

## TERMS AND CONDITIONS OF SALE

All goods and services purchased from the Company and any of its divisions are sold subject to the following terms and conditions of sale and these terms and conditions of sale shall prevail notwithstanding any other document, terms and conditions and/or anything else except a written agreement signed by the Customer and the Company, except only for such terms as are implied by or under any law and which cannot be excluded.

### **1. Price & Goods and Services Tax ("GST")**

The price will be the price current at the time of order or supply unless otherwise agreed in writing. GST and/or any other Government imposts whatsoever applicable to the supply of goods and/or services will be payable by the Customer.

### **2. Payment**

- (i) Payment for goods and services purchased from the Company shall be made before delivery or in the case of Customers who have an account with the Company payment must be received by the last working day of the month after the month of invoice.
- (ii) The Customer shall not be entitled to retain any money owing to the Company notwithstanding any default or alleged default by the Company including the supply of defective or allegedly defective goods or delay or alleged delay in supply.
- (iii) If payment is not made on time, the Customer shall pay interest to the Company on any amount owing at the rate of 3% above Westpac Banking Corporation's Overdraft Business Rate.
- (iv) A certificate signed by a responsible officer of the Company shall be prima facie evidence of the amount owed to the Company by the Customer at the date of such certificate.
- (v) The Customer will pay to the Company without deduction or set-off all moneys owing to the Company.
- (vi) The Company shall be entitled at any time to set-off any moneys then or contingently owed to the Company by the Customer against any debt the Company owes to the Customer.

### **3. Default**

If the Customer defaults in any payment, or if in the opinion of the Company, the Customer is unlikely to be able to meet its liability as it falls due then the Company may at its option:

- (i) require payment forthwith of all amounts owing by the Customer to the Company, whether or not such amounts are then due for payment including without limitation, all interest, administration and collection charges and all legal costs and any payment by the Customer shall be first applied to such charges and costs;
- (ii) charge full list price for goods supplied without allowing discount and cancel or suspend the Customer's credit account.
- (iii) terminate any contract or contracts in relation to goods which have not been delivered and/or withdraw credit.

### **4. Reservation of Title**

- (i) Property in any goods supplied by the Company shall remain the sole and absolute property of the Company as legal and equitable owner until the full price for all goods and services supplied is received by the Company from the Customer.
- (ii) Risk in the goods shall pass to the Customer on delivery to the Customer or its agent.
- (iii) The Customer agrees that until payment in full to the Company for goods and services supplied to the Customer, the Customer shall hold the goods as bailee for the Company and that the Customer has a fiduciary duty to the Company.
- (iv) The Customer irrevocably authorises the Company to repossess any goods supplied by the Company to the Customer, without any notice if the Customer fails to make any payment when it is due or if in the opinion of the Company the payment of any amount in respect of goods and services supplied by the Company is in jeopardy or the Customer commences to be wound up or is placed in administration or under official management or into liquidation or suffers a receiver and/or manager to be appointed in respect of any of its assets. The Customer in consideration of credit being given irrevocably authorises the Company to enter onto any land on which the goods are left and to which the Customer has a right of entry, to enter thereon and remove the goods and the Company has the right to resell such repossessed goods.
- (v) Any moneys received by the Customer in payment in part or in full for the goods supplied by the Company to the Customer shall be kept by the Customer in a separate identifiable account and be held by the Customer in trust for the benefit of the Company and payable to the Company until the Customer has paid for all goods and services supplied to the Customer by the Company.
- (vi) The Customer will prior to attaching any goods onto any land or building notify the owner of the land or building that such goods are subject to reservation of title clause, except only as provided by law.
- (vii) The Customer releases and indemnifies the Company and its servants or agents from all claims for loss or damage caused by the Company or its servants or agents in enforcing or attempting to enforce its rights under this clause 4.

### **5. Caveat**

The Customer hereby charges in favour of the Company as security for the Customer's obligations to the Company, all right title and interest in any land held now by the Customer alone or jointly with anyone or acquired by the Customer at any time hereafter as beneficial owner and as trustee of every trust. If the Customer defaults in payment of any amount owed to the Company, the Customer specifically authorises the Company to lodge a caveat against any dealings with any such property and appoints the Company to be the Customer's Attorney for this purpose.

### **6. Orders**

- (i) The Company may in its absolute discretion refuse to supply goods or services for any reason whatsoever.
- (ii) Should there be any discrepancy between the order by telephone as recorded and processed by the Company and later confirmation in writing by the Customer, the Company's record of the telephone order shall prevail.

### **7. Cancellations**

- (i) Once an order has been accepted by the Company, the Customer can only cancel, vary or suspend the order (whether in whole or in part) if the Company agrees in writing to such cancellation, variation or suspension.
- (ii) The Customer agrees to accept delivery of all goods held by the Company or in transit in respect of such order.
- (iii) The Customer agrees to pay all costs, expenses and liabilities incurred by the Company in consequence of the cancellation, variation or suspension of the order and accepts the consequential delay.

### **8. Limitation of Liability**

- (i) The company may compute an estimate of dimensions and quantities of goods based on plans or other information given by or on behalf of the Customer. The Company does not accept any liability as to the correct computation of any such estimate and the estimate is provided to the

Customer as indicative only and the Company is not responsible for any mistakes in the estimate. The Customer undertakes to check any such estimate and in any events accepts full responsibility for the dimensions and quantities of goods ordered as independently computed by the Customer without relying on the estimate.

