
Kustom Worx Limited T/A KT Trailers – Terms & Conditions of Trade

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “KT Trailers” means Kustom Worx Limited T/A KT Trailers, its successors and assigns or any person acting on behalf of and with the authority of Kustom Worx Limited T/A KT Trailers.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting KT Trailers to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Goods” means all Goods or Services supplied by KT Trailers to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between KT Trailers and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with KT Trailers and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Clients credit limit and/or the account exceeds the payment terms, KT Trailers reserves the right to refuse Delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to KT Trailers as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client’s behalf and/or to request any variation to the Services on the Client’s behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies KT Trailers in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise KT Trailers in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to KT Trailers for all additional costs incurred by KT Trailers (including KT Trailers’ profit margin) in providing any Goods, Services or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that KT Trailers shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by KT Trailers in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by KT Trailers in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of KT Trailers; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

- 5.1 The Client shall give KT Trailers not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by KT Trailers as a result of the Client’s failure to comply with this clause.

6. Price and Payment

- 6.1 At KT Trailers' sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by KT Trailers to the Client; or
 - (b) KT Trailers' quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 KT Trailers reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, incorrect or inaccurate plans, specifications or information (such as structural measurements, customisations, etc.) provided by the Client, or change of design, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to KT Trailers in the costs of supply and/or production of the Goods (including fluctuations in currency exchange rates and metal prices etc.), and/or Delivery, due to circumstances beyond the reasonable control of KT Trailers.
- 6.3 Variations will be charged for on the basis of KT Trailers' quotation, and will be detailed in writing, and shown as variations on KT Trailers' invoice. The Client shall be required to respond to any variation submitted by KT Trailers within ten (10) working days. Failure to do so will entitle KT Trailers to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At KT Trailers' sole discretion a deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by KT Trailers, which may be:
- (a) by way of instalments/progress payments in accordance with KT Trailers' payment schedule;
 - (b) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by KT Trailers.
- 6.6 Payment may be made by cheque, electronic/on-line banking, or by any other method as agreed to between the Client and KT Trailers.
- 6.7 KT Trailers may in its discretion allocate any payment received from the Client towards any invoice that KT Trailers determines and may do so at the time of receipt or at any time afterwards. On any default by the Client KT Trailers may re-allocate any payments previously received and allocated. In the absence of any payment allocation by KT Trailers, payment will be deemed to be allocated in such manner as preserves the maximum value of KT Trailers' Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by KT Trailers nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to KT Trailers an amount equal to any GST KT Trailers must pay for any supply by KT Trailers under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Goods

- 7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that KT Trailers (or KT Trailers' nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.2 At KT Trailers' sole discretion the cost of Delivery is in addition to the Price.
- 7.3 KT Trailers may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by KT Trailers for Delivery of the Goods is an estimate only. The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. KT Trailers will not be liable for any loss or damage incurred by the Client as a result of Delivery being late.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, KT Trailers is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by KT Trailers is sufficient evidence of KT Trailers' rights to receive the insurance proceeds without the need for any person dealing with KT Trailers to make further enquiries.
- 8.3 If the Client requests KT Trailers to leave Goods outside KT Trailers' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 8.4 Any advice, recommendation, information, assistance or service provided by KT Trailers in relation to Goods or Services supplied is given in good faith, is based on KT Trailers' own knowledge and experience and shall be accepted without liability on the part of KT Trailers, and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.
- 8.5 Where the Client has supplied materials for KT Trailers to complete the Services, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. KT Trailers shall not be responsible for any defects in the materials, any loss or damage howsoever arising from the use of materials supplied by the Client.
- 8.6 The Client accepts that any certification or registration required from third parties for Goods manufactured by KT Trailers is the responsibility and sole cost of the Client.

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- 8.7 The Client acknowledges and accepts that in the event KT Trailers' is only part way through their Services and is requested by the Client to supply a shell, chassis or frame only (thereby is an incomplete trailer), KT Trailers offers no warranty and accepts no liability of non-compliance or faults that may occur.
- 9. Dimensions, Plans and Specifications**
- 9.1 All customary industry tolerances shall apply to the dimensions and measurements of the Goods unless KT Trailers and the Client agree otherwise in writing.
- 9.2 KT Trailers shall be entitled to rely on the accuracy of any plans, specifications and other information (including CAD plans) provided by the Client.
- 9.3 If the giving of an estimate or quotation for the supply of Goods involves KT Trailers estimating measurements, it shall be the responsibility of the Client to verify the accuracy of KT Trailers' estimated measurements, before the Client places an order based on such estimate or accepts such quotation.
- 9.4 Should the Client require any changes to KT Trailers' estimated measurements, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
- 9.5 Where the Client has provided instructions or specifications for KT Trailers to complete the Services (including, but not limited to, any requested variation to the original design), then KT Trailers shall accept no liability whatsoever for the finished Services being deemed as unsatisfactory to the Client.
- 9.6 Whilst KT Trailers shall use their best endeavours to provide the Goods based upon the instructions supplied by the Client, the Client agrees to release and indemnify KT Trailers, their directors, agents, and employees from any and all liabilities arising out of any damage, loss or injury caused by Goods made to the Client's designs/specifications where an unknown design fault may be present.
- 10. Access**
- 10.1 The Client shall ensure that KT Trailers has clear and free access to the Delivery site to enable them to effect Delivery. Kt Trailers shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of KT Trailers.
- 11. Title**
- 11.1 KT Trailers and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid KT Trailers all amounts owing to KT Trailers; and
 - (b) the Client has met all of its other obligations to KT Trailers.
- 11.2 Receipt by KT Trailers of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 11.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to KT Trailers on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for KT Trailers and must pay to KT Trailers the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for KT Trailers and must pay or deliver the proceeds to KT Trailers on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of KT Trailers and must sell, dispose of or return the resulting product to KT Trailers as it so directs;
 - (e) the Client irrevocably authorises KT Trailers to enter any premises where KT Trailers believes the Goods are kept and recover possession of the Goods;
 - (f) KT Trailers may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of KT Trailers;
 - (h) KT Trailers may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 12. Personal Property Securities Act 1999 ("PPSA")**
- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to KT Trailers for Services – that have previously been supplied and that will be supplied in the future by KT Trailers to the Client.
- 12.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which KT Trailers may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, KT Trailers for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of KT Trailers; and
 - (d) immediately advise KT Trailers of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.3 KT Trailers and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

