

GENERAL TERMS AND CONDITIONS

1. CONTRACT

These general terms and conditions of sale form the contract between the Customer and the Supplier and the contract does not include any terms or conditions varying or in addition to these general terms and conditions of sale unless such terms and conditions have been expressly agreed in writing by the Supplier. No prior correspondence discussion or other terms and conditions form part of this contract unless stated in this contract.

2. CANCELLATION

- (1) The Customer may only cancel this contract with the Suppliers consent and only on the basis that the Customer meets all loss, damage, cost or expense, including loss of profits, incurred by the Supplier as a result of the cancellation.
- (2) The Supplier may suspend delivery, cease manufacture or cancel the contract if the Customer at any time:
 - (a) breaches any terms of the contract or any other contract with the Supplier.
 - (b) commits an act of bankruptcy, resolves to or goes into liquidation, has a receiver or manager appointed, enters into voluntary administration or enters into a scheme of arrangement or other composition with its creditors or otherwise becomes insolvent and unable to pay its debts; or
 - (c) refuses or neglects to take delivery of the products described in the contract.

3. PRICE VARIATION

- (1) Unless otherwise stated in this contract the Supplier may vary the price stated in the contract to reflect any change in costs, taxes or duties incurred by the Supplier after the date of this contract.
- (2) Where a list price applies to products supplied by the Supplier under this contract all prices listed:
 - (a) are subject to alteration without notice;
 - (b) are applicable to all deliveries on or after the effective date of any alteration;
 - (c) do not include tax or other government impost unless specifically stated.

4. VARIATIONS TO SCOPE OF CONTRACT

The price is based upon:

- (a) the scope of the work as detailed in the information provided by the Customer to the Supplier for the purpose of this contract including, where applicable, plans, specifications (including standards and finish), schedules, and nominated quantities; and
 - (b) delivery arrangements in accordance with Clause 7,
- and any variations to the scope of the work or delivery arrangements shall be a variation of the contract entitled the Supplier to vary the price stated.

5. SPECIFICATIONS

- (1) Where the Supplier manufactures or supplies products according to the Customer's specifications;
 - (a) the Supplier does not warrant the suitability or performance of the product; and
 - (b) the Customer shall provide to the "Supplier" accurate information sufficient to enable the Supplier to provide the products specified and the Customer warrants to the Supplier that the information and any products to be manufactured by the Supplier under the contract do not breach any copyright, registered design, patent or other right of any third party and the Customer shall indemnify the Supplier in relation to any such breach.
- (2) Unless otherwise stated in this contract the products shall be in conformity with a standard determined by the Supplier.

6. PAYMENT

- (1) Time of payment for the amount due to the Supplier shall be of the essence in this contract and the amount due shall include the price, any variations to the price and any additional charges which the Supplier is entitled to make.
- (2) Subject to sub-clauses (3) and (4) the Customer shall pay the amount due in accordance with the credit arrangements as agreed by the Supplier.
- (3) Where no credit arrangements have been previously agreed by the Supplier, but credit has been agreed by the Supplier as a condition of this particular contract, the Customer shall pay the amount due within the month following the month of invoice.
- (4) Where no credit arrangements have been agreed by the Supplier, the Customer shall pay the amount due before the first delivery of the products.
- (5) The Customer shall pay interest at the rate of 12% per annum calculated monthly on any amount not paid by the due date.
- (6) Where price is stated on a volumetric basis, payment will be based on measurement of the volume of product as loaded by the Supplier for delivery.

