

SUPPLY AGREEMENT STANDARD TERMS AND CONDITIONS

- 1 Definitions**
- 2 Seller** means **Crosspaths Group Pty Ltd (ACN 133 103 483) trading as VanEssa Mobilcamping Australia** or any Related Body Corporate as defined by the *Corporations Act (2001)* (Cth).
- 3 Customer** means the entity which orders Goods from the Seller or to which Goods are delivered by the Seller.
- 4 Contract** means the contract formed between the Seller and the Customer in accordance with these Terms and Conditions.
- 5 Goods** means the goods purchased or ordered by the Customer from the Seller.
- 6 GST** means goods and services tax imposed in Australia by the GST law.
- 7 GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 8 Order** means an order by the Customer to the Seller requesting the supply of Goods.
- 9 Permitted Security Interest** means any security interest which the Seller consents to or otherwise agrees in writing with the Customer will be a Permitted Security Interest for the purposes of these terms and conditions.
- 10 PPSA** means the *Personal Property Securities Act 2009* (Cth).
- 11 PPSR** means the Personal Property Security Register.
- 12 PPS Regulations** means the *Personal Property Securities Regulations 2010* (Cth).
- 13 Purchase Money Security Interest** that has the meaning prescribed to it in the PPSA.
- 14 Security Interest** includes any security interest under the PPS Act.
- In these terms and conditions, unless the context otherwise requires, the following terms and expressions have the same meanings given to them in the PPSA or the PPS Regulations (as applicable): after-acquired property, circulating asset, collateral, control, commingled goods, financial property, financing change statement, financing statement, possession, purchase money security interest, security agreement and verification statement
- 2 General**
- 3** Any quotation made by the Seller to the Customer is not an offer to sell or provide Goods to the Customer, nor does it give rise to any obligation on the Seller to sell Goods to the Customer.
- 4** An Order constitutes an offer by the Customer to purchase Goods from the Seller in accordance with the Order and these Terms and Conditions.
- 5** An Order is accepted on the first to occur of:
- 6** the Seller notifying the Customer of its acceptance of the Order in writing; and
- 7** any act undertaken by the Seller consistent with fulfilling the Order.
- 8** Upon acceptance of an Order, a binding Contract is formed between the Seller and the Customer on the terms set out in the Order and these Terms and Conditions.
- 9** If there is an inconsistency between these Terms and Conditions and any Order, these Terms and Conditions prevail to the extent of that inconsistency, unless expressly agreed in writing by a duly authorised officer of the Seller.
- 10** It is the Customer's responsibility when placing an Order to ensure that the Goods ordered conform to the Customer's requirements and are suitable and sufficient for the Customer's purpose.
- 11** To the extent permitted by law, the Seller will not accept the return of, or give credit for, any Goods supplied to the Customer.
- 12** It is the Customer's responsibility to obtain any approvals, licences or permits necessary for:
- 13** the Customer to perform its obligations under the Contract; and
- 14** the use or sale of the Goods by the Customer.
- 15** All descriptive specifications, performance figures, drawings, data, dimensions and weights furnished by the Seller or contained in catalogues, price lists or advertisements are by way of general description of the Goods only and do not form part of the Contract.
- 16** It is the Customer's responsibility to provide all information necessary to enable the Seller to provide the Goods in accordance with the Customer's requirements and the Customer is responsible for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information.
- 17** If at any time after the Contract has been formed, the Customer cancels or alters an Order, or any part of an Order, including by requesting standard Goods with non-standard materials then without prejudice to any other rights the Seller has against the Customer, the Seller may charge the Customer any costs incurred by the Seller in fulfilling the Order, including materials already acquired for the Order together with the cost of any labour and tooling.
- 18** In the event of any dispute concerning any Order (including any question of identity, delegation or authority or any telephone, facsimile, email, e-commerce or computer generated order) the internal records of the Seller will be conclusive evidence of what was ordered.
