

# BORD PRODUCTS PTY LTD

## TERMS AND CONDITIONS OF SALE

### 1. GENERAL

- 1.1. These Terms and Conditions govern all sales of goods and services supplied (**Supply**) by Bord Products Pty Ltd (ABN 22 169 711 086) (**Company**) to its customers (**Customer**) and take precedence over any other terms or conditions, including those in any Customer purchase orders or agreements or quotations, unless expressly agreed in writing by the Company.
- 1.2. No variation to these Terms and Conditions shall be effective unless agreed in writing by an authorized representative of the Company. Failure to enforce any provision does not constitute a waiver of the Company's rights.
- 1.3. By purchasing from the Company, the Customer acknowledges and agrees to these Terms and Conditions.

### 2. QUOTATIONS AND PRICES

- 2.1. The Company may provide the Customer with a Quotation. A quotation is a written description of the Supply to be provided, an estimate of costs and an estimate of the time frame for the performance of the Supply (**Quotation**).
- 2.2. All Quotations provided by the Company remain valid for the period specified. If no period is stated, the Quotation expires **30 days** from the issue date.
- 2.3. A contract is formed upon the Customer accepting a Quotation or requesting a Supply. The contract is subject to these Terms and Conditions and any additional items set out in a Quotation.
- 2.4. The Company reserves the right to adjust prices for a Supply if costs to the Company increase substantially between the issuance of a Quotation and request for Supply or delivery (as applicable). The Company will notify the Customer of any price increase as soon as practicable. The Customer must notify the Company if it accepts or rejects the updated price.
- 2.5. All prices are exclusive of goods and services tax or similar tax (**GST**) unless otherwise specified. The Customer is responsible for paying any applicable GST as invoiced.
- 2.6. Any product descriptions, specifications, or illustrations in marketing materials serve as general information and do not constitute binding representations.

### 3. PAYMENT

- 3.1. The Customer must pay the Company the price for the Supply and the applicable GST.
- 3.2. The Customer must pay any deposit specified at the time of order and make full payment on the earlier of a pre-delivery or pre-collection payment date specified by the Company or set out in a Quotation, or for customers with credit terms and balance is within agreed terms, within **30 days** from the date that the Company provides an invoice.
- 3.3. The Customer shall not withhold payment or offset amounts against any disputed claims relating to the Supply.
- 3.4. The Company reserves the right to suspend or terminate the provision of the Supply if it reasonably believes the Customer may default on payment obligations.
- 3.5. Any costs incurred by the Company in recovering outstanding amounts, including debt collection fees and legal costs, shall be borne by the Customer.
- 3.6. The Company may charge interest at **2% above** the prescribed rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) (or any re-enactment) on overdue amounts, calculated daily and capitalized monthly.
- 3.7. In the event of insolvency, administration or liquidation of the Customer, all outstanding amounts shall become immediately due and payable, and the Company reserves the right to terminate any existing contracts.

### 4. SECURITY OF PAYMENT LAWS

- 4.1. In the event the Company makes a progress payment claim (or any equivalent) in accordance with applicable security of payment laws:
  - 4.1.1. the reference date for the purpose of the claim is 30 days from the date the Company provides an invoice;
  - 4.1.2. the Company may suspend Supply, and is not liable for any consequential loss or damage suffered by the Customer in accordance with the applicable security of payment laws; and
  - 4.1.3. any agreed or notified time for collection or delivery will be extended for a corresponding period.

### 5. COLLECTION OR DELIVERY

- 5.1. The Company, or its contractor, may make goods available for collection or deliver goods to the Customer at the location set out in a Quotation or order confirmation at a time or time frame notified by the Company to the Customer. The time for collection or delivery may change by reason of events beyond the Company's control.