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- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by KT Trailers, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by KT Trailers under clauses 12.1 to 12.5.
- 12.7 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of KT Trailers agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies KT Trailers from and against all KT Trailers' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising KT Trailers' rights under this clause.
- 13.3 The Client irrevocably appoints KT Trailers and each director of KT Trailers as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Defects

- 14.1 The Client shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify KT Trailers of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford KT Trailers an opportunity to have the Goods inspected and a report completed by a suitable, experienced and qualified engineer of KT Trailers' choosing within a reasonable time following Delivery, and prior to commencing any repairs or disassembly of the Goods, if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which KT Trailers has agreed in writing that the Client is entitled to reject, KT Trailers' liability is limited to either (at KT Trailers' discretion) replacing the Goods or repairing the Goods.
- 14.2 Goods will not be accepted for return other than in accordance with 14.1 above.
- 14.3 Subject to clause 14.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

15. Warranty

- 15.1 Subject to the conditions of warranty set out in clause 15.2 KT Trailers warrants that if any defect in any workmanship of KT Trailers becomes apparent and is reported to KT Trailers within twelve (12) months of the date of Delivery (time being of the essence) then KT Trailers will either (at KT Trailers' sole discretion) replace or remedy the workmanship.
- 15.2 The conditions applicable to the warranty given by clause 15.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by KT Trailers; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and KT Trailers shall thereafter in no circumstances be liable under the terms of the warranty if the Goods are disassembled or the workmanship is repaired, altered or overhauled without KT Trailers' consent.
 - (c) in respect of all claims KT Trailers shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 15.3 For Goods not manufactured by KT Trailers, the warranty shall be the current warranty provided by the manufacturer of the Goods. KT Trailers shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 15.4 In the case of second hand Goods, the Client acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by KT Trailers as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. KT Trailers shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

16. Consumer Guarantees Act 1993

- 16.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by KT Trailers to the Client.

17. Intellectual Property

- 17.1 Where KT Trailers has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of KT Trailers. Under no circumstances may such designs, drawings and documents be used without the express written approval of KT Trailers.
- 17.2 The Client warrants that all designs, specifications or instructions given to KT Trailers will not cause KT Trailers to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify KT Trailers against any action taken by a third party against KT Trailers in respect of any such infringement.
- 17.3 The Client agrees that KT Trailers may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which KT Trailers has created for the Client.

18. Default and Consequences of Default

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- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at KT Trailers' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes KT Trailers any money the Client shall indemnify KT Trailers from and against all costs and disbursements incurred by KT Trailers in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, KT Trailers' collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies KT Trailers may have under this Contract, if a Client has made payment to KT Trailers, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by KT Trailers under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 18.4 Without prejudice to KT Trailers' other remedies at law KT Trailers shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to KT Trailers shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to KT Trailers becomes overdue, or in KT Trailers' opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by KT Trailers;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

19. Cancellation

- 19.1 Without prejudice to any other remedies KT Trailers may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions KT Trailers may suspend or terminate the supply of Goods to the Client. KT Trailers will not be liable to the Client for any loss or damage the Client suffers because KT Trailers has exercised its rights under this clause.
- 19.2 KT Trailers may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice KT Trailers shall repay to the Client any money paid by the Client for the Goods. KT Trailers shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by KT Trailers as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by KT Trailers is Personal Information as defined and referred to in clause 20.3 and therefore considered confidential. KT Trailers acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). KT Trailers acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by KT Trailers that may result in serious harm to the Client, KT Trailers will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to KT Trailers in respect of Cookies where transactions for purchases/orders transpire directly from KT Trailers' website. KT Trailers agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to KT Trailers when KT Trailers sends an email to the Client, so KT Trailers may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via KT Trailers' website.
- 20.3 The Client authorises KT Trailers or KT Trailers' agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by KT Trailers from the Client directly or obtained by KT Trailers from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 20.4 Where the Client is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.5 The Client shall have the right to request KT Trailers for a copy of the Personal Information about the Client retained by KT Trailers and the right to request KT Trailers to correct any incorrect Personal Information about the Client held by KT Trailers.

21. Service of Notices

- 21.1 Any written notice given under this Contract shall be deemed to have been given and received:

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- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

22. Trusts

- 22.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not KT Trailers may have notice of the Trust, the Client covenants with KT Trailers as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of KT Trailers (KT Trailers will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

23. General

- 23.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Tauranga District Court of New Zealand.
- 23.3 KT Trailers shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by KT Trailers of these terms and conditions (alternatively KT Trailers' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 KT Trailers may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of KT Trailers.
- 23.6 KT Trailers may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of KT Trailers' sub-contractors without the authority of KT Trailers.
- 23.7 The Client agrees that KT Trailers may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for KT Trailers to provide Goods to the Client.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.