- 19 Price**
- 20** Prices quoted by the Seller for Goods are based on the full quantities specified and do not necessarily operate pro rata for any greater or less quantities.
- 21** Prices quoted by the Seller for Goods are exclusive of GST and the Customer is required to pay any GST payable by the Seller in respect to the supply of Goods at the same time that the price is required to be paid by the Customer to the Seller.
- 22** Prices quoted by the Seller for Goods are based on the then present rates and costs of materials including resin, labour, freight, currency exchange rates insurance, customs agents and carriers' fees, government tariffs, duties and taxes and are subject to increase in respect of any variation in such rates or costs or the method of assessment of the same occurring during the term of the Contract before delivery of the Goods to the Customer. Otherwise prices quoted are not subject to change within thirty (30) days from the date of quotation.
- 23** If the manufacture or supply of Goods is suspended on the Customer's instruction, or due to any act or omission of the Customer, including a failure of the Customer to accept the Goods for any reason on or after the date on which they are ready for delivery, then the Customer is liable for all extra costs and losses incurred by the Seller as a result.
- 24 Terms of payment**
- 25** The Customer must pay the price owing under an Order to the Seller in full upon order acceptance, unless otherwise agreed in writing to accept a deposit followed by payment or payments of balance immediately prior to delivery or subsequent to delivery.
- 26** The customer must pay for specific factory commissions, One third (1/3rd) of the price prior to commencement of manufacturing of the Goods by the Seller; then
- 27** One third (1/3rd) of the price at conclusion of manufacturing and prior to release of the Goods to the freight forwarder accordance with the Contract; and
- 28** One third (1/3rd) of the price upon arrival to destination port before release of the Goods to the Customer,
- 29** Prices quoted are strictly net and payment in full must be made in accordance with the Contract and within the times stated above and on either the quotation or the invoice with respect to the relevant Goods. The times stated on the invoice prevail to the extent of any inconsistency with the times stated on in clause 5.1 above and/or the quotation.
- 30** Interest must be paid by the Customer on overdue accounts calculated daily from the day following the day upon which payment should have been made, at the rate of eighteen (18%) per cent per annum and without any demand being necessary.
- 31** The Seller will provide reasonable written notice to the Customer as to when commencement of the manufacture and delivery of the Goods will occur, so as to enable the Customer to pay for the Goods in accordance with clause 5.1(1) and (2).
- 32** Upon demand being made by the Seller, the Customer must indemnify the Seller against all costs (including legal costs on a solicitor/client basis), expenses or other sums incurred by the Seller in exercising any right or remedy available to it upon default by the Customer, which sum will also carry interest at the rate specified above if unpaid within one (1) calendar month of demand having been made.
- 33 Retention of title, delivery, risk and property**
- 34** If the Goods are being delivered to another country, and unless otherwise agreed by the parties in writing, the Goods will be delivered to the Customer CFR (to the port of destination nominated in the quotation and/or invoice) the Incoterms® 2010 Rules. The port of destination nominated in the invoice will prevail to the extent of any inconsistency with the quotation. If this clause applies, all references to the delivery of the Goods by the Seller to the Customer under the Contract are to be interpreted in accordance with CFR the Incoterms® 2010 Rules.
- 1.1** If the Goods are not being delivered to another country, and unless otherwise agreed by the parties in writing, delivery of Goods from the Seller's premises to the carrier constitutes delivery to the Customer and upon delivery to the Customer risk of loss passes to the Customer. A certificate purporting to be signed by an officer of the Seller, or any signed delivery docket, quote or invoice, confirming delivery is conclusive evidence of delivery.
- 35** As long as the Customer owes the Seller any part of the sale price for Goods supplied at any time the Seller retains the legal title in all Goods supplied and not yet used or resold by the Customer. The Customer must keep such Goods stored separately during the time it has them in such a way that the Goods remain identifiable and must hold such Goods as bailee for the Seller. When such Goods are filled or used, even with loss of identity, legal title to the resultant product vests in the Seller.
