



Terms and Conditions of Sale – Foreshore Campers Pty Ltd

Definitions

- 1 For the purpose of these Terms and Conditions of Sale, the following definitions apply:
 - Confidential Information** means all technical, commercial and/or sensitive information belonging or relating to Foreshore Campers, its business or activities and/or the Product.
 - Customer** means the person who purchases and/or uses the Product.
 - Force Majeure Event** means any circumstance beyond the reasonable control of a party which results in a party being unable to observe or perform on time an obligation under these Terms.
 - Foreshore Campers** means Foreshore Campers Pty Ltd (ACN 643 100 609).
 - Intellectual Property Rights** means all current and future registered and unregistered rights and all renewals and extension of those rights in respect of copyright, marks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation 1967.
 - Order** means the order submitted by the Customer for the purchase of the Product from Foreshore Campers.
 - Privacy Policy** means the Foreshore Campers Privacy Policy published on the Website and as amended from time to time.
 - Product** means the detachable watercraft camper sold by Foreshore Campers.
 - Product Manual** means the Foreshore Campers Owner's Manual which is provided to the Customer with the Product as updated from time-to-time.
 - Purchase Price** means the purchase price of the Product as displayed on the Website.
 - Terms** means these Terms and Conditions of Sale as set out herein and as amended from time to time.
 - Terms of Use** means the Website Terms of Use as published on the Website and as amended from time to time.
 - Website** means the Foreshore Campers website through which the Product is sold.

General

- 2 Foreshore Campers will sell, and the Customer will purchase, the Product on the terms and conditions set out in these Terms.
- 3 By placing an Order, the Customer agrees to abide by these Terms, the Product Manual, the Terms of Use and the Privacy Policy.
- 4 If there are any inconsistencies between the Terms of Use and these Terms, these Terms will prevail.

Product

- 5 The Customer may select their preferred colour of the Product from the list of colours stated on the Website. All colours are subject to availability.

- 6 The Customer acknowledges that the Product frame is sold in a standard size, as per the dimensions displayed on the Website. The Customer may cut the frame to size and bolt together to suit their specific trailer's width and length.
- 7 Foreshore Campers may, in some circumstances, offer custom design solutions. Customers seeking a custom design:
 - 7.1 may do so by requesting a quote through the Website. The Customer must fill out an online customisation form providing Foreshore Campers with the following details:
 - (a) Customer's contact details;
 - (b) make and model of the Customer's trailer and jet-ski;
 - (c) dimensions of the Customer's trailer;
 - (d) images of the trailer;
 - (e) accessory items to be fitted (awning and/or tent);
 - (f) colour choice; and
 - (g) any other information reasonably requested by Foreshore Campers from time-to-time to enable Foreshore Campers to undertake the custom design process;
 - 7.2 must ensure that they provide Foreshore Campers with accurate information and details. Foreshore Campers accepts no liability in the event that the information provided by the Customer is incorrect;
 - 7.3 acknowledge and agree that Foreshore Campers reserves the right to deny the Customer's request for any reason, including where the customisation would result in an unsafe design; and
 - 7.4 acknowledge and agree that additional design and engineering fees will be incurred, in addition to the Purchase Price, and these will be notified to the Customer by Foreshore Campers prior to confirmation of the order.
- 8 The Product may have limited quantities. Foreshore Campers reserves the right to limit sale of the Product to any person or jurisdiction.
- 9 Foreshore Campers has made an effort to accurately display images of the Product, including the Product colours and design, however actual colours and design may vary slightly. Foreshore Campers cannot guarantee that the Customer's electronic device's display is accurate.
- 10 Foreshore Campers reserves the right to discontinue the Product at any time without notice.
- 11 A copy of the Product Manual will be provided to the Customer upon purchase of the Product. The Customer agrees to follow and ensure that all other users of the Product follow the Product Manual (including but not limited to adhering to the safety measures and precautions, set-up and pack-down instructions). Foreshore Campers accepts no liability whatsoever arising from the Customer's or any other person's use of the Product which is in any way inconsistent with the Product Manual.

Pricing and payment

- 12 In placing an Order through the Website, the Customer agrees to payment of the Purchase Price as listed on the Website at the time of purchase.
- 13 Upon the Customer submitting a customisation form for a custom Order, Foreshore Campers will prepare a quote for the custom Product. All quotes provided by Foreshore Campers will be valid for 30 days. Upon the Customer accepting the quote, Foreshore Campers will issue a tax invoice for the quoted amount plus delivery costs. Full payment of the invoice is required in order to confirm the Order.
- 14 Unless otherwise stated, the Purchase Price is inclusive of GST and will be displayed in Australian dollars.
- 15 Full payment of the Purchase Price plus any additional delivery costs and/or payment surcharges (if any) is required in order to confirm the Order.