- 5.2. The Company or its contractor may determine a reasonable drop-off point if direct access to the specified delivery location is unavailable or considered impractical or unsafe. The Customer is solely responsible for the safe unloading of goods, including making all necessary equipment available.
- 5.3. If goods are collected by the Customer, or its contractor, site policies and procedures notified by the Company must be followed, and the Customer is responsible for ensuring goods are appropriately and legally loaded, secured and transported.
- 5.4. The Customer releases and indemnifies the Company against any claims for damage or loss arising during collection or delivery, except where caused by the Company's negligence.

## **6. DEFECT LIABILITY PERIOD, CLAIMS AND RETURNS**

- 6.1. Unless otherwise stated in a Quotation, the Company provides a 12-month, non-assignable, warranty from the day of Supply, covering defects in materials and workmanship in goods supplied by the Company, subject to the limitations in clauses 6, 10 and 11 and payment in full for a Supply.
- 6.2. The Customer must inspect goods at the time of collection or upon delivery (as applicable) and notify the Company in writing of any discrepancies, defects or shortages within **two (2) business days**. Subject to clause 9.1, in the absence of such notification, the Customer will be bound to accept and pay for the goods.
- 6.3. If the Company determines (acting reasonably) that a valid claim is made, the Company will, at its option, replace, repair or issue a credit for the affected Supply. The Customer must assist the Company to determine or validate the Customer's claim.
- 6.4. The Customer acknowledges without limitation that goods will not be considered defective by reason of, and the Customer does not have a claim in relation to:
  - 6.4.1. goods being altered or impacted by their treatment, application, loading, unloading or storage by the Customer; or
  - 6.4.2. defects, damage or claims arising from or referable to misuse, improper installation, environmental exposure, subsequent processing or modification, use contrary to manufacturer's recommendations or the intended and ordinary use, and natural timber variations.
- 6.5. Where the Customer specifies or supplies a non-standard finish or substrate, the Customer assumes all responsibility and indemnifies the Company for any resulting application or defects.
- 6.6. The Company is not liable for consequential, indirect, special, or economic loss, including loss of profits, business interruption, or third-party costs, except as required under the ACL in accordance with clause 9.

## 7. RISK AND TITLE

- 7.1. Risk in the goods passes to the Customer upon collection or delivery.
- 7.2. Title in the goods remains with the Company until full payment is received by the Company.
- 7.3. Where the Supply is supplied by the Company to the Customer without payment in full, the Customer must:
  - 7.3.1. hold the goods as a bailee for the Company;
  - 7.3.2. not sell or dispose of the goods except in the ordinary course of business;
  - 7.3.3. not allow any person to have or acquire any security interest in the goods; and
  - 7.3.4. be able upon demand by the Company to separate and identify as belonging to the Company the goods supplied by the Company from other goods which are held by the Customer.
- 7.4. If payment is overdue or the Customer defaults, the Company may enter the premises to recover unpaid goods without prior notice and the Customer grants the Company a licence for the Company or its nominees to enter the Customer's premises to recover the goods.

## 8. PERSONAL PROPERTY SECURITIES ACT (PPSA)

- 8.1. Where the Company makes the Supply to the Customer and the Customer has not made payment in full, the Company may register and perfect a security interest in the goods under the *Personal Property Securities Act 2009* (Cth) or any re-enactment (**PPSA**).
- 8.2. The Customer:
  - 8.2.1. must do all things reasonably required by the Company to ensure that security interest is effective, enforceable and perfected;
  - 8.2.2. waives, to the extent permitted by law, the right to receive notices or statements of verification in connection with a registration under the PPSA; and
  - 8.2.3. acknowledges that the subject matter referred to in section 275(1) of the PPSA is confidential.
- 8.3. The Company may apply payments received in any order it deems necessary to satisfy outstanding amounts.
- 8.4. For the purpose of section 115 of the PPSA, the following sections of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135.

