

1. Terms and Conditions

- 1.1** The Customer and Borcat agree that an Order placed by the Customer with Borcat, in writing or otherwise, is accepted on these Terms and Conditions.
- 1.2** These Terms and Conditions form the entire agreement between the Customer and Borcat ("Agreement").
- 1.3** These Terms and Conditions can only be revoked or varied with the written consent of Borcat.
- 1.4** None of Borcat's employees, representatives or agents are authorised to make any promises, statements or agreements not expressed within these Terms and Conditions.
- 1.5** Borcat will not be bound by any such unauthorised promises, statements or agreements as referred to in clause 1.4 nor will any such unauthorised 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** "Deposit" means an amount paid by the Customer to Borcat as security and/or part payment of the Price.
- 2.4** "Goods & Services" means all goods and/or services supplied by Borcat to the Customer.
- 2.5** "GST" means goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999* ("GST Act") and the terms used have the same meaning as defined in the GST Act.
- 2.6** "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 and all monies as owed to Borcat by the Customer.
- 2.7** "Order" means a request, confirmed in writing or otherwise, by the Customer for Borcat to supply Goods & Services.
- 2.8** "Price" means the amount payable for the Goods & Services by the Customer as indicated on any invoice, quote or Order form issued by Borcat to the Customer.

3. Price and Payment

- 3.1** In respect of Goods & Services supplied by Borcat the Customer is taken to have accepted the Price when an Order is made with Borcat.
- 3.2** Where more than one (1) Customer has entered into this Agreement with Borcat, the Customers shall be jointly and severally liable for payment of the Price.
- 3.3** The Price will be GST exclusive and increased by the amount of any GST that may be applicable.
- 3.4** Borcat may, by notice in writing to the Customer, increase the Price to reflect any increase in cost to Borcat including, but not limited to, an increase in taxes, material costs, warehousing costs, labour costs, insurance premiums, etc.
- 3.5** Where there is any increase to the Price as referred to in clause 3.4 the Customer is taken to have agreed to pay that increased Price if no dispute is raised by the Customer within 7 days of Borcat issuing such notice in writing.

Borcat signature: _____ | Customer signature: _____

- 3.6** If, at the sole discretion of Borcat, a Deposit is required to be paid by the Customer the amount of the Deposit will be notified by Borcat at the time the Customer places an Order with Borcat.
- 3.7** The time for payment of the Price and any Deposit will be as stated on the relevant invoice issued by Borcat to the Customer.
- 3.8** 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.
- 3.9** Personal cheques are not accepted by Borcat.
- 3.10** 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.
- 3.11** Payment is not deemed to be received by Borcat until funds have cleared with Borcat and Borcat has advised the Customer of same.

4. Trade-in Trailers

- 4.1** 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.
- 4.2** Borcat, in its sole discretion, will determine and advise the Customer of the value of any relevant trade-in trailer.
- 4.3** 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 it incurs to restore the trailer to the condition as misrepresented.

5. Interest on Unpaid Amounts

If payment of the Price is not made within 14 days of the due date interest may be charged by Borcat at a rate of 2% above the rate charge 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.

6. Seller's Rights

- 6.1** Until the Customer has paid the full amount of the Price, Deposit 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.
- 6.2** If the Customer fails to pay the full amount of the Price, Deposit 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, damage or costs to Borcat arising out of such disposal.

7. Delivery of Goods & Services

- 7.1** Delivery of the Goods & Services is at Borcat's premises unless agreed otherwise in writing between Borcat and the Customer.

Borcat signature: _____ | Customer signature: _____

- 7.2** 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.
- 7.3** In the event that 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.
- 7.4** Delivery of the Goods & Services will be within the time specified by Borcat in the Order.
- 7.5** Borcat will, however, be entitled to extensions 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, problems in obtaining materials, industrial disputes, labour shortages, accidents, power failures or any event in the nature of a force majeure.
- 7.6** In the event of a delivery delay as referred to in clause 7.5 Borcat shall not be liable to the Customer for any loss or damage suffered by the Customer arising from the delivery delay.

8. Title and Risk

- 8.1** Title to the Goods & Services shall not pass from Borcat to the Customer until the Customer has paid the full amount of the Price, Deposit and any other amounts owing to Borcat by the Customer and Borcat has acknowledged receipt of same.
- 8.2** The Customer shall not charge the Goods & Services in any way nor grant or otherwise give any interest in the Goods & Services to any person or entity while title to the Goods & Services remains with Borcat.
- 8.3** Borcat may issue proceedings to recover the Price of the Goods & Services from the Customer if the Customer has failed to pay the Price, Deposit and any other amounts owing to Borcat by the Customer notwithstanding that title to the Goods & Services may or may not remain with Borcat.
- 8.4** Once title to the Goods & Services passes from Borcat to the Customer the Goods & Services are at the Customer's full risk and responsibility.
- 8.5** 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.

