



## Terms of Trade

### Outside Inside Building Products Pty Ltd (ACN: 168 002 195)

#### 1. General

- 1.1. These Terms of Trade are between the Customer (**You, Your**) and Outside Inside Building Products Pty Ltd (ACN: 168 002 195) (**Us, We, Our**).
- 1.2. These Terms of Trade apply to:
  - (a) the establishment, operation and use of any account of Yours with Us; and
  - (b) all transactions effected between You and Us in relation to the supply of Goods on Your account or cash basis; and
- 1.3. These Terms of Trade take precedence over Terms of Trade contained in any document of Yours or elsewhere.
- 1.4. You agree to be bound by, and comply with, these Terms of Trade.
- 1.5. You agree to comply with all relevant laws relating to your use of Our Website and Your placement of any Order through Us.
- 1.6. All variations to these Terms of Trade must be agreed to by Us in writing.

#### 2. Commencement

These Terms of Trade commence upon You placing and We accepting an Order for Goods from Us.

#### 3. Website Account

- 3.1. If you register an account with Us through Our Website then:
  - (a) you must not have more than one (1) active account at any time;
  - (b) your account is non-transferrable; and
  - (c) you may update, edit or terminate your account at any time through Our Website.
- 3.2. You are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer.
- 3.3. You agree to accept responsibility for all activities that occur under your account.

#### 4. Quotes

- 4.1. We may provide You with a Quote containing a description of the Goods required to be provided to complete Your Order.
- 4.2. Quotes are valid for a period of thirty (30) days.
- 4.3. Quotes are based upon the market value of materials available at the time of preparation of the Quote and assume the timely supply by You of necessary instructions to Us.
- 4.4. Where We has provided a Quote to You, We are not obliged to process your Order until the Quote has been accepted by You in writing.
- 4.5. We reserve the right to amend any Quote before the Order has been processed to take into account any rise or fall in the cost of completing the Order and We will notify You of any such amendment as soon as reasonably practicable.
- 4.6. Upon Us giving You notification of any such amendment, such amended Quote will be the Quote for the purpose of these Terms of Trade.

#### 5. Orders

- 5.1. Every Order by You for the provision of Goods must:
  - (a) be submitted via Our Website using the relevant online form; or
  - (b) be in writing and:
    - (i) be signed by You or Your authorised representative;
    - (ii) identify the Goods ordered and the Quote or Price for them; and
    - (iii) specify the required date of delivery.
- 5.2. An Order will not be deemed to have been placed by You until We are satisfied that You have provided sufficient details of the Goods required to enable us to complete the Order.
- 5.3. You acknowledge that We rely on the information provided by You and any costs incurred by Us in reliance on incorrect or



inadequate information may result in the imposition of an Additional Charge.

- 5.4. Any Order placed through Us or Our Website that is not subject to a Quote, is an offer to you to purchase the Goods for the Price (including any Additional Charges) at the time you place the Order.

## 6. Your Cancellation of Orders

- 6.1. You may not cancel any Order that You place for the supply of Goods after that order is accepted by Us unless We give You consent in writing.
- 6.2. We may give or withhold Our consent at Our absolute discretion.
- 6.3. Custom made or custom processed Goods acquired or manufactured by Us specifically for You are not returnable unless in accordance with these Terms of Trade.
- 6.4. Where an Order is cancelled, You indemnify Us against any Losses incurred by Us as a result of the cancellation, including, but not limited to direct costs, and loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

## 7. Your Variation to Orders

- 7.1. You may request that Your Order be varied by providing such a request in writing to Us.
- 7.2. We must consent to any such variation request in writing before it comes into effect.
- 7.3. We may give or withhold Our consent at Our absolute discretion.
- 7.4. If You wish to vary Your requirements after a Quote has been prepared or after the placement of an Order, We reserve the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred due to the variation.
- 7.5. A variation agreed to by Us constitutes a new Order.
- 7.6. A revised Quote or Price issued by Us in respect of the requested variation supersedes the original Quote or Price.
- 7.7. If the revised Quote or Price only specifies the variation costs, the Quote or Price for those variation costs will be in addition to the immediately preceding Quote or Price for the Goods.
- 7.8. We have an automatic extension of time for the provision of the Goods equal to the delay caused by the variation.