## 9. CONSUMER AND BUSINESS RIGHTS UNDER AUSTRALIAN CONSUMER LAW

- 9.1. Nothing in these Terms and Conditions excludes, restricts, or modifies any rights or remedies available under the Australian Consumer Law (**ACL**).
- 9.2. All warranties not expressly stated or required by the ACL are excluded.
- 9.3. Customers who are consumers within the meaning of the ACL may be entitled to certain guarantees, including those relating to acceptable quality, fitness for purpose, and compliance with descriptions.
- 9.4. Business customers acknowledge that:
  - 9.4.1. to the extent permitted by law, certain statutory guarantees may not apply if goods are purchased for commercial purposes; and
  - 9.4.2. where permitted, the Company limits its liability to, at its discretion, the replacement of goods, supply of equivalent goods, or repair of goods.
- 9.5. Any exclusion or limitation of liability in these Terms and Conditions is subject to the non-excludable provisions of the ACL.

## 10. PRODUCT SELECTION AND FIT FOR PURPOSE DECLARATION

- 10.1. The Customer is solely responsible for selecting goods, and applicable finishes, treatment and application and determining the suitability of the Supply for their intended purpose.
- 10.2. The Company does not:
  - 10.2.1. assess or verify the Customer's intended or preferred use of goods;
  - 10.2.2. make recommendations as to the selection or use of goods, finishes or substrates; or
  - 10.2.3. warrant, represent, or guarantee that any Supply is fit for any particular purpose unless expressly confirmed in writing by an authorized representative of the Company.
- 10.3. The Company is not liable for any loss or damage arising from the Customer's reliance on its own skill or judgment in the selection and application of a Supply.
- 10.4. To the extent that a claim can be made by the Customer under or in connection with a third party supplier or manufacturer warranty, that warranty takes precedence and claims must be made directly against them.

## 11. PROCESSING EXCLUSION

- 11.1. If the Customer itself or through a third party processes, alters, or applies any finish to the goods, the Company has no responsibility and provides no warranties in relation to the finished product, which is the sole responsibility of the Customer and any applicable third party.
- 11.2. Without limitation, the Company is not liable for any defects, damage, or performance issues resulting from any processing or finishing.
- 11.3. Any claims arising from processing are the responsibility of the Customer and must, if applicable, be directed to the third party responsible for the modifications.

## 12. FORCE MAJEURE AND CANCELLATION

- 12.1. The Company is not liable for failure to perform obligations due to **circumstances beyond its control**, including but not limited to industrial actions, natural disasters, supply chain disruptions, or government-imposed restrictions.
- 12.2. The Company will use its best endeavours to ensure that delivery of the Supply occurs as soon as possible, but may delay delivery or terminate the Contract in its sole discretion if the Supply is not available due to circumstances beyond its control.
- 12.3. If the Company elects to terminate the Contract in accordance with clause 12.2, it will notify the Customer in writing.

## 13. TERMINATION

- 13.1. Either party (**Terminating Party**) can terminate a Contract immediately by written notice to the other party if that other party:
  - 13.1.1. is in breach of any material term of these Terms and Conditions and (where the breach is capable of remedy) has failed to remedy the breach within 7 business days after receipt of written notice from the Terminating Party describing the breach and calling for it to be remedied; or
  - 13.1.2. becomes, threatens, resolves to become, or is in jeopardy of becoming, subject to any form of insolvency event (including entering into any arrangement with its creditors, having a receiver appointed over any of its assets or being the subject of any resolution or petition for winding up or judicial management).
- 13.2. Where an event of default occurs and the Company elects to terminate, except where payment in full has been received by the Company, the Company:
  - 13.2.1. may refuse to deliver Supply; and
  - 13.2.2. pursuant to clause 7.4, repossess and re-sell any Supply delivered to the Customer, the payment for which has not been received.

- 13.3. Where an event of default occurs and the Customer elects to terminate, the Company must refund the Customer any payment received in advance, unless the goods have been delivered, in which case the Customer must make payment in full to the Company.

## **14. GOVERNING LAW**

- 14.1. These Terms and Conditions are governed by the laws of Victoria, Australia, and the parties submit to the jurisdiction of the courts of Victoria.