

Terms and Conditions

The following standard terms and conditions (**Terms**) apply to and form part of any contract created for the manufacture and supply of truck bodies and related products (**Goods**), the provision of related design, customisation, installation and other services (**Services**) by Kirin industries Holdings Pty Ltd ACN 658 160 493 as trustee for Kirin Industries Discretionary Trust ABN 39 734 678 273 (**Kirin Industries**) to its customer, who includes the individual, company or any other business entity as the case may be (the **Customer**).

1. General:

- 1.1. All quotations, tenders, offers, purchase orders and contracts are made or accepted and all Goods and/or Services are subject to acceptance by Kirin Industries and, if accepted, are supplied subject to the Terms and any special terms and conditions which are imposed or agreed to by Kirin Industries from time to time, unless varied in writing by Kirin Industries. Unless otherwise expressly agreed to in writing by Kirin Industries, any previous dealings between Kirin Industries and the Customer, or the attempted imposition of additional or alternative terms and conditions by the Customer, shall not vary or replace the terms and conditions or be deemed in any circumstances whatsoever to do so.
- 1.2. The contract between Kirin Industries and the Customer shall be construed and take effect in accordance with and be governed by the laws in force in the State of Queensland and each party submits to the jurisdiction of the courts of Queensland in relation to any dispute arising out of any contract.
- 1.3. Each of the provisions of any contract formed is severable from the others in that if at any time one or more of such provisions is or becomes void, invalid or unenforceable for any reason the remaining provisions of said contract will not be affected. In any event that Kirin Industries is unable to supply the Customer's entire order, the Terms shall continue to apply to the Goods and/or Services supplied.
- 1.4. The use and disposal of the Goods are not within Kirin Industries's control, regardless of any assistance provided. Kirin Industries assumes no obligation or liability for the suitability of its Goods in any specific end use application. It is the Customer's responsibility to determine whether the Goods are appropriate for the Customer's use and purpose and to comply with all relevant regulations.
- 1.5. The Customer must not assign any rights under any contract entered into with Kirin Industries, without Kirin Industries' prior written consent.
- 1.6. Except as required by mandatory operation of law (or as otherwise expressly provided) all implied conditions are excluded.

- 1.7. If Kirin Industries is prevented from supplying the Goods and/or Services resulting from a Force Majeure Event, it shall be entitled to cancel the contract or the balance of the contract between it and the Customer by notice in writing to the Customer and the Customer shall not have any claim whether in contract, tort or otherwise, for damages against Kirin Industries in respect of any such cancellation. The Customer shall be liable to pay the reasonable charges of Kirin Industries up to the time of such cancellation. Each party shall as soon as the Force Majeure Event ceases to affect its performance or its obligations under this Agreement, resume compliance with its obligations. Delivery of the Goods shall be extended by at least the period of the Force Majeure Event.
 - 1.8. Kirin Industries may, from time to time, collect personal information from the Customer for the primary purpose of supplying the Goods and/or Services in accordance with the terms of its Privacy Policy and the provisions of the *Privacy Act 1988* (Cth).
- 2. Quotation**
- 2.1. Kirin Industries may, upon request by the Customer, provide the Customer with a quote which sets out the work (including Truck Body specifications if any) required to be done or services required to be provided in accordance with the Customer's instructions and an estimate of the amount payable to perform such work (**Quote**).
 - 2.2. Unless expressly stated otherwise, any Quote provided by Kirin Industries is valid for thirty (30) days.
 - 2.3. Each Quote accepted by the parties forms part of the contract between the Customer and Kirin Industries, and is deemed to be incorporated into the Terms.
 - 2.4. The Customer will have accepted the Quote by: (a) signing and returning a copy of the Quote; (b) providing instructions (either orally or in writing) to Kirin Industries to commence work after receiving the Quote; or (c) contacting and advising Kirin Industries of its acceptance of the Quote.
 - 2.5. Any Quote is made by Kirin Industries on the basis that the addressee is the Customer, and that any order authorisation or contract, formal or informal, will be binding on the addressee or on the basis that the addressee is: (a) a representative who is validly appointed and has authority to act on behalf of the Customer in accordance with Section 129 of the *Corporations Act 2001* (Cth); or (b) the agent of a third party with lawful authority to bind its client in a contract for the quoted work and/or Services.
 - 2.6. Kirin Industries need not commence work until the Quote has been accepted by the Customer in accordance with Clause 2.4.