## 8. Our Cancellation or Variation of Orders

- 8.1. In certain circumstances, We may need to cancel or vary Your Order.

- 8.2. This may happen where the Goods are not available or if there has been an error in the Quote or Price of the Good either displayed in Our Store or on Our Website.

- 8.3. If we need to cancel or vary Your Order, we will endeavour to provide you with notification in writing as soon as reasonably possible after you place Your Order.

## 9. Invoicing and Payment

- 9.1. We may in Our absolute discretion, issue an invoice to You in any one (1) or more of the following ways:

- (a) prior to the delivery of the Goods:
- (i) for an amount equal to the Quote or Price and Additional Charges; or
  - (ii) an amount representing a proportion of the Quote or Price and Additional Charges.
- (b) upon or after the delivery of the Goods:
- (i) for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced; or
  - (ii) if no Quote was provided, for an amount representing Our price for the Goods and any Additional Charges.
- (c) Any combination of the above invoicing methods or any other method required by Us from time to time at Our complete discretion;

- 9.2. The amount payable in an invoice will be in accordance with the Quote or Price and any Additional Charges.

- 9.3. You must pay Us within the payment period agreed to by Us and as specified in the invoice.

- 9.4. If any invoice is due but unpaid, We may withhold the provision of the Goods or any further Goods until any overdue amounts are paid in full.

- 9.5. You are not entitled to retain any money owing to Us, notwithstanding any default or alleged default by Us of these Terms of Trade, including, but not limited to, the supply of allegedly faulty or defective Goods or a delay in the provision of Goods.

9.6. You are to pay Us on demand interest at the rate of 9% per annum on all overdue amounts owed by You to Us. Such interest will be calculated daily and compounded monthly.

9.7. All costs and expenses associated with collecting overdue amounts, including, but not limited to, legal fees and internal costs and expenses incurred by Us, are to be paid by You as a debt due and payable under these Terms of Trade.

## 10. Additional Charges

10.1. We may require You to pay Additional Charges in respect of matters relating to the Goods including, but not limited to, the following:

- (a) costs incurred by Us as a result of Our reliance on inadequate or incorrect information or material provided by You that is required by Us in to provide You with the Goods within the specified time frame (if any);
- (b) cancellation by You of an Order where such cancellation results in Loss to Us;
- (c) costs incurred in relation to the delivery of the Goods to You;
- (d) any costs incurred by Us on Your behalf; and
- (e) additional work required by You.

## 11. Acceptance of Goods

11.1. You are deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with Your Order, if You do not received notice from you in writing of any fault in the Goods or failure of the Goods to accord with Your Order, within forty eight (48) hours of the Goods being delivered to You.

## 12. Claims and Returns

12.1. No return of Goods that are allegedly defective or faulty will be accepted by Us unless either:

- (a) You are a Consumer in relation to those Goods and are entitled to return them because a Consumer Guarantee applies; or
- (b) We have given prior written authorisation for the return of the Goods.

12.2. If We consent under paragraph 12.1(b) for the return of any Goods, You must:

- (a) provide Us with a written statement setting out the reasons for return of the Goods;

(b) give Us details of the original invoice number and the date of delivery of the Goods;

(c) provide to Us a copy of the receipt or delivery docket relating to the Goods; and

(d) return the Goods in their original condition as at the time of their sale.

## 13. GST

13.1. The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the *A New Tax System (Goods and Services Tax) Act 1999* and any other applicable legislation governing GST.

## 14. Retention of Title and Passing of Risk

14.1. Risk in the Goods passes to You immediately upon delivery.

14.2. Property in and title to the Goods supplied to You pursuant to these Terms of Trade does not pass to You until all monies (including monies owing in respect of other transactions between Us and You) due and payable to Us by You have been fully paid.

