



TERMS AND CONDITIONS OF SALE

1. If the BUYER places an order with the SELLER and it is accepted by the SELLER (the "Agreement"), the BUYER agrees that it will be bound by these terms and conditions and any attached schedule to this agreement and further includes any written variation to this agreement, unless otherwise agreed in writing by the SELLER. The SELLER is not bound by any terms and conditions contained in any document issued by the BUYER.
2. Once an order has been accepted by the SELLER and work on the project has commenced, it cannot be cancelled or amended by the BUYER. The SELLER will not be held liable for any errors or omissions in the Specifications and/or Plans provided by the BUYER.
3. The supply of goods is subject to availability. The SELLER reserves the right to suspend or discontinue the supply of goods to the BUYER. If the SELLER is unable to supply all of the BUYER'S order, these Terms and Conditions continue to apply to any part of the order supplied.
4. Any materials or plans to be supplied by the BUYER must be delivered to the SELLER at least 7 days prior to the expected commencement date of the order. The SELLER will not be liable for any delays in production due to the absence of BUYER supplied materials.
5. Where a written quotation has been given by the SELLER, the selling price is the prices specified in the quotation. The written quotation will be fixed for sixty (60) days. In any other case, the SELLER'S selling price is the price specified on the invoice. Unless otherwise stated, the selling price does not include GST. Except for the sixty day period offered by a written quotation, the SELLER may at any time change its price list and the BUYER agrees to be bound by those changes. The SELLER may charge a reasonable delivery fee for all orders delivered to the BUYER. The BUYER must accept any errors or omissions in invoicing and, where applicable, must accept the amended pricing and pay the difference within the approved terms of trade.
6. A delivery date supplied by the BUYER is an estimate only and the SELLER is not liable for any delay in delivery. The BUYER must accept delivery and pay for the goods delivered, including transport costs, even if they are delivered after any specified delivery date.
7. The BUYER must inspect the goods immediately following delivery. Any claim that the goods are not in accordance with the order placed or these terms and conditions (including if they are defective, damaged during delivery, or short delivered) must be made at the time of delivery and noted on the delivery docket. If the BUYER fails to make a claim then, to the extent permitted by law, the goods are deemed to have been accepted by the BUYER and the BUYER must pay for the goods in accordance with these terms and conditions.
8. Unless the BUYER has fully completed the SELLER'S Credit Application and this has been approved by the SELLER, all orders must be paid in full prior to delivery or dispatch from our premises.
9. If the BUYER has an approved credit account with the SELLER, the BUYER must pay for goods or services ordered by the BUYER within 30 days from the end of the month of invoicing or earlier if the approved credit limit is exceeded.
10. By purchasing goods on credit from the SELLER, the BUYER acknowledges that pursuant to the PPSA, the SELLER'S interest will be registered onto the PPSR with regards to all current and future supply of goods and services.
 - 10.1 PPSA means the Personal Properties Securities Act 2009 (Cth); and PPSR means the Personal Property Securities Register.
 - 10.2 By contracting with the SELLER to purchase goods on credit, the BUYER acknowledges that under the PPSA these terms and conditions will create a security interest in Goods supplied by the SELLER to the BUYER now and in the future, and that the SELLER will register any interest it has pursuant to the Agreement which is capable of registration on the PPSR.
 - 10.3 If the SELLER does not have at the commencement of this Agreement a PPSA registration insuring a perfected first priority security interest in the Goods, the Term (including any extension of the Term or the aggregate of any consecutive terms during which the BUYER has substantially uninterrupted possession) may not, despite anything else in this document or in any higher schedule be longer than one year.

- 10.4 If this Agreement creates a security interest the BUYER agrees that:
- a. It will do all things necessary including providing all information the SELLER requires to register a Financing Statement or Financing Change Statement on the PPSR in relation to the security interest;
 - b. It will not change its name, ABN or other details required on the PPSR, without first notifying the SELLER;
 - c. It waives its right to receive a verification statement in respect of Financial Statement or Financing Change Statement;
 - d. It will pay the SELLERS costs of any discharge or necessary amendment of any Financing Statement or Financing Change Statement; and
 - e. It will not register a Financing Statement or Financing Change Statement in respect of a security interest contemplated or constituted by this Agreement without the SELLERS prior written consent.

10.5 If Chapter 4 of the PPSA applies to the enforcement of a security interest, the following provisions of the PPSA will not apply to the enforcement of that security interest:

- a. section 95 (notice of the removal of accession), to the extent that it requires the company to give the BUYER a notice;
- b. section 96 (when a person with an interest in the whole may retain accession);
- c. section 121(4) (enforcement of liquid assets – notice to grantor);
- d. section 125 (obligation to dispose of or retain collateral);
- e. section 129(2) and (3)
- f. section 130 (notice of disposal), to the extent that it requires the company to give the BUYER a notice;
- g. section 132(3)(d) (contents of statement of account after disposal)
- h. section 132(4) (statement of account if no disposal);
- i. section 135 (notice of retention);
- j. section 142 (redemption of collateral) &
- k. section 143 (reinstatement of security agreement).

