any kind howsoever caused irrespective of fault, negligence or strict liability or damage due to any equipment being unavailable. TMC's liability shall not exceed the price of the Goods.

5.6 The Customer agrees to indemnify TMC upon demand against any liability or cost incurred by TMC under the CG Act as a result of any breach by the Customer of any of its obligations under that Act.

5.7 To the extent permitted by law, no warranty is implied or given on traded second-hand vehicles.

5.8 The Customer agrees that TMC may access and download Electronic Braking System (EBS) data from any trailer or vehicle supplied or serviced by TMC. Access to this data is a mandatory condition of any warranty assessment or claim. Failure to provide such access will render the warranty claim invalid.

5.9 The Customer shall indemnify TMC against all loss, damage or cost incurred as a result of the Customer's breach of any warranty, representation, or obligation under these Terms, including any claim by a third party arising from the Customer's misuse of the Goods or Services.

5.10 Any modification or structural repairs to TMC products must be approved by TMC in writing and carried out by a certified engineer in compliance with NZTA requirements, including the issuance of a valid LT400 certificate. TMC accepts no liability for damage, defect, or compliance issues arising from unauthorised modifications.

## 6. DEFAULT AND CANCELLATION

6.1 If an Event of Default occurs:

(a) TMC may suspend or terminate any contract; and  
(b) any Amount Owing shall immediately become due and payable notwithstanding the due date for payment has not arisen; and  
(c) TMC is entitled to recover from the Customer all costs that TMC may incur in attempting to collect the Amount Owing including full solicitor client costs and any other moneys owing by the Customer to TMC from time to time, whether in relation to any contract or on any other account whatsoever.

6.2 If the Customer does not pay the Amount Owing by the due date:

(a) TMC may charge the Customer a penalty of 2.5% per month calculated daily on the Amount Owing from due date until payment is received in full (both prior to and following any judgement obtained); and  
(b) any discounts may be disallowed and whether or not previously credited.

6.3 The Customer is not permitted to cancel the order once the order has been accepted by TMC in accordance with clause 1.2. Changes to orders after acceptance are at TMC's sole discretion and may incur additional charges.

## 7. PAYMENT VALIDITY

7.1 The Customer acknowledges that TMC continues to supply the Customer on condition that all payments received by TMC from the Customer are made at a time when the Customer is able to pay its debts as they become due from its own money.

## 8. USE OF INFORMATION

8.1 The Customer understands that TMC may ask for personal information about the Customer so as to use credit reporting services to assess the creditworthiness of the Customer from time to time. The Customer acknowledges that:

(a) Credit Reporting Agencies will give TMC information about the Customer for that purpose;  
(b) TMC may give the Customer's personal information to Credit Reporting Agencies and those agencies may hold that information on their systems and use it to provide credit reporting services;  
(c) When other users of Credit Reporting Agencies use those agencies' services, the agency may give the information to those users;  
(d) TMC may use credit reporting services in the future for purposes related to the provision of credit to the Customer. This may include using a Credit Reporting Agency's monitoring services to receive updates if any of the information about the Customer changes;  
(e) If an Event of Default occurs information about that Event of Default may be given to a Credit Reporting Agency and the Agency may give information about the Event of Default to other users of the credit reporting services.

8.2 The Customer agrees that TMC may obtain information about the Customer from third parties in the course of TMC's business including credit assessment, debt collection and direct marketing activities, and may use that information for those purposes.

8.3 TMC will collect, hold and use the information on the condition that:

(a) it will be held securely at TMC's registered office;  
(b) it will be accessible to any of TMC's employees and agents who need access to it for the efficient running of TMC's business;  
(c) the Customer may request access to and correction of it at any time.

## 9. OTHER AGREEMENTS

9.1 If there is any inconsistency between these Terms and any order submitted by the Customer (whether in writing, verbally or otherwise) these Terms prevail unless otherwise expressly agreed in writing by the parties.

## 10. WAIVER

10.1 If TMC exercises or fails to exercise any right or remedy available to it, this shall not prejudice TMC's rights in exercising that or any other right or remedy unless expressly waived by TMC in writing.

## 11. ACCEPTANCE AND TERMS

11.1 Acceptance of a quote by the Customer or the placing of an order by the Customer constitutes acceptance by the Customer of these Terms. TMC reserves the right to amend these Terms by written notice to the Customer.

11.2 Orders placed via the Online Store by an Authorised User (including via electronic checkout confirmation) constitute acceptance of these Terms by the Customer.

## 12. ASSIGNMENT

12.1 TMC is entitled at any time to assign its rights under these Terms. The assignee will be entitled to claim full rights of set off or counter claim against the Customer, its secured parties or successors in respect of the debt or part of the debt which is assigned.

12.2 The Customer is not entitled to assign its rights under these Terms.

## 13. FORCE MAJEURE

13.1 TMC shall not be liable to the Customer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the Goods or performance of the Services, or failure to perform any term of these Terms where such delay or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials, facilities, accidents, interruptions of, or delay in transportation or any other cause beyond TMC's control (**Force Majeure**).

13.2 If TMC is delayed in the supply of Goods or services due to Force Majeure which continues for more than 90 days, TMC may terminate the order for Goods or Services by written notice to the Customer without payment of compensation or any other liability.

## 14. DELIVERY

14.1 Delivery shall be deemed to have been completed when TMC notifies the Customer that the Goods are ready for collection or that the Services have been completed and gives possession of the Goods or goods the subject of the Services to the Customer.

14.2 Delivery shall be by collection by the Customer or delivery by a carrier to the address previously notified by the Customer to TMC and which has been agreed by TMC at the time of placing of the order.