- 2.7. Once the Quote has been accepted by the Customer, it is irrevocable and cannot be deferred, cancelled or suspended by the Customer unless otherwise agreed to in writing by Kirin Industries.
 - 2.8. The Customer indemnifies Kirin Industries for any costs or loss of profits from the deferral, cancellation or suspension of the Quote that has been accepted by the Customer.
 - 2.9. Any Quote by Kirin Industries (whether accepted or not) may be varied or withdrawn by Kirin Industries at any time up to the time of delivery of Goods or provision of Services. Kirin Industries expressly excludes any liability for any costs or damages incurred by the Customer or their Related Entities, employers and agents due to Kirin Industries varying or withdrawing the Quote at any time.
 - 2.10. Any Quote relating to the supply of the Goods and/or Services are based on the information supplied by the Customer. The Customer warrants such information are in a correct state and free from any defects and errors. Kirin Industries takes no responsibility for errors in respect of the Goods or Services, quantity or price described in any Quote.
 - 2.11. If, in the period between acceptance of the Quote and delivery of the relevant Goods and/or Services, Kirin Industries incurs an increase in the cost of producing and/or delivering the Goods and/or Services, Kirin Industries reserves its right to increase the quoted price of the Goods and/or Services any time prior to delivery.
- 3. Price**
- 3.1. The price for the supply of the Goods and/or Services may be subject to any price variation made before or after the acceptance of the Quote, order or contract and also during the currency of any order or contract, either made orally or in writing, unless otherwise stated in writing.
 - 3.2. All quoted prices are based on the description of work indicated in any Quote, tender, offer, order or contract. Kirin Industries reserves its right to change the price should the amount of work change due to factors outside Kirin Industries' control including and without limitation to: (a) any relevant representation made by the Customer is incorrect, incomplete or otherwise deficient; (b) any fluctuations in currency value; or (c) any rise or fall in the amounts payable for labour, charges, in the amounts charged to Kirin Industries by its suppliers.
 - 3.3. The Customer acknowledges and agrees that no variation to the price in accordance with Clause 3.2 shall entitle the Customer to cancel an accepted quote.
 - 3.4. Unless otherwise stated, all prices quoted for the Goods and Services are exclusive of GST.

- 3.5. The Customer shall be liable for all excise, sales, GST or any other tax, charge or government impost on the Goods and/or Services in addition to the price. Where Goods and/or Services are subject to GST, the Customer must pay GST at the same time as payment for the Goods and/or Services is made.
- 3.6. Unless otherwise agreed, all prices quoted by Kirin Industries do not include the cost of delivery of Goods.

4. Payment

- 4.1. Unless an account is held with Kirin Industries, payment terms are cash or Electronic Funds Transfer upon delivery or collection of Goods or provision of Services. Where an account is held with Kirin Industries, payment must be made by the Customer in accordance with the terms set out in that account.
- 4.2. If the Customer does not pay Kirin Industries on time pursuant to the Terms, Kirin Industries may: (a) without notice to the Customer, withdraw or vary any credit facilities Kirin Industries previously provided (if any); and/or (b) withhold the delivery or collection of the Goods indefinitely until full payment has been made.
- 4.3. In the event that the Customer fails to make payment when due pursuant to the Terms, the amount unpaid will incur compound interest at the rate of 3% per month on the amount outstanding, compounding daily, in respect of each day that the amount outstanding remains unpaid until the date payment is received.
- 4.4. If the Customer fails to pay any amount that is due and payable pursuant to the Terms, Kirin Industries reserves its right to suspend or terminate the contract. Kirin Industries is also entitled to appoint a debt collector or debt collection agency and/or initiate legal action seeking recovery of all monies as well as interest on the unpaid amount (both before and after judgment, where applicable) and the Customer acknowledges and agrees that it must pay Kirin Industries any and all costs it incurs associated with enforcing its rights under the Terms, including and without limitation to recovery of the unpaid amount, legal costs, administration costs and all other costs relating to debt collection.
- 4.5. The Customer shall provide a security deposit for payment if it is indicated on the Quote accepted by the Customer (**Security Deposit**). If the Security Deposit is not provided as set out in the Quote, Kirin Industries is not required to undertake work until such Security Deposit is provided.
- 4.6. If the Customer defaults under the Terms, Kirin Industries may, not less than 14 days after written notice to the Customer and without limiting any rights of Kirin Industries,