14.3. Where Goods are delivered by Us to You without payment in full of all monies payable to us in consideration of the Goods, You:

(a) hold the Goods on trust for Us until all monies due and payable by You has been fully paid;

(b) irrevocably appoint Us as Your attorney to do all acts and things necessary to ensure the retention of title to Goods; and

(c) must separate and identify as belonging to Us Goods delivered by Us from other goods which are held by You.

14.4. Where You make a new object from the Goods, whether finished or not, or You install the Goods (**New Goods**), You agree that:

(a) the ownership of the New Goods immediately passes to Us;

(b) any New Goods do not constitute as a fixture of any part of a building or premises;

(c) until payment of all monies owing to Us, whether in consideration for the Goods or any other amount owed to Us, You will hold the New Goods on trust for Us; and

(d) if required by Us, to store or mark the New Goods in a manner that clearly shows that they are owned by Us.

14.5. Notwithstanding clause 14.3, You may transfer, sell or dispose of Goods, including



New Goods, to a third party in the ordinary course of business provided that:

- (a) You obtain Our written consent, which is provided at our absolute discretion; and
- (b) Where:
  - (i) You are paid by a third party in respect of Goods including New Goods, You must hold the whole of the proceeds of sale (less GST) on trust for Us until all amounts owed by You to Us have been paid; or
  - (ii) You are not paid by a third party, You assign all of your rights against such third party to Us.

14.6. The rights and obligations contained in this clause 14 are in addition to any other rights or obligations provided for under these Terms of Trade.

## 15. Personal Property Securities Act

15.1. You acknowledge and agree that:

- (a) These Terms of Trade are a security agreement for the purposes of the PPSA;
- (b) You grant us a security interest in the Goods and in any present or after acquired property that represents Proceeds of the Goods; and
- (c) The security interest secures all amounts owing by You to Us in connection with the relevant Goods under these Terms of Trade.

15.2. You acknowledge and agree as follows:

- (a) We may at any time register a financing statement (or, if relevant, a financing change statement) on the Register in relation to Our security interest in the Goods.
- (b) We may register a financing statement or financing change statement on the Register for any period that We determines (at Our discretion).
- (c) We may register Our security interest on the Register at any time so long as We believe on reasonable grounds that We will become a secured party in relation to the Goods.
- (d) You must do anything reasonably required by Us to enable Us to

register the security interest as a PMSI and to maintain that registration.

- (e) If We consider that We have or may have a security interest that is not a PMSI in relation to any Goods, We may register a financing statement in respect of that security interest (and that financing statement may be in addition to a financing statement registered by Us in relation to a PMSI in the same Goods).

15.3. You agree that We do not need to give You any notice under the PPSA, including without limitation a notice of a verification statement received from the Registrar, unless the notice is required by the PPSA and that requirement cannot be excluded.

15.4. In the event of a default by You in performing of any of Your obligations in connection with a supply of Goods under these Terms of Trade, You agree that We are not obliged to give notice to any other secured party with interests in the same collateral or to any other third party of any enforcement or recovery action that it takes or which it may take with respect to its security interest in any of the Goods.

## 16. Agency and Assignment

16.1. You agree that We may at any time appoint or engage an agent to perform an obligation of Us arising out of or pursuant to these Terms of Trade.

16.2. You agree that We may assign and transfer to any person or company all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms of Trade provided that the assignee agrees to assume any duties and obligations of Ours so assigned and transferred.

16.3. You are not to assign, or purport to assign, any of its obligations or rights under these Terms of Trade without Our prior written consent.

