

# ISLANDER CAMPERS (SELLER)

## TERMS AND CONDITIONS OF PURCHASE

### 1. DEFINITIONS

In these T+Cs:

**“ACL”** means the Australian Consumer Law Schedule of the Competition and Consumer Act;

**“Balance”** means the amount of money payable to the Seller by the Customer to finalise the purchase of the Camper trailer, as adjusted under clause 3.3;

**“Camper”** means the camper purchase by the Customer from the Seller, as described in the Camper Description and Specifications section on the first page of this Contract;

**“Camper Purchase Price”** means the amount payable by the Customer to the Seller for the purchase of the Camper;

**“Consumer”** is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Contract;

**“Contract”** means this contract for the purchase of the Camper by the Customer from the Seller;

**“Customer”** means the person, jointly and severally if more than one, specified on the First page of this Contract;

**“Default Interest Rate”** means the interest rate specified on the First page of this Contract;

**“Deposit”** means the amount of money paid to the Seller by the Customer as an initial payment to proceed with the manufacture and/or purchase of the Camper, or to arrange a production slot for the purpose of manufacturing at a later date;

**“Estimated Delivery Date”** means the date on which the Seller estimates the Camper will be available for delivery to the Customer;

**“GST”** means the Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

**“Seller”** means the seller as specified on the First page of this Contract;

**“Services”** means services provided by the Seller to the Customer in relation to the Camper trailer;

**“T+Cs”** means these Terms and Conditions of Sale;

## **2. BASIS OF AGREEMENT AND ORDERS**

- Unless otherwise agreed by the Seller in writing, the T+Cs apply exclusively to the Contract and cannot be varied or replaced by any other terms, including the Customer’s terms and conditions of purchase.
- Any special conditions specified on the First page of this Contract (Special Conditions) apply to this Contract and will override the T+Cs to the extent of any inconsistency.
- The Contract is accepted by the Seller when the Seller signs this Contract or provides the Customer with the Camper trailer or the services.
- The Customer must provide the Seller with its specific requirements, if any, in relation to the Camper and the services.

## **3. PRICING**

- Unless otherwise specified in this Contract, the price quoted for the Camper Purchase Price and the services includes GST and any other taxes or duties imposed on or in relation to the Camper.
- Where there is any change in the costs incurred by the Seller in relation to the Camper or services, the Seller may vary its pricing to take account of any such change, by notifying the Customer.

## **4. PAYMENT**

- Unless otherwise specified by the Seller, payment for the Camper trailer and the services must be made as follows:
  - (a) the Deposit upon execution of the Contract;
  - (b) subsequent progress payment as outlined in Sale Terms & Conditions, and
  - (c) the Balance due after advice of availability or before collection of the Camper.
- Payment by cheque is not deemed made until the proceeds of the cheque have cleared. Clearing time is 3 business days. This includes personal cheques and bank cheques.
- The Seller may request progress payments throughout various stages of the manufacture of the Camper. Such progress payments are due within the timeframe specified by the Seller, or within 72 hours if no time is specified.
- The time for payment is of the essence.

## **5. PAYMENT DEFAULT**

- If the Customer defaults in payment by the due date of any amount payable to the Seller, then all money which would become payable by the Customer to the Seller at a later date on any account becomes immediately due and payable without the requirement of notice to the Customer, and the Seller may, without prejudice to any of its other accrued or contingent rights:
  - (a) charge the Customer interest at the Default Interest Rate of 12% per annum for the period from the due date until the date of payment in full;
  - (b) charge the Customer for, and the Customer must indemnify the Seller from, all costs and expenses (including legal costs) incurred by the Seller resulting from the default or in taking action to enforce compliance with the Contract or to recover any sum due;
  - (c) cease or suspend the manufacture and/or delivery of the Camper or provision of the services;
  - (d) by written notice to the Customer, terminate any uncompleted contract with the Customer.
- Clauses 6.1 (c) and (d) may also be relied upon, at the Seller's option, where:
  - (a) the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement with any of its creditors; or
  - (b) the Customer is a corporation and becomes insolvent or enters into any scheme of arrangement or any assignment or composition with any or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

## **6. RETENTION OF TITLE**

- Until the Seller receives full payment in cleared funds from the Customer for the Camper, as well as all other amounts owing by the Customer to the Seller:
  - (a) title and property in the Camper remains vested in the Seller and does not pass to the Customer;
  - (b) the Customer must hold the Camper as fiduciary bailee and agent for the Seller; and
  - (c) the Seller may, without notice, enter any premises where it suspects the Camper is and remove it, and for this purpose the Customer irrevocably licenses the Seller to enter such premises and also indemnifies the Seller from and against all costs, claims, demands or actions by any party arising from such action.
- If the Customer fails to make any payments for the Camper, the Seller will have the right to sell the Camper to another party after

giving the Customer 14 days' written notice. Only after any losses incurred by the Seller as a consequence have been calculated will the Seller refund excess money (if any) to the Customer.

