

Terms and Conditions including Warranty

for goods and / or services provided by

Fineline Fabrications Pty Ltd trading as Fineline Trailers
(ABN 97 618 738 659)



**FINELINE
TRAILERS**



law team

(02) 8331 9930

erin@lawteam.com.au

Suite 3.08, 4 Ilya Avenue

Erina NSW 2250

Contents

1. Parties	3
2. Definitions and interpretation	3
3. Engagement of Finline Trailers	3
4. Standards and duties	3
5. Provision of Services	3
6. Provision of the Goods	4
7. Pricing and invoicing	5
8. Shipping	5
9. Online purchases	6
10. Payment	6
11. GST	6
12. Product warranty	6
13. Defects / Returns	8
14. Non-disparagement	9
15. Non-solicitation	9
16. Intellectual Property	10
17. Liability and remedies	10
18. Termination	11
19. Notices	12
20. General	12
Schedule 1 Definitions and Interpretation	14

Operative provisions

1. Parties

The parties to this agreement are Fineline Fabrications Pty Ltd trading as Fineline Trailers (ABN 97 618 738 659) and the Customer to which a Quote has been provided.

2. Definitions and interpretation

The definitions and interpretation to be applied to this agreement are as contained in Schedule 1.

3. Engagement of Fineline Trailers

- 3.1 The Customer engages Fineline Trailers on a non-exclusive basis to provide the Goods and / or Services or Service Goods to the Customer, and Fineline Trailers accepts that engagement and agrees to provide the Goods and / or Services to the Customer, in accordance with the terms of this agreement.
- 3.2 The Customer agrees to be bound by this agreement upon engaging Fineline Trailers, including but not limited to any order for Goods, Services or Service Goods, requesting completion of any work by Fineline Trailers, and includes any other commercial or proposed transaction between the Customer and Fineline Trailers, or otherwise in accordance with the terms of this agreement.

Commencement and duration

- 3.3 Fineline Trailer's engagement with the Customer will:
- (a) commence on the date Fineline Trailers confirms an order for Goods, Services or Service Goods with the Customer; and
 - (b) continue indefinitely unless and until it is terminated in accordance with clause 18.

Nature of relationship

- 3.4 Fineline Trailers is an independent contractor of the Customer and nothing in this agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties.

4. Standards and duties

- 4.1 Fineline Trailers must, in providing the Goods and / or Services, comply with the following standards and duties:

- (a) **(Honesty and diligence)** be honest and diligent and provide the Goods and / or Services to it to the best of its knowledge and abilities;
- (b) **(Standards)** at all times maintain reasonable ethical, professional and technical standards;
- (c) **(Discrimination and harassment)** not unlawfully discriminate against, sexually harass or otherwise physically or verbally abuse any person; and
- (d) **(Privacy)** in relation to any Personal Information of any customer, client, supplier or Representative of the Customer, any user or prospective user or any other person, comply with:
 - (i) the Privacy Act and any guidelines, information sheets and other relevant material issued from time to time by the Commonwealth Privacy Commissioner; and
 - (ii) any approved privacy policy and procedures adopted from time to time by the Customer.

5. Provision of Services

Quote

- 5.1 In respect of each individual engagement for Fineline Trailers to provide Services to the Customer under this agreement (each an **Engagement**), the parties must first agree on a Quote. Fineline Trailers obligation to provide the Services that are the subject of each Engagement does not arise unless and until the Customer has notified Fineline Trailers of the Customer's acceptance of the relevant Quote.
- 5.2 Each Quote will expire thirty (30) days after the issue date.
- 5.3 The Customer acknowledges that the Charges for the Services are subject to revision, variation or confirmation by Fineline Trailers and the pricing may be the same or differ from the Quote provided (the 'Revised Quote').

Payment of Deposit

- 5.4 For the Customer to engage Fineline Trailers to accept the Quote to provide Services, the Customer must pay to Fineline Trailers ten percent (10%) of the Quote for the Services (the 'Holding Deposit') in consideration for Fineline Trailers booking a time in the queue for provision of the Services ('Queue Booking').
- 5.5 From the date of Fineline Trailers receiving payment of the Holding Deposit, the Customer is entitled to a Cooling Off Period. If the

Customer cancels their order during the Cooling Off Period, they are entitled to a full refund of the Holding Deposit.

- 5.6 If the Customer cancels their order after the expiration of the Cooling Off Period, the Customer is not entitled to a refund of the Holding Deposit.

Payment to proceed with manufacture / Services

- 5.7 Prior to production of the Goods and or Services, Fineline Trailers will contact the Customer to finalise the order by providing the Customer with the Revised Quote, at which time the Customer must:

- (a) Sign all necessary documents requested by Fineline Trailers to authorise the production of the Goods and Services; and
- (b) pay to Fineline Trailers a total of forty percent (40%) of Charges detailed in the Revised Quote; and
- (c) pay to Fineline Trailers any additional Charges required so that they have paid a total of fifty percent (50%) of the Charges detailed in the Revised Quote; within the Order Finalisation Period.

