

## TrailerTail Sales Agreement – Terms & Conditions

- 1. ACCEPTANCE AGREEMENT.** This document, once executed by both Buyer and Seller, including these Terms and Conditions, (collectively “Agreement”) shall constitute a legally enforceable purchase contract between the parties that supersedes all other prior agreements, oral or written, and all other prior communications between the parties suggesting additional or different terms. It represents the final and complete understanding of the parties and may be amended or cancelled only by written agreement signed by both parties.
- 2. TERMS OF PAYMENT.** All payments shall be made in the amount and within the time period specified on the face hereof, except as otherwise provided by any applicable lease or purchase financing agreement executed concurrently or hereafter by the parties. No discounts shall be taken except as specifically allowed by such terms. The price for the goods and services (hereafter collectively the “Goods”) and all other amounts due to Seller from Buyer shall be paid without abatement, deduction, or setoff. Any unpaid balance after the required payment date(s) shall be subject to a finance charge of 1.5% per month (18% per annum) from such date. In the event the Seller is required to institute Litigation to recover any obligations due Seller from Buyer, Seller shall be entitled to receive, as an additional item of damages, reasonable collection and/or attorney’s fees and costs incurred by Seller in pursuit of Buyer, inclusive of any pre-Litigation attorney’s fees or costs.
- 3. TAXES.** Prices do not include any sales, use, excise, privilege, or other taxes or assessments now or hereafter imposed or levied by or under the authority of any federal, state, or local law, rule, or regulation concerning the Goods sold hereunder or the manufacture or sale thereof. If Seller pays any such taxes or assessments, Buyer shall upon demand, reimburse Seller for such amounts.
- 4. RISK OF LOSS.** Except as otherwise specifically provided for herein, all risk of loss or damage to Goods shipped hereunder shall pass to Buyer upon delivery thereof to Buyer to its designated agent, or to a carrier for delivery to Buyer, whichever occurs first. Unless otherwise stated, all shipments will be made F.O.B. point of manufacture.
- 5. VARIATIONS AND DUPLICATION.** Goods shipped by Seller shall be within the limits and sizes published by Seller, subject to Seller’s standard variation. Shades and colors will be duplicated as nearly as possible; but EXACT DUPLICATION IS NOT WARRANTIED.
- 6. DELIVERY.** All shipping and delivery dates are estimated and based upon prompt receipt of all necessary information and required payments. Delays in securing Buyer’s approval of necessary specifications or samples of products and materials shall, if Seller so chooses, extend the date of delivery. Seller shall not be liable for any claim, loss, expense, or damage of any kind whatsoever for delays in delivery.
- 7. LIMITED WARRANTY**
  - A. Description.** This warranty covers only parts manufactured by Seller and services provided by Seller. Except with respect to title, this warranty does not attach to parts or accessories not manufactured by Seller, regardless of whether such parts or accessories were selected or recommended by Seller. Seller will, as an accommodation, pass on to Buyer whatever warranty, if any, Seller receives from this manufacturer or such part or accessory, but only to the extent allowed by such manufacturer. Any claim with respect to any such part or accessory shall be made directly to the manufacturer. This warranty shall be void if the goods are in any way subjected to **(i)** improper installation or storage; **(ii)** lack of proper maintenance and service; **(iii)** accident, damage, abuse, or misuse; **(iv)** abnormal operating conditions or applications; **(v)** repair or modification by Buyer or any third party without the prior written consent of Seller; **(vi)** operating conditions of applications above the rated capacity of the goods; **(vii)** use under operating conditions or applications not made known to or contemplated by Seller; **(viii)** any other abnormal operation. With respect to any defect in material or workmanship in any goods sold or services covered by this warranty, if Buyer notifies Seller of such defect in writing within the warranty period, Seller will repair, replace, or redo, at its sole option, at a location designated by the Seller, any such defective goods or services provided that the Buyer delivers such goods to the designated location at Buyer’s cost. This shall be Buyer’s exclusive remedy for any breach of this warranty by Seller. Any claims not made within the warranty period are deemed waived by Buyer. In lieu of repairing, replacing, or redoing any such goods, defective goods or services, Seller shall have the right, at its sole option, to refund the purchase price thereof. If Seller authorizes Buyer or a third party to repair, replace, or redo the defective goods instead of Seller doing such work itself, Buyer shall retain any such defective goods for a reasonable period after such work is done to allow Seller a chance to examine and inspect the same. In no event will Seller be liable, whether in tort, contract or otherwise, for any bodily injury, death, or property damage resulting from or in any way arising out of any goods or services provided by Seller or their sale, use, or manufacture. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, LOSSES OR EXPENSES, AND THE MAXIMUM TOTAL LIABILITY OF SELLER ARISING FROM OR RELATED TO THIS AGREEMENT OR THE PRODUCTS SOLD HEREUNDER SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY BUYER TO SELLER.** Seller reserves the right, at any time, to make any change or changes, in the design or specification of the goods or services, which Seller, in its sole discretion, believes will constitute an improvement, in such goods and services. However, no such change shall create any obligation on

