



## Terms and Conditions

### 1. DEFINITIONS

The following terms and conditions of sale shall apply to the sale of goods or services ("**Goods**") by Tailgate Campers Pty Ltd ACN 602 480 339 trading as Tailgate Campers (hereinafter referred to as "**TGC**") to another party:

- 1.1. **Purchaser** means a person whose order for the purchase of Goods is accepted by TGC.
- 1.2. **Order** means an order to offer to purchase and can be made by the Purchaser verbally, in writing or via the TGC website.
- 1.3. **Contract** means a contract formed between TGC and the Purchaser by the provision of an order and production of a printed invoice by TGC.

### 2. FORMATION OF CONTRACT OF SALE OF GOODS

- 2.1. Terms of payment – Unless otherwise stated, terms of payment are:
  - 2.1.1. \$1,000.00 initial deposit to secure the next available position in the build list. This initial deposit is refundable at any time within 14 days of the Purchaser entering into the Contract with TGC. After the expiration of the 14 day period the Purchaser acknowledges that this initial deposit will be forfeited if the Purchaser exercises its right to rescind the Contract.
  - 2.1.2. 30% of the quoted price ("**Contract Price**") payable at the time construction of the Goods commence;
  - 2.1.3. Payment in full of the balance of the Contract Price (subject to any agreed variations) prior to collection of the Goods.
- 2.2. The Purchaser may make a change to the order following the initial deposit. No changes to the order can be made following the formation of the contract unless agreed to by TGC. The Purchaser further acknowledges that any change to the order may affect the delivery time of the Goods and may result in additional cost.
- 2.3. The Purchaser will collect the Goods from TGC at its factory (unless alternative arrangements are made) on a date to be mutually agreed between the parties. The Purchaser acknowledges that it will take TGC a minimum of 8 hours to install the Goods on the Purchaser's motor vehicle. The Purchaser will be responsible for all accommodation and other associated costs whilst the Goods are being installed.
- 2.4. Interest may be charged at a rate of 4% per annum above the Reserve Bank cash rate on all monies outstanding under the Contract Price, and without prejudice to TGC's other rights under law in respect of non-payment.
- 2.5. The Purchaser agrees that it may be necessary to vary the Contract from time to time to allow for any variations required to accommodate any difficulties with TGC obtaining items from suppliers. The Purchaser will be notified of any variations as soon as they occur.

### 3. TITLE TO THE GOODS

- 3.1. Title to the Goods passes to the Purchaser on collection of the Goods from TGC's factory.
- 3.2. Construction of the Goods will not commence until the 30% deposit has been received in full.
- 3.3. The Purchaser indemnifies TGC against any claim, damages, liability, cost, expense or payment, which it suffers, incurs or becomes liable for in respect of the exercise of TGC's rights under this clause.

### 4. RISK

- 4.1. Risk in the Goods passes to the Purchaser upon collection from TGC's factory or upon delivery of the Goods (if agreed with TGC).

### 5. INSTALLATION OF GOODS

- 5.1. All care will be taken by TGC when installing the Goods. The Purchaser acknowledges that TGC will not be liable for any damage sustained to the Purchaser's motor vehicle or tray whilst the Goods are being installed.
- 5.2. TGC will not be held responsible or liable for any incorrect installation undertaken by the Purchaser.

### 6. COLLECTION OF GOODS

- 6.1. Upon payment in full and completion of the Goods, the Goods may be collected from TGC's factory.
- 6.2. TGC shall not be liable for:
  - 6.2.1. any delay in delivering the Goods for any reason; or
  - 6.2.2. any damage or loss due to unloading or unpacking of the Goods unless caused by the negligence of TGC; or
  - 6.2.3. damage to any property owned by the Purchaser whilst collecting the Goods from TGC's factory.
- 6.3. Any costs incurred by TGC due to any failure by the Purchaser to accept the Goods at the time of delivery will be reimbursed by the Purchaser to TGC
- 6.4. Except as required by law, TGC will be under no obligation to accept Goods returned for any reason.