7. DELIVERY

- (1) Subject to sub-clauses (2) delivery shall be on reasonable notice from the Customer to the Supplier and the Customer shall not be relieved from any obligation to accept or pay for products by reason of any delay in delivery.
- (2) Where this contract includes a Delivery Schedule delivery shall be in accordance with the dates and other information contained in such Schedule.
- (3) The Supplier shall not be liable for delay in delivery arising from any cause whatsoever.
- (4) Where the Customer refuses or denies delivery, the Customer's obligation to pay for products, as set out in clauses 6, remains unchanged. The Customer shall also pay any additional storage, freight, holding or handling charges incurred by the Supplier.
- (5) The Supplier reserves the right to deliver by instalments and failure to deliver any instalment shall not entitle the Customer to terminate the contract.
- (6) Deliveries are subject to suitable access, firm standing, storage, unloading and manoeuvring space, as determined by the Supplier. The Supplier shall not be liable for, and the Customer shall indemnify the Supplier against any claims for damage caused to access ways, storage areas, plant, equipment or works during delivery.
- (7) Additional costs incurred by the Supplier in delivering or unloading the products:
 - (a) outside the hours of 7:30am to 4:00pm weekdays (excluding public holidays);
 - (b) due to delays at the site or an unsuitable site; or
 - (c) where less than full truckloads are required, shall be at the Customer's expense.
- (8) The Customer warrants that its receipt facilities and equipment are suitable for deliveries and meet all relevant standards, laws and regulations. The Customer hereby indemnifies the Supplier against any breach of such standards, laws or regulations during delivery, and against any damage or loss caused by leakage, spillage, breakage or contamination during or caused by delivery.

8. TITLE

- (1) Title in the products shall not pass to the Customer until payment in full for the products together with any interest due has been received by the Supplier.
- (2) If payment is overdue in whole or in part, the Supplier may (without prejudice to any of its other rights) recover or recall the products and may enter upon any premises where they are stored or where they are reasonably thought to be stored.
- (3) The Customer's right to possession of the products shall cease if the Supplier at its discretion recalls or recovers the products or if the Customer, not being a Company, commits an act of bankruptcy or if it, being a Company:
 - (a) does anything which would entitle a receiver to take possession of any assets,
 - (b) does anything which would entitle any person to present a petition for winding up, or
 - (c) enters into voluntary administration.The Supplier may for the purpose of recovery of its products enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the products

9. DEFECTS

- (1) The Customer shall ensure it has an authorised representative at the delivery site who shall check prior to unloading that the information shown on the delivery docket corresponds with the Customer's order. Unless otherwise noted on the delivery docket, the signature of the Customer's representative on the delivery docket shall represent acknowledgement by the Customer that the products comply with its order and have been supplied in accordance with this contract.

- (2) Notice of any defects shall be given to the Supplier in writing on the delivery docket/receipt/ manifest signed by the Customer and immediately returned with the cartage contractor. Where the point of delivery or collection is unattended, the Customer shall give notice in writing to the Supplier, within 24 hours from the time of delivery or collection and prior to installation of any defects in the products.

- (3) If notice in accordance with clauses 9(1) or 9(2) is not given, the products shall be deemed to be in good order and condition and in accordance with the contract and the Customer shall accept the products accordingly.

- (4) The Supplier shall have the right to inspect on site any products notified by the Customer as being defective and until such inspection is completed the product shall not be installed.

10. TESTING AND REPORTING

- (1) Where the Customer requires the products to be subject to special testing or inspection the Customer shall pay all costs of and associated with such testing or inspection.
- (2) Any inspector or other person attending the "Supplier's" premises on behalf of the Customer shall be authorised in writing by the Customer.
- (3) The Customer shall provide the Supplier with copies of all authorisations, test results, measurements and reports prepared by or for the Customer in relation to the "Supplier's" products.

11. LIMITATION OF LIABILITY

- (1) If a product is defective and the Customer advises the Supplier of that defect in accordance with clause 9(1) or 9(2) the Supplier shall repair or resupply the product, but the Supplier shall not be liable for the removal of any defective products or for the re-installation of any products or for any consequential losses or loss of profits.

- (2) The Supplier shall not be liable for any defect, loss, damage or injury howsoever arising by reason of:

- (a) a failure to use the products in a manner other than what is normally expected to be done with or in relation to the products;
- (b) any delay in delivery
- (c) a failure to comply with any instructions or warnings with respect to doing anything with or in relation to the products

- (3) Any design or description of use, capacity, durability, colour, manner of installation, detail contained in drawings, data sheets, technical brochures or other documents provided by the Supplier are given as a general guide only and the Customer hereby acknowledges that it has satisfied itself as to the suitability of the products for the Customer's particular purpose, use or application and the Supplier shall not be liable in these respects.