#### **7. CHANGES TO ORDERS**

- If the Customer requests any variations to the specifications of the Camper after signing this Contract, the Seller may:
  - (a) reject the request for variation;
  - (b) increase the price of the Camper to account for the variation; or
  - (c) cancel the Contract and provide a revised Order Form and a new contract for the Camper.
- The Seller reserves the right to refuse the Customer's requested variations:
  - (a) once the Camper has entered manufacture; or
  - (b) if the requested variations would, in the Seller's opinion, result in a safety issue or non-compliance with applicable Australian Standards and/or Australian Design Rules.
- The Seller reserves the right to change the specifications of the Camper, without liability, provided that:
  - (a) those specifications and features are replaced with specifications and features of equivalent value, composition and quality; and
  - (b) the end performance and capabilities of the Camper are not materially prejudiced

#### **8. VEHICLE COMPATIBILITY, TARE MASS, GROSS VEHICLE MASS AND BALL WEIGHTS**

- The Customer acknowledges that:
  - (a) customisations of and options fitted to the Camper will change the weight of the Camper;
  - (b) any weights specified by the Seller (other than as stamped on the compliance plates) are estimates only and are subject to variance;
  - (c) the Customer is solely responsible to research its towing/carrying vehicle's compatibility with the Camper and to allow for tolerance in the towing/carrying vehicle's and the Camper stamped and operating weights;
  - (d) the Seller is not responsible or liable for the consequences of any variations or inaccuracies in weights; and
  - (e) the Seller is not responsible or liable for the Customer's towing/carrying vehicle compatibility or otherwise or any consequences.

#### **9. COMPLETION AND DELIVERIES**

- Completion and/or delivery dates and the Estimated Delivery Date specified by the Seller are estimates only and are not a contractual commitment.

- The Seller will use its reasonable endeavours to meet the Estimated Delivery Date for delivery of the Camper but will not be held liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- If the Seller cannot complete the services by any estimated date, it will complete the services within a reasonable time.
- Upon the Seller giving the Customer notice that the Camper is available for delivery, the Customer must:
  - (a) pay the Balance owing for completion of works
- Unless otherwise agreed in writing:
  - (a) the Customer is responsible to arrange for the collection and transportation of the Camper from the Seller's premises;
  - (b) delivery of the Camper will be deemed to occur at the commencement of the loading or hitching of the Camper onto the Customer's transport/towing vehicle;
  - (c) the Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of collection of the Camper; and
  - (d) on and from the point of collection of the Camper, the Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties, arising out of the use of possession of the Camper trailer, unless recoverable from the Seller on the failure of any statutory guarantee under the ACL.
- The Customer indemnifies the Seller against any loss or damage suffered by the Seller, its subcontractors or employees as a result of delivery, except where the Customer is a consumer and the Seller has not used due care and skill.
- The Customer must arrange for collection of the Camper within 7 days notice that it is ready. If the Customer does not collect the Camper within this timeframe, the Customer:
  - (a) will nevertheless be deemed to have taken delivery of the Camper from such date; and
  - (b) may be liable for storage charges payable to the Seller weekly upon demand.

## **10. LIABILITY**

- Except as the T+Cs specifically state, or as contained in any express warranty provided in relation to the Camper, the Contract does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Camper or the services or any contractual remedy for their failure.
- If the Customer is a consumer nothing in these T+Cs restricts, limits or modifies the Customer's rights or remedies against the Seller for failure of a statutory guarantee under the ACL.

- Other than as stated in the T+Cs or any written warranty statement the Supplier is not liable to the Customer in any way arising under or in connection with the sale, use of, storage or any other dealings with the Camper or the services by the Customer or any third party.
- The Seller is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, other than, if the Customer is a consumer, then to the extent the loss was reasonably foreseeable.
- Nothing in these T+Cs is to be interpreted as excluding, restricting or modifying the application of any applicable State or Federal legislation which cannot be so excluded, restricted or modified.

#### **11. INTELLECTUAL PROPERTY**

- The Customer warrants that where the Camper is manufactured by the Seller based in whole or in part upon designs, drawings, sketches, descriptions or specifications supplied by the Customer, these will not infringe any copyright, patents or design rights owned by third parties. The Customer is responsible for, and must fully indemnify the Seller from, any liability, cost, loss or damage arising from any claims made.

#### **12. CANCELLATION**

- If the Seller is unable to deliver the Camper or provide the services, then the Seller may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.
- No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Seller once the order has been accepted.
- If the Seller accepts the Customer's cancellation of an order, the Seller is entitled to retain, in its discretion, all or part of the Deposit and apply it to the costs and losses incurred by the Seller as a result of the cancellation.

#### **13. PRE-DELIVERY INSPECTION**

- The Customer must inspect the Camper for any shortages, damage or non-compliance with the specifications in the Contract at the time of delivery.
- Subject to clause 14.1, the Seller will not be liable for any shortages, damage or non-compliance unless the Customer notifies the Seller at the time of inspection, otherwise the Customer will be deemed to have accepted the Camper.
- Where any shortages, claim for damaged Camper or non-compliance is accepted by the Seller, the Seller may, at its option, repair the Camper or component, replace the component, or refund the price of the component.

- If the Customer is a consumer, nothing in this clause 14 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

#### **14. FORCE MAJEURE**

- The Seller is not liable in any way howsoever arising under the Contract to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism, or war. If an event of force majeure occurs the Seller may suspend or terminate the Contract by giving the Customer written notice.

#### **15. MISCELLANEOUS**

- The law of the Seller's home State or Territory governs the T+C's.
- The Seller's failure to enforce any of these T+C's shall not be construed as a waiver of any of the Seller's rights.
- If any of the T+C's are unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from these T+C's without affecting the enforceability of the remaining terms.
- A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by prepaid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed to be received upon confirmation or successful transmission.