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Seller to make equivalent changes in goods, previously manufactured or services previously provided by Seller. **THIS IS SELLER'S ONLY WARRANTY. SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED.**

**B. Term.** Except as otherwise provided herein, Seller expressly warrants that all goods and services provided by Seller will be free from defects in material and workmanship for a period ending thirty-six months after delivery to original owner.

**C. Buyer's Specifications.** In the event Buyer furnishes specifications (including, without limitation, specifications regarding the size or fit of the Goods) to Seller for the purpose of manufacturing Goods, Buyer represents and warrants that all such specifications are accurate and complete in all respects. Seller shall have no liability for, and Buyer shall indemnify, defend and hold harmless Seller from, all claims, damages, losses, liabilities, costs and expenses (collectively, "Damages") arising out of or related to inaccurate or incomplete specifications furnished by Buyer. If Buyer does not furnish any specifications to Seller, then Seller will manufacture Goods for Buyer based on industry standard specifications. **IN ADDITION TO THE DISCLAIMER IN 7(A), ABOVE, SELLER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO SUCH INDUSTRY STANDARD SPECIFICATIONS, AND SELLER SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGES ARISING OUT OF OR RELATED TO SELLER'S USE OF INDUSTRY STANDARD SPECIFICATIONS.**

- 8. INSPECTION.** Buyer shall inspect the Goods as soon as possible, but at least within seven days, after receipt, and Buyer shall immediately notify Seller in writing of any claims that the Goods do not confirm to the description in Seller's quotation or order acknowledgement, that the Goods are in any way defective, or that Buyer is rejecting the Goods.
- 9. FORCE MAJEURE.** Seller shall not be liable for any delay in or failure of performance hereunder due to any contingency beyond its reasonable control, including without limitation; an act of God; war; civil commotion; sabotage; labor dispute; explosion; fire; accident; power or equipment failure; inability to obtain suitable or sufficient labor, fuel, power, or material; delay of carrier, embargo, or any law ordinance, rule or regulation, whether valid or invalid, including but not limited to priority, requisition, allocation or price control.

**10. DEFAULT.** If Buyer is in default or commits a breach of any of the provisions of this Agreement, Seller shall have the right to cease work and/or shipment of any further goods hereunder immediately. Further, if Buyer fails to cure such default or breach within 10 days after written notice thereof from Seller, Seller may terminate this agreement by written notice by Buyer, in the sole discretion of Seller. If Buyer cures such default or breach within said 10 day period, this Agreement shall remain in effect, except for any adjustments to price, delivery terms, or other provision hereof which are necessary or appropriate because of any permitted cessation of work by Seller.

**11. STORAGE.** In absence of agreed shipping dates, Seller shall have the right to invoice Buyer and ship the Goods once they are ready for shipment. If Buyer is unwilling to accept shipment of the Goods on the agreed shipping date or as provided in the prior sentence, Seller may, as its option, place them in storage and bill Buyer for applicable storage charges. In such cases, risk of loss shall pass to Buyer when the Goods are placed in storage, and the date the Goods are placed in storage shall constitute the date of shipment for purposes of beginning the warranty period.

**12. WAIVER.** Failure of Seller at any time to require Buyer's performance of any obligation under this Agreement shall not affect Seller's right to require performance of that obligation. Any waiver by Seller of any breach or default hereunder must be in writing and shall not be construed to be a waiver of any continuing or succeeding breach or default, a waiver or modification of this provision itself, or waiver or modification of any right under this Agreement. Failure of Seller to exercise any right of termination or suspension of performance hereunder shall not act as a waiver of any rights or remedies provided herein or under applicable law.

**13. ASSIGNMENT.** Buyer shall not assign this Agreement or any monies due or to become due hereunder, without Seller's prior written consent.

**14. GOVERNING LAWS, ARBITRATION, VENUE.** This Agreement shall be construed in accordance with the laws of the State of North Carolina. As the exclusive means of resolving through adversarial dispute resolution any disputes arising out of this agreement ("Litigation"), a party may demand that any such dispute be resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and each party hereby consents to any such disputes being so resolved. Judgment on the award rendered in any such arbitration may be entered in any court having jurisdiction. The exclusive venue for any arbitration shall be within the City of Longview, TX.