resort to and otherwise apply the Security Deposit towards satisfaction of the default, or otherwise to compensate Kirin Industries for any claim because of that default.

- 4.7. Failure by any third party to make payment to the Customer for Goods and/or Services supplied by Kirin Industries must not be valid grounds for nonpayment by the Customer.

5. Retention of Title to Goods and PPSA:

- 5.1. The legal and equitable title to Goods manufactured, supplied and sold by Kirin Industries to the Customer will not pass from Kirin Industries to the Customer until the later of: (a) unconditional payment in full and was made in cleared funds to Kirin Industries for those Goods; and (b) unconditional payment in full and was made in cleared funds of any and all other amounts owing or unpaid by the Customer to Kirin Industries on any account, including but not limited to in respect of Goods previously or subsequently supplied to the Customer.
- 5.2. Until such time as title to Goods passes to the Customer under Clause 5.1: (a) the Customer will hold the Goods as a fiduciary and as bailee for Kirin Industries and will be responsible for any loss, damage or conversion of the Goods; (b) the Customer must store the Goods physically separate from the other goods of the Customer and in such a manner as to identify the Goods and show clearly that they are owned by and remain Kirin Industries' property; (c) Kirin Industries may, at its discretion, enter any premises owned or occupied by the Customer or its agents to take possession of any Goods to which title has not passed and where payment on any account is overdue, or inspect the Goods or inspect the Customer's books and records regarding the Goods at any time; (d) subject to the Customer's right to possess, sell or otherwise deal with the Goods in respect of which title has not passed to the Customer under Clause 5.1 not having ceased, and despite the above, the Customer may only use the Goods in the ordinary course of the Customer's business, or sell the Goods in the ordinary course of the Customer's business, provided that where the Customer sells Goods, it will do so as principal and the Customer will have no power to commit Kirin Industries to any contract or otherwise or to any liability, but as between the Customer and Kirin Industries, the Customer will sell as fiduciary agent and hold all proceeds on trust for Kirin Industries. When the Customer is not paid by that third party, the Customer must at the request of Kirin Industries assign its claim against that third party to Kirin Industries. The Customer must pay the stamp duty on any such assignment (if any). For the purpose of perfecting any such assignment the Customer irrevocably appoints Kirin Industries as its agent and holds the book debt arising from such sale and, upon payment of such debt, the proceeds of sale (but only to the extent of the monies and any outstanding interest owing to Kirin Industries) upon trust for Kirin Industries; and (e) the Customer must ensure that the Goods are not and will not be subject to any encumbrance or other security interest including a lien granted or created in favour of any third party whether under contract, statute or common law without Kirin Industries' prior written consent. Without limiting Kirin Industries' rights,

