

**Terms & Conditions**

**1. Terms and Conditions**

- 1.1 An Order placed by a Customer with Borcat is deemed to be accepted by the Customer and Borcat on these conditions.
- 1.2 These Terms and Conditions form the agreement between the Customer and Borcat ("Agreement").
- 1.3 None of Borcat's employees, representatives or agents are authorised to make any promises, statements or agreements not expressed to the Customer by Borcat in writing or within these Terms and Conditions.
- 1.4 Borcat will not be bound by any such unauthorised promises, statements or agreements as referred to in clause 1.3 nor will any such authorised promises, statements or agreements form part of this Agreement.

**2. Definitions**

- 2.1 "Borcat" means Borcat Trailers Pty Ltd A.C.N. 131 446 341.
- 2.2 "Customer" means the Customer as indicated on any invoice, quote or Order form issued by Borcat to the Customer.
- 2.3 "Goods & Services" means all goods and/or services supplied by Borcat to the Customer.
- 2.4 "GST" means goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999* ("GST Act") and the terms used to have the same meaning as defined in the GST Act.
- 2.5 "Guarantor" means a person (or persons), or entity, as indicated on any invoice, quote or Order form issued by Borcat to the Customer who agrees to be liable for any debts of the Customer as owed to Borcat.
- 2.6 "Order" means a request, confirmed in writing or otherwise, by the Customer for Borcat to supply Goods & Services.
- 2.7 "Price" means the cost of the Goods or Services as indicated on any invoice, quote or Order form issued by Borcat to the Customer.

**3. Acceptance**

- 3.1 Any instructions received by Borcat from the Customer for the supply of "Goods & Services", whether by Order, in writing or otherwise, shall constitute acceptance of these Terms and Conditions by the Customer.
- 3.2 These Terms & Conditions can only be revoked or varied with the written consent of Borcat.

**4. Price and Payment**

- 4.1 In respect of Goods & Services supplied by Borcat the Customer is taken to have accepted the Price when an Order is made with Borcat.
- 4.2 Where more than one (1) Customer has entered into this Agreement with Borcat, the Customers shall be jointly & severally liable for payment of the Price.
- 4.3 The Price will be GST exclusive and increased by the amount of any GST that may be applicable except to the extent that such GST is expressly included in any invoice or quote issued by Borcat to the Customer.
- 4.4 Borcat may, by notice in writing to the Customer, increase the Price to reflect any increase in cost to Borcat beyond the reasonable control of Borcat including, but not limited to, an increase in taxes, duties, foreign exchange, rates, insurance premiums, material costs, warehousing costs, labour costs, etc.
- 4.5 If a deposit is required to be paid by the Customer, which is at the sole discretion of Borcat, the deposit amount will be notified by Borcat at the time of an Order and will be immediately due and payable by the Customer.
- 4.6 The time for payment of the Price will be as stated on the relevant invoice issued by Borcat to the Customer.
- 4.7 Payment of the Price is to be made by cash, bank cheque, Electronic Funds Transfer (EFT) or credit card or as otherwise directed on the relevant invoice by Borcat
- 4.8 Personal cheques are not accepted by Borcat.
- 4.9 Where payment of the Price is made by credit card the Customer agrees to pay any additional charges that may be applicable which will be advised by Borcat at the time of payment.
- 4.10 Payment is not deemed to be received by Borcat until such payment has cleared with Borcat and Borcat has advised the Customer of the same.

**5. Trade-ins**

- 5.1 The acceptance by Borcat of any trade-in trailer offered by the Customer will be at the sole discretion of Borcat and subject to Borcat's satisfaction with the condition of same.

**Terms & Conditions**

- 5.2** Borcat, in its sole discretion, will determine and advise the Customer of the value of any relevant trade-in trailer.
- 5.3** If the condition of any trade-in trailer offered by the Customer has been misrepresented in any way Borcat will be entitled to recover from the Customer any loss, damage or costs it incurs as a result of that misrepresentation. Borcat will also be entitled to recover from the Customer any cost to restore the trailer to the condition as misrepresented and/or a roadworthy status.

**6. Interest**

If payment of the Price is not made within 14 days of the due date interest may be charged by Borcat at the rate of 2% above the rate charged by Borcat's bankers in respect of overdraft amounts of \$100,000 or more per annum, calculated daily, from the due date until the actual date of payment.