9. Return of Goods & Services

- 9.1** Upon delivery of the Goods & Services the Customer shall inspect same and, within 7 days, notify Borcat of any alleged damage or failure of the Goods & Services to comply with the Order.
- 9.2** If no such notice has been given by the Customer in accordance with clause 9.1 the Customer is taken to have accepted the Goods & Services as free from any such damage or failure to comply with the Order.
- 9.3** If, however, notice has been given by the Customer in accordance with clause 9.1 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.

Borcat signature: _____ | Customer signature: _____

- 9.4** 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 Goods & Services are returned to Borcat within 7 days of Borcat's agreement in writing that the Customer is entitled to reject the Goods & Services; and
 - b) the Goods & Services are in the same condition in which they were delivered to the Customer.
- 9.5** Borcat will not be liable for replacing or repairing the Goods & Services where they have not been appropriately stored or used by the Customer.

10. Borcat's Warranty

- 10.1** Borcat warrants that the Goods & Services are free from defects in material and workmanship for a period of 12 months, or up to 130,000kms, whichever occurs first.
- 10.2** The warranty in clause 10.1 is not applicable to normal wear and tear nor where the Goods & Services are misused, neglected, overloaded, not adequately maintained or have been subject to accident.
- 10.3** If the Goods & Services are defective within the terms of the warranty in clause 10.1 Borcat will replace or repair the Goods & Services, or such parts therein, as necessary to remedy the defect.
- 10.4** 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 10.3.

11. Intellectual Property

- 11.1** Where Borcat has designed, drawn or made the Goods & Services for the Customer then the intellectual property in those designs, drawings and making shall remain vested in Borcat.
- 11.2** Where any designs or specifications for Goods & Services have been supplied by the Customer for supply by Borcat the Customer warrants that the use of those designs or specifications by Borcat will not infringe the rights of any party.
- 11.3** Where any infringement as referred to in clause 11.2 occurs the Customer fully indemnifies Borcat against all demands, claims and suits whatsoever for any loss or damage suffered by any party as a result of such infringement.

12. Termination of Agreement

- 12.1** This Agreement may be terminated at any time by way of mutual agreement in writing between Borcat and the Customer.
- 12.2** If termination is instigated by the Customer Borcat can:
- a) keep the Deposit; and/or
 - b) sue the Customer
- to recover the cost of any materials, expenditure of Borcat's time, labour and any other costs and expenses incurred arising out of the Customer's termination.
- 12.3** If, in the event of a delivery delay as referred to in clause 7.5, 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.

Borcat signature: _____ | Customer signature: _____

12.4 Upon termination by Borcat as referred to in clause 12.3 Borcat will not be liable for any loss or damage suffered by the Customer arising from the termination.

13. Dispute Resolution

13.1 Where a dispute arises between the Customer/Guarantor and Borcat the parties to that dispute are to use their best endeavours to negotiate, in good faith, a resolution to that dispute.

13.2 In order to facilitate a negotiated resolution pursuant to clause 13.1 the party raising a dispute must issue a notice in writing to the other party setting out:

- a) The nature of the dispute;
- b) What outcome the party raising the dispute wants; and
- c) What action the party raising the dispute believes, on reasonable grounds, will settle the dispute.

13.3 The parties are then required to meet and/or correspond with each other to try and resolve that dispute.

13.4 If the parties are unable to resolve the dispute within 30 days of a notice being issued in accordance with clause 13.2, then either party may refer the matter to an independent accredited mediator with the choice of that accredited mediator to be as agreed between the parties.

13.5 If the parties cannot agree on the choice of accredited mediator either party may request the President of the New South Wales Law Society to make an appointment which will be binding on the parties.

13.6 Where an accredited mediator is appointed, the parties will share the cost of the accredited mediator equally.

13.7 If, after a period of 30 days, mediation has failed then either party may initiate legal proceedings.

14. Customer's Reliance

14.1 The Customer acknowledges that no reliance has been placed upon any statement, representation or warranty made or given by Borcat or anyone on its behalf in respect of the Goods & Services other than those that are contained in this Agreement.

14.2 The Customer relies upon their own enquires and conclusions as to the fitness of the Goods & Services for any purpose.

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/or the Guarantor.

15.2 The Customer and Guarantor agree for Borcat to obtain such confidential and 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 under this Agreement.

15.3 The Customer and Guarantor agree that Borcat may use and exchange such information as referred to in clause 15.2 with any person or entity for the purposes of:

Borcat signature: _____ | Customer signature: _____

- a) Providing 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 and interpreted in accordance with the laws of the State of New South Wales.
- 16.2** The headings contained in these Terms and 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 and 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 and 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 and Conditions are inconsistent with a Customer's Order then these Terms and Conditions will prevail.
- 16.6** Borcat reserves the right to amend these Terms and Conditions from time to time. If any such amendment shall affect the Agreement between the Customer and 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. Deposit 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 any part of the supply of Goods & Services.

Borcat signature: _____ | Customer signature: _____