



Terms and Conditions of Sale

1 Definitions and interpretation

1.1 Definitions

Buyer means the purchaser of the Goods, whose details are set out in the invoice.

Goods means the products and, if any, services specified in the invoice.

Seller means the seller of the Goods whose details are set out in the invoice.

1.2 Interpretation

Nothing in these conditions exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the consumer guarantee provisions in the ACL) and which by law cannot be excluded, restricted or modified.

2 General

These conditions (which will only be waived in writing signed by the Seller and Buyer) will prevail over all conditions of the Buyer's order, to the extent of any inconsistency.

3 Terms of sale

The Goods and all other products sold by Seller are sold on these terms and conditions.

4 Seller's quotations

- (a) Unless previously withdrawn, Seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after its date.
- (b) The Seller reserves the right to refuse any order based on this quotation within 7 days after the receipt of the order.
- (c) A binding contract for sale of Goods referred to in a quotation comes into existence on receipt by the Seller of the Buyer's written acceptance of the quotation.
- (d) The Seller's brochures and catalogues are published as sources of general information only, do not constitute contractual offers and are not binding on the Seller.
- (e) These conditions will prevail to the extent of any inconsistency between the quotation or order and these conditions.

5 Orders

- (a) Orders for Goods will not bind the Seller until accepted in writing by an authorised employee of the Seller and a binding contract for sale of Goods comes into existence at this time. The Seller reserves the right to accept orders in whole or in part. Any order or part of an order not accepted by the Seller in the manner prescribed will be regarded as having been refused by the Seller.
- (b) Once the Seller has accepted an order, the Buyer may not alter or modify the order unless the written consent of an authorised employee of the Seller is first obtained.

6 Packing

The cost of any special packing and packing materials used in relation to the Goods are at the Buyer's expense, even if that cost has been omitted from any quotation.

7 Shortage

The Buyer waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with the Seller within 2 days from the date of receipt of Goods by the Buyer.

8 Drawings, etc

- (a) All specifications, drawings, and particulars of weights and dimensions submitted to the Seller are approximate only and any deviation from any of these things does not vitiate any contract with the Seller or form grounds for any claim against the Seller.
- (b) The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.
- (c) Where specifications, drawings or other particulars are supplied by the Buyer for the purposes of the Goods order, the Seller's price will be calculated on the basis of estimates of quantities required to provide the Goods as specified, drawn or otherwise particularised by the Buyer. If there are any adjustments in quantities above or below the quantities estimated by Seller as set out in a quotation, then any such increase or decrease will be adjusted on a unit rate basis according to unit prices set out in this document or in the quotation.

9 Performance

Any performance figures, specifications or dimensions given by the Seller are estimates only. The Seller is under no liability for damages for failure of the Goods to attain such figures, specifications or dimensions unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures, specifications or dimensions.

10 Delivery

- (a) The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery or non-delivery.
- (b) The Seller will not be liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the Goods.

- (c) The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is an endorsement overleaf to the effect that the Buyer will not take delivery by instalments.
- (d) If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
 - (i) this does not constitute a repudiation of the contract of sale formed by these conditions; and
 - (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.
- (e) Subject to clause 10(a), delivery dates will not be varied by the Buyer once they have been agreed without the prior written consent of an authorised employee of the Seller. If the Seller agrees to postpone delivery, the Goods in question will be stored at the Buyer's risk and the Supplier reserves the right to impose a weekly storage charge equal to 1% of the net invoice value. Where delivery is postponed for more than 3 months, the price for the Goods may be increased by the Seller at the Seller's discretion to reflect the Seller's then ruling list price.

11 Loss or damage in transit

- (a) Risk in the Goods passes to the Buyer upon despatch from the Seller's location. The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind or by any person (whether or not the Seller is legally responsible for the actions of that person).
- (b) The Buyer is responsible for insuring the Goods for risk of loss during transport.
- (c) The Seller must provide the Buyer with such assistance as may be reasonably necessary to institute claims against a carrier for damages to Goods in transit so long as the Buyer:
 - (i) has notified the Seller and the carrier in writing as soon as reasonably practical (any in any event within 3 days) after loss or damage is discovered by the Buyer on receipt of Goods; and
 - (ii) serves a claim for compensation on the carrier within 5 days of the date of receipt of the Goods.