- 16 Foreshore Campers may, in its sole discretion, and without notice to the Customer, change the pricing of the Product from time-to-time.
- 17 The Customer must make payment of the Purchase Price through Stripe or such other payment methods made available by Foreshore Campers from time to time. By placing an Order, the Customer agrees to be bound by and comply with the terms and conditions of all such third-party service providers, as updated from time-to-time.
- 18 In the event that the Customer wants to finance the purchase of the Product, the Customer may fill out an enquiry form on the Website requesting an introduction to DBS Finance. Customers who fill out such form:
- 18.1 give express permission for the Customer's details to be sent by Foreshore Campers to DBS Finance and for DBS Finance to contact the Customer directly;
 - 18.2 have no obligation to proceed with the finance application simply because they filled out the form;
 - 18.3 acknowledge and agree that, other than as expressly stated in these Terms, Foreshore Campers has no involvement in the finance process and that any arrangements entered into between the Customer and DBS Finance are as between them only;
 - 18.4 acknowledge and agree that Foreshore Campers does not recommend or endorse DBS Finance, nor do Foreshore Campers make any representation or warranty about the provision of DBS Finance's services. The Customer relies on their own enquiries and due diligence as to the suitability of DBS Finance for their needs and the Customer engages DBS Finance solely at the Customer's own risk; and
 - 18.5 in the event that the Customer proceeds with the finance application, they give express permission for Foreshore Campers to communicate with DBS Finance directly with respect to an order.

Delivery

- 19 All delivery costs will be added to the Purchase Price. Alternatively, the Customer may elect to pick up the Product from the Foreshore Campers premises free of charge on a date and time agreed to by Foreshore Campers.
- 20 All Products will generally be dispatched to the Customer within 6 to 8 weeks of payment unless Foreshore Campers notifies the Customer of a delay. The estimated delivery times provided to the Customer are estimates only, and Foreshore Campers will not be liable for late delivery or non-delivery.
- 21 The Product will be delivered through a third-party courier, and therefore, once the Product has been handed over to such courier, the delivery time and process is out of Foreshore Campers' control.
- 22 Foreshore Campers will not be responsible to the Customer or any person claiming through the Customer for any loss or damage to the Product in transit caused by any event of any kind by any person. Foreshore Campers will, however, provide reasonable assistance to the Customer (as necessary) to investigate any claims against the courier/s.
- 23 Once the Customer has specified a location for delivery of the Product, this cannot be changed.
- 24 The title and risk in the Product will pass to the Customer upon dispatch of the Product.
- 25 The Customer must arrange for the Product to be accepted on delivery by a person 18 years or older. If delivery is delayed due to the Customer's unavailability or refusal to accept delivery, Foreshore Campers may charge the Customer for storage fees up until the date of successful delivery. The Customer will also be liable for all additional costs, including third party courier costs, associated with re-delivery.

Cancellation of Order

- 26 Once the Customer has placed an Order, under no circumstances whatsoever can the Order be cancelled. Other than as expressly stated in these Terms, the sale of all Products will be final.

Return, Exchange and Replacement Policy

- 27 The Customer acknowledges that once the Order has been placed, it cannot be changed.

- 28 Subject to the warranty provisions under these Terms, under no circumstances can the Product be refunded, returned, exchanged or replaced by Foreshore Campers.
- 29 If the Product is damaged, faulty or otherwise defective, as determined by Foreshore Campers in its sole discretion, Foreshore Campers may in its discretion offer the Customer with a refund or replacement. If Foreshore Campers agrees to refund or replace the Product in accordance with this clause, the Customer must return the Product to an address nominated by Foreshore Campers.

