

# Kentucky Trailer Technologies

## TERMS AND CONDITIONS OF SALE

1. **Offer & Acceptance; Agreement.** These terms and conditions of sale (these “Terms and Conditions”) are the only terms which govern the sale of the goods (“Goods”) and/or the provision of services (“Services”, together with Goods, the “Deliverables”) by Trailer Technologies Holdings, LLC d/b/a Kentucky Trailer Technologies d/b/a KTT d/b/a Kentucky Trailer Specialty Vehicles d/b/a KTSV (“Seller”) to Buyer, and supersede all other terms and conditions, oral or written, and all other communications between Buyer and Seller suggesting additional or different terms, and may be amended or cancelled only by written agreement signed by both parties. These Terms and Conditions expressly limit acceptance to these provisions. Seller may provide Buyer with a proposal regarding the sale of Deliverables (“Sales Proposal”). Once accepted by Buyer (which shall include without limitation Buyer signing the Sales Proposal, confirming acceptance by email or paying Seller any sums as described in the Sales Proposal or a related invoice), the Sales Proposal shall become a binding agreement between the Buyer and Seller and shall be subject in all respects to the Terms and Conditions. To the extent terms on the face of the Sales Proposal conflict with Seller’s Terms and Conditions, the terms on the face of the Sales Proposal will govern. The Sales Proposal along with the Terms and Conditions (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 proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the provisions of the Sales Proposal or these Terms and Conditions is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to the provisions contained in the Sales Proposal or these Terms and Conditions. Any modifications proposed by Buyer shall not become part of the Purchase Documents in the absence of Seller’s written acceptance thereof.

2. **Purchase Price & Payment Terms.** All prices quoted for the Deliverables are in U.S. dollars. Invoices shall be due and payable within thirty (30) days of the invoice date, unless otherwise agreed in writing or noted in these Terms & Conditions. Unless otherwise agreed in writing, payment terms are: (a) initial deposit of 50% of the purchase price reflected in the Purchase Documents (“Purchase Price”) due within 10 days of Buyer’s acceptance of the Sales Proposal, (b) 25% of the Purchase Price due at half complete stage, and (c) remaining Purchase Price due at completion of Deliverables. Unless otherwise agreed in writing, (i) all prices are FOB Seller’s factory, Wixom, MI (Incoterms 2020) freight and insurance charges to be paid by Buyer, and (ii) regardless of payment terms, Buyer shall fully pay for the Deliverables prior to shipment. Seller may from time to time agree to different payment terms, and if, in Seller’s judgment, the financial condition of Buyer does not justify continuance on such payment terms, then Seller may require full or partial payment in advance or otherwise adjust the terms including ceasing to supply Buyer. Payments not made when due are subject to a finance charge of 1-1/2% of the outstanding balance or the amount permitted by law, whichever is lower, each month or part thereof until paid.

3. **Taxes.** Buyer is responsible for payment of any and all taxes and assessments imposed by any federal, provincial, state, or local laws arising from the Deliverables, or the manufacture or sale thereof including, but not limited to, any sales, excise, privilege or other taxes and assessments, which shall be added to the Purchase Price. If Seller pays any such taxes or assessments, Buyer shall, upon demand, reimburse Seller for such amounts within two days (48 hours).

#### **4. Freight & Delivery.**

a. Unless otherwise agreed in writing, (i) delivery of the Deliverables shall be made FOB Seller's Wixom, MI facility – Incoterms 2020 (or in the event third-party installed equipment has to be tested by a third-party equipment manufacturer, FOB such equipment manufacturer's facility – Incoterms 2020), and title and risk of loss of the Deliverables shall pass to Buyer at such place and time, and (ii) regardless of payment terms, Buyer shall fully pay for the Deliverables prior to shipment.

