

TERMS AND CONDITIONS OF TRADE

KEITH ANDREWS TRUCKS LIMITED

Application

These terms and conditions apply to the supply of any goods and/or services (referred to interchangeably hereafter as "goods") supplied or provided by Keith Andrews Trucks Limited ("KATL") to any person or entity ("Customer") unless specified otherwise in writing.

On requesting or placing any order for goods from or with KATL the Customer shall be deemed to have read, understood and accepted these terms and conditions.

KATL reserves the right to review and change these terms and conditions at any time.

Prices

The price to be paid shall be according to any quotation submitted by KATL to the Customer. If no quotation has been submitted, the prices shall be according to the price list in force at the time of dispatch of the goods. If neither of these apply, the price shall be as indicated on an invoice by KATL upon completion of the order.

Prices quoted by KATL shall be subject to adjustment, correction or withdrawal at any time before acceptance of the Customer's order by KATL. Unless specified to the contrary, prices quoted are "ex KATL premises", and freight will be charged where applicable.

GST is payable by the Customer in addition to the contract price unless KATL expressly states otherwise in writing.

Payment

Unless specified otherwise by KATL in writing payment is due in full by the 20th of the month following the month of invoicing.

The Customer must pay the full amount invoiced by KATL by the due date without deduction, set-off or counter-claim and notwithstanding any dispute.

If the Customer does not pay the full amount invoiced on the due date for payment, then the Customer shall pay default interest on the unpaid amount at the rate of 2.5% per month, compounding monthly, from the due date for payment until the date of actual payment in full of the unpaid amount together with any default interest accrued thereon.

The Customer will fully indemnify KATL for any costs incurred by KATL arising out of, or incidental to, the enforcement or attempted enforcement by KATL of its rights against the Customer, including its rights and remedies under these terms and conditions, including but not limited to solicitor-client costs and/or debt collector fees, disbursements and charges.

KATL reserves the right to impose a fee on all credit card payments. The fee will be as displayed on site or notified at the time of accepting the credit card payment.

KATL reserves the right, at its sole discretion, to withdraw credit facilities at any time from the Customer.

Delivery

KATL will do its best to comply with any delivery date agreed with the Customer but shall not be liable for any delay or for consequential loss resulting from late delivery of goods or for loss or damage to goods after dispatch from KATL's premises howsoever caused. Delivery is deemed to be complete when the goods have been uplifted by the Customer or the Customer's agent or KATL's carrier.

KATL accepts no responsibility for damage or loss in transit.

If KATL is prevented from or is delayed in fulfilling KATL's obligations to the Customer as a direct or indirect result of force majeure, KATL may terminate its agreement with the Customer by giving written notice of termination to the Customer. Force majeure shall include, by way of example only, flood, earthquake, civil disturbances, war, war rationing allocation or embargoes, national strikes or labour shortages not peculiar to KATL's property or acts of God or government or local or regional authorities or any breach or agency of them.

Claims for damaged or otherwise defective goods or for shortage in quantity must be advised in writing within 7 days of receipt of the goods by the Customer and an opportunity given to the supplier to investigate the claim.

Returns

If KATL supplies goods to the Customer expressly on the basis that the Customer has a right to return them, then:

- All goods returned are subject to a 10% handling charge.
- Returns will not be accepted after 30 days from date the Customer takes possession of the goods and must be returned in the original packaging.
- All goods returned must be in the same condition as when delivered to the Customer and must be accompanied by an invoice.
- Delivery costs will not be refunded to the Customer and freight charges must be prepaid on goods being returned.
- No returns accepted for electrical items.

Procured items are **NON-RETURNABLE**.

Insurance

Insurance for goods during delivery within NZ is the responsibility of the Customer, even if KATL arranges the carrier on the Customer's behalf. Insurance for all export shipments is automatically included where export freight is arranged by KATL on behalf of the Customer. This insurance will be on-charged to the Customer.

Risk and Reservation of Title

Risk shall pass to the Customer when the goods leave KATL's premises, even though KATL may arrange delivery.

