

Trailman Pty Ltd trading as Titan Trailer Repairs

1. Definitions

- 1.1 "Conditions" means these terms and Conditions of Sale;
- 1.2 "Customer" means a person, firm or corporation seeking to acquire goods from Titan, and if there is more than one, these Conditions bind them jointly and each of them severally;
- 1.3 "goods" means goods supplied by Titan to the Customer;
- 1.4 "GST" means the goods and services tax which will apply to transactions for the sale of goods from 1 July 2000;
- 1.5 "Titan" means Trailman Pty Ltd trading as Titan Trailer Repairs ABN 34 093 815 760

2. Basis of Contract

- 2.1 The Conditions apply exclusively to every contract for the sale of goods by Titan to the Customer and cannot be varied or supplanted by any other condition(s) including those that may be proffered by a Customer or printed on a Customer's purchase order unless expressly accepted in writing by Titan.
- 2.2 Any written quotation or Order form provided by Titan to the Customer in respect of the proposed supply of goods is deemed to be an invitation only to the Customer to place an order based upon that quotation. Quotations are valid for 30 days from the quotation date.
- 2.3 Orders made upon order forms approved by Titan from time to time are subject to these Conditions. Titan may only accept an Order by:
 - a) Notifying the Customer in writing of the acceptance;
 - b) Notifying the Customer in writing of the availability of the goods for delivery; or
 - c) Delivery of the goods to the Customer.
- 2.4 Each acceptance of a separate order by Titan will be deemed to be a separate contract.

3. Payment

- 3.1 Unless otherwise specified by Titan, payment for goods must be made within 30 days of the issue of an invoice by Titan.

4. Pricing

- 4.1 Prices for the supply of goods exclude GST, and any other taxes, duties or imposts imposed on or in relation to the goods in Australia or overseas. As from the date of imposition of a GST, Titan will be entitled to increase its prices for goods by an amount equal to the GST payable on the goods.
- 4.2 The Customer will arrange and pay for all costs associated with the carriage and insurance of the goods from Titan's nominated collection address unless otherwise specified by Titan.
- 4.3 The prices specified for goods may be adjusted by Titan at any time before the delivery date, whether or not a price has previously been specified.

5. Payment Default

- 5.1 If the Customer defaults in payment by the due date of any amount payable to Titan, then all money which would become payable by the Customer to Titan at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Titan may, without prejudice to any other remedy available to it:-
 - a) Claim a general lien over all of the Customer's property in the possession of Titan and subject to giving 14 days written notice to the customer, sell the property by private treaty or public auction, whichever Titan in its sole discretion deems appropriate, and allocate the proceeds to the repayment of

its sale costs and expenses and any sum which is due and payable by the Customer;

- b) Charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic.) plus 2 per cent for the period from the due date until the date of payment in full;
- c) Charge the Customer for all expenses and costs (including legal costs on a solicitor/own client basis) incurred by it in taking whatever action it deems appropriate to recover any sum due;
- d) Cease or suspend for such period as Titan thinks fit, supply of goods to the Customer without liability to the Customer or any third party for any loss or damage whether of a direct or consequential nature.

6. Retention of Title

- 6.1 It is an express condition of the supply of goods by Titan that property in and legal and beneficial title to goods supplied shall not pass to the Customer with physical possession of the goods and that property in and title to the goods shall not pass until all sums owing to Titan are paid in full.
- 6.2 Titan reserves the right to recover possession of any goods supplied by it where all sums owing to Titan have not been fully paid for within the terms of Titan's normal trading arrangements with the Customer.
- 6.3 Titan may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of Titan, and for this purpose the Customer irrevocably licenses Titan to enter such premises and also indemnifies Titan from and against all costs, claims, demands or actions by any party arising from such action.

7. Performance of Contract

- 7.1 Any period or date stated by Titan for the delivery of the goods is intended as an estimate only and is not a contractual commitment. Titan will use its best endeavours to meet any estimated dates but will in no circumstances whatsoever be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date even if such loss or damage is caused by the act or omission of Titan.