Customer Obligations and Acknowledgments

- 30 The Customer acknowledges and agrees that:
- 30.1 in placing the Order, the Customer is relying solely upon the Customer's own enquiries, skill, judgement and evaluation of the Product;
 - 30.2 the Customer has made its own enquiries and obtained the appropriate permit(s) or licence(s) required under the relevant laws and regulations for the usage of the Product;
 - 30.3 the Customer has made its own enquiries and confirmed that the Product is legal and suitable for whichever jurisdiction the Customer intends to use the Product in (including but not limited to with respect to the relevant road rules);
 - 30.4 the Customer has made its own enquiries and confirmed that the Product is suitable for the Customer's vehicle and trailer, including adhering to maximum loading limits;
 - 30.5 the Customer has made its own enquiries and, where appropriate, sought its own advice from its insurance provider regarding the use of the Product, including but not limited to whether the Product may void insurance or result in the insurance provider denying a claim;
 - 30.6 Foreshore Campers will not be liable for any technical advice or assistance given in good faith to the Customer in relation to the Product;
 - 30.7 the Customer will strictly comply with all directions and instructions contained within the Product Manual, or otherwise given by any representative of Foreshore Campers;
 - 30.8 Foreshore Campers will not be responsible should the Customer assemble or make use of the Product in any way that is inconsistent with the Product Manual;
 - 30.9 the Customer will be required to measure, cut, drill and level the Product frame during the installation and assembly process. The Customer acknowledges that it has the relevant expertise and capabilities to safely do so in accordance with the Product Manual or, in the absence of such expertise and capabilities, warrants that it will engage a qualified contractor to complete installation;
 - 30.10 the Customer will need its own tools to complete installation of the Product. Foreshore Campers does not supply such tools;
 - 30.11 Foreshore Campers does not make any guarantees, warranties, representations or conditions whatsoever regarding the Product other than as provided for pursuant to these Terms;
 - 30.12 the Customer will comply with all applicable legislation in respect of its dealings with Foreshore Campers and not do anything that may cause Foreshore Campers to breach its obligations under any applicable legislation; and
 - 30.13 the Customer will comply with the remaining provisions of these Terms.

Warranty

- 31 The Product comes with the guarantees and warranties that cannot be excluded under the Australian Consumer Law.
- 32 In the event that the Product is damaged, or a defect is identified, the Customer must immediately cease using the Product and contact Foreshore Campers to assess.
- 33 The Customer will be entitled to a repair or replacement of the Product or part thereof (at the election of Foreshore Campers) if:

- 33.1 the Product has a 'Major Defect' as reasonably determined by Foreshore Campers. A **'Major Defect'** is a defect in the manufacture of the Product which results in the Product failing to perform substantially as described in the Product Manual; and
- 33.2 no more than 12 months have passed since the date of purchase (**Warranty Period**).
- 34 For the avoidance of doubt, the warranty provided under these Terms is limited to manufacturing defects. It does not include damage caused by the Customer, misuse or abuse, wear and tear, adverse weather conditions, damage in transit, accidents or incorrect set-up of the Product.
- 35 In order to make a warranty claim during the Warranty Period, the Customer must provide written notice of the claim and proof of purchase to Foreshore Campers via info@foreshorecampers.com.au.
- 36 Where the warranty claim is accepted by Foreshore Campers, Foreshore Campers will, at its sole discretion, either repair or replace any defected Product or part thereof with a new or remanufactured equivalent. Where Foreshore Campers determines in its discretion that a repair or replacement is not appropriate, it will refund the Customer the Purchase Price (excluding any delivery costs or payment surcharges).
- 37 The warranty claim under this section shall be the sole and exclusive remedy available to the Customer in relation to the defective Product.
- 38 To the extent permitted by law, all express and implied warranties under statute or general law as to merchantability, description, quality, suitability or fitness of the Product for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded by Foreshore Campers. To the extent that such warranties cannot be excluded, they are limited to the Warranty Period.
- 39 To the extent that any part of the Product is not manufactured by Foreshore Campers, any warranty against defects of those parts by the relevant manufacturer is hereby accepted by the Customer.

Limitation of Liability and Indemnity

- 40 To the maximum extent permitted by law, Foreshore Campers excludes all liability (including all losses, damages, expenses and costs of whatever kind) arising from or in connection with:
- 40.1 the Customer's or any other person's use of the Product;
- 40.2 any failure to comply with these Terms or the Product Manual;
- 40.3 the provision of services by a third party (including but not limited to finance provided by DBS Finance);
- 40.4 damage or injury to any property or persons caused by a failure or defect in the parts of the Product that are not manufactured by Foreshore Campers;
- 40.5 the lack of skill, qualification or expertise of the Customer; and/or
- 40.6 any other act or omission of the Customer in connection with these Terms.
- 41 Foreshore Campers will not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation, use or operation of the Product.
- 42 The Customer agrees to indemnify and keep indemnified Foreshore Campers from and against all actions, claims, proceedings, demands, liabilities, penalties, loss, damage, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Foreshore Campers or which Foreshore Campers may pay, suffer, sustain or incur as a direct or indirect result of:
- 42.1 the Customer's use of the Product;
- 42.2 a breach of these Terms or the Product Manual by the Customer; and/or
- 42.3 any other act or omission by the Customer in connection with these Terms.
- 43 Notwithstanding any other provision of these Terms, in no event will Foreshore Campers' liability exceed the value of the most recent Purchase Price paid by the Customer.