- 36** The Seller has:
- 37** the right to re-entry and inspection to support the property reservation; and
- 38** the power to repossess any Good to which it retains title when any payment or part-payment due to the Seller by the Customer is overdue.
- 39** If the Customer resells the Goods referred to above before all moneys payable by the Customer to the Seller have been paid, the Customer agrees that it holds the proceeds of re-supply of the Goods on trust for, and as agent for, the Seller immediately when they are receivable or received, such proceeds to be kept in a separate account.
- 40** Seller, at its discretion, may deliver the Goods ordered by instalments (in which case each instalment is subject to a separate agreement for sale) without any liability to the Customer arising whatsoever.
- 41** No delivery may be deferred except with the written consent of the Seller.
- 42** It is further acknowledged and agreed that:
- 43** the retention of title clause in these Terms and Conditions constitutes a security agreement for the purposes of the PPSA which creates a Security Interest in all Goods, including any Commingled Goods. It is the intention of the Seller and the Customer that upon registration of the Seller's Security Interest on the PPSR a Purchase Money Security Interest will result; and
- 44** until such time as ownership of the Goods passes from the Seller to the Customer, the Seller may give notice in writing to the Customer or permit the customer to return the Goods to the Seller. Upon such notice or permission to return, the Customer's rights to obtain ownership or any other interest in the Goods ceases, and no credit or refunds shall be given for any monies or payments made to date prior to such notice or return.
- 45 Cancellation**
- Subject to any applicable law, any Order may only be cancelled, varied or suspended with the written consent of the Seller and in the event of such cancellation, variation or suspension the Customer undertakes to reimburse and indemnify the Seller for any costs expenses or charges incurred by the Seller in preparation for, and in the execution of, an Order which may include:

46	an amount equal to 50% of the order value as a result of the cancellation, variation or suspension, in circumstances where the Goods were, or were to be, custom made; or	75	Warranty and liability of Seller
47	an amount equal to 33% of the order value following the cancellation, variation or suspension, in all other circumstances.	76	To the extent permitted by law, liability of the Seller for any breach of the Contract by the Seller, arising as a result of the negligence of the Seller or for breach of any conditions or warranty implied in the Contract by law is limited to one of the following at the Seller's option:
48	Description and Specification	77	In the case of Goods:
49	The Customer warrants that any Goods manufactured, constructed or supplied by the Seller which are based in whole or in part upon designs drawings or specifications supplied to the Seller by or on behalf of the Customer do not breach the intellectual property rights of any third party. The Customer indemnifies and keeps indemnified and hold harmless the Seller against any action loss cost claim or damage that may be brought against or suffered by the Seller for any breach of this warranty by the Customer.	78	the replacement of the Goods or the supply of equivalent Goods;
50	The Seller does not warrant or guarantee, and it is not a term of the Contract that any Goods manufactured constructed or supplied by the Seller which are based upon any designs, drawings or specifications supplied to the Customer by or on behalf of the Customer will achieve any standard of performance or capacity whatsoever and the Customer acknowledges that it does not rely on the skill and judgment of the Seller for the fitness for any purpose of any Goods so manufactured constructed or supplied.	79	the repair of the Goods;
51	Access	80	the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or
52	In respect of any work done on the Customer's premises or elsewhere other than at the Seller's premises, subject to any written agreement to the contrary, it is the duty of the Customer to ensure that the conditions under which the work has to be performed, the layout, means of access, accessibility of the different parts of the subject matter being worked upon or handled and other material circumstances are suitable to the Seller failing which the Seller is entitled to charge a reasonable increase in the price having regard to the prevailing circumstances.	81	the payment of the cost of having the Goods repaired.