14.3 TMC gives no warranty or guarantee as to the timing of the delivery of the Goods or goods to which the Services have been performed.

14.4 The Customer acknowledges that delivery time is not a condition of these Terms and TMC will have no liability to the Customer if the Goods or goods to which the Services have been performed have not been delivered by the estimated date.

14.5 To the extent permitted by law, the Customer indemnifies TMC in relation to any Claim suffered by TMC as a result of collecting or delivery any goods to the Customer on which Services have been performed.

14.6 If the Customer fails to collect the goods within a reasonable time after notification from TMC that the goods are ready for collection, TMC may charge the Customer storage fees for the period between notification and collection. TMC also reserves the right to dispose of or sell the goods after providing reasonable written notice to the Customer. Any shortfall between the sale proceeds and the amount owed (including storage and handling costs) shall remain payable by the Customer.

## 15. CUSTOMER RETURNS

15.1 Returns are at the discretion of TMC and Goods that have been custom-made, modified, ordered in specifically for the Customer, or manufactured to the Customer's specifications are not eligible for return under any circumstances.

15.2 Applicability: This restocking fee applies to all spare parts returned for reasons other than a defect or an error on TMC's part.

15.3 Fee Amount: A restocking fee of 20% of the original purchase price will be charged for all returned spare parts, freight is non-refundable.

15.4 Condition of Returned Parts: Returned spare parts must be in their original condition, unused, and in the original packaging. Parts not meeting these criteria may be subject to an increased restocking fee or may be ineligible for return.

15.5 Time Frame for Returns: Returns must be initiated within 10 days of the original purchase date to be eligible for a return and restocking fee.

## 16. ONLINE STORE ORDERS

16.1 TMC may provide the Customer with access to an online ordering platform ("Online Store") for the purpose of placing orders for Goods or Services on the Customer's credit account (where applicable).

16.2 The Customer may nominate employees or representatives ("Authorised Users") to access the Online Store by completing TMC's authorised user access form or such other written approval process as required by TMC. TMC reserves the right to approve or decline any nominated Authorised User.

16.3 Any order placed via the Online Store by an Authorised User shall be deemed to be an order placed by the Customer and shall be legally binding on the Customer.

16.4 The Customer is solely responsible for:

(a) maintaining the confidentiality of login credentials;  
(b) managing access of Authorised Users;  
(c) notifying TMC immediately of any changes to Authorised Users; and  
(d) notifying TMC immediately of any suspected unauthorised access.

16.5 The Customer remains liable for all orders placed via its Online Store account, including orders placed by any Authorised User, whether authorised internally by the Customer or not.

16.6 Access to the Online Store does not:

- (a) increase the Customer's credit limit;
- (b) alter agreed payment terms; or
- (c) oblige TMC to accept any order exceeding the Customer's credit limit.

16.7 TMC may suspend or terminate Online Store access at any time, including where an Event of Default occurs or where TMC reasonably believes the Store is being misused.

16.8 In the event of pricing errors, system errors, or stock availability errors appearing on the Online Store, TMC reserves the right to cancel or amend any affected order prior to dispatch or delivery.

16.9 The Customer indemnifies TMC against any loss, claim, or liability arising from misuse of the Online Store by its Authorised Users.

## 17. DEFINITIONS

17.1 "**Authorised User**" means an employee or representative of the Customer who has been approved by the Customer and accepted by TMC as having authority to access the Online Store and place orders on behalf of the Customer.

17.2 "**Amount Owing**" means the price charged by TMC for the Goods, and any other sums which TMC is entitled to charge under these Terms which remain unpaid.

17.3 "**TMC**" means TMC Trailers Ltd.

17.4 "**Claim**" includes any claim:

- (a) for damages of any kind, including, but not limited to damages for breach of contract;
- (b) for loss of profits; or
- (c) for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly; and
- (d) for compensation, demand, remedy, liability or action.

17.5 "**Customer**" means the person purchasing the Goods or ordering the Services from TMC pursuant to these Terms, including that person's successors and permitted assigns.

17.6 "**Delivery**" means delivery of the Goods in accordance with clause 14 of these Terms.

17.7 An "**Event of Default**" means an event where:

- (a) the Customer fails to comply with these Terms or any other contract with TMC; or
- (b) the Customer commits an act of bankruptcy; or
- (c) the Customer enters into any composition or arrangement with its creditors; or
- (d) if the Customer is a company:
  - (i) the Customer does anything which would make it liable to be put into liquidation; or
  - (ii) a resolution is passed or an application is made for the liquidation of the Customer; or
  - (iii) a receiver or statutory or official manager is appointed over all or any of the Customer's assets or the Customer, its board or shareholders is considering appointing an administrator or liquidator; or
  - (iv) an administrator is appointed to the Customer;
- (e) an administrator is appointed to the Customer;
- (f) anything analogous to or having similar effect to any of the other events above arises.

17.8 "**Goods**" means all goods ordered by the Customer and supplied by TMC under these Terms

17.9 "**Online Store**" means TMC's spare parts online store, customer login platform, or any other digital ordering interface provided by TMC from time to time for the purchase of Goods or Services.

17.10 "**Person**" includes a corporation, association, firm, company, partnership or individual.

17.11 "**Price**" means the purchase price of the Goods or Services and any costs payable by the Customer under clauses 1 of these Terms.

17.12 "**Services**" means all services requested by the Customer and supplied by TMC under these Terms.

17.13 "**Terms**" means these TMC standard terms and conditions of sale.