12 Guarantee

- (a) The Seller's liability for Goods manufactured by it is limited to making good any defects. This must be done by repairing the defects or, at the Seller's option, by replacement, within a period (10 years for Woodshield posts) not exceeding 12 calendar months (unless otherwise specified by the Supplier in writing) after the Goods have been dispatched. This applies so long as:
 - (i) the defects have arisen solely from faulty materials or workmanship;
 - (ii) the defect has not arisen due to misuse, proximity or exposure to heat, accident, abuse, neglect, misapplication or due to repairs or modifications made by anyone other than the Seller;
 - (iii) damage arising from normal wear and tear;

- (iv) the defect has not arisen due to physical damage caused by trauma or impact of any kind;
 - (v) the Goods have been not received maltreatment, inattention or interference and have been appropriately stored by the Buyer;
 - (vi) accessories of any kind used by the Buyer are manufactured by or approved by Seller;
 - (vii) the failure of or any defect has not arisen due to rotting or pest infestation in the wooden component of the Goods;
 - (viii) damage has not arisen from use of the Goods in conjunction with other building materials or products, such as wire, not expressly approved or provided by the Seller;
 - (ix) damage has not arisen from a failure by the buyer to abide by the installation guide contained in the Information Sheet provided by the seller
 - (x) the defective parts are promptly returned free of cost to the Seller.
- (b) Repaired or replacement Goods are warranted for the remainder of the period of warranty for the Goods into which these repairs or replacements are incorporated
- (c) If the Goods are not manufactured by the Seller, the guarantee of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer for the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- (d) The Seller is not liable for:
 - (i) the cost of removal or return of any defective Goods or costs of return and reinstallation or any repaired or replacement Goods; or
 - (ii) the damage to any surrounding property, assets of the Buyer howsoever affected by any defect in the Goods.
- (e) The Seller is not liable for, and the Buyer releases the Seller from, any claims in respect of faulty or defective design of any Goods supplied. This is unless the design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing.
- (f) The Seller's liability under clause 12(e) is limited strictly to the replacement of defective parts in accordance with clause 12(a) of these conditions.
- (g) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage, loss of anticipated savings, loss of goodwill, loss of profits or use or any third party claims, increased working costs or overheads, delays or disrupt[ion] to business or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or use of the Goods or arising out of the Seller's negligence or in any way

- (h) The Seller's guarantee obligations in this contract of sale are conditional on the Buyer:
 - (i) notifying the Seller of the suspected defect in the goods as soon as reasonably practicable (and in any event within 7 days) after discovering the defect, providing proof of purchase and sufficient details of the defect to enable the Seller to assess the Buyer's claim;
 - (ii) removing and separating the defected Goods, setting such Goods aside for inspection; and
 - (iii) making the defective Goods available to the Seller for inspection, either at the Buyer's premises or upon return of the Goods to the Seller's premise (at the Buyer's expense), within 14 days of request by the Buyer.

13 Consumer guarantees

The Seller's liability for a breach of a condition or warranty implied by chapter 3, part 3-2, division 1 of the Australian Consumer Law (**ACL**) is limited to:

- (a) in the case of Goods, any one or more of:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and
 - (iv) the payment of the cost of having the Goods repaired; or
- (b) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

14 Indemnification of suppliers by manufacturers

The Seller of Goods is indemnified by the manufacturer under section 274 of the ACL if the Seller:

- (a) is liable to pay damages under section 259(4) of the ACL to the consumer for loss or damage suffered by the consumer; and
- (b) the manufacturer is or would be liable under section 271 of the ACL to pay damages to the consumer for the same loss or damage.

15 Prices

- (a) Unless otherwise stated all prices quoted by vendor are exclusive of Goods and Services Tax (**GST**).
- (b) Goods will be supplied at the published price at time of shipment or, if a quotation has been accepted by the Buyer, that quotation.

- (c) Prices quoted in published price lists or by the Seller's representatives are subject to change without notice and are not binding on the Seller
- (d) Prices quoted are calculated at the date of issue of a relevant quotation and include rates provided by third parties providers. These third party rates include the cost of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of water, cost of materials and other charges affecting the cost of production (**Third Party Rates**). Third Party Rates may vary slightly from the date of the quotation to the time of delivery of the Goods. The Buyer will be liable for any increase in the Third Party Rates.
- (e) If the Seller makes any alterations to the price of the Goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Buyer's account.
- (f) The Buyer agrees to pay custom duty, freight and insurance charges, import duty, sale tax, goods and services tax (**GST**) or other taxes required by law to be paid in relation to the Goods [(including on the storage and handling charges as set out at clause 10(e)).

16 Payment

- (a) If the Buyer has an approved credit account with the Seller, the Goods supplied by the Supplier must be paid for within 30 days of the date of invoice or 30 days of the date of shipment, whichever occurs first. Where the Buyer is overdue with any payment or the Seller is in receipt of a credit reference which it regards in its absolute discretion to be unsatisfactory, the Seller reserves the right to change the Buyer to a COD account in which case the Buyer will either pay for all Goods and Services before they are supplied or before the [1st] day of the month following the delivery of the Goods unless other terms of payment are agreed in writing between the parties.
- (b) Unless otherwise agreed, all payments are to be made by electronic funds transfer and must be made in the currency specified in the invoice without deduction or set off of any kind.
- (c) Time of payment is of the essence of this contract. Without prejudice to any other remedy, the Seller may charge interest on any overdue payments at an annual rate equal to 2% above the rate notified by Westpac Bank from time to time as being that Bank's indicator lending rate (to accrue from day to day).
- (d) All unpaid balances owing to the Seller by the Buyer in the circumstances described in clause [termination] will become a debt immediately due and payable to the Seller despite any other provision of these conditions.
- (e) The Buyer indemnifies the Seller on demand against all costs, charges, expenses and legal costs incurred by the Seller in recovering sums owed by the Buyer.
- (f) The Seller is not obliged to make delivery on any unfilled order before the payment of due invoice amounts (including any default interest) has been paid in full to the Seller. The Seller will not be deemed to be in default on a delivery as a result of this clause.