b. Delivery schedules are estimated, and Seller assumes no responsibility for delays. Seller may invoice Buyer and ship the Deliverables once they are ready for shipment. If, because of Buyer's refusal or inability to take delivery when the Deliverables are ready for shipment, the Deliverables are not shipped, are not picked up by Buyer, are stopped in transit or are returned, then (i) Seller may, at its option, store the Deliverables and bill Buyer for any storage and power charges. Risk of loss shall pass to Buyer in accordance with Section 4.a. above, and the warranty period shall begin at such time. Seller shall not be responsible for insuring any Deliverables once risk of loss has passed to Buyer, and is not responsible for any loss incurred by the Deliverables while in Seller's possession, including losses caused by weather. If Seller is relying on Buyer-provided components for completion of the Deliverables, and Buyer fails to provide any such component by the date the parties agreed, then Seller shall have the right to issue an invoice to Buyer for any partial work completed on the Deliverables regardless of any payment schedule. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Deliverables to Buyer.

c. If Seller is responsible for arranging transportation of the Deliverables, unless Buyer specifies in writing the desired method of transportation (air express, motor freight, etc.) within a reasonable period of time before the date scheduled for shipment, Seller will use its judgment in selecting the carrier and route. Seller shall not be liable for any claim, loss, expense or damage of any kind whatsoever for delays, or loss or damage in transit. Claims for loss or damage in transit shall be made solely against the carrier.

d. Seller shall provide Buyer notice that the Deliverables are ready for inspection, and Buyer shall inspect the Deliverables at Seller's designated location prior to delivery and shipment. At such inspection, Buyer shall notify Seller in writing of any claims that the Deliverables do not conform to Seller's warranty for such Deliverables. Failure to give such written notice, or failure to inspect the Deliverables, in accordance with the delivery schedule will constitute irrevocable acceptance by Buyer of all Deliverables upon shipment or delivery, whichever is sooner. Seller shall not be responsible for any delay in delivery of the Deliverables if the delay is caused by Buyer, including without limitation, if (i) Buyer fails to fully pay for the Deliverables prior to the scheduled delivery date, (ii) Buyer fails to conduct inspection of the Deliverables, if any, when scheduled, or (iii) delivery to Seller of items from Buyer or from equipment manufacturers designated by Buyer are delayed.

**5. Seller's Specifications; Tooling.** 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 Deliverables shall be deemed incorporated into the Purchase Documents as if fully set forth therein. In no event shall Buyer have any interest in any tools, jigs, dies, patterns, etc. (collectively, "Tooling") which is made or obtained for the production of the Deliverables. Such Tooling shall remain the property of Seller.

**6. 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 Deliverables (“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, trade names or other intellectual property rights arising from Seller's use of the Buyer's Specifications in the design and manufacture of the Deliverables.

**7. Intellectual Property.** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights, trademarks, patents and applications therefor, and other information or intellectual property disclosed or otherwise provided to Buyer by Seller and all rights therein (collectively, “IP”) are and will remain the property of Seller. Buyer shall have no claim to, nor ownership interest in, any IP and such information, in whatever form and any copies thereof, shall be promptly returned to Seller upon written request from Seller. Buyer acknowledges that no license or rights of any sort are granted to Buyer hereunder in respect of any IP, other than the limited right to use the Deliverables purchased from Seller.

**8. Confidential Information.** The specifications, drawings, designs, manufacturing data, IP, 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 conditions that they are not to be reproduced, copied, used or disseminated to others and they are to be used only in connection with performance of the Purchase Documents.

**9. Change Orders; Modifications.** Any change orders or modifications to the Specifications or Purchase Documents shall not be accepted unless approved in writing by Seller. 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 Deliverables in accordance with the accepted modifications. Once ordered, Deliverables may not be cancelled by Buyer. Without limiting any other damages, in the event of cancellation of the Purchase Documents by the Buyer, (i) the Buyer shall forfeit any down payment and any progress payment, and (ii) if no down payment or progress payment was made, or If such payment(s) are inadequate, then Buyer will owe Seller any shortfall to compensate Seller for time and materials plus a reasonable profit for work completed to date. Seller reserves the right to proceed against Buyer for both incidental and consequential damages associated with the cancellation, in Seller’s sole discretion.