53	Inspection and Acceptance	82	In the case of services:
54	Upon delivery of Goods, the Customer may inspect those Goods at its expense.	83	the supplying of the services again, or
55	If the Customer, acting reasonably, believes that the some or all of the Goods have not been provided in accordance with the Contract, the Customer may provide written notice to the Seller specifying the details of the non-conformance. If the Customer fails to give any such written notice to the Seller within seven (7) days of the date of delivery, the Customer has accepted that the Goods have been provided in accordance with the Contract.	84	the payment of the cost of having the services supplied again.
56	Force Majeure	85	To the full extent permitted by law all other warranties or liabilities imposed or implied whether by law or by statute are expressly negated.
	The Seller is not liable for failure or delay in the supply of the Goods due in any substantial part to any cause beyond the control of the Seller such as, but not limited to, any act or neglect of any carrier, sub-contractor, manufacturer or supplier of the Seller, acts of God, strikes, lock-outs, bans or other industrial disturbances, fire, flood, explosion, civil riot, or commotion, government interference or request, by-laws, rules or regulations or order of any competent authority. No such failure or delay entitles the Customer to terminate the Contract and the Seller's obligations to the Customer under this Contract will be suspended without liability on the part of the Seller while such cause exists.	86	The Customer assumes all risk and liability resulting from the use of the Goods either alone or in conjunction with other Goods or materials even if the Seller had or should have had prior knowledge of use to which the Goods would be put.
57	Intellectual Property	87	To the extent permitted by law, the Seller is not liable to the Customer for any indirect or consequential losses, loss of profits or use, any rectification costs or third party claims in connection with providing the Goods.
	The Seller is not liable to the Customer for any infringement or unauthorised use of any patent, trademark, design, copyright or any other intellectual property right arising out of performance of the Contract. If any dispute or claim arises with respect to any such matter then the Seller may terminate the Contract by notice in writing to the Customer without any liability on the part of the Seller.	88	In the event that the Goods are covered by insurance taken out by the Seller, the Seller will only be liable to the extent of any indemnity provided.
58	Default	89	As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the Customer, the Customer must within fourteen days notify the Seller in writing of those facts or matters.
59	If any of the following events occur then there is a Default :	90	To the full extent permitted by law, the Seller is not liable in any circumstances for any:
60	The Customer goes into administration, receivership or liquidation.	91	defects or damage caused in whole or in part by misuse, abuse, neglect, improper installation repair or alteration (other than by the Seller) or accident;
61	The Customer assigns its property for the benefit of creditors, or has a receiver or official manager appointed to any of its assets.	92	any transport, installation, removal, labour or other costs;
62	Execution is levied upon the assets of the Customer for an amount in excess of \$1,000.00 and is not within seven days satisfied.	93	Goods not manufactured by it, but the Seller will endeavour to pass on to the Customer the benefit of any claim made by the Seller and accepted by the Customer and the benefit of any claim made by the Seller and accepted by the manufacturer of such Goods under a warranty given by the manufacturer;
63	The Customer fails to make any payment to the Seller under the Contract on the due date for that payment.	94	technical advice or assistance given or rendered by it to the Customer whether or not in connection with the manufacture construction or supply of Goods for or to the Customer, provided always that the Seller has rendered such services with due care and skill and that any materials supplied in connection with those services are reasonably fit for the purpose for which they are supplied; or
64	The Customer breaches any provision of the Contract.	95	claim, loss or expense which is made after fourteen (14) days from date of delivery or performance (or at all once the goods have been unpacked, on sold or otherwise used or applied).
65	If a Default occurs then the Seller, without prejudice to any other remedies available to it, may do any one or more of the following:	96	The Customer agrees to indemnify the Seller and keep the Seller indemnified against any claim. This indemnity includes any legal fees and expenses the Seller incurs in order to enforce its rights, on an indemnity basis.
66	Suspend production of the Goods.	97	Miscellaneous
67	Decline to deliver the Goods, or any balance of the Goods still due under the contract.	98	The Contract is governed and construed in accordance with the law of the State in which the Goods are delivered.