17 Rights in relation to Goods

- (a) The Seller reserves the following rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid:
 - (i) ownership of the Goods;

- (ii) to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
 - (iii) subject to, and in accordance with, the PPSA, to keep or resell any Goods repossessed pursuant to clause 17(a)(ii).
- (b) If the Goods are resold, or products manufactured using the Goods are sold, by the Buyer, the Buyer will hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account. This will be held the beneficial property of the Seller and the Buyer will pay such amount to the Seller upon request. Despite the provisions above, the Seller will be entitled to maintain an action against the Buyer for the purchase price and the risk of the Goods shall pass to the Buyer upon delivery.

18 Buyer's property

Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

19 Returned Goods

- (a) Except for any provisions to the contrary contained in this contract, the Seller is not under any duty to accept Goods returned by the Buyer. The Seller will do so only on terms to be agreed in writing in each individual case.
- (b) If the Seller agrees to accept returned Goods from the Buyer under clause 19(a) of this clause, the Buyer must return the Goods to the Seller at the Seller's place of business referred to at the head of these conditions.

20 Goods sold

All Goods to be supplied by the Seller to the Buyer are as described on the purchase order agreed by the Seller and the Buyer and the description on such purchase order as so agreed prevails over all other descriptions of the Goods including any specification or enquiry of the Buyer.

21 Cancellation

No order may be cancelled by the Buyer except with the written consent of the Seller. If there is a cancellation of the order by the Buyer, the Seller has the right to claim indemnity against all losses suffered by the Seller as a result of such cancellation.

22 Personal Property Securities Act 2009 (Cth) (PPSA)

- (a) This contract is a security agreement.
- (b) The interest of the Seller in the Goods and all proceeds from the sale of the Goods by the Buyer to a third party is a security interest.
- (c) The Buyer consents to the Seller registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Seller to facilitate registration.

- (d) Until title in the Goods has passed to the Buyer as contemplated by clause 17 of this contract, the Buyer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create, a security interest over, the Goods in favour of the Buyer or any third party. The parties agree that this clause will not prohibit the Buyer from selling the Goods in the ordinary course of business.
- (e) The Buyer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (f) The Seller and Buyer agree that this contract and all related information and documents are confidential (**Confidential Information**) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this contract or required by law. The Seller and Buyer agree that the Seller will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.
- (g) Unless the Goods are used predominantly for personal, domestic or household purposes, the Seller and the Buyer agree that each of the following requirements or rights under the PPSA does not apply to the enforcement of the Seller's security interest in the Goods or of this contract:
 - (i) any requirement for the seller to give the Buyer a notice of removal of accession;
 - (ii) any requirement for the Seller to give the Buyer a notice of the Seller's proposed disposal of the goods;
 - (iii) any requirement for the Seller to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
 - (iv) any requirement for the Seller to give the Buyer a statement of account if the Seller does not dispose of the Goods;
 - (v) any right the Buyer has to redeem the Goods before the Seller exercises a right of disposal; and
 - (vi) any right the Buyer has to reinstate this contract before the Seller exercises a right of disposal of the Goods.
- (h) Expressions defined in the PPSA have the same meaning when used in this contract.

23 Termination

- (a) In the absence of any breach of this contract, the Buyer may terminate this contract before the supply of Goods has been made with a minimum of [7] days' written notice to the Seller provided the the written approval of an authorised employee of the Seller has first been obtained; and the Buyer agrees to pay any cancellation charge, being a genuine pre-estimate of the Seller's loss, which may include a 10% restocking fee, as determined and specified by the Seller.
- (b) This contract will automatically terminate if a party enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for amalgamation or reconstruction).
- (c) Either party may terminate this agreement if the other party is in material breach of any of its obligations under this agreement and if the breach is capable of remedy fails to remedy the

breach for a period of 7 days after receipt of a written notice by the other party requiring rectification of the breach.

- (d) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this agreement.
- (e) The obligations of the parties that by their nature could be reasonably construed as being intended to continue to apply beyond the termination of this agreement will continue to apply.

24 Place of contract

This agreement shall be governed by and construed in accordance with laws of the state of Victoria. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of the governing law jurisdiction. Nothing in this clause is intended to undermine the jurisdiction of the Federal Court of Australia or Federal Circuit Court of Australia.