THE TRUSTEE FOR KIRIN INDUSTRIES DISCRETIONARY TRUST



- if the Customer becomes aware of a third party's interest in or relating to an encumbrance or other security interest, including a lien, in respect of the Goods, the Customer must notify Kirin Industries immediately in writing and provide Kirin Industries with all relevant details relating to the encumbrance or other security interest, including the third party's full name and contact details, the nature of the encumbrance or other security interest and the Goods subject to the encumbrance or other security interest.
- 5.3. Despite this Clause 5, Kirin Industries is entitled to maintain an action against the Customer for payment of the purchase price of Goods and/or Services.
 - 5.4. The Customer acknowledges and agrees that Clause 5.1 creates a security interest (including, where applicable, a purchase money security interest, as defined in the PPSA) in Goods (and their proceeds, as defined in the PPSA) supplied by Kirin Industries to the Customer from time to time.
 - 5.5. The Customer agrees to do all things necessary and execute all documents required by Kirin Industries to register each security interest in the Goods, and ensure that Kirin Industries acquires a perfected security interest in the Goods, under the PPSA.
 - 5.6. Until title to Goods passes to the Customer under Clause 5.1, the Customer waives its rights under Sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4) 135, 142, 143, 157(1) and 157(3) of the PPSA, to the extent that is permitted by law. Kirin Industries may also contract out of any additional provision of the PPSA as determined by Kirin Industries from time to time, provided that is also permitted under the PPSA.
 - 5.7. Where Kirin Industries has rights in addition to those under Part 4 of the PPSA, those rights continue to apply.
 - 5.8. The Customer agrees that repossession and retention of Goods pursuant to the PPSA will only satisfy so much of the amounts owing by the Customer to Kirin Industries as is equivalent to Kirin Industries' estimation of the net realisable value of the Goods, or their cost price (whichever is the lower) as at the date of repossession, and the repossession and retention will immediately extinguish any rights or interest the Customer has in the Goods.
 - 5.9. Until title to Goods passes to the Customer under Clause 5.1, the Customer must not give to Kirin Industries a written demand, or allow any other person to give to Kirin Industries a written demand, requiring Kirin Industries to register a financing change statement under the PPSA in respect of or affecting any Goods, or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA in respect of or covering the Goods.
 - 5.10. The Customer will be responsible for payment of any fees (and any other costs) that Kirin Industries incurs in relation to investigating, perfecting or registering Kirin



Industries' security interest in the Goods, and those fees and costs may be added as a charge on invoices issued by Kirin Industries to the Customer.

- 5.11. The Customer may not assign or factor the Customer's right and interest in any debt owed by a Customer of the Customer to the Customer on account of the proceeds of sale of any of Kirin Industries' Goods by the Customer on credit or deferred payment terms, without Kirin Industries' prior written consent.
- 5.12. Subject to Section 275(7) of the PPSA and any provision of any other contract between Kirin Industries and the Customer permitting Kirin Industries to disclose information, Kirin Industries and the Customer agree that neither of them will disclose, or authorise the disclosure of, information of the kind described in Section 275(1) of the PPSA in relation to the Terms, any contract or any transaction contemplated by or effected under the Terms or any contract.
- 5.13. The Customer must notify Kirin Industries in writing of any change in the Customer's ownership or in the ownership of the Customer's business, or in the directors or address of the Customer. Notwithstanding any change in the Customer's ownership/trading structure or any notice by the Customer to Kirin Industries of such change, the Customer will remain personally liable for the payment for any Goods and/or Services supplied to, or ordered by, the Customer from Kirin Industries until the Customer has received written confirmation from Kirin Industries that the Customer's account has been closed and full payment has been received by Kirin Industries.

6. Acceptance of Goods and/or Services

- 6.1. The Goods and/or Services shall be collected at Kirin Industries' warehouse. Alternatively, the Goods may be delivered to the Customer's nominated address upon the request and at the cost of the Customer.
- 6.2. The Customer is responsible for arranging collection or delivery of the Goods unless otherwise stated, and Kirin Industries shall not be liable for any loss, damage, delay or other liability arising whether directly or indirectly from the Goods not arriving by the anticipated delivery date. Delivery costs shall be to the account of the Customer.
- 6.3. The Customer must inspect the Goods immediately upon delivery or collection and give written notice to Kirin Industries with particulars of any claim that the Goods are damaged, defective, non-conforming or otherwise not in accordance with the contract on the same day of delivery or collection. The written notice should be emailed to Kirin Industries Pty Ltd at info@kirin.net.au. If the Customer fails to give such notice, then to the extent permitted by law, the Goods must be treated as having been accepted by the Customer and shall be deemed to be in all respects in accordance with the contract. The Customer must be bound to accept the same.

6.4. The Customer must not accept the delivery of Goods and/or Services if at the time it is insolvent or likely to become insolvent.

7. Warranty

7.1. Subject to the Customer's compliance with Clause 7.2, Kirin Industries warrants to the Customer the Goods to be free of defects in workmanship for a period of 12 months from the date of invoice.