Intellectual Property

- 44 All Intellectual Property Rights, including but not limited to, the Foreshore Campers' logo, designs, drawings, product specifications, labelling, packaging and all information and contents of the Product Manual, shall remain vested in Foreshore Campers.
- 45 The Customer must:
- 45.1 refrain from reproducing, copying, transmitting or revealing the intellectual property of Foreshore Campers to third parties, unless authorised by Foreshore Campers; and
 - 45.2 refrain from producing or having third parties produce products using the intellectual property of Foreshore Campers, including but not limited to the Product Manual.
- 46 In the event that the Customer breaches its obligations under these intellectual property provisions, the Customer will be liable to pay Foreshore Campers a fixed amount of \$10,000 as a genuine estimate of damages caused by such breach. Foreshore Campers also reserves the right to commence proceedings against the Customer for a breach of these intellectual property provisions.

Confidentiality

- 47 With respect to the Confidential Information, the Customer agrees to:
- 47.1 keep it confidential;
 - 47.2 refrain from reproducing, copying, transmitting or revealing it to third parties, unless within the limits expressly authorised in writing by Foreshore Campers;
 - 47.3 refrain from applying for patents or claiming any other rights in relation to the Confidential Information;
 - 47.4 refrain from producing or having third parties produce, or providing third parties with, for any reason, directly or indirectly, products using the Confidential Information.
- 48 In the event that the Customer breaches its obligations under these confidentiality provisions, the Customer will be liable to pay Foreshore Campers a fixed amount of \$10,000, as a genuine estimate of damages caused by such breach. Foreshore Campers also reserves the right to commence proceedings against the Customer for a breach of these confidentiality provisions.

Force Majeure Event

- 49 If Foreshore Campers is wholly or partially unable to perform its obligations under these Terms because of a Force Majeure Event, then:
- 49.1 after the Force Majeure Event arises, Foreshore Campers may notify the Customer (via a notice posted on the Website) of the extent to which Foreshore Campers is unable to perform its obligations;
 - 49.2 Foreshore Campers will use reasonable endeavours to mitigate the effect of the Force Majeure Event; and
 - 49.3 Foreshore Campers will not be liable to the Customer for any liability the Customer suffers or incurs as a result of the Force Majeure Event.
- 50 A Force Majeure Event does not relieve a party from liability for an obligation to pay money in a timely manner prior to the occurrence of that Force Majeure Event.
- 51 If a Force Majeure Event occurs and Foreshore Campers reasonably believes that it will continue for a period of more than 30 days, Foreshore Campers may take any action reasonably necessary to mitigate the effect of the Force Majeure Event, including:
- 51.1 suspending or postponing deliveries; or
 - 51.2 terminating the Order by notice to the Customer.

Dispute Resolution

- 52 If a dispute arises out of or relating to these Terms (**Dispute**), neither party may commence any proceedings in relation to the Dispute unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

- 53 A party to the Terms claiming a Dispute has arisen must give written notice to the other party detailing the nature of the Dispute, the desired outcome and the action required to settle the Dispute (**Notice**).
- 54 On receipt of such Notice by the other party, the parties must, within 14 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree. If for any reason whatsoever, 14 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Australian Mediation Association or his or her nominee.
- 55 The parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and, without limiting the foregoing, undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The parties must each pay their own costs associated with the mediation.
- 56 The mediation will be held in Brisbane.
- 57 All communications concerning negotiations made by the parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.
- 58 If 14 days have elapsed after the start of a mediation and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

General

- 59 If a provision, or part of a provision, of these Terms is void or voidable that provision, or part, is severed and the remainder of these Terms have full force and effect.
- 60 These Terms, Terms of Use, Product Manual and Privacy Policy:
- 60.1 contain the entire agreement between the Customer and Foreshore Campers with respect to their subject matter; and
 - 60.2 set out the only conduct relied on by Customer and Foreshore Campers and supersedes all representations, conduct, contracts, expectations or arrangements by the Customer or Foreshore Campers with respect to their subject matter.
- 61 Foreshore Campers reserves the right to vary or amend these Terms at any time in its discretion by providing notice to the Customer (including by way of a notice posted on the Website).
- 62 Foreshore Campers may assign or transfer the benefit of these Terms by providing notice to the Customer.
- 63 These Terms must not be construed to the disadvantage of a party because that party was responsible for their preparation.
- 64 No failure to exercise or delay in exercising any right, power or remedy under these Terms will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that right, power or remedy.
- 65 These Terms will be governed by, constructed by, and take effect in accordance with the laws of Queensland and the Customer and Foreshore Campers submit to the non-exclusive jurisdiction of Queensland.

Questions

- 66 Should the Customer have any questions about these Terms, Foreshore Campers may be contacted at info@foreshorecampers.com.au.