- 5.8 In the event the Customer does not complete the requirements under clause 5.7 within the Order Finalisation Period, and in the absence of any material breach by Fineline Trailers constituting a repudiation or deemed repudiation of this agreement, the Queue Booking will be cancelled and Fineline Trailers will have no further obligations to the Customer in respect of the Quote or any Revised Quote.

- 5.9 The Customer acknowledges and agrees that Fineline Trailers will not commence manufacturing / production of the Goods and/or Services until the Charges outlined in clause 5.7(b) and 5.7(c) have been paid in full.

Cancellation by Customer

- 5.10 The Customer agrees and acknowledges that if the Customer cancels the Services at any point in time after Fineline Trailers has commenced the Services, including after the Customer completes the requirements in clauses 5.4., 5.7 and 5.8, then the following will apply:

- (a) The Customer must pay all relevant Charges, Fees and Expenses to Fineline Trailers, as determined by Fineline Trailers in their absolute discretion; and
- (b) The Customer indemnifies Fineline Trailers against any Losses incurred by

Fineline Trailers as a result of the cancellation.

Payment of outstanding balance

- 5.11 After the Goods and or Services have been finalised, Fineline Trailers will contact the Customer to notify them that the Services have been completed (Notification Date) and provide the Customer with the Final Invoice at which time the Customer must:

- (a) Pay the balance of the Revised Quote as outlined in the Final Invoice, so the total amount has been paid; and
- (b) Arrange for or attend to collection or shipping of the Service Goods; within the Services Finalisation Period.

- 5.12 In the event the Customer does not arrange for the collection of the Service Goods within the Services Finalisation Period, then from the last day of the Services Finalisation Period the Customer must pay to Fineline Trailers the Storage Fee for each day until the Service Goods are collected.

- 5.13 In the event that the Customer does not collect the Service Goods by the Final Collection Date (which period shall start from the Notification Date), and in the absence of any material breach by Fineline Trailers constituting a repudiation or deemed repudiation of this agreement the Customer acknowledges and agrees that any funds paid for the Service Goods or any other item provided under the Revised Quote:

- (i) shall belong solely to Fineline Trailers; and
- (ii) the Service Goods shall belong solely to Fineline Trailers;
- (iii) the Customer will no longer have any right title or interest in the Service Goods or items; and
- (iv) the Customer shall not be entitled to make a claim for Losses and wholly indemnifies Fineline Trailers for any Losses suffered due to the breach by the Customer.

- (b) This clause 5.12 shall not merge on completion or termination.

6. Provision of the Goods

- 6.1 Where the Customer agrees to buy Goods that are premade items from Fineline Trailers not subject to a Quote, they:

- (a) Agree on the price for the Goods; and
 - (b) Pay to Fineline Trailers ten percent (10%) of the price for the Goods (the 'Deposit') in consideration for Fineline Trailers withholding the Goods for sale to other customers for a period of seven (7) days ('Goods on Hold Period').
- 6.2 Before the expiration of the Goods on Hold Period, the Customer must:
- (a) Pay the balance of the price for the Goods to Fineline Trailers (which must be received by Fine Trailers as cleared funds); and
 - (b) Arrange for collection or shipping of the Goods from Fineline Trailers.
- 6.3 In the event that the Customer does not:
- (a) pay to Fineline Trailers the balance of the price for the Goods before the expiration of the Goods on Hold Period; and
 - (b) collect the Goods before the expiration of the Goods on Hold Period (or such other period of time as agreed by Fineline Trailers in writing);
- then the Customer acknowledges and agrees that the Deposit:
- (c) shall belong solely to Fineline Trailers; and
 - (d) they will no longer have any right title or interest in the Goods.

7. Pricing and invoicing

Invoicing

- 7.1 Where a payment for Goods, Services or Service Goods is detailed in this agreement, Fineline Trailers will provide to the Customer an invoice setting out the Charges.

Payments non-refundable

- 7.2 In the absence of any material breach by Fineline Trailers constituting a repudiation or deemed repudiation of this agreement, the Deposit, Holding Deposit or any other payment made in accordance with this agreement (as applicable) are non-refundable.

Repairs and other charges

- 7.3 Where Fineline Trailers is unable to provide a Quote for Services, the Customer accepts that the Services may be provided at the Hourly Rate.
- 7.4 The Hourly Rate shall be the current hourly rate charged by Fineline Trailers for the particular service at the time the Services are provided.

- 7.5 Where an Hourly Rate applies it will be calculated on the basis of the time spent by Fineline Trailers in exclusively providing those Services on an hourly rate basis payable upon completion of the Services to the reasonable satisfaction of the Customer.
- 7.6 Hourly Rates shall be proportionately charged for work involving periods of less than one hour and structured in 15 minute units, with 4 units per hour – eg, the time charged for an attendance of up to 15 minutes will be 1 unit and the time charged for an attendance between 15 and 30 minutes will be 2 units.
- 7.7 Fineline Trailers must keep and maintain accurate records of the number of hours of Services in respect of which the Hourly Rate applies and provide the Customer with a copy of such records upon reasonable notice as may be requested by the Customer from time to time.