7.2. To be entitled to a warranty claim the following conditions must be met: (a) the Goods must be deemed faulty or not fit for its purpose; (b) the Customer must provide a copy of the tax invoice or any proof of purchase issued by Kirin Industries; (c) the potential claim must be within the warranty period as stated in Clause 7.1; (d) inspections to determine assess claim and fault must be carried out by Kirin Industries or its authorized repair agent; and (e) the cost of transportation to or from Kirin Industries or its authorized repair agent is to be paid by the Customer.

7.3. The warranty will not apply where: (a) the Goods have been repaired, altered, or modified by someone other than Kirin Industries or an authorized repair agent; (b) Kirin Industries cannot establish any fault in the Goods after testing and inspection; (c) the Goods have been used in a way that were not intended from their design; (d) the defect in the Goods has arisen due to the Customer's failure to properly use and maintain the Goods in accordance with Kirin Industries' instructions and recommendations; (e) the Goods have been subject to abnormal conditions, including but not limited to environment, temperature, water, fire, humidity, pressure, or stress; (f) the defect has arisen due to abuse, misuse, or neglect; (g) unauthorized parts or accessories have been used on or in conjunction to the Goods; or (h) the defect is the result of wear and tear.

7.4. The Customer must: (a) immediately notify Kirin Industries of any defect in the Goods including any defect in a component or part; (b) immediately make available to Kirin Industries the Goods, component or part the subject of the warranty claim for either repair, replacement or to pursue a third party claim; and (c) provide all reasonable assistance to Kirin Industries in seeking to recover any amount or in making any claim against a third party.

7.5. If the Services are performed on behalf of Kirin Industries by a sub-contractor, those Services are subject only to the then applicable sub-contractor's warranty, details of which will be made available to the Customer upon request to Kirin Industries in writing and except to the extent prohibited by law, all other warranties in relation to the Goods and Services provided on behalf of Kirin Industries by are sub-contractor are excluded.

- 8. Limited Liability:** Any liability of Kirin Industries, if any, to the Customer arising from the supply of Goods and/or Services by Kirin Industries or pursuant to any contract with Kirin Industries is limited to the following, as is deemed appropriate by Kirin Industries in each instance: (a) the repair by Kirin Industries of the Goods, (b) the resupply by Kirin Industries of replacement Goods at no additional charge to the Customer; or (c) the refund of the invoice price paid by the Customer, for the Goods giving rise to the liability, whether the liability arises for breach of contract or at common law, or by a negligent act or omission or recklessness of Kirin Industries, a Related Entity, or employees, sub-contractor, representatives or agents of Kirin Industries.
- 9. Exclusion of Damages and Consequential Loss:**
- 9.1. Kirin Industries shall in no circumstances be liable for or have any liability (including liability in negligence) for any form of damages including but not limited to incidental, indirect, special, consequential or general damages or loss, or otherwise due to circumstances beyond Kirin Industries' reasonable control in connection with or arising out of, or loss suffered or incurred as a result of or caused by, whether directly or indirectly, the supply, performance or use of any Goods and/or Services supplied or performed as the case may be by Kirin Industries to or for the Customer or any person, or any failure to supply Goods or to perform any Services in excess of the limitation provided in Clause 8.
- 9.2. Where, at the Customer's request, Kirin Industries manufactures the Truck Body to a design, specification, or in compliance with the Customer's instructions or suggestions as to design, materials, method of construction or otherwise, Kirin Industries shall not be liable for the practicability or performance of (in part or in whole) the output or result of such designs, specifications, instructions or recommendations and shall not be liable for any loss or damage caused to the Customer or any other person as a result of defects or inaccuracies caused by reliance on such design, specifications or recommendations.
- 10. Indemnity**
- 10.1. The Customer indemnifies Kirin Industries, regardless of any negligence on the part of Kirin Industries, against: (a) all losses incurred by Kirin Industries; (b) all liabilities incurred by Kirin Industries; and (c) all costs actually payable by Kirin Industries to its own legal and other expenses incurred by Kirin Industries in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal); arising directly or indirectly as a result of or in connection with the supply of Goods and/or Services by Kirin Industries to the Customer.
- 10.2. The Customer must pay to Kirin Industries all liabilities, costs and other expenses referred to in this Clause, whether or not Kirin Industries has paid or satisfied them.
- 10.3. If the Customer's truck which is in the care and control of Kirin Industries are damaged or destroyed, Kirin Industries will only be liable to the extent of any indemnity

provided by Kirin Industries' insurance even if the damage or destruction of the truck arises as a result of the negligent or wilful act or omission of Kirin Industries.