## 17. Default by You

17.1. Each of the following events is an event of default under these Terms of Trade:

- (a) You breach or are alleged to have breached these Terms of Trade for any reason, including, but not limited to, defaulting on any payment due under these Terms of Trade;

- (b) You being a natural person, commits an act of bankruptcy.
- (c) You, being a corporation, are subject to an Insolvency Event.
- 17.2. Where an event of default occurs, except where payment in full has been received by Us, We may:
- (a) refuse to deliver Goods;
- (b) pursuant to clause 14, repossess and re-sell any Goods delivered to You, the payment for which has not been received; or
- (c) retain ,where applicable, all monies paid to Us on account of Goods or otherwise.
- 17.3. In addition to any action permitted to be taken by Us under clause 17.2, upon the occurrence of an event of default:
- (a) all invoices will become immediately due and payable; and
- (b) We may terminate all contracts and credit arrangements (if any) with You.
- 18. Termination**
- In addition to the express rights of termination provided in these Terms of Trade, We may terminate the agreement between the parties upon the occurrence of any of the following:
- (a) an event of default pursuant to clause 17 forthwith (without notice required); or
- (b) in any other circumstances, upon Us giving You thirty (30) days written notice.
- 19. Exclusions and Limitation of Liability**
- 19.1. All express or implied terms, conditions, warranties, statements, assurances and representations in relation to any Goods ordered from Us are excluded except for:
- (a) these Terms of Trade;
- (b) the conditions and warranties necessarily implied under the law of the relevant State and the provisions of the Consumer Act; and
- (c) any other terms and conditions to which We agree to be bound by in writing.
- 19.2. Any liability Ours which is not excluded by clause 19.1 is limited to the extent permitted by law to one (1) or more of the following as determined by Us in Our absolute discretion:
- (a) the replacement of the Goods or the supply of equivalent Goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods;
- (d) acquiring equivalent Goods; or
- (e) the payment of the cost of having the Goods repaired.
- 19.3. You acknowledge that except for these terms and conditions, We do not give or make any warranty assurance, promise or representation regarding the quality, fitness for use, suitability or merchantability of the Goods for any purpose whatsoever, and that in entering into these Terms of Trade, You have relied entirely on Your own knowledge, skill and judgement.
- 19.4. Any advice, recommendation, information, assistance or service given by Us in relation to Goods is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability.
- 19.5. We do not accept any liability or responsibility for any Loss suffered as a result of Your reliance on such advice, recommendation, information, assistance or service.
- 20. Indemnity**
- 20.1. You agrees to indemnify and keep indemnified Us, Our servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to You):
- (a) against Us; or
- (b) for which We are liable;
- in connection with any Loss arising from or incidental to:
- (c) the provision of Goods; or
- (d) the subject matter of this agreement;
- including, but not limited to any legal costs incurred by Us in relation to meeting any claim or demand or any party's legal costs for which We are liable in connection with any such claim or demand.
- 20.2. This provision will remain in force after the termination of this agreement.
- 21. Force Majeure**
- 21.1. Should any Force Majeure Event prevent or hinder the provision of the Goods, We will be free from any obligation to provide the Goods while any such Force Majeure Event exists.
- 21.2. For as long as any Force Majeure Event exists, We may elect to terminate this agreement or keep the agreement on foot until any Force Majeure Event has ceased.
- 22. Governing Jurisdiction**
- These Terms of Trade are governed by the laws of New South Wales and each party irrevocably



submits to the non-exclusive jurisdiction of the courts of such state.

### 23. Whole Agreement

- 23.1. These Terms of Trade, any Quotes or Prices and written variations agreed to in writing by Us represent the whole agreement between the parties.
- 23.2. These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- 23.3. In entering into these Terms of Trade, You have not relied on any warranty, representation or statement, whether oral or written, made by Us or any of Our employees or agents relating to or in connection with the subject matter of these Terms of Trade.

### 24. Void, Voidable or Unenforceable Provisions

If any provision of these Terms of Trade at any time is or becomes void, voidable or unenforceable, the remaining provisions of these Terms of Trade will continue to have full force and effect.