Reimbursement of Expenses

- 7.8 The Customer will pay all reasonable expenses properly and necessarily incurred by Fineline Trailers in the course of providing the Goods and / or Services, provided that:
- (a) Fineline Trailers:
 - (i) obtains the Customer's written consent before incurring the expenses;
 - (ii) provides the Customer with acceptable documentation for the expenses incurred; and
 - (iii) complies with any applicable expenses policy of the Customer in force from time to time, provided that a copy of the policy has been provided to Fineline Trailers by the Customer prior to the relevant expense being incurred.

8. Shipping

- 8.1 The Customer acknowledges and agrees that shipping costs are payable by the Customer in addition to the price for the Goods, the Service Goods, or any Services provided under this agreement.
- 8.2 The Customer holds Fineline Trailers harmless and acknowledges that Fineline Trailers is not responsible for the Goods, the Services Goods or any other item at the point the items are collected or shipped.
- 8.3 The Customer is responsible for collection or shipping of the Goods, the Service Goods and any other item.

9. Online purchases

- 9.1 Unless Fineline Trailers advises otherwise, the terms of online sales are contained in the Online Terms & Conditions of Sale, available upon request or on Fineline Trailers' website.

10. Payment

Timing of payments

- 10.1 The Customer must pay to Fineline Trailers all other Charges properly invoiced pursuant to clause 6 in full on or before the date that is 7 days after the Customer's receipt of the relevant invoice, unless another period is specified.

Method of payment

- 10.2 All amounts to be paid by a party to another party under or in connection with this agreement must be paid in cash or by way of bank cheque or electronic funds transfer into the account nominated by the other party.

No set-off or deduction

- 10.3 All amounts payable under or in connection with this agreement must be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever, whether or not any such set-off, counterclaim, withholding, deduction or lien arises under this agreement (unless otherwise required by law).
- 10.4 If a party is required by law to make a deduction or withholding in respect of any sum payable under or in connection with this agreement to another party, it must, at the same time as the sum that is the subject of the deduction or withholding is payable, make a payment to the other party of such additional amount as is required to ensure that the net amount received by the other party will equal the full amount that would have been received by it had no such deduction or withholding been required to be made.

Default interest

- 10.5 If a party fails to pay any sum payable by it under this agreement to another party at the time and otherwise in the manner provided in this agreement, it must pay interest on that sum from the due date of payment until that sum is paid in full at the Default Rate, calculated daily on the basis of a 365-day year and compounded monthly. Interest will accrue from day to day and will be payable on demand. The payment of interest by a party to another party in respect of any late payment under this clause 10.5 is in addition to any other remedies that the

other party may have in respect of such late payment.

- 10.6 If a liability of a party to another party under this agreement becomes merged in a judgement or order and the interest rate that applies under that judgement or order is lower than the Default Rate, that party must, as an independent obligation, pay to the other party, at the same time and in the same manner as the sum that is the subject of that judgement or order is to be paid, such additional interest on that sum as is required to ensure that the total amount of interest that the other party receives in respect of that liability is equal to the Default Rate.

Tax

- 10.7 The Customer shall be responsible for payment of any amount of Tax payable or assessed as payable in relation to any of the Goods or Services, even if after the date of supply. This clause shall not merge on completion.

11. GST

Definitions regarding GST

- 11.1 In this clause 11:
- (a) expressions that are not defined, but which have a defined meaning in the GST Act, have the same meaning as in the GST Act;
 - (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 11; and
 - (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 11.

Consideration is exclusive of GST

- 11.2 Unless expressly stated otherwise, any sum payable, or amount used in the calculation of a sum payable, under this agreement has been determined without regard to GST and must be increased on account of any GST payable under this clause 11.

12. Product warranty

General

- 12.1 All Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law.

12.2 All Goods and Services must be suitable for the purpose for which they are required being a purpose specified by Fineline Trailers to the Customer. The manufacturing, modification and delivery of the Goods must be carried out in accordance with good engineering practice and must comply with applicable standards and codes, the requirements of relevant statutory authorities and any other applicable law as well as any specifications provided by Fineline Trailers.

12.3 The Goods must be of merchantable quality and conform to the specifications set out in this agreement and the standards prescribed by law or by any body having the right to prescribe minimum standards. Substitutions, changes or delays are not acceptable unless approved in writing by Fineline Trailers.

12.4 Fineline Trailers warrants and guarantees that:

- (a) Fineline Trailers has the skills, resources and experience necessary to complete the delivery of the Goods in accordance with this agreement;
- (b) The Goods conform to the required specifications and quality;
- (c) The Goods are free from all encumbrances, or other defects in title; and
- (d) The sale, delivery and use of the Goods do not infringe any intellectual property rights of any person.

12.5 Without limiting the operation of any other provisions of this agreement, the Customer is entitled to the benefit of all warranties conferred by law and the operation of any such warranty for the benefit of the Customer may not be excluded by Fineline Trailers.

Term of Warranty

12.6 All Goods manufacturer by Fineline Trailers except those as contained in clause 12.10 have a warranty of thirty-six (36) months from the date of delivery of the Goods and is strictly limited to faulty workmanship. Prior to a warranty claim being approved, the Goods must be returned to Fineline Trailers for inspection and approval at Fineline Trailers absolute discretion. All costs attributable to warranty claims for defects including return of the item shall be paid by the Customer.

