

Terms & Conditions – Invoice

- 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 and/or quotation

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 *Competition and Consumer Act 2010 (Cth)*) 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 sold by the Seller are sold on these terms and conditions.
- 4. Descriptions and specifications**
 - (a) 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.
 - (b) 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.
 - (c) Where the Seller has obtained measurements for the Goods to be sold to the Buyer, the Seller shall take all reasonable care to obtain accurate measurements and order the Goods to meet those measurements. The Seller takes no responsibility should the Buyer alter or adjust the space measured by the Seller after the Seller has measured and before the Goods are installed.
 - (d) Any measurements provided by the Buyer to the Seller are at the Buyers risk and any remedial work required due to inaccurate measurements supplied by the Buyer shall be at the Buyers cost.
- 5. 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 arising from late or non-delivery of the Goods.
 - (c) The Seller will take all reasonable steps to update the Buyer on estimated delivery times.
 - (d) The Goods are delivered to the Seller's warehouse and pickup/delivery is to be arranged by the Buyer at their own cost. If the Seller agrees to organise pickup/delivery on behalf of the Buyer then this shall be to the account of the Buyer. All insurance for the Goods in transit are to be arranged by the Buyer.
 - (e) Where the Goods are delivered to the Buyer the Buyer acknowledges that it accepts the Goods as a bailee in possession and title to the Goods does not transfer until such time as title in the Goods transfers pursuant to clause 13.
- 6. Loss or damage in transit**
 - (a) 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 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 within 24 hours after receipt of the Goods; and
 - (ii) serves a claim for compensation on the carrier within three (3) days of the date of receipt of the Goods.
- 7. Guarantee**
 - (a) 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.
 - (b) 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.
- 8. No warranty**
 - (a) All warranties, descriptions, representations, and conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether of alike nature or not and where express or implied by law, trade, custom or otherwise are, to the extent permitted by law, expressly excluded.
 - (b) No agent or representative of the Seller is authorised to make any representation, statement, warranty, condition, or agreement not expressly set out in these terms. The Seller is not in any way bound by any such unauthorised statements or can any such statement be taken to form a contract or part of a contract with the Seller or collateral to these terms.
- 9. Consumer Guarantees**

The Seller's liability for a breach of a condition or warranty implied by 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.
- 10. Indemnification of suppliers by manufacturers**

The Seller's liability under section 274 of the ACL is expressly limited to a liability to pay the Buyer an amount equal to:-

 - (a) the cost of replacing the Goods;
 - (b) the cost of obtaining equivalent goods; or
 - (c) the cost of having the Goods repaired.

Whichever is the lowest amount.
- 11. Prices**
 - (a) Unless otherwise stated all prices quoted by the Seller are exclusive of Goods and Services Tax (GST).
 - (b) All prices are in \$AUD unless otherwise stated.
- 12. Payment**
 - (a) The purchase price for the Goods plus GST where applicable is payable as follows:-
 - (i) 35% of the total value of the Goods upon agreement being reached; and
 - (ii) 25% of the total value of the Goods upon the Buyer's approval of the designs and renders; and
 - (iii) 40% of the total value of the Goods prior to delivery; or
 - (iv) As otherwise agreed by the Buyer and Seller and reflected in writing on order documentation.
(the "Payment Due Dates")
 - (b) The Buyer must pay interest on any outstanding amount not paid by the Payment Due Dates. Interest will be calculated on the basis of the National Australia Bank Business Indicator Rate as published from time to time plus 5%. Interest will accrue daily from the Payment Due Dates until the outstanding amount is paid in full.
 - (c) Payment per Clause 12(a)(i) is non-refundable after 3 business days, each of the remaining payments are non-refundable.
- 13. 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 *Personal Property Securities Act 2009 (Cth)*, to keep or resell any Goods repossessed pursuant to clause 16(a)(ii).
 - (b) If the Goods are resold 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 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.
- 14. Storage**

The Seller reserves the right to charge \$100 per week for every \$1,000 worth of Goods for storage if delivery instructions are not provided by the Buyer within seven (7) days of a request by the Seller for such instructions. The parties agree that the Seller may charge for storage from the first day after the Seller requests the Buyer to provide delivery instructions.
- 15. Returned Goods**
 - (a) Except for any provisions to the contrary contained in this agreement, the Seller is not under any duty to accept Goods returned by 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 of the Seller at the Seller's place of business.
- 16. Goods sold**
 - (a) All Goods to be supplied by the Seller to the Buyer are as described on the quote or invoice agreed by the Seller and the Buyer and the description on such quote or invoice as so agreed prevails over all other descriptions of the Goods including any specification or enquiry of the Buyer.
 - (b) Goods are received by the Seller from its wholesaler in bulk quantities and the amount of goods delivered to the site of the Buyers installation and stored there during the installation process may exceed the total amount of material purchased by the Buyer. At all times this additional material remains the property of the Seller.
 - (c) While additional material as contemplated in c16(b) is stored on the site of the installation the Buyer indemnifies the Seller against the cost of its wilful damage or destruction of the additional material and against the cost of damage or destruction of the additional material that occurs as a result of the Buyers negligence.
- 17. Installation**
 - (a) The Seller is a supplier of Goods only, and does not install the Goods.
 - (b) It is the Buyer's responsibility to source an appropriately qualified professional to install the Goods where they are to be installed.
 - (c) Where the Seller provides the Buyer a recommendation for an installation professional it is the Buyer's sole responsibility to ensure that the suggested professional is suitably qualified and able to complete the installation.
 - (d) The Seller makes no warranty as to the fitness or suitability of any tradesperson to install the Goods and shall not be liable for any loss or damage resulting from poor installation.
 - (e) After the completion of the installation the Seller shall collect any excess material that is its property from the installation site.
 - (f) The installation process may result in unused left-over material ("Wastage") that the Buyer has paid for.
 - (g) The Buyer acknowledges that Wastage is an intrinsic unavoidable aspect of the installation process when working with the material provided by the Seller and consequently accepts that it will not be entitled to a refund for materials not used.
- 18. 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.
- 19. Personal Property Securities Act 2009 (Cth) (PPSA)**
 - (a) This agreement is a security agreement.
 - (b) The interest of the Seller in the Goods 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 to facilitate registration.
 - (d) Until title in the Goods has passed to the Buyer as contemplated by clause 16 of this agreement, 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.
 - (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 agreement 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 agreement 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) Expressions defined in the PPSA have the same meaning when used in this agreement.

20. Natural product and colour variation

The Seller makes every effort to display as accurately as possible the colours of its Goods. However, as many of the Goods are natural products the Seller cannot guarantee that any samples, reproduction, image or other depiction of the Goods will be an accurate representation of the Goods. The Buyer acknowledges and agrees that where the Goods purchased from the Seller are a natural product that they will indemnify the Seller from any variation from the sample shown by the Seller.

21. Damages

The Buyer acknowledges and agrees that if in the event the Seller suffers loss and/or damage resulting from any default of the Buyer under these terms, then the Seller shall be entitled to recover from the Buyer its costs for taking any action to recover its loss and/or damage on a full indemnity basis.

22. Place of contract

These terms and conditions shall be governed by and construed in accordance with the laws of Queensland, Australia. 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.