8. Delivery and Risk in Goods

- 8.1 Risk in the goods and all insurance responsibility for theft, damage or loss in respect of the goods will pass to the Customer upon the goods being loaded onto the relevant transport at Titan's premises, whether such transport is arranged by Titan or the Customer.
- 8.2 The Customer agrees to accept partial delivery of goods however the Customer cannot insist upon a partial delivery or pre-delivery of goods.

9. Specifications

- 9.1 Titan has no responsibility whatsoever to verify specifications supplied by the Customer.

10. Liability

- 10.1 All conditions and warranties implied into contracts for the supply of goods at law or pursuant to Federal or State legislation are excluded to the maximum extent permitted.
- 10.2 Subject to and to the extent permitted by State and Federal legislation applicable to the sale of goods, replacement or repair of the goods is the absolute limit of Titan's liability howsoever arising

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under or in connection with the supply of the goods, the description, quality, condition, performance, assembly, manufacture, merchantability or fitness for purpose of the goods or alternatively the sale, use of or any other dealings with the goods by the Customer or any third party.

10.3 Titan is not liable for any consequential loss, damage or expense suffered by the Customer or any third party however caused, including but not limited to loss of profits, business or goodwill or any liability to a third party.

10.4 Any advice, recommendation, information or assistance provided by Titan in relation to the goods supplied by it or their use or application is given in good faith, is believed by Titan to be appropriate and reliable, however, it is provided with a disclaimer for any liability or responsibility on the part of Titan.

11. Warranty

11.1 Goods supplied shall be free from defects in materials and workmanship for a period of 1 year from the date of delivery.

11.2 This warranty does not apply in circumstances where:-

- a) The goods are not defective;
- b) The goods were used for a purpose other than for which they were intended;
- c) The goods were repaired, modified or altered by any person other than Titan;
- d) The defect has arisen due to misuse, neglect or accident;
- e) The defect has arisen due to the incorrect installation of the goods;
- f) The goods have not been stored or maintained as recommended by Titan;
- g) The defect has arisen due to normal wear and tear on the goods;
- h) The Customer is in breach of the Conditions.

11.3 Titan's liability under this warranty is limited to repairing or replacing any goods that Titan accepts are defective and covered by this warranty.

11.4 In order to make a claim under this warranty, a Customer must:-

- a) Give Titan written details of any defect in the goods together with documentary proof of the date of purchase and date of installation of end use of the goods within 30 days of identifying the defect;
- b) Return the defective goods to Titan or allow Titan or its employees or agents to inspect the goods;
- c) Provide any information requested by Titan in relation to the goods or installation or use of the goods.

11.5 Titan accepts no responsibility for defective goods not of its manufacture. In the case of any claim, the item(s) will be returned to the original supplier for examination. The Customer will be entitled to the benefit of any warranty given by the original supplier should the item(s) be found to be defective. Titan will not be under any obligation to provide replacement parts while the examination of the item(s) is undertaken by the original supplier.

12. Returns and Exchanges

12.1 Except as otherwise required by law claims for shortages in delivery must be made within 14 days of the date of delivery.

12.2 Titan will not under any circumstances accept goods for return:-

- a) Which have been specifically produced, imported or acquired to fulfill any contract;
- b) Which have been altered in any way;

c) Which have been used; or

d) Which are not in their original condition.

12.3 If goods are accepted for return by Titan, the Customer will receive a credit for the returned goods equal to the price charged by Titan less a 10% deduction for handling and restocking charges.

13. Cancellation

13.1 If, through circumstances beyond the control of Titan, Titan is unable to supply the goods, then Titan may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer. Titan will be under no liability to the Customer or any third party for any damages or losses, direct or indirect, resulting from such cancellation.

13.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on Titan after that order has been accepted by Titan.

14. Jurisdiction

14.1 These Conditions will be governed by the laws of Victoria and the parties hereby submit to the exclusive jurisdiction of the Victorian courts and the Federal Court of Australia (Victoria Registry).

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