12.7 The following Goods are specifically excluded from clause 12.6 and have a warranty for a period of twelve (12) months from the date of delivery of the Goods:

- (a) Rubber/PVC door seals and door hinges;
- (b) Jockey wheels;
- (c) Wheels and tyres; and

- (d) Any other Goods that easily deteriorate over time if they are not maintained and cared for appropriately.

What is not covered

12.8 Fineline Trailers reserves the right to refuse claims for warranty repairs, including if:

- (a) the Goods were used for an abnormal purpose or in any way other than that for which it was intended, such as using the Goods for permanent residential purposes instead of recreational use only;
- (b) the Goods were used for an improper purpose other than that for which they were intended to be used;
- (c) the Goods have not been appropriately cared for or have been neglected or subjected to severe or abnormal weather conditions; and
- (d) the Goods have endured normal wear and tear.

12.9 The following items, parts and Goods are specifically excluded from any warranty claims:

- (a) Any custom-made Goods;
- (b) Fabric items such as canvas, canopies, window screenings, vinyl windows, cushion and mattress covers that have been damaged by way of tears, punctures, shrinkage, softening, fading or soiling;
- (c) Damages caused to tent sections, curtains or plywood finish by condensation being left untreated;
- (d) Deterioration of sealants over time;
- (e) Any damage or defect to the aesthetics or physical appearance of the Goods that have been damage due to weather exposure;
- (f) Any Goods that have had alterations post manufacture;
- (g) Any Goods that have undergone repairs or additions that have not been authorised by Fineline Trailers;
- (h) Accidents, theft or fire;
- (i) Hail, windstorm, lightning, stone strike, external fire or unusual environmental conditions;
- (j) Incursions by vermin and other pests; and
- (k) Goods such as camper tents or other Goods with aluminium surfaces and joints if they have been subjected to any after treatments including gloss finishings and accidental contamination.

12.10 In the case of second-hand Goods the Customer acknowledges that they have had full

opportunity to inspect the Goods and that they accept the Goods with all faults and that no warranty is given by Fineline Trailers as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Fineline Trailers is not responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

Supplier / third party components

- 12.11 The warranty for Goods not manufactured by Fineline Trailers, including Goods that have been imported or supplied by third parties, shall be the current warranty provided by the manufacturer or supplier of the Goods. Fineline Trailers shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- 12.12 In relation to the Goods referred to in clause 12.12, it is the Customer's responsibility to read the third parties applicable warranties, including their procedures and warranty terms. The length of warranty periods for these Goods and their terms may vary and Fineline Trailers assumes no responsibility or liability for defects in workmanship, operation or other for these Goods.

Customers responsibility

- 12.13 It is the Customers responsibility to:
- (a) regularly and properly maintain and care for their Goods (whether manufacturer guidelines have been provided or not); and
 - (b) to keep a record of and supply to Fineline Trailers on request, details of any maintenance and care provided (including by the Customer or a third party) in accordance with clause 12.13(a).
- 12.14 Clause 12.13(b) does not apply to normal maintenance of the Goods including but not limited to routine cleaning, greasing wheel bearings and tightened wheel nuts.
- 12.15 The Customer acknowledges and agrees that it will be responsible for transportation or shipping the Goods or Services Goods to the location nominated by Fineline Trailers, including any costs associated with the transportation or shipping, relating to any warranty claim.

Procedure for warranty claims

- 12.16 The procedure for applying for a warranty claim is as detailed on the website for Fineline Trailers, or if a procedure is not made available from time to time then the Customer must:

- (a) contact Fineline Trailers in writing outlining the details of their warranty claim and providing return business hour contact details; and
- (b) Provide evidence of the claim; and,
- (c) when deemed necessary by Fineline Trailers, and a booking for assessment of the warranty claim with Fineline Trailers.

13. Defects / Returns

- 13.1 The Customer shall inspect the Goods upon collection or delivery and shall within two (2) business days of delivery notify Fineline Trailers in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or Quote. The Customer shall afford Fineline Trailers an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions the Goods shall be conclusively presumed to be in accordance with this agreement and free from any defect or damage.
- 13.2 Where the Goods or Services Goods are unable to be brought to Fineline Trailers by the Customer, the Customer must make themselves available during business hours at a time nominated by Fineline Trailers for a video call, and if required by Fineline Trailers must provide any photographs requested.
- 13.3 Unless otherwise agreed in this agreement, Fineline Trailers must with all possible speed, make good all defects which may arise from the defective design, materials or workmanship or from any act or omission of Fineline Trailers that, under the conditions provided for in this agreement and under proper use, may appear in the Goods. This guarantee is in addition to the Customers legal rights and does not replace or limit them.
- 13.4 If any Goods are proven to be defective as referred to in clause 13.1 during the applicable warranty period, Fineline Trailers will, at its sole discretion, either replace or repair the Goods or the defective part of the Goods. In these circumstances Fineline Trailers will arrange the repair or replacement the Goods by an authorised Fineline Trailers dealer or repairer at its place of business within a reasonable time after delivery of the Goods.
- 13.5 The Customer acknowledges and agrees that it will be responsible for transportation or shipping the Goods or Services Goods to the location nominated by Fineline Trailers, including any costs associated with the transportation or shipping.