68	Stop any Goods in transit and have them returned, at the expense of the Customer, to the Seller.	99	This Contract is the only agreement between the parties with respect to the supply of Goods to the Customer by the Seller, notwithstanding any terms and conditions submitted by the Customer to the Seller.
69	Otherwise cease to perform any of its obligations to Customer, under the Contract or otherwise.	100	All notices to be served upon the Customer will be duly served if left at or sent by ordinary prepaid post to the last known address of the Customer. The Customer will be deemed to have received any notice two (2) days after posting.
70	Terminate the Contract without incurring any liability at law or in equity and without prejudice to the rights to recover amounts owing to it by Customer and/or other damages.	101	The Customer may not assign any of its rights or obligations under the Contract without the prior written consent of the Seller.
71	Enter onto any premises and repossess any Goods already delivered and whether or not property in such Goods has passed to the Customer in respect of which entry the Customer indemnifies the Seller and will keep the Seller indemnified for all damages for which the Seller may be responsible.	102	No conduct by the Seller with respect to any default of the Customer in the performance of any obligation or condition of the Contract will be a waiver of that or any other obligations or condition.
72	Recover from the Customer the contract price together with default interest in accordance with clause 5.3 for all Goods delivered and for freight storage handling and any other expenses incurred by the Seller.	103	The singular includes the plural and vice versa, words importing any gender include every other gender and where there is more than one Customer, those Customers are bound to the Seller jointly and severally.
73	To sell the Goods elsewhere and require the Customer to pay as damages any difference between the sale price received in that regard and the contract price for those Goods.	104	Costs
74	For Orders of a specified quantity of Goods with a non-specified delivery date, require immediate payment for all Goods the subject of that Order.	105	The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Seller relating to any default by the Customer.
		106	The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).
		107	The Customer will pay the Seller's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer to the Seller irrespective of whether pursuit of the recovery action, claim or remedy is successful.
		108	The Customer acknowledges and agrees that payments by the Customer will be applied by the Seller as follows.
		109	Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 22.3.
		110	Secondly, in payment of any interest required to be paid under this agreement.
		111	Thirdly, in payment of the outstanding invoice(s).

<p>112 Set-off</p> <p>113 All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.</p> <p>114 Any amount due to the Seller from time to time may be deducted from any monies which may be or may become payable to the Customer by the Seller.</p> <p>115 General Covenants</p> <p>116 Until such time as payment in full has been received by the Seller from the Customer in respect to an Order, the Customer covenants to the Seller not to create, cause or permit to exist any other Security Interest over any Goods the subject of the applicable Order, other than a Permitted Security Interest. The Customer further covenants that it will comply with the terms of each Permitted Security Interest binding on it in respect of the relevant Goods from time to time and will ensure that:</p> <p>117 there is no increase in the amount secured under a Permitted Security Interest (excluding any part of a Permitted Security Interest which is a purchase money security interest); and</p> <p>118 there is no variation to a Permitted Security Interest that increases the collateral the subject of the Permitted Security Interest, other than in the case of a purchase money security interest,</p> <p>without obtaining the prior written consent of the Seller.</p>	<p>119 The Customer covenants to the Seller that it will sign anything and do anything the Seller requires to further or more effectively secure the Seller's rights over the applicable Goods or under these terms and conditions. This includes anything the Seller requires in order for it to:</p> <p>120 register and maintain (including renew before expiry) one or more financing statements in relation to any Security Interest in the relevant Goods created by these terms and conditions and/or any Order;</p> <p>121 remove any financing statement which is registered against the Customer or in relation to a Security Interest which is not a Permitted Security Interest; and</p> <p>122 obtain possession or control of any Goods for the purposes of perfecting any Security Interest in that property by possession or control for the purposes of the PPS Act.</p> <p>123 The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of the Seller under the PPSA to the extent permitted by the PPSA and agrees to that as between the Seller and the Customer, to the extent permitted by the PPSA, the Customer will have no rights under (or by reference to) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA.</p>
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