11. Intellectual property

- 11.1. The Customer acknowledges and agrees that: (a) Kirin Industries owns the Intellectual Property Rights in all documents, drawings, specifications and any other materials produced by Kirin Industries or on behalf of Kirin Industries in connection with the Goods or Services, and these shall not be reproduced without the written consent of Kirin Industries (**Kirin Industries' IP**). (b) the Customer acquires no rights in Kirin Industries' IP or any other material provided under this Agreement; and (c) the Customer must not use Kirin Industries' IP for any purpose except for the use of the Truck Body.
- 11.2. The Customer agrees that: (a) it must not register or apply to register any rights in relation to the Truck Body and its specifications and/or modifications, including a patent, design, trademark or copyright, anywhere in the world; (b) it must not challenge, question or in any way impair: (i) Kirin Industries' IP; (ii) any interest which Kirin Industries has in the Truck Body and its specifications and/or modifications; (iii) the validity of any registrations in relation to the Truck Body and its specifications and/or modifications; or (iv) any application by Kirin Industries to register any rights, including a patent, design, trade mark or copyright, in relation to the Truck Body and its specifications and/or modifications.
- 11.3. The Customer must immediately notify Kirin Industries in writing if it becomes aware of: (a) any infringement or threatened infringement of Kirin Industries' IP; (b) any claim by a third party in relation to Kirin Industries' IP, including a claim that the Truck Body infringes a third party's rights; or (c) any attempts, threats or notices to oppose any application, cancel, remove or otherwise challenge any registrations or applications relating to the Truck Body or Kirin Industries' IP or other challenges to the Truck Body or Kirin Industries' IP, and the Customer must not take any steps in relation to such infringement, claims or conduct without Kirin Industries' prior written consent.
- 11.4. The Customer must, on the request of Kirin Industries, provide assistance and information in relation to: (a) any infringement, claims or conduct referred to in Clause 11.3; and (b) Kirin Industries' IP, any enforcement or defence of Kirin Industries' IP, or any application the Customer makes to register any intellectual property rights in respect of the Truck Body and its specifications and/or modifications.
- 12. Dispute:** (a) Any dispute arises from the quotations, tenders, offers, orders and contracts between Kirin Industries and the Customer which cannot be settled between the parties by direct negotiation, must be referred to a mediator of mutual agreement. (b) The parties agree that expenses associated with the mediation is to be borne by the parties equally. (c) A party to the dispute must not commence court or arbitration

proceedings relating to the dispute unless that party has participated in a mediation in accordance with. This Clause does not apply to an application for urgent interlocutory relief.

13. Return of Goods

- 13.1. If the Customer considers that the Goods do not comply with Clause 7, the Customer must provide written notice to Kirin Industries making such claim within the relevant warranty period referred to in Clause 7.1.
- 13.2. If the Customer does not provide any notice in accordance with Clause 13.1 the Customer is deemed to have accepted the condition and correctness of the Goods ordered and received.
- 13.3. If notice is provided by the Customer in accordance with Clause 13.1, Kirin Industries may determine, at its sole discretion, to accept the return of the Goods for its own assessment or determine that the Goods should be returned to Kirin Industries for its determination.
- 13.4. Where any Goods are returned to Kirin Industries or the manufacturer in accordance with clause 13.3, the Goods remain at the Customer's risk pending acceptance of liability by Kirin Industries or the manufacturer. The Customer is to pay the freight and other cost of returning the Goods unless the reason for return is directly and wholly caused by an error of Kirin Industries or the manufacturer in which case only the freight for the return will be paid for by Kirin Industries or the manufacturer, respectively.
- 13.5. Any acceptance of delivery back from the Customer by Kirin Industries or the manufacturer of the Goods prior to Kirin Industries or the manufacturer (as the case may be) accepting responsibility in relation to the Goods, will be by Kirin Industries or the manufacturer of the Goods (as the case may be) as agent for the Customer and is not to be taken as any acceptance of any liability by Kirin Industries or the manufacturer of the Goods.
- 13.6. Subject to the Australian Consumer Law and the warranties provided in Clause 7 and without limitation to Kirin Industries' discretion to accept the return of the Goods, Kirin Industries is not required to accept Goods that: (a) are not returned within 30 days of the date of the notice provided by the Customer in clause 13.1; (b) are obsolete, incomplete, damaged by the someone other than Kirin Industries (save for the defect causing the return) or otherwise imperfect; (c) were specially procured or cut to length by Kirin Industries; (d) are not in the original undamaged/unmarked state, or as supplied and remain in good condition and with all documentation such as instructions.