- 13.6 For defective Goods which Fineline Trailers has agreed in writing that the Customer is entitled to reject, Fineline Trailers liability is limited to either replacing the Goods or repairing the Goods provided that:
- (a) The Customer has complied with the provisions of clause 13.1;
 - (b) the Goods are returned to Fineline Trailers at the Customers cost within thirty (30) days of the delivery date;
 - (c) Fineline Trailers will not be liable for Goods which have not been stored or used in a proper manner;
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.
- 13.7 Fineline Trailers may, in its absolute discretion, accept the Goods for credit which shall incur a handling fee of 30% of the Charges invoiced, and will also incur any associated shipping costs of the returned Goods.
- 13.8 Fineline Trailers reserves the right to make changes and improvements to the Goods without notice to the Customer and has no obligation for warranty purposes to install the same components as originally supplied.
- 13.9 Any Goods or parts used that have been returned to Fineline Trailers for repair may be replaced by refurbished goods of the same type.

14. Non-disparagement

- 14.1 Subject to clause 14.2, on and from the date of this agreement, each party must not:
- (a) make, express, transmit, speak, write, verbalise or otherwise communicate in any way (directly or indirectly, in any capacity or manner) any remark, comment, message, information, declaration, communication or other statement of any kind (whether verbal, in writing, electronically transferred or otherwise) that might reasonably be construed to be critical of, or derogatory or negative towards, any other party or any Representative of any other party; or
 - (b) cause, further, assist, solicit, encourage or knowingly permit any other person to do so, or support or participate in any other person doing so,

and must take all reasonable steps to prevent its Representatives from doing so.

- 14.2 Clause 14.1 shall not prohibit any party from making any statement or disclosure as required by law or court order, provided that such party must:
- (a) promptly notify the other party in writing in advance of any such statement or disclosure, if reasonably practicable; and
 - (b) reasonably assist the other party in obtaining confidential treatment for, or avoiding or minimising the dissemination of, such statement or disclosure to the extent reasonably requested by any party.

15. Non-solicitation

- 15.1 During Fineline Trailers engagement with the Customer under this agreement and for each Non-Solicitation Period thereafter, the Customer must not, without Fineline Trailers prior written consent (which Fineline Trailers may withhold or delay in its absolute discretion), directly or indirectly:
- (a) **(non-solicitation suppliers)** interfere with or disrupt, or attempt to interfere with or disrupt, any relationship, whether contractual or otherwise, between Fineline Trailers and any of Fineline Trailers suppliers, distributors or joint venture partners, or identified prospective suppliers, distributors or joint venture partners; or
 - (b) **(non-solicitation of staff)** induce, encourage or solicit any of Fineline Trailers officers, employees, contractors or agents to cease their employment, engagement or agency with Fineline Trailers.
- 15.2 The restraint periods are:
- (a) 12 months;
 - (b) 6 months;
 - (c) 3 months.
- 15.3 The Customer acknowledges and agrees that:
- (a) the restraints in clause 15.1 constitute several separate covenants and restraints consisting of each of clauses 15.1(a) and (b) combined with each separate Non-Solicitation Period severally;
 - (b) each of those separate covenants and restraints is a fair and reasonable restraint of trade that goes no further than is reasonably necessary to protect Fineline Trailers goodwill and business;

- (c) the Customer has received substantial and valuable consideration for each of those separate covenants and restraints, including its receipt of the Goods and / or Services; and
- (d) breach by the Customer of any of those separate covenants and restraints would be unfair and calculated to damage Fineline Trailers goodwill and business and would lead to substantial loss to Fineline Trailers.

15.4 The parties intend the covenants and restraints under clauses 15.1 to operate to the maximum extent. If any of those separate covenants and restraints would, in the absence of this clause 15.4, be void as unreasonable for the protection of the interests of Fineline Trailers but would not be so void if any part of the wording in this clause 15 was deleted or amended, the separate covenants and restraints will apply with the minimum modifications necessary to make them effective.

16. Intellectual Property

16.1 The parties agree that all Relevant IP will be owned by, and vest in, Fineline Trailers.

Assignment

16.2 The Customer assigns, transfers and conveys to Fineline Trailers all current and future right, title and interest in all Relevant IP and acknowledges that all future Relevant IP will vest in Fineline Trailers on and from creation.

Customer's duty to assist Fineline Trailers

16.3 The Customer must do anything necessary, including executing any documents, for the purpose of effecting, perfecting and/or protecting Fineline Trailers' title to any Relevant IP, in Australia or in such other countries as the Customer may require at its discretion.

Permitted use

16.4 The Customer may not use or reproduce any Relevant IP or any other Intellectual Property Rights of Fineline Trailers or any of Fineline Trailers' customers, clients or suppliers without Fineline Trailers' prior written approval, except in the proper provision of the Goods and / or Services and performance of its duties under this agreement.