### 7. WARRANTIES

- 7.1. TGC warrants to the original Purchaser to repair any defects in material and workmanship supplied and attributable to TGC for a period of 24 months from the date of purchase as set out in the TGC Warranty guide.
- 7.2. Legislation such as the Australian Consumer Law or the equivalent state legislation may apply to these Terms and Conditions, warranties or conditions or impose obligations which cannot be excluded, restricted or modified and these Terms and Conditions are read subject to such statutory provisions.
- 7.3. All other conditions, warranties, representations, liabilities and obligations, whether implied or imposed by statute, including any conditions or warranties as to merchantability, fitness for purpose or correspondence with description are excluded to the extent permitted by law.
- 7.4. In the event that TGC breaches its obligations referred to in Clause 7.2, to the extent allowed by law, its liability is limited to any one or more of the following, at its election:
  - 7.4.1. the replacement of the Goods or the supply of equivalent Goods;
  - 7.4.2. the repair of the Goods;
  - 7.4.3. the payment of the costs of replacing the Goods or acquiring equivalent goods; or
  - 7.4.4. the payment of the costs of having the Goods repaired.
- 7.5. The total liability of TGC under these Terms and Conditions is, to the extent permitted by law, expressed in this Clause 7 and the TGC Warranty guide and TGC will under no circumstances be liable to the Purchaser for any loss incurred by the Purchaser or any other party resulting directly or indirectly out of the supply by TGC to the Purchaser or out of any breach by TGC under these Terms and Conditions or the TGC Warranty Guide or out of the negligence of TGC.
- 7.6. Nothing in these Terms and Conditions shall exclude or modify any conditional warranty implied by law where to do so would render these Terms and Conditions void.
- 7.7. TGC does not warrant that the Goods will meet the specific needs of the Purchaser. TGC will take all due care to ensure the Goods meet the demands, specifications and requirements of the Purchaser.
- 7.8. Whilst all due care to ensure your nominated vehicle is suitable, TGC does not warrant that the Goods, when installed on a motor vehicle, will meet the roadworthy standards applicable to each state and/or territory of Australia. Some vehicle may require modifications, and the Purchaser should make all necessary enquiries with road traffic authorities before entering into a Contract with TGC.
- 7.9. In the case of second hand Goods, the purchaser acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by TGC as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded.

### 8. VOIDED WARRANTY

- 8.1. TGC reserves the right to declare void any warranty claim where the Purchaser does not give TGC the opportunity to have its representatives inspect the application and installation of the Goods.
- 8.2. Any incorrect installation of the Goods by the Purchaser which results in loss or damage will void any warranty with TGC.
- 8.3. Any attempt by the Purchaser to repair the goods once installed will void the warranty unless the Purchaser first obtains the approval of TGC to either personally undertake the repair or have another person or company complete the work.
- 8.4. In the event TGC agrees with the Purchaser for another individual or company to complete any repairs or undertake any work on the Goods installed on the Purchaser's motor vehicle then any warranty will be void unless first agreed in writing by TGC.

### 9. EXCLUSION OF LIABILITY – ASSUMPTION OF RISK

The Purchaser agrees:

- 9.1. that TGC, its employees and agents shall have no liability whatsoever in negligence, breach of contract or statute or statutory duty (including conditions or warranties implied by the Australian Consumer Law to it, its dependant/s or legal representative for personal injury suffered by the Purchaser as a result of using the Goods;
- 9.2. to indemnify TGC and its servants for any loss, demands, damages, expenses, claims, actions and suits arising out of, or in any way connected to, use of the Goods.

### 10. GENERAL

- 10.1. These Terms and Conditions take effect, are governed by and will be construed in accordance with the laws of the State of Victoria, Australia.
- 10.2. These Terms and Conditions are subject to change without notice.
- 10.3. The parties agree that any action arising out of, or relating to these Terms may only be brought by a court of competent jurisdiction in the state of Victoria, Australia.
- 10.4. If any of these Terms and Conditions are found by a court of competent jurisdiction to be invalid or unenforceable, it will be struck out and the remaining Terms and Conditions will remain in force.
- 10.5. If TGC does not act in relation to a breach by the Purchaser of the Terms and Conditions, this does not waive TGC's right to act with respect to subsequent or similar breaches.
- 10.6. The Purchaser may not assign or transfer any rights or benefits it may receive under these Terms and Conditions to any other person or entity without the prior written consent of TGC.