**10. Force Majeure.** Seller shall not be liable for any delay in performance or delivery, or failure to perform its obligations, caused by circumstances beyond its reasonable control, including but not limited to, acts of God, wars, epidemics, riots, strikes, raw material shortages and material increases in costs of raw materials or shipping, unavailability of shipping methods, blockades, floods, labor disputes, pandemics, accidents, and governmental restrictions.

**11. Warranty.**

a. Conditions of Warranty. All warranties provided for hereunder are subject to the condition that the Deliverable 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 any of the Warranty Conditions shall not have been satisfied in all material respects, warranties provided for hereunder shall be null and void to the extent affected by failure to meet such Warranty Conditions.

b. Warranty on Deliverables. Subject to other paragraphs in Sections 11 and 12, and for a period of one (1) year from the date of delivery of the Deliverables, Seller warrants to Buyer that ("Seller's Warranty")

- Seller's labor, materials and workmanship shall be free of material defects, and

- the Deliverables are free from all liens, encumbrances, and other claims of title by any third person, and that Seller shall convey clear title to the Deliverables upon receipt of payment of the Purchase Price.

c. LIMITATION OF WARRANTY. EXCEPT AS SPECIFICALLY SET FORTH IN SELLER'S WARRANTY, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE DELIVERABLES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING SENTENCE, SELLER MAKES NO WARRANTY, AND SPECIFICALLY DISCLAIMS ANY CLAIM, THAT THE DELIVERABLES MEET ANY BUILDING CODE OR REGULATION, OR MEDICAL STANDARD OR REGULATION.

d. MODIFICATION OF WARRANTY. SELLER RESERVES THE RIGHT TO MODIFY THE TERMS AND CONDITIONS OF SELLER'S WARRANTY AT ANY TIME IN ITS SOLE DISCRETION. ALL CHANGES TO THE WARRANTY SHALL BECOME EFFECTIVE IMMEDIATELY, 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 DELIVERABLES. 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 or on behalf of Buyer to said party.

f. Third-Party Equipment. Seller's Warranty does not cover any equipment purchased by Seller from its vendors and incorporated into the Deliverables ("Third-Party Equipment"). Third-Party 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.

## 12. Limitations of Remedies.

a. Buyer's Remedy. Seller's Warranties shall be Buyer's exclusive remedies for Seller's liability. IN THE EVENT OF A WARRANTY CLAIM, THE ORIGINAL BUYER MUST CONTACT SELLER AT THEIR OFFICES AT 48282 FRANK STREET, WIXOM, MI , 48393; 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 DELIVERABLES 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. ALL OPTIONS MUST BE EXHAUSTED TO CONDUCT WARRANTY WORK DURING NORMAL BUSINESS HOURS. REQUESTS TO CONDUCT WARRANTY WORK OUTSIDE OF NORMAL BUSINESS HOURS MIGHT RESULT IN SHARED LABOR COSTS WITH THE ORIGINAL PURCHASER. 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. Any claims not made during the warranty period are deemed waived.

b. Limitation on Damages. SELLER SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES, DAMAGES OR EXPENSES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE PRICE RECEIVED BY SELLER FOR THE DELIVERABLES WITH RESPECT TO WHICH SUCH LIABILITY IS CLAIMED.

13. **Termination.** Seller shall have the right to terminate these Terms and Conditions or to cease work on the Deliverables, in whole or in part, at any time, if (i) Buyer is in default of or commits a breach of any of the provisions of these Terms and Conditions or any other agreement it has with Seller, or Seller's affiliates; (ii) a petition initiating a proceeding under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Buyer; (iii) Buyer executes an assignment for benefit or creditors; (iv) a receiver is appointed for Buyer or any substantial part of its assets; or (v) Seller shall have any reasonable ground for insecurity with respect to Buyer's ability to perform and Buyer is unable to provide Seller with adequate assurance of its ability to perform upon Seller's written request. Seller's right to terminate under this section is not an exclusive remedy. Seller shall be entitled to all other rights and remedies it may either at law or in equity. No termination hereunder shall affect any accrued rights or obligations of either party as of the effective date of such termination and those provisions which, by their nature, should or are intended by Seller to survive shall survive notwithstanding such termination.