**7. Seller's Rights**

- 7.1** Until the Customer has paid the full amount of the Price and any other amounts owed to Borcat by the Customer and Borcat has acknowledged receipt of same Borcat is entitled to withhold the Goods & Services without any recompense to the Customer.
- 7.2** In the event that the Customer has failed to pay the full amount of the Price and any other amounts owed to Borcat by the Customer, and Borcat has issued a written demand to the Customer that is not satisfied by the due date specified within, then Borcat may dispose of the Goods & Services as Borcat sees fit and claim from the Customer any loss to Borcat arising out of such disposal.

**8. Delivery**

- 8.1** Delivery of the Goods & Services is at Borcat's premises unless agreed otherwise in writing between Borcat and the Customer.
- 8.2** In the event that delivery of the Goods & Services is to be at a place, or via means, other than Borcat's premises the Goods & Services are at the Customer's risk and responsibility from the time the Goods & Services leave the premises of Borcat.
- 8.3** In the event that delivery of the Goods & Services is to be at a place, or via means, other than Borcat's premises and the Customer requires Borcat or any of its employees, representatives or agents to operate, test, adjust or otherwise handle the Goods & Services or any other property owned by the Customer the Customer indemnifies Borcat, its employees, representatives and/or agents against all claims and demands whatsoever for any loss or damage suffered by any party as a result of same.
- 8.4** Borcat shall use reasonable endeavours to deliver the Goods & Services within the time specified in the Order.
- 8.5** Borcat will be entitled to extension of time for delivery of the Goods & Services where the delay is caused by circumstances beyond its control including, but not limited to, a breakdown in plant or machinery, industrial disputes, labour shortages, accidents, delays or inability in obtaining materials, failure in power supplies or transport, fire, flood or other force majeure.
- 8.6** In the event of a delivery delay as referred to in clause 8.5 Borcat shall not be liable to the Customer for any loss or damage suffered by the Customer arising from the delivery delay.

**9. Title & Risk**

- 9.1** Title to the Goods & Services shall not pass from Borcat to the Customer until the Customer has paid the full amount of the Price and any other amounts owing to Borcat by the Customer and Borcat has acknowledged receipt of same.
- 9.2** The Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods & Services to any person or entity while title to the Goods & Services remain with Borcat.
- 9.3** Borcat may, however, issue proceedings to recover the Price of the Goods & Services from the Customer if the Customer has failed to pay the Price and any other amounts owing to Borcat by the Customer notwithstanding that title to the Goods & Services may remain with Borcat.
- 9.4** Once title to the Goods & Services passes from Borcat to the Customer the Goods & Services are at the Customer's risk & responsibility.
- 9.5** The Customer shall have no claim against Borcat, its employees, representatives or agents, in respect of any damage or loss to the Customer arising out of the use or storage of the Goods & Services at Borcat's premises.

**Terms & Conditions**

**10. Returns**

- 10.1** Upon delivery of the Goods & Services, the Customer shall inspect same, and within seven (7) days, notify Borcat of any alleged damage or failure of the Goods & Services to comply with the Order.
- 10.2** Borcat will then be given an opportunity to inspect the Goods & Services for such alleged damage or failure of the Goods & Services to comply with the Order and make its own assessment.
- 10.3** If Borcat, in its sole discretion, has agreed in writing that the Customer is entitled to reject the Goods & Services for damage or failure of the Goods & Services to comply with the Order Borcat's liability will be limited to replacing or repairing the Goods & Services provided that:
- (a) the Customer has complied with the provisions of clause 10.1;
  - (b) the Goods & Services are returned to Borcat within seven (7) days of Borcat's agreement in writing that the Customer is entitled to reject the Goods & Services; and
  - (c) the Goods & Services are in the same condition in which they were delivered to the Customer.
- 10.4** Borcat will not be liable for replacing or repairing the Goods & Services where they have not been appropriately stored or by the Customer.

**11. Warranties**

- 11.1** Borcat warrants that the Goods & Services are free from defects in material and workmanship for a period of 12 months, or up to 130,000km, whichever occurs first.
- 11.2** The warranty in clause 11.1 is applicable where the Goods & Services are used by the Customer in a normal manner, are adequately maintained and have not been subject to misuse, neglect, accident or overload.
- 11.3** The warranty in clause 11.1 does not, however, apply to normal wear & tear of the Goods & Services.
- 11.4** In the event of the Goods & Services proving to be defective within the terms of the warranty in clause 11.1 Borcat will replace or repair the Goods & Services, or such parts therein, as necessary to remedy the defect.
- 11.5** The Customer is required to return the Goods & Services to the premises of Borcat to enable such replacement or repair as referred to in clause 11.4.