KATL shall retain title to the goods sold until they are paid for in full whether or not the goods have been supplied to the Customer. Full payment includes the whole of the price and any other sum(s) payable by the Customer, including any default interest incurred. Until full payment is made the Customer undertakes to: 1) ensure that the goods will at all times be able to be identified as the property of KATL; 2) maintain the goods in the same condition they were in when supplied to the Customer; 3) pay all proceeds to KATL if the goods are sold to a sub-buyer; 4) notify KATL immediately of any change in the address at which the goods are kept; 5) not grant a security interest over the goods to a third party.

If the Customer fails to comply with KATL's terms of payment, KATL shall have all rights and remedies as may be available to it, whether in law or equity or otherwise howsoever arising, and KATL or its authorised agent may enter upon any premises where the goods are situated and take possession of such goods. The Customer shall fully indemnify KATL for any claim and/or demand which may be brought in respect of such entry and taking of possession.

Personal Property Securities Act 1999

KATL shall have a Purchase Money Security Interest in all goods sold to the Customer on credit and when full payment is not made at the time the goods are purchased. KATL may perfect its Security Interest by registering a financing statement(s) pursuant to the Personal Property Securities Act 1999 ("PPSA").

The Customer acknowledges that the above clause creates a security interest (as that term is defined in the PPSA) in the goods. The Customer will at KATL's request promptly execute any documents, provide all necessary complete, accurate and up-to-date information and do anything else required by KATL to ensure that the security interest constitutes a perfected security interest (as that term is defined in the PPSA) including all information required to register a financing statement on the personal property security register.

The Customer waives any right they may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 133 and 134 of the PPSA.

The Customer waives its right to receive a copy of any verification statement (as that term is defined in the PPSA) under s148 of the PPSA.

If goods are attached, fixed or incorporated into any property of the Customer, the Customer grants KATL a security interest in the property to which the goods are attached, fixed or incorporated.

The Customer irrevocably authorises KATL to enter onto any premises or into any building where the goods are situated to enforce its security interest.

While KATL has a security interest over the goods, the Customer will keep the goods in good repair, properly insured and free of any other charges whatsoever.

Customer Details

The Customer shall give KATL at least 14 days' prior written notice of any proposed change in the Customer's name or other details including, but not limited to, changes of operational control, directorship, address, contact details and/or trading name.

Warranty

The Consumer Guarantees Act 1993, and Fair-Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon KATL which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these terms, KATL excludes all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.

The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires goods and services from KATL for the purposes of a business in terms of sections 2 and 43 of that Act.

KATL gives no warranty on any product or service performed beyond that offered by the manufacturer or supplier. The judgment of the manufacturer or supplier as to the validity of any claim is final and binds both the Customer and KATL.

KATL gives no undertaking or warranty that goods supplied are fit or suited for any particular purpose unless expressly stated in writing by KATL.

Cancellation

An order may not be cancelled by the Customer without the written consent of KATL. The Customer shall reimburse KATL for materials, labour and other incidental expenses incurred before the order was cancelled.

Bankruptcy or Insolvency

If the Customer becomes bankrupt or insolvent or commits any act of bankruptcy or assigns his or her estate for the benefit of his or her creditors and/or being a company is put into liquidation or is voluntarily wound up and/or has a receiver appointed, the Customer shall be in default of any agreement with KATL and KATL may cancel any such agreement without prejudice to its rights and remedies under that agreement and these terms and conditions and take such action against the Customer for damages and/or other relief as may be available to KATL.

Authority to Enter Contract

Each signatory to KATL's credit application form and/or these terms and conditions warrants that he or she or it has the power and authority to bind the Customer to any agreement with KATL and to these terms and conditions.