10.6 Where a person is a controller in relation to the Goods, the parties agree that Part 4.3 of the PPSA will not apply to the enforcement of any security interest in the goods by the controller.

10.7 Sections 123 (seizing collateral), section 126 (apparent possession), section 128 (secured party may dispose of collateral), section 129 (disposal by purchase) and section 134(1) (retention of collateral) confer rights on the SELLER. The BUYER agrees that in addition to those rights the SELLER shall if there is a default by the BUYER have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Goods, not only under those sections but also, as an additional and independent right under this Agreement and the BUYER agrees that the SELLER may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or license.

11. If the BUYER does not make full payment by the due date, exceeds its credit limit at any time, commits any other material breach of these terms and conditions or an insolvency event in respect of the BUYER arises or is reasonably suspected by the SELLER, the SELLER may (without limiting any other rights or claim it may have against the BUYER) do any or all of the following:

- a. charge the BUYER interest calculated on a daily basis on any portion of the BUYER'S account that is overdue at the Commonwealth Banking Group's overdraft index rate plus 5% calculated from the date the payment was due until the date payment is made (both dates inclusive);
- b. vary or withdraw any approved credit limit and /or terms of trade;
- c. cancel or suspend any unfilled orders;
- d. terminate any contracts between the SELLER and the BUYER and demand immediate payment of any moneys due and outstanding under those contracts;
- e. cancel any rebate, discount or allowance due or payable by the SELLER as at the date of the event;
- f. enter (at any time) any premises in which the SELLER'S goods are stored, to enable the SELLER to inspect the goods and to reclaim possession of the goods without liability for the tort of trespass, negligence, or payment of any compensation to the BUYER whatsoever;
- g. institute any recovery process as the SELLER in its discretion decides at the BUYER'S cost and expense.

12. If any part of an invoice is in dispute, the balance will remain payable and must be paid when due. The BUYER has no right to set-off any claim against the SELLER from moneys owing to the SELLER.

13. Goods supplied by the SELLER to the BUYER are at the BUYER'S risk immediately on the earlier of delivery to the BUYER or into the BUYER'S custody, including its carrier or forwarder.
14. Property in the goods supplied by the SELLER to the BUYER does not pass to the BUYER until those goods have been paid for in full. In the meantime, the BUYER takes custody of the goods and retains them only as fiduciary agent and bailee of the SELLER. Until goods have been paid for in full:
 - a. to the extent possible, the BUYER must maintain records relating to the goods, secure the goods from risk, damage and theft and ensure that the goods are kept in good and serviceable condition;
 - b. the BUYER may sell the goods, in the ordinary course of its business, but only as fiduciary agent of the SELLER. The BUYER must not represent to any third party that the BUYER is acting in any capacity for or on behalf of the SELLER and the BUYER has no authority to bind the SELLER to any contract or otherwise assume any liability for or on behalf of the SELLER. The BUYER receives all proceeds (including any proceeds from insurance claims) in trust for the SELLER and must keep the proceeds in a separate bank account until all liability to the SELLER is discharged;
 - c. if the BUYER uses the goods in some manufacturing or construction process of its own or a third party, the BUYER must hold in trust for the SELLER that part of the proceeds of the manufacturing or construction process equal to the amount owing by the BUYER to the SELLER at the time of receipt of the proceeds.
15. To the extent permitted by law, these terms and conditions exclude all other conditions, warranties, liabilities or representations in relation to the goods. Where legislation implies in these terms and conditions any condition or warranty that cannot be excluded or modified, the liability of the SELLER for a breach of any such condition or warranty is limited at the SELLER'S option to any one or more of the following:
 - a. In the case of goods:
 - i. replacement of the goods or the supply of equivalent goods;
 - ii. payment of the cost of replacing the goods, by credit to the BUYER'S account, in cash or by cheque at the SELLER'S discretion; or
 - iii. repayment of any part of the purchase price of the goods which has been paid by the BUYER, by credit to the BUYER'S account, in cash or cheque at the SELLER'S discretion.
 - b. In the case of advice, recommendations, information or services by supplying the advice recommendations, information or services again.
16. The SELLER is not liable for any loss or damage of any kind whatsoever and howsoever arising, including (without limitation) any indirect or consequential loss (including without limitation loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings), arising out of or in connection with the supply of goods or services, even if due to the negligence of the SELLER or any of its employees or agents.
17. If any provision of these terms and conditions is unenforceable, illegal or void, that provision is severed and the other provisions of these terms and conditions remain in force.
18. The SELLER may amend or vary these terms and conditions by notifying the BUYER in writing of the amendment or variation.
19. The laws of Australia apply to these terms and conditions and any account opened in the name of the BUYER. The parties irrevocably submit to the jurisdiction of the appropriate court convenient to the SELLER in respect of any claims, proceedings and matters arising out of or in respect of these terms and conditions.
20. The exemptions, limitations, terms and conditions in these terms and conditions shall apply whether or not any loss or damage is caused by negligence or actions constituting fundamental breach of contract.