**12. Intellectual Property**

- 12.1** Where Borcat has designed or drawn Goods & Services for the Customer then the intellectual property in those designs and drawings shall remain vested in Borcat.
- 12.2** Where any designs or specifications have been supplied by the Customer for manufacture by Borcat then the Customer warrants that the use of those designs or specifications by Borcat will not infringe the rights of any party.
- 12.3** Where an infringement as referred to in clause 12.2 occurs the Customer fully indemnifies Borcat against all claims & demands whatsoever for any loss or damage suffered by any party as a result of such infringement.

**13. Termination**

- 13.1** This Agreement may be terminated at any time by way of mutual agreement in writing between Borcat & the Customer.
- 13.2** If termination is instigated by the Customer Borcat may, in its sole discretion, charge the Customer, and the Customer is liable to pay, a termination fee of 10% of the Price to cover the cost of any expenditure of Borcat's time and any expenses it may incur.
- 13.3** If, in the event of a delivery delay as referred to in clause 8.4, Borcat believes that it will not be able to deliver the Goods & Services within a reasonable time then Borcat may terminate this Agreement by notice in writing to the Customer.
- 13.4** Upon termination by Borcat as referred to in clause 13.3 Borcat will not be liable for any loss or damage suffered by the Customer arising from the termination.

**14. Reliance**

- 14.1** The Customer acknowledges that it has not relied upon any statement, representation or warranty made or given by Borcat or anyone on its behalf in respect of the subject matter of this Agreement other than those that are contained in this Agreement.
- 14.2** The Customer makes its Order with Borcat in reliance upon its own enquiries and conclusion as to the fitness of the Goods & Services for any purpose.

**Terms & Conditions**

**15. Privacy**

- 15.1** In order for Borcat to supply the Goods & Services to the Customer Borcat may need to obtain confidential and personal information about the Customer and Guarantor/s
- 15.2** The Customer and Guarantor agree for Borcat to obtain such confidential & personal information including, but not limited to, ownership details, contact details including addresses, phone numbers, fax numbers and email addresses, credit reports, insolvency and/or bankruptcy reports, criminal history reports and any other confidential and personal information deemed by Borcat to be necessary for Borcat to supply the Goods & Services and/or protect its rights and interests.
- 15.3** The Customer and Guarantor agree that Borcat may use & exchange such information as referred to in clause 15.2 with any person or entity for the purposes of:
- (a) Provision of Goods & Services;
  - (b) Marketing of Goods & Services;
  - (c) Marketing Borcat;
  - (d) Assessing an application for credit by the Customer;
  - (e) Assessing the credit history of the Customer and/or Guarantor;
  - (f) Notification of any default by the Customer and/or Guarantor under this Agreement;
  - (g) Protecting Borcat's rights and interests under this Agreement; and
  - (h) Disclosure as required by law.
- 15.4** The Customer and/or Guarantor may access any such information held by Borcat by making a written request to the managing director of Borcat. Borcat will then indicate to the Customer and/or Guarantor in writing the manner, time and place in which such access can be gained.
- 15.5** The Customer and/or Guarantor have the right to correct any such information that may be inaccurate, incomplete or out-of-date.

**16. General**

- 16.1** This Agreement shall be governed & interpreted in accordance with the laws of the State of New South Wales.
- 16.2** The headings contained in these Terms & Conditions are inserted for reference purposes only and shall not be construed as part of the Agreement nor shall they effect the interpretation hereof in any way whatsoever.
- 16.3** Words importing the singular number or the plural number shall include the plural number and the singular number respectively and words importing any gender shall include each other gender.
- 16.4** Each of these Terms & Conditions shall be severable and shall have an independent operation from the other with the intent that if any one or more of such Terms & Conditions are or may constitute unfairness or otherwise be ruled to the contrary to public interest or be unenforceable or illegal such application shall not affect the balance of this Agreement which shall continue to operate in full force and effect.
- 16.5** Where any of these Terms & Conditions are inconsistent with a Customer's Order then these Terms & Conditions will prevail.
- 16.6** Borcat reserves the right to amend these Terms & Conditions from time to time. If any such amendment shall affect the Agreement between the Customer & Borcat, Borcat will notify the Customer in writing of the amendment and the date upon which the amendment will take effect.
- 16.7** In relation to any amounts due from Borcat the Customer shall have no right of set off against the Price or any other amounts owed to Borcat by the Customer.
- 16.8** In relation to the supply of Goods & Services the Customer authorises Borcat to subcontract the whole or part of the supply of Goods & Services.