### 25. No Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

### 26. Notices

- 26.1. A notice or other communication required or permitted to be given by one party to another must be in writing to the party's address (or as varied pursuant to this clause) and:
- (a) delivered personally;
  - (b) sent by pre-paid mail to the address of the addressee;
  - (c) sent by facsimile transmission to the facsimile number of the addressee, with acknowledgment of receipt from the facsimile machine of the addressee; or
  - (d) sent by e-mail to the e-mail address of the addressee with acknowledgement of delivery.
- 26.2. A notice or other communication is taken to have been given (unless otherwise proved):
- (a) if mailed, on the second Business Day after posting; or
  - (b) if sent by facsimile or e-mail before 4 pm on a Business Day at the place of receipt, on the day it is sent

and otherwise on the next Business Day at the place of receipt.

### 27. Interpretation

27.1. In these Terms of Trade:

- (a) **Additional Charge(s)** shall mean those detailed in Clause 10.
- (b) **Business Day** means a day that is not a Saturday, Sunday or public holiday in the state where the Goods are being provided.
- (c) **Consumer** has the meaning ascribed to it by the Consumer Act.
- (d) **Consumer Act** means the *Competition and Consumer Act 2010* (Cth).
- (e) **Consumer Guarantee** means any consumer guarantee that applies to these Terms of Trade in accordance with the Consumer Act, including any express warranty as defined in the Consumer Law.
- (f) **Force Majeure Event** means any of the following:
  - (i) illness or injury to Our personnel (including subcontractors) or their immediate family;
  - (ii) unavailability of materials or components;
  - (iii) strikes;
  - (iv) lockouts;
  - (v) riots;
  - (vi) natural disasters;
  - (vii) fire;
  - (viii) war;
  - (ix) acts of God;
  - (x) Government decrees, proclamations or orders;
  - (xi) transport difficulties; and
  - (xii) failures or malfunctions of computers or other information technology systems.
- (g) **Goods** means any goods supplied by Us to You.
- (h) **Insolvency Event** means any of the following:
  - (i) a petition being presented, an order being made or a meeting being called to

- consider a resolution for You to be wound up, deregistered or dissolved;
- (ii) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of Your property and undertaking;
  - (iii) the entering of a scheme of arrangement (other than for the purpose of restructuring); or
  - (iv) You purport to assign Your rights under these Terms of Trade without Our written consent;
  - (v) any assignment for the benefit of creditors; or
  - (vi) You cease or threatens to cease conduct of Your business in the normal manner.
- (i) **Loss(es)** includes (but is not limited to):
    - (i) costs (including, but not limited legal costs incurred by You, Us or any other party);
    - (ii) expenses;
    - (iii) lost profits;
    - (iv) awards of damages against the party alleging the loss;
    - (v) personal injury; and
    - (vi) property damage.
  - (j) **Order** means a purchase order for Goods placed by You in accordance with clause 5 and as varied in writing from time to time by the parties.
  - (k) **PMSI** means a purchase money security interest as defined in the PPSA.
  - (l) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
  - (m) **Price** means the price offered by Us to You for the provision of any Goods to You.
  - (n) **Proceeds** has the meaning ascribed to it in the PPSA.
  - (o) **Quote** means a written document issued by Us which (either directly or by reference to another document) describes and quantifies the Goods to be provided and the costs and terms, in addition to these Terms of Trade, upon which We may provide the Goods to You.
- (p) **Register** means the Personal Property Securities Register established under the PPSA.
  - (q) **Terms of Trade** means these terms of trade.
  - (r) **Website** means Our website on which these Terms of Trade can be accessed from time to time.
- 27.2. In these Terms of Trade, unless the context otherwise requires:
- (a) a reference to writing includes email and other communication established through Our website;
  - (b) the singular includes the plural and vice versa;
  - (c) a reference to a clause is a reference to a clause of these Terms of Trade;
  - (d) a reference to a party to these Terms of Trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
  - (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
  - (f) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms of Trade;
  - (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
    - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
    - (ii) in all other cases, must be done on the next Business Day