14. **Indemnification.** Buyer shall indemnify, defend, and hold harmless Seller against all claims, demands, losses, liabilities, and expenses (including, without limitation, attorneys' fees), which Seller may incur or become liable to pay which arise from or relate to: (A) repairs or modifications to the Deliverables by anyone other than Seller; (B) specifications, structure, design, operation, material, or method of making Deliverables provided by or on behalf of Buyer; (C) the Deliverables being subjected to, in whole or part: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Deliverables; (v) use or application in violation of applicable law, Seller's specifications, Terms and Conditions; (vi) use or application other than or varying in any degree from that for which the Deliverables were designed; (D) if the Deliverables are manufactured in accordance with Buyer's Specifications, Buyer special requests, Buyer requested deviations from standard Seller designs, or other directions provided by Buyer; (E) product liability claims, claims relating to patent, trademark, copyright infringement, or unfair competition, claims of non-compliance with any Federal, State, or local law or regulation, and any other claim of any third party which relates to or in any way arises out of Buyer specifications, Buyer special requests, Buyer requested deviations from standard Seller designs, or other directions provided by Buyer; or (F) any voluntary or mandatory recalls arising out of or relating to Buyer's Specifications,

Buyer special requests, Buyer requested deviations from standard Seller designs, or other directions provided by Buyer.

15. **Insurance.** Buyer shall obtain and, at all times in which the Purchase Documents are in effect and for no less than two (2) years thereafter, maintain at its cost insurance as designated by Seller from time to time, but no less than insurance with insurers having a current A.M. Best rating and financial category of "A- VIII" or better, respectively: (1) primary comprehensive or commercial general liability insurance worldwide with limits of at least \$1 million per occurrence combined single limit for bodily injury and property damage with a \$2 million products-completed operations aggregate and a \$2 million general aggregate, including coverage for: (i) Products and Completed Operations liability; (ii) Blanket Contractual liability; (iii) Premises Liability; and (iv) Cross Liability endorsement or Severability of Interest clause; (2) Auto Liability insurance with limit of \$1,000,000 per occurrence combined single limit for owned (if applicable), hired and non-owned vehicle coverage; (3) umbrella insurance with limits of \$4,000,000 per occurrence and \$4,000,000 aggregate covering underlying general liability, employer's liability (if applicable) and auto liability. Insurance required shall: (a) be endorsed to insure Seller, its officers, directors, employees, representatives and agents as additional named insureds; (b) be endorsed to waive any rights of subrogation against Seller's insurers and Seller; (c) provide contractual liability coverage to Buyer for its indemnity obligations; and (d) be endorsed to provide that such insurance is primary to and non-contributory with any other insurance obtained by, for or on behalf of Seller notwithstanding any "other insurance" provision contained within such policies, with such insurance being excess, secondary, and non-contributing. Buyer shall provide written notice to Seller no less than 30 days prior to the effective date of cancellation or material reduction of any required insurance coverage. Prior hereto and at any time upon reasonable request, Buyer shall provide certificates of insurance to Seller along with other documentation as may be reasonably required by Seller to evidence the insurance coverages required herein.

16. **Governing Law.** Resolution of disputes shall be conducted in accordance with the laws of the State of Michigan without regard to any rules on conflicts of laws.

17. **Venue.** The parties submit to the jurisdiction and venue of any state or federal court located in Cook County, Illinois or in Michigan, at Seller's sole discretion, 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.

18. **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.

19. **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.

20. **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.