(ii) The Customer warrants to the Company that it will not rely on representations made and/or advice given by the Company or its employees in connection with the design, dimensions, installation or use of goods sold and agrees that the company shall not be liable for the consequences of any mistakes in such representation or advice even if made or given negligently.

(iii) It is a condition of sale that any description or specification given by the company or in printed literature of the Company is for general indicative purposes only and does not render the Company responsible in any way except to the extent that the goods shall comply with the standards set out in such description or specification and that such description or specification shall not be taken as implying or giving any undertaking as to fitness for any particular purpose.

(iv) If the goods are required for a particular purpose, the Customer must clearly specify that the purpose in writing in the order placed with the Company and obtain written assurance from the Company that the goods when supplied will meet that requirement. If the Customer does not specify the particular purpose and the Company does not expressly undertake in writing that the goods will be fit for the specified purpose, then the Customer agrees that it did not rely on the skill or judgement of the Company in relation to the suitability of the goods for a particular purpose.

(v) The Company shall not be liable for delay in delivery of the goods or delivery of part(s) of the goods in instalments or failure to deliver due to any cause whatsoever. The Customer shall not be relieved from any obligation to accept or pay for goods by reason of any delay in or the instalment delivery of the goods. In no event shall the Company be responsible for any loss of profits, penalties, disruption, expenditure and/or damages incurred and/or sustained by the Customer due directly or indirectly because of any delay in or the instalment delivery of the goods.

(vi) Any complaint by the Customer for failure to deliver or delayed delivery must be notified to the Company in writing within three (3) business days of the failure or delay in delivery. The Customer waives, foregoes, abandons and forgives forever any claim whatsoever the Customer may have against the Company unless it has strictly complied with these notifications requirements.

(vii) If the goods are delivered by the Company to the Customer in a damaged state or there is short delivery or incorrect or faulty goods are supplied, the Customer must request the Company in writing for their replacement within eight (8) hours of the delivery of the alleged damaged, short supplied, incorrect or faulty goods and the Customer must at the time of the delivery, specify in the delivery docket to be given to the deliverer the nature and extent of the alleged damage, short supply or incorrectness of the goods.

(viii) Any goods returned by the Customer will be held and/or disposed of by the Company on behalf of the Customer unless the return of the goods is preceded by the complaint and the claim in writing as specified in the preceding paragraph. The Customer must facilitate the inspection of the goods by a Company representative prior to return. The acceptance of any returned goods shall not imply any acceptance by the Company of the Customer's claim.

(ix) Any claim, whatsoever against the Company arising in contract or otherwise howsoever and whether directly or indirectly from the sale and delivery of goods including without limitation for failure to deliver, delayed delivery, short delivery, supply of incorrect goods, damaged goods and/or defective goods shall be limited to the price of the goods which was agreed by the Customer and the Company or in the absence of such agreement reasonable price therefore confined to the quantity of the goods required to be delivered on the occasion by reference to which the claim arises.

(x) To the fullest extent permitted by law all terms, conditions and warranties statutory or otherwise not expressly provided in these Terms and Conditions of Sale are excluded. To the extent that any term, condition or warranty not expressly provided in these Terms and Conditions of Sale cannot be excluded due to the provisions of Section 68A of the *Trade Practices Act 1974* or any other statute and the Company breaches such term, condition or warranty and the Customer makes a claim with which the Company agrees that the goods were damaged or defective at the time of delivery the Company's liability is limited to replacing these goods or crediting the Customer with the purchase price of the goods at the Company's option.

(xi) The Customer will indemnify the Company for any claims whatsoever and howsoever made by a third party against the Company for any default of the Company in relation to or directly or indirectly arising from any contract and/or arrangement made between the Company and the Customer.

## **9. Delivery**

(i) Unless agreed otherwise in writing prior to delivery, unloading of goods shall be the Customer's responsibility and the Company will not be responsible for any damage whatsoever resulting from the unloading of the goods by the Customer or by anyone on its behalf, or by the Company's employee or agent.

(ii) The Customer indemnifies the Company from any claim whatsoever resulting from the Customer, its employee or agent loading goods supplied by the Company on any vehicle or unloading goods supplied by the Company from any vehicle.

(iii) Where goods are delivered to a particular site the goods will be entirely at the Customer's risk when delivered.

(iv) If the cartage contractor or driver is not satisfied that access to the delivery site is safe the goods will be unloaded at kerbside adjacent to the delivery address.

(v) A quantity, description, date, time and place of delivery as shown on the Company's invoice or delivery docket shall be conclusive evidence of quantity, description, date, time and place of delivery of such goods.

(vi) If the site is unattended goods will be unloaded on the site or if the site is not accessible at the kerbside adjacent to the site and the delivery docket/manifest signed by the cartage contractor or the driver of the Company that the goods were delivered accordingly shall be conclusive evidence of due delivery of the goods.

(vii) The Company if requested to enter a property accepts no responsibility for any damage caused by the Company or its agent.

(viii) A Standard delivery charge as published by the Company from time to time in its price list will apply.

(ix) Where trucks are held on a site for more than 1 hour additional costs will apply.

(x) For delivery of lengths over 9 metres the Customer must enquire at time of ordering about additional delivery costs.

(xi) Deferred delivery of goods already manufactured for the Customer will incur storage charge of 0.5% per week of invoice value.