



KENTUCKY TRAILER

KENTUCKY TRAILER TECHNOLOGIES TERMS AND CONDITIONS OF SALE

1. **Background.** Seller is a business engaged in the design, engineering and manufacture of custom built specialty trailers ("Custom Trailer(s)"). Buyer is interested in contracting with Seller for the purchase of one or more Custom Trailers from Seller.

2. **Offer & Acceptance; Agreement.** Seller will provide Buyer with a quote which sets forth its proposed general terms of sale for one or more Custom Trailers ("Sales Quote"). Once accepted in writing by Buyer (which shall include Buyer signing the Sales Quote), the Sales Quote shall become a binding agreement between the Buyer and Seller and shall be subject in all respects to the following terms and conditions of sale. The Sales Quote along with these terms and conditions of sale (and any supplementary information or documentation incorporated by reference herein) shall constitute the "Purchase Documents" and shall supersede any prior discussions, negotiations, agreements, and understandings of the parties hereto and shall represent the entire agreement of the parties with respect to the subject matter hereof. Any modifications proposed by Buyer shall not become part of the Purchase Documents in the absence of Seller's written acceptance thereof.

3. **Purchase Price & Payment Terms.** All prices quoted are in U.S. dollars, less any applicable taxes, for the Custom Trailer(s) specified in the Purchase Documents. Buyer shall be obligated to make an initial down payment of fifty percent (50%) of the purchase price reflected in the Purchase Documents ("Purchase Price"), within ten (10) days of Buyer's written acceptance of the Sales Quote. The remaining balance of the Purchase Price shall be paid upon completion and delivery of the Custom Trailer(s) contracted for in the Purchase Documents.

4. **Taxes.** Buyer is responsible for payment of any and all taxes imposed by any federal, state, or local laws arising from the sale of the Custom Trailer(s) including, but not limited to, any sales and excise taxes which taxes shall be added to the Purchase Price.

5. **Freight & Delivery.** Unless otherwise agreed in writing, all prices are F.O.B., Seller's factory, Walled Lake, MI, freight and insurance charges to be paid by Buyer.

6. **Seller's Specifications.** Any specifications, drawings, notes, instructions, engineering notices or technical data prepared or furnished by Seller and consented to in writing by Buyer ("Seller's Specifications") for the design and manufacture of the Custom Trailer(s)

contracted for in the Purchase Documents shall be deemed incorporated into the Purchase Documents as if fully set forth therein.

7. **Buyer's Specifications.** To the extent that Buyer shall provide Seller with any plans, specifications, drawings, notices, technical data or instructions for the design and manufacture of the Custom Trailer(s) contracted for in the Purchase Documents (“Buyer’s Specifications”), the same shall not be deemed accepted and agreed upon by Seller unless and until such Buyer’s Specifications are consented to in writing by Seller in which case such Buyer’s Specifications shall be deemed incorporated into the Purchase Documents as if fully set forth therein. To the extent that Buyer's Specifications are accepted and agreed upon by Seller in writing, Buyer warrants and represents that Buyer is the owner and record holder of such Buyer’s Specifications, free and clear of all liens and encumbrances and further agrees to indemnify and hold Seller harmless from any and all claims for infringement of any patents, copyrights, trademarks, or trade names arising from Seller's use of the Buyer's Specifications in the design and manufacture of the Custom Trailer(s) contracted for in the Purchase Documents.

8. **Confidential Information.** The specifications, drawings, designs, manufacturing data, and any other information transmitted by either party in connection with the performance of the Purchase Documents are the property of the party making the disclosure and are disclosed in confidence upon the condition that they are not to be reproduced, copied, used or disseminated to others.

9. **Change Orders; Modifications.** Any change orders or modifications to the Purchase Documents shall not be accepted unless approved in writing by Seller and Buyer. In the event such change orders or modifications are accepted by Seller, Seller reserves the right, in its sole discretion, to adjust the Purchase Price, delivery schedule and such other terms and conditions as may be required in order to design and manufacture the Custom Trailer(s) in accordance with the accepted modifications.

10. **Force Majeure.** Neither party shall be liable under the Purchase Documents for delays in performance or failure to perform its obligations caused by circumstances beyond its control, including but not limited to, acts of God, wars, riots, strikes, floods, labor disputes, accidents, and governmental restrictions.

11. **Cancellations.** In the event of cancellation of the Purchase Documents by the Buyer, the Buyer shall forfeit its down payment as liquidated damages. Seller reserves the right to proceed against Buyer for both incidental and consequential damages associated with the cancellation, in Seller’s sole discretion.

12. **Warranty.**

a. **Conditions of Warranty.** All warranties provided for hereunder are subject to the condition that the Custom Trailer(s) has been operated and maintained in a proper and reasonable manner, has not been subject to any accident, damage, abuse or misapplication caused by any person, machine, or other source, and Buyer has complied in all material respects with all of Seller’s published preventative maintenance policies (collectively, the “Warranty Conditions”). In the event all of the Warranty Conditions shall not have been satisfied in all material respects, all warranties provided for hereunder shall be null and void.

b. Warranty on Custom Trailer(s). Subject to Section 12(a) above and for a period of one (1) year from the date of delivery of the Custom Trailer(s), Seller warrants to Buyer that:

- (i) Seller's labor, materials and workmanship shall be free of material defects. Equipment purchased by Seller from its vendors and incorporated into the Custom Trailer(s) ("Equipment") shall be guaranteed exclusively by the vendor's specific guarantee, if any, to the extent such guarantee may be transferred to and assumed by Buyer.
- (ii) Seller further warrants that the Custom Trailer(s) sold pursuant to the Purchase Documents is free from all liens, encumbrances, and other claims of any nature by any third person and that Seller shall convey clear title to the Custom Trailer(s) upon receipt of full payment.

c. LIMITATION OF WARRANTY. EXCEPT AS SPECIFICALLY SET FORTH IN PARAGRAPHS 12(a) AND 12(b) ABOVE, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CUSTOM TRAILER(S) INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

d. MODIFICATION OF WARRANTY. SELLER RESERVES THE RIGHT TO MODIFY THE TERMS AND CONDITIONS OF THE AFOREMENTIONED WARRANTY AT ANY TIME IN ITS SOLE DISCRETION. ALL CHANGES TO THE WARRANTY SHALL BECOME EFFECTIVE IMMEDIATELY UPON SELLER'S WRITTEN NOTICE TO BUYER BY REGULAR MAIL BUT SHALL APPLY ONLY TO THAT WHICH IS PURCHASED AFTER THE EFFECTIVE DATE OF EACH SUCH CHANGE.

e. UNAUTHORIZED WARRANTY PROHIBITED. SELLER DOES NOT AUTHORIZE, NOR DOES IT ADOPT, CONFIRM, OR RATIFY ANY WARRANTY OR REPRESENTATION MADE BY ANY PERSON OR ANY OTHER SOURCE REGARDING ANY CUSTOM TRAILER(S) OR EQUIPMENT SOLD PURSUANT TO THE PURCHASE DOCUMENTS, OTHER THAN AS SPECIFICALLY DESCRIBED THEREIN. Buyer agrees to indemnify and hold Seller harmless from any and all claims by any third party based on any warranty or representation made by Buyer to said party.

f. Products Not Sold By Seller. Warranties contained in the Purchase Documents do not cover any Equipment supplied by a party other than Seller and incorporated into the Custom Trailer(s) contracted for in the Purchase Documents.

13. Limitations of Remedies.

a. Buyer's Remedy. Should any valid warranty claim occur within the one (1) year warranty period provided for above, Buyer's remedy shall be limited to repair or replacement of the Custom Trailer(s) or the defective portion thereof. All determinations regarding repair or replacement are within the sole discretion of Seller. IN THE EVENT OF A WARRANTY

CLAIM, THE ORIGINAL BUYER MUST CONTACT SELLER AT THEIR OFFICES AT 1240 PONTIAC TRAIL, WALLED LAKE, MI 48390, TELEPHONE NUMBER (800) 521-9701. WARRANTY SERVICE MUST BE PERFORMED AS APPROVED BY SELLER. WARRANTY REPAIRS MUST BE PERFORMED AT THE ADDRESS LISTED ABOVE UNLESS OTHERWISE APPROVED IN WRITING BY SELLER. WARRANTY REPLACEMENT PARTS WILL BE FURNISHED FREIGHT PREPAID. LABOR COST TO REPAIR OR REPLACE WILL BE LIMITED TO THE AMOUNT OF THE ORIGINAL PURCHASE PRICE OF THE CUSTOM TRAILER(S) AND COMPONENTS. THE REPLACED WARRANTY PRODUCTS OR PARTS SHALL BECOME THE PROPERTY OF SELLER AND MUST BE RETURNED TO THE ADDRESS LISTED ABOVE FREIGHT PREPAID, UNLESS PRIOR ARRANGEMENTS HAVE BEEN AGREED TO BY THE PARTIES IN WRITING. IN THE EVENT REPAIRS ARE UNDERTAKEN BY ANY PARTY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN CONSENT, ALL WARRANTY CLAIMS WITH RESPECT TO THE PORTION OF THE CUSTOM TRAILER THAT IS SO REPAIRED OR AFFECTED SHALL BE NULL AND VOID.

b. **Limitation on Damages.** Seller shall not be liable for any loss or damages, including lost profits, whether direct, indirect, special, incidental, consequential, or otherwise, caused by or in any way involving the Custom Trailer(s) contracted for and sold under the Purchase Documents, even if Seller has been advised of the possibility of such damages.

14. **Precedence.** In the event of a conflict between Purchase Documents, the following order of precedence shall apply.

- a. Written contract modifications.
- b. Sales Quote.
- c. Seller's Standard Terms and Conditions of Sale.

15. **Governing Law.** Resolution of disputes shall be conducted in accordance with the laws of the State of Michigan.

16. **Venue.** The parties submit to the jurisdiction and venue of the Circuit Court for the County of Oakland, State of Michigan or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan with respect to any action arising, directly or indirectly, out of the Purchase Documents or the performance or breach of the Purchase Documents. The parties stipulate that the venues referenced in the Purchase Documents are convenient.

17. **Assignment.** Buyer may not assign its rights under the Purchase Documents without the prior written consent of Seller. Any assignment made without Seller's written consent shall be null and void.

18. **Severability.** If any provision of the Purchase Documents is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining

provisions of the Purchase Documents shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance.

19. Non-Waiver. Seller's failure to insist upon the strict performance of any term or condition contained in the Purchase Documents shall not be deemed a waiver of any of Seller's rights or remedies thereunder, nor of its right to insist upon the strict performance of the same or any other term contained therein in the future.