- 13.7. The amount of credit allowed in respect of the Goods returned, if any, may be subject to a service charge at Kirin Industries' rate currently in effect, unless these Terms specifically state otherwise.
- 13.8. The Customer is responsible for Goods lost or damaged in transit during return to Kirin Industries or the manufacturer and the risk remains with the Customer until the Goods are received by Kirin Industries.
- 13.9. Any dispute relating to this clause is to be determined in accordance with clause 12.
- 14. Termination:** (a) The Customer may only terminate the contract (or part of the contract) by written notice to Kirin Industries prior to the commencement of any quoted work by Kirin Industries. The Customer acknowledges and agrees that it will be liable for and must pay to Kirin Industries on demand all costs and expenses incurred by or on account of Kirin Industries prior to the time of termination that relate directly or indirectly to the termination by the Customer. (b) If the Customer commits a Material Breach, Kirin Industries may, at its sole discretion and without limiting its other rights under the Terms, terminate the contract by written notice to the Customer.
- 15. Definitions**
- 15.1. **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) as amended from time to time.
- 15.2. **Business Day** means a day (other than a Saturday, Sunday or public holiday in Brisbane) on which banks are open for business in Brisbane, Queensland, Australia.
- 15.3. **Force Majeure Event** means an event outside the control of a party, which includes and without limitation to: (a) acts of god; (b) inclement or unseasonal weather; (c) fire, explosion or flood; (d) riots or civil disturbances; (e) acts of terrorism; (f) acts of government (except, in the case of an obligation of the Manufacturer, an act of government arising from a failure by the Manufacturer to comply with its obligations under this agreement); or (g) labour disturbances, strikes, go slows, black bans and work practices.
- 15.4. **GST** means Goods and Services Tax or other tax that substitutes or replaces the Goods and Services Tax from time to time.
- 15.5. **Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trademarks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property.

- 15.6. **Material Breach** means: a breach by the Customer referred to any of the following Clauses in the Terms: Clauses 2.9; 3.3; 3.4; 3.5; 4; 5; 6; 7.2; 7.4; 11; and 13.
- 15.7. **PPSA** means the *Personal Property Securities Act 2009* (Cth) as amended from time to time.
- 15.8. **Related Entity** has the meaning given to it in the *Corporations Act 2001* (Cth).
- 15.9. **Truck Body** means the truck body set out in the Quote.
- 15.10. **Security Interest** has the meaning given to it under the PPSA.
- 16. Interpretations:** (a) Headings and bold type are for convenience only and do not affect the interpretation of this agreement. (b) The singular includes the plural and the plural includes the singular. (c) Words of any gender include all genders. (d) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning. (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual. (f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement and a reference to this agreement includes any schedule, attachment and exhibit. (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them. (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document. (i) A reference to a party to a document includes that party's successors and permitted assignees. (j) A promise on the part of 2 or more persons binds them jointly and severally. (k) A reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing. (l) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death. (m) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision. (n) A reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not: (i) which ceases to exist; or (ii) whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions.



THE TRUSTEE FOR KIRIN INDUSTRIES DISCRETIONARY TRUST

55 Magnesium Drive, Crestmead QLD 4132

info@kirin.net.au