Disclosure of Relevant IP

16.5 The Customer must immediately disclose in writing to Fineline Trailers any Intellectual Property Rights that the Customer makes,

develops or conceives that might reasonably be regarded as Relevant IP.

17. Liability and remedies

Indemnity

17.1 The Customer shall have personal liability for, and hereby irrevocably indemnifies and covenants to hold Fineline Trailers harmless from and against, any and all Losses that may be suffered by Fineline Trailers and which arise, directly or indirectly, in connection with any breach of this agreement by the Customer and/or any negligent or other tortious conduct in the provision of the Goods and / or Services.

Indemnities continuing

17.2 Each indemnity contained in this agreement is an additional, separate, independent and continuing obligation that survives the termination of this agreement despite any settlement of account or other occurrence and remains in full force and effect until all money owing, contingently or otherwise, under the relevant indemnity has been paid in full and no one indemnity limits the generality of any other indemnity.

Limitation of liability

17.3 To the maximum extent permitted by law, Fineline Trailers and its Representatives expressly:

- (a) **(Disclaimer of warranties)** disclaim all conditions, representations and warranties (whether express or implied, statutory or otherwise) in relation to the Goods and / or Services, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement. Without limitation to the foregoing, Fineline Trailers and its Representatives make no representation, and provide no warranty or guarantee, that:
 - (i) the Customer will achieve any particular results from the provision of the Goods and / or Services;
 - (ii) any particular individuals will perform the Goods and / or Services on behalf of Fineline Trailers; or
 - (iii) the Goods and / or Services will be:

- (A) error-free or that errors or defects will be corrected; or
- (B) meet the Customer's requirements or expectations; and

(b) **(Limitation of liability)** limit their aggregate liability in respect of any and all Claims for any Losses that the Customer and/or any of its Representatives may bring against Fineline Trailers under this agreement or otherwise in respect of the Goods and / or Services to the following remedies (the choice of which is to be at Fineline Trailers sole discretion):

- (i) re-supply of the Goods and / or Services;
- (ii) the refund of any amounts paid by the Customer to Fineline Trailers under this agreement in respect to the Goods and / or Services,

even if they have been advised of the possibility of such Losses,

and the Customer acknowledges and agrees that Fineline Trailers holds the benefit of this clause 17.3 for itself and as agent and trustee for and on behalf of each of its Representatives.

Force majeure

17.4 To the maximum extent permitted by law, Fineline Trailers and its Representatives expressly exclude liability for any damage and/or delay in the performance of any obligation of Fineline Trailers under this agreement where such damage or delay is caused by circumstances beyond the reasonable control of Fineline Trailers and Fineline Trailers shall be entitled to a reasonable extension of time for the performance of such obligations, and the Customer acknowledges and agrees that Fineline Trailers holds the benefit of this clause 17.4 for itself and as agent and trustee for and on behalf of each of its Representatives.

Remedies for breach

17.5 Each party acknowledges and agrees that, in the event of any breach by the other party of the provisions of clause 14 (Non-disparagement), clause 15 (Intellectual Property) or clause 15 (Non-solicitation), damages may not be an adequate remedy and the first-mentioned party may, in addition to any other remedies, obtain an injunction restraining any further violation by the other party and other equitable relief,

without the necessity of showing actual damage and without any security being required, together with recovery of costs. Any Claims asserted by such other party against the first-mentioned party shall not constitute a defence in any such injunction action, application or motion.

18. Termination

Termination for breach

- 18.1 Fineline Trailers may terminate this agreement immediately by notice to the Customer if an Event of Default occurs in respect of the Customer.
- 18.2 If Fineline Trailers commits any material or persistent breach of this agreement, the Customer may (but is not obliged to) provide Fineline Trailers with a notice of breach in writing. If Fineline Trailers fails to remedy the breach within 20 Business Days after the date of its receipt of such notice, the Customer may terminate this agreement with immediate effect upon providing Fineline Trailers with a further notice of termination in writing.

Effect of termination

- 18.3 In the event of any termination of this agreement in any circumstances and for any reason whatsoever:
 - (a) the Customer will remain liable to pay all Charges accrued up to and including the date of termination, whether or not invoiced prior to the date of termination (for the avoidance of doubt, in the event of any termination of this agreement by the Customer, including Charges incurred by Fineline Trailers for the purchase of materials for those Services prior to such termination); and
 - (b) Fineline Trailers will send to the Customer a final invoice for the balance of any unbilled Charges accrued up to and including the date of termination and clause 8 will apply in respect thereof.

Ipsa facto legislation

- 18.4 If any provision of this agreement is otherwise unenforceable by virtue of the operation of the Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017 (Cth), upon the occurrence of an Insolvency Event in respect of a particular party, notwithstanding any other provision of this agreement, to the maximum extent permitted by law:

- (a) time is of the essence in respect of all obligations of that party under this agreement (whether falling due for performance before, upon or after the occurrence of that Insolvency Event); and
- (b) any breach of this agreement by that party (whether occurring before, upon or after the occurrence of that Insolvency Event), however minor, will (alone or, severally, in combination with the occurrence of that Insolvency Event) be deemed to be a material breach of this agreement,

and, if any such material breach has occurred or occurs, the parties acknowledge and agree that such provision will instead be enforceable by virtue of the occurrence of that material breach.