- (4) Other than expressly provided in this contract the Supplier provides no other warranty to the Customer in relation to the products and this contract comprises the whole agreement between parties.

- (5) Section 68A of the Trade Practices Act, 1974 ("the Act") enables the Supplier to limit its liability for breach of certain conditions and warranties implied by the Act. To the fullest extent permitted by that section and other similar legislation the liability of the Supplier for a breach of a condition or warranty (other than a condition or warranty implied by Section 69 of the Act) is limited to one of the following (selected at the option of the Supplier):

- (a) the replacement of the products; or
 - (b) the repair of the products,
- unless the Customer is able to establish the matters set forth in sub-section 68A(2) of the Act.

12. RISK

Risk in the products shall pass to the Customer upon delivery and, in the event of a site being unattended, the delivery docket/manifest signed by the cartage contractor shall be prima facie evidence of delivery of the products.

13. AMENDMENTS AND WAIVER

The Supplier shall not be taken to have agreed to any amendment or waiver of any provision of these terms and conditions or of the contract unless the amendment or waiver shall be in writing signed by the Supplier. No terms and conditions referred by the Customer after the date of this contract shall form part of this contract unless expressly agreed in writing by the Supplier.

14. GOVERNING LAW

The contract is governed by the law for the time being of the State from which the products are to be supplied.

15. FORCE MAJEURE

The Supplier shall not be liable for any delay, loss, damage or injury arising by reason of any event beyond its control and without limiting the generality of the foregoing such events include industrial disputes, the unavailability of equipment or materials, fire, flood, machinery breakdown, civil disturbance, acts of God or government action.

16. SUBJECT TO STATUTE

The contract is subject to the provisions of any statute applicable to it and which may not be varied by the terms of the contract. If any provision of the contract is void or unenforceable that provision shall be severed and the remaining provisions shall continue with full force and effect.

17. NOTICES

All notices given under or in connection with this contract shall be in writing and given or delivered to the recipient at its address specified in this contract or at its registered office or principal place of business.

18. CONFIDENTIAL INFORMATION

If at any time the Supplier discloses to the Customer or the Customer becomes aware of confidential information of the Supplier including confidential information relating to products, material, procedures, tests or equipment, the Customer shall not use the information for any purpose not approved by the Supplier and shall not disclose that confidential information to any other person unless expressly agreed in writing by the Supplier.

19. ASSIGNMENT

This contract is assignable by the Customer in whole or in part only with the "Supplier's" consent.

20. RETURNABLE PACKAGING

Unless otherwise stated, all pallets, stillages, timbers, dunnage, formers or similar packaging delivered with the products remain the property of the Supplier and shall be returned in good order and condition to the Supplier within 30 days of the date of delivery. Any such packaging not returned by the due date shall be paid for by the Customer at a price determined by the Supplier.

21. SAMPLES AND BLENDING

Any sample product or sample colour is provided to indicate only the general nature of the product. The Supplier provides no warranty or guarantee that the products supplied shall correspond in colour, texture or blend with any sample or any previous or future product supplied. The Supplier shall not be liable for any failure of the Customer or others to blend the products.

22. NON-CONFORMING PRODUCT

Where a product is supplied by the Supplier on the basis of a description or marking such as "non-conforming", "second", "reject" or similar, no warranty or undertaking (express or implied) whatsoever is given by the Supplier. Notwithstanding the preceding terms and conditions, the Supplier shall not be liable in any way for the performance or use of, or any defect in, such product.

23. FITTINGS

Unless otherwise stated in this contract, cast in or similar fittings for handling the products are to be removed or finished by the Customer.

24. PRESSURE APPLICATIONS

Unless otherwise stated in this contract, the products supplied are not warranted by the Supplier to be suitable for applications or use involving internal pressure.

25. The Customer acknowledges that if it sells any of the "Supplier's" products,

- (a) it sells the products as fiduciary agent of the Supplier provided that such sales shall not give rise to any obligations on the part of the Supplier, and
- (b) prior to making full payment for all products supplied by the Supplier to the Customer, the Customer shall hold the proceeds of sale on trust for the Supplier, and shall hold the proceeds in a separate account.