Limitation of Liability

Notwithstanding anything else expressed or implied in these terms and except where a statute requires otherwise, KATL shall not be liable for:

- (a) any injury to persons or damage to property; or
 - (b) any direct, indirect, consequential, financial or economic loss or damage to property; or
 - (c) any direct, indirect, consequential, financial or economic loss or damage in contract or in tort such as, but not limited to, loss of profits, loss of use, loss of power, costs of capital or costs of replacement production arising in any way whether as a result of negligence on the part of KATL or its employees, agents or contractors or otherwise arising out of or resulting from the use of the goods whether directly or indirectly.
 - (d) Any property held or stored at KATL's premises for any purpose whatsoever shall be accepted into KATL's custody at the owners' risk and it shall be the responsibility of the owner of the goods to arrange insurance protection of the goods.
- To the extent that KATL are liable for any reason for any loss suffered or liability incurred by the Customer arising from any breach of these terms or for any other reason, such liability is limited to the amount of the price of the goods concerned. If goods are returned by the Customer, or if the Customer makes a claim in writing to KATL in relation to goods or associated services provided, KATL may, in KATL's discretion, repair or replace the goods or re-perform the services, or refund the price of those goods to the Customer, provided that:
- (e) the goods must be returned, or the claim must be made in writing to KATL within fourteen (14) days of delivery; and
 - (f) the Customer must supply the date and number of any invoice relating to the goods; and
 - (g) KATL must be given a reasonable opportunity to inspect the goods.

Guarantee

If the Customer is a registered company or other organisation, then in consideration for KATL supplying or agreeing to supply goods and services on credit to the Customer in accordance with and subject to these terms and conditions, each director of the company or principal of the organisation (as the case may be) and anyone who signs these terms and conditions and/or KATL's credit application form on behalf of the Customer, hereby personally guarantees the due and punctual payment of all monies and performance and observance by the Customer of all terms, conditions and obligations to KATL, whether contained in these terms and conditions or at law or otherwise.

Privacy Act and Unsolicited Electronic Messages Act

12.1 Information as to credit worthiness:

- (a) the Customer consents to KATL, or any financier or credit rating agency, making enquiries of, and obtaining and retaining any information from anyone about the financial standing and credit worthiness of the Customer.
- (b) the Customer hereby requests and authorises any person from whom KATL, financier, or credit-rating agency requests such information to provide that information.
- (c) the Customer agrees that KATL, financier, or credit-rating agency may supply all information about the financial standing and credit worthiness of the Customer, however obtained, to any other person whom KATL, financier, or credit-rating agency considers has a legitimate interest in such information.
- (d) the Customer agrees that the authorisations, consents and requests contained in these terms and conditions shall continue in favour of KATL, financier, or credit-rating agency as long as those persons have a legitimate interest in the information which is the subject of these authorisations, consents and requests.

12.2 In car computer data: (Vehicle or Truck)

The Customer consents to the Manufacturer extracting, using or disclosing data from the vehicle's in-car computer:

- (a) to assist in the identification and diagnosis of any vehicle defect;
- (b) for research and development purposes (in which case the data will not be linked to the vehicle, the Customer or any individual);
- (c) where the Manufacturer believes, on reasonable grounds, that disclosure is necessary to assist the Police with the detection, investigation or prosecution of a possible offence; or
- (d) where such extraction, use or disclosure is otherwise authorised or required by law.

12.3 General Information:

- (a) the Customer consents to KATL using all information about all the Customer that the Dealer has received from any source to administer, perform and enforce these terms and conditions.
- (b) the Customer consents to KATL disclosing all information about the Customer that KATL has received from any source (including information received directly from the Customer or from the vehicle's in-car computer) to the Manufacturer, Financiers & authorised Franchised Dealers or to any persons as may be necessary or desirable to enable KATL to exercise any power or enforce or attempt to enforce any of KATL's rights, remedies and powers under these terms and conditions.
- (c) all such information may be retained and used by KATL, the Manufacturer, Finance company or Authorised Dealers to communicate with the Customer about Franchised products and services.
- (d) the Customer may inspect, update or correct the Customer's personal information at any time. To do this, or to raise queries, please contact KATL at the address specified on the front of these terms and conditions.
- (e) by providing its email address to KATL, the Customer consents to KATL, Manufacturer or Financier or Authorised Dealers communicating with the Customer by email.