Accrued rights

- 18.5 Termination of this agreement will not affect any rights or liabilities that the parties have accrued under it prior to such termination.

Survival

- 18.6 The obligations of the parties under clause 14 (Non-disparagement), clause 15 (Intellectual Property), clause 17 (Liability and remedies), clause 15 (Non-solicitation) and this clause 18 will survive the termination of this agreement.

19. Notices

- 19.1 A notice given to a party under this agreement must be:

- (a) in writing in English;
- (b) sent to the address or email address of the relevant party as the relevant party may notify to the other party from time to time; and
- (c) delivered/sent either:
 - (i) personally;
 - (ii) by commercial courier;
 - (iii) by pre-paid post;
 - (iv) if the notice is to be served by post outside the country from which it is sent, by airmail; or
 - (v) by e-mail.

- 19.2 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) if delivered by commercial courier, at the time of signature of the courier's receipt;

- (c) if sent by pre-paid post, 48 hours from the date of posting;
- (d) if sent by airmail, five days after the date of posting; or
- (e) if sent by e-mail, 4 hours after the sent time (as recorded on the sender's e-mail server), unless the sender receives a notice from the party's email server or internet service provider that the message has not been delivered to the party,

except that, if such deemed receipt is not within business hours (meaning 9:00 am to 5:30 pm on a Business Day), the notice will be deemed to have been received at the next commencement of business hours in the place of deemed receipt.

- 19.3 To prove service, it is sufficient to prove that:

- (a) in the case of post – that the envelope containing the notice was properly addressed and posted; and
- (b) in the case of email – the email was transmitted to the party's email server or internet service provider.

20. General

Amendments

- 20.1 Fineline Trailers reserves the right to amend these terms from time to time, and the Customer acknowledges and agrees that they will be bound by the most current terms as provided to them by Fineline Trailers or as published on their website.

Inconsistency

- 20.2 Where there are any inconsistencies between these terms and any other terms of sale (including for the avoidance of doubt, sale terms) then the terms most favourable to Fineline Trailers shall apply.

Further assurances

- 20.3 Each party must (at its own expense, unless otherwise provided in this agreement) promptly execute and deliver all such documents, and do all such things, as any other party may from time to time reasonably require for the purpose of giving full effect to the provisions of this agreement.

Third parties

- 20.4 This agreement is made for the benefit of the parties to it and their successors and permitted

assigns and is not intended to benefit, or be enforceable by, anyone else.

Entire agreement

20.5 This agreement contains the entire understanding between the parties in relation to its subject matter and supersedes any previous arrangement, understanding or agreement relating to its subject matter. There are no express or implied conditions, warranties, promises, representations or obligations, written or oral, in relation to this agreement other than those expressly stated in it or necessarily implied by statute.

Severability

20.6 If a provision of this agreement is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

No waiver

20.7 No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon it under this agreement will operate as a waiver of that power or right. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this agreement.

Assignment

A party must not assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with, any of its rights under this agreement without the prior written consent of the other party.

Counterparts

20.8 This agreement may be executed in any number of counterparts, each of which is an original and which together will have the same effect as if each party had signed the same document.

Electronic exchange

20.9 Delivery of an executed counterpart of this agreement by facsimile, or by email in PDF or other image format, will be equally effective as delivery of an original signed hard copy of that counterpart.

20.10 If a party delivers an executed counterpart of this agreement under clause 20.9:

- (a) it must also deliver an original signed hard copy of that counterpart, but failure to do so will not affect the validity, enforceability or binding effect of this agreement; and
- (b) in any legal proceedings relating to this agreement, each party waives the right to raise any defence based upon any such failure.

Governing law and jurisdiction

20.11 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of New South Wales, Australia.

20.12 The parties irrevocably agree that the courts of New South Wales, Australia have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this agreement or its subject matter or formation (including non-contractual disputes or claims).

* * * *

Schedule 1 | Definitions and Interpretation

Definitions

20.13 The following definitions apply in this agreement unless the context requires otherwise:

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.

Charges means Fees and Expenses.

Claim means any claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse (whether in contract, tort, under statute or otherwise).

Cooling Off Period means the period that is fourteen (14) days from the date of Finline Trailers receiving the Holding Deposit.

Corporations Act means the Corporations Act 2001 (Cth).

Customer means the Customer of the Goods and / or Services as named in the Quote.

Default Rate means a rate of interest set at 8% above the RBA cash target rates at the beginning of periods 1 January – 30 June & 1 July – 31 December.

Engagement has the meaning given in clause 5.1, being each individual engagement for Finline Trailers to provide specific Services to the Customer pursuant to a Quote.

Event of Default means any of the following on the part of the Customer:

- (a) committing any material or persistent breach of this agreement;
- (b) repudiating or, or, in the reasonable opinion of Finline Trailers, evincing an intention to repudiate, this agreement;
- (c) if the Customer is a company, undergoing a Change of Control without the prior written consent of Finline Trailers;
- (d) misleading Finline Trailers in any material way; and/or
- (e) an Insolvency Event occurring in respect of the Customer.

