

DELTA CARAVANS INTERNATIONAL LIMITED

TERMS AND CONDITIONS OF SALE

The customer's attention is drawn in particular to the provisions of clause 9.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions and Order Acknowledgment, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.6.

Contract: the contract between Delta and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from Delta.

Delta: Delta Caravans International Limited whose registered office is at 240 Leads Road Hull East Yorkshire HU7 0DF (registered in England and Wales with company number 04016676).

Force Majeure Event: has the meaning given in clause 10.

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the Goods, including but not limited to, as set out in the Customer's purchase order form or the Customer's written acceptance of Delta's quotation issued by Delta to the Customer.

Order Acknowledgement: written acceptance of the Order issued by Delta to the Customer.

Specification: the specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and Delta and set out in the Order Acknowledgement.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and the Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Delta issues written acceptance of the Order in the form of the Order Acknowledgement, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Delta which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by Delta and any descriptions or illustrations contained in Delta's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by Delta shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. GOODS

- 3.1 The Goods are described in Delta's catalogues as may apply at the time of the Contract and as modified by the Specification.
- 3.2 Delta reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 Delta shall ensure that each delivery of the Goods is accompanied by a dispatch note which shows the date of dispatch, model type and authorised signatures.
- 4.2 Unless otherwise agreed in writing by Delta, the Customer shall collect the Goods (or arrange for the Goods to be collected) from Delta's premises at 240 Leads Road Hull HU7 0DF or such other location as may be advised by Delta prior to delivery (**Delivery Location**) within 3 Business Days of Delta notifying the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the completion of loading of the Goods at the Delivery Location. Unless otherwise varied by the Contract, delivery shall be Ex Works as defined by the International Chamber of Commerce INCOTERMS 2010 which are incorporated into this Contract for the purposes of this clause.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Delta shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Delta with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If Delta fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Delta shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Delta with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to take delivery of the Goods within three Business Days of Delta notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Delta's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Delta notified the Customer that the Goods were ready; and
 - (b) Delta shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after the day on which Delta notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Delta may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 Delta may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

- 4.9 If the Customer orders Goods for delivery outside the UK, the Customer will be responsible for (and Delta shall have no liability for):
- (a) any export duties, import duties and/or taxes which are levied when the Goods leave the UK and/or reach the specified destination; and
 - (b) complying with all applicable laws and regulations applicable to the export of and Goods and all applicable laws and regulations of the country for which the Goods are destined.

5. QUALITY

5.1 Delta warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

- (a) conform in all material respects with their description and the Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by Delta.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing (specifying the serial number, chassis number (if applicable) and date of purchase of the relevant Goods) to Delta during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; or
- (b) Delta is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by Delta) returns such Goods to Delta's place of business at the Customer's cost,

Delta shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Delta shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow Delta's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Delta following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of Delta;
- (e) the Goods are subjected to extreme or unusual weather conditions;

- (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- (g) in the case of a claim for external visible damage and the Customer has failed to e mail to Delta on the same date as delivery of the Goods (or on the next working day following delivery of the Goods if the date of delivery is not a working day), a fully completed Delta Caravan Delivery Acceptance form setting out the extent of any external damage;
- (h) in the case of a claim for missing items and/or obvious internal damage to the Goods, and the Customer has failed to e mail Delta within seven days from the date of delivery of the Goods, a fully completed Delta Caravan PDI form (Internal Inspection) setting out what items are missing and/or the extent of any internal damage; or
- (i) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, Delta shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Delta.

5.7 In the event that an external visible defect occurs after delivery but before receipt of the Goods by the Customer then the defect is the responsibility of the haulier and the Customer should contact the haulier.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until Delta has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) any other goods or services that Delta has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as Delta's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Delta's property;
- (c) not remove, deface or obscure any serial number, chassis number or other identifying mark on or relating to the Goods;

- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify Delta immediately if it becomes subject to any of the events listed in clause 8.2; and
- (f) give Delta such information relating to the Goods as Delta may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Delta receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as Delta's agent; and
- (b) title to the Goods shall pass from Delta to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or Delta reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy Delta may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) Delta may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Order Acknowledgement, or, if no price is quoted, the price set out in Delta's published price list in force as at the date of delivery.

7.2 Delta may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond Delta's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Delta adequate or accurate information or instructions.

- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer (if applicable).
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**) unless otherwise stated. The Customer shall, on receipt of a valid VAT invoice from Delta, pay to Delta such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice (unless otherwise agreed in writing). Payment shall be made to the bank account nominated in writing by Delta. Time of payment is of the essence.
- 7.6 If the Customer fails to make any payment due to Delta under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base lending rate of Clydesdale Bank PLC trading as Yorkshire Bank from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.7 For so long as the Customer is in arrears with any payments due to Delta, Delta may suspend further deliveries under any contract with the Customer whether made before or after the contract in respect of which default is made.
- 7.8 In the event two or more parties comprise the Customer, Delta shall be entitled, if not otherwise defined, to determine at its entire discretion which of the Goods shall be provided to which Customer. If there is more than one Customer then each shall be jointly and severally liable for their obligations under this Contract.
- 7.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Delta in order to justify withholding payment of any such amount in whole or in part. Delta may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Delta to the Customer.
- 7.10 The Customer shall, on demand, pay to Delta (on a full indemnity basis) the amount of all costs and expenses (including legal, agents and other professional expenses) incurred by Delta in connection with enforcing, preserving any rights under, or monitoring the provisions of, the Contract.
- 7.11 The Customer shall indemnify Delta against all liabilities, costs, expenses, damages and losses suffered or incurred by Delta arising out of or in connection with any breach of the terms of the Contract by the Customer.

8. CUSTOMER'S INSOLVENCY OR INCAPACITY

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or Delta reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, or if the Customer fails to pay any amount due under this Contract on the due date for payment, then, without limiting any other right or remedy available to Delta, Delta may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Delta without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (g) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(h) (inclusive);

- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (k) the Customer's financial position deteriorates to such an extent that in Delta's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 On termination of the Contract for any reason, the Customer shall immediately pay to Delta all of Delta's outstanding unpaid invoices and interest.

8.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude Delta's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for Delta to exclude or restrict liability.

9.2 Subject to clause 9.1:

- (a) Delta shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by Delta, its employees, agents or subcontractors); and
- (b) Delta's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by Delta, its employees, agents or subcontractors shall not exceed the price of the Goods.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. CONSUMERS

- 11.1 If the Customer is a consumer not acting in the course of their trade, business or profession, nothing in these terms and conditions shall affect that Customer's statutory rights.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 If Delta manufactures the Goods, or applies any process to it, in accordance with a specification submitted or prepared by the Customer or any other information provided by the Customer, the Customer shall indemnify and keep indemnified Delta against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by Delta in connection with, or paid or agreed to be paid by Delta in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from Delta's use of the Customer's specification or such other information. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of Delta.
- 12.2 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods are and shall remain the sole property of Delta or (as the case may be) third party rights, owner.
- 12.3 Delta shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of Delta.
- 12.4 Delta's Intellectual Property Rights in and relating to the Goods shall remain the exclusive property of Delta, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.

12.5 This clause 12 shall survive termination of the Contract.

13. GENERAL

13.1 Assignment and subcontracting.

- (a) Delta may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Delta.

13.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, pre-paid airmail or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by pre-paid air mail, at 9.00 am on the fifth Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- (d) For the purpose of this clause and calculating deemed receipt all references to time are to local time in the place of deemed receipt.

13.3 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a

waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 13.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 13.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Delta.
- 13.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.