Expenses mean the expenses of Finline Trailers for which Finline Trailers is entitled to be reimbursed by the Customer pursuant to clause 7.8.

Fees has the meaning given in clause 7.1.

Final Collection Date means the period of thirty (30) days from the date that Finline Trailers notifies the Customer that Goods or Service Goods or other item must be collected.

Final Invoice means the balance of the Revised Quote or any other outstanding amount as determined by Finline Trailers to complete the provision of the Services.

Goods means the pre-made and other Goods or items made available for sale by Finline Trailers to the Customer under this agreement and otherwise in accordance with clause 6, and includes in addition the Service Goods.

GST has the same meaning given to that expression in the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth), as in force from time to time.

Hourly Rate means the hourly rate set out in the relevant Quote, if applicable.

Insolvency Event means, in respect of a party:

- (a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency;
- (b) where the party is a company, a resolution is passed or court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law;
- (c) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the party or any part thereof; or
- (d) the party is otherwise unable to pay its debts as and when they fall due.

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair

competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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.

Losses means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character (including legal and other professional fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for, including all:

- (e) liabilities on account of Tax;
- (f) interest and other amounts payable to third parties;
- (g) legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability; and
- (h) all amounts paid in settlement of any Claim.

Non-Solicitation Period means each period of time being:

- (a) Twenty four (24) months;
- (b) Twelve (12) months;
- (c) Six (6) months;
- (d) Three (3) months.

Order Finalisation Period means the period of seven (7) days.

Personal Information has the meaning given in the Privacy Act.

Privacy Act means the Privacy Act 1998 (Cth).

Quote means, in respect of a particular Engagement, the document headed "Quote" or similar setting out the scope of the Goods and / or Services for that Engagement as provided by Fineline Trailers to the Customer and accepted by the parties in accordance with this agreement.

Relevant IP means all Intellectual Property Rights that Fineline Trailers makes, develops or conceives (whether alone or in conjunction with someone else, and whether during or outside normal working hours) in the course of, or arising out of, the provision of the Goods and / or Services and/or Fineline Trailer's engagement with the Customer, including any Intellectual Property Rights so made, developed or conceived:

- (e) using the premises, resources or facilities of the Customer or any of its customers, clients or suppliers;
- (f) in the course of, as a consequence of, or in relation to, the provision of the Goods and / or Services by Fineline Trailers and/or the performance (whether proper or improper) of Fineline Trailers' duties and responsibilities to the Customer under this agreement or otherwise;
- (g) as a direct or indirect result of any person's access to any confidential information or Intellectual Property Rights of the Customer or any of its customers, clients or suppliers; or
- (h) in respect of any of the products or services of the Customer or any of its customers, clients or suppliers, or any alterations, additions or methods of making, using, marketing, selling or providing such products or services.

Representatives means, in respect of a person, the employees, officers, consultants, agents and professional advisers of that person.

Revised Quote has the meaning given to it in clause 5.3, or as otherwise provided by Fineline Trailers to the Customer before production and manufacturing of the Goods and or Services.

Services means the Services provided by Fineline Trailers to the Customer under this agreement in respect of each Engagement, as set out in the relevant Quote.

Services Finalisation Period means the period of seven (7) days from the date of the Final Invoice.

Service Goods means the Goods provided under through the Services of a Quote or a Revised Quote.

Stamp Duty means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount in respect of the above, but excludes any GST.

Storage Fee means the sum of \$100 plus GST per day to Fineline Trailers or such other amount as Fineline Trailers notifies to the Customer in writing.

Tax Acts means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth).

Tax or Taxation means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);
- (b) unless the context otherwise requires, Stamp Duty and GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

Interpretation

20.14 These Warranty Terms and Conditions as contained in this agreement are current as from **8 November 2023**.

20.15 The following rules of interpretation apply in this agreement unless the context requires otherwise:

- (a) headings in this agreement are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because this agreement is

prepared by (or on behalf of) that party;

- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (d) a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this agreement;
- (f) in each schedule to this agreement, a reference to a paragraph is a reference to a paragraph in that schedule;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (i) a reference to writing includes any communication sent by post, facsimile or email;
- (j) a reference to time refers to time in Sydney, New South Wales and time is of the essence;
- (k) all monetary amounts are in Australian currency;

- (l) a reference to a **“liability”** includes a present, prospective, future or contingent liability;
- (m) the word **“month”** means calendar month and the word **“year”** means 12 calendar months;
- (n) the meaning of general words is not limited by specific examples introduced by **“include”**, **“includes”**, **“including”**, **“for example”**, **“in particular”**, **“such as”** or similar expressions;
- (o) a reference to a **“party”** is a reference to a party to this agreement and a reference to a **“third party”** is a reference to a person that is not a party to this agreement;
- (p) a reference to any thing is a reference to the whole and each part of it;
- (q) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (r) words in the singular include the plural and vice versa; and
- (s) a reference to one gender includes a reference to the other genders.