

TERMS AND CONDITIONS OF SALE

(Herein referred to as “these Terms and Conditions”)

1. General

- 1.1 These Terms and Conditions shall apply to the supply of Goods and Services provided by Bord Products Pty Ltd (“the Company”) to its customers (“the Customer”) and shall prevail over any other terms or conditions relating thereto where such terms and conditions conflict with those herein.

2. Quotations and Prices

- 2.1 A written quotation issued by the Company to the Customer is an offer to sell the Goods and Services identified in the quotation at the quoted price. A written quotation expires at the date specified as an expiry date. If no expiry date is specified, the written quotation expires 30 days after the date of the written quotation.
- 2.2 A contract for the supply of Goods and/or Services is made when the Customer communicates to the Company that it accepts the written quotation.
- 2.3 Where in the period between the issuing of a written quotation and the delivery of the relevant Goods and/or Services, the Company incurs an increase in the cost of producing and/or delivering the Goods and/or Services, the Company reserves the right to increase the quoted price of those Goods and/or Services at any time prior to delivery.
- 2.4 Unless otherwise specified, all quoted and advertised prices are exclusive of GST.
- 2.5 Unless otherwise specified, all amounts are in Australian Dollars (AUD).
- 2.6 Where the Company makes a Taxable Supply (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* or any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax) in connection with these Terms and Conditions to the Customer and the consideration otherwise payable for the Taxable Supply does not include GST, the Company will be entitled to recover from the Customer the amount of any GST on the Taxable Supply.
- 2.7 All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in catalogues, price lists or other advertising matter of the Company or elsewhere are approximations only. They are intended by the Company to be a general description for information and identification purposes and do not create a sale by description.

3. Payment

- 3.1 Where the Company has agreed to extend credit to the Customer, the Company will submit an invoice to the Customer for Goods or Services or both supplied to the Customer and the full amount of the invoice together with any additional charges (if any) must be paid by the

Customer to the Company by no later than 30 days after the date of the invoice or such other date for payment as the Company and the Customer agree in writing.

- 3.2 The Customer must not retain any money owing to the Company notwithstanding any breach or alleged breach by the Company of these Terms and Conditions including the supply of allegedly faulty or defective Goods and/or Services.
- 3.3 If the Company is not satisfied as to the Customer's ability to pay for Goods and/or Services, it may suspend or terminate supply or the performance of Goods and/or Services, and shall not be liable in any way for any claim, damage, expense or cost arising there from and all monies then outstanding by the Customer shall become immediately due and payable.
- 3.4 Any expenses, costs or disbursements incurred by the Company in recovering any outstanding monies including debt collection agency fees and legal costs on an indemnity basis shall be paid by the Customer providing that those fees do not exceed the charges as charged by that debt collection agency/solicitor.
- 3.5 The Company shall be entitled without notice to terminate any credit arrangement with the Customer in the event of the Customer defaulting in any of these Terms and Conditions.
- 3.6 The Company shall be entitled at any stage during the continuance of a contract between the Company and the Customer to request such security or additional security as the Company shall in its discretion think fit and shall be entitled to withhold supply of any Goods and/or Services or credit arrangements until such security or additional security shall be obtained.
- 3.7 The Company shall be entitled to charge interest on all overdue amounts owed by the Customer to the Company at the rate which is 2% per annum above the rate prescribed from time to time in the Penalty Interest Rates Act 1983 (VIC). Interest will be calculated daily and capitalised monthly.
- 3.8 In the event that the Customer is declared bankrupt or bankrupt proceedings are brought against the Customer or if the Customer is a company, if it is subject to Voluntary Administration, a Winding-up proceeding, a Receiver or Manager or Receiver and Manager of its assets is appointed, or if it shall commit any breach of or fail to perform any one or more of these Terms and Conditions on its part then:
 - 3.8.1 all monies owed by the Customer to the Company shall become immediately due and payable;
 - 3.8.2 the Company may by notice in writing terminate any contract between the Company and the Customer forthwith and any such termination shall not affect any other rights or remedies which the Company may have in consequence of any such breach or non-performance by the Customer.
- 3.9 The Customer as beneficial owner charges in favour of the Company all its interest in all of the present and future real property of the Customer as security for the due and punctual

payment of all debts and monetary liabilities owed by the Customer to the Company. The Customer consents to the Company lodging a caveat to note its interest. Upon demand by the Company, the Customer agrees to immediately execute a mortgage on terms satisfactory to the Company to more particularly describe the security interest conferred by this clause. Should the Customer fail within a reasonable time of such demand to execute such mortgage then the Customer irrevocably appoints the Company as its attorney with authority to do on its behalf any thing that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Customer.

4. Delivery

4.1 Unless otherwise agreed, the Company shall deliver Goods to the Customer as follows:

4.1.1 delivery will be made during Working Hours to the location agreed by the parties ("Delivery Point");

4.1.2 the Company or its transport contractor will deliver the Goods so close ("Drop Spot") to the Delivery Point as, in the opinion of the Company or its transport contractor, it is safe or prudent to do so and delivery occurs and risk in the Goods passes to the Customer when the Company's or its transport contractor's delivery vehicle arrives at the Drop Spot;

4.1.3 the unloading of Goods at a Drop Spot is the Customer's responsibility at its own cost and risk but the Company or its transport contractor may, without liability to the Customer, unload the Goods at the Drop Spot if the Customer requests the Company to do so or is absent from the Drop Spot at the time the Company or its transport contractor wishes to unload and the Customer releases and forever discharges the Company and its transport contractor from and against any claim, cause of action or liability arising out of the unloading of Goods at the Drop Spot;

4.1.4 where the Customer attends the Company's premises to acquire the Goods, the Company may, in its absolute discretion:

4.1.4.1 deliver the Goods into or onto the Customer's vehicle in which case risk in the Goods passes to the Customer and delivery is effected when the Goods are set down in or on the Customer's vehicle; or

4.1.4.2 deliver the Goods by setting them down alongside the Customer's vehicle in which case risk in the Goods passes to the Customer and delivery is effected when the Goods are set down alongside the Customer's vehicle notwithstanding that the Company's staff may, on request, assist the Customer to load the Goods into or onto the Customer's vehicle.

4.2 The Goods are at the Customer's risk from the time at which they are delivered to the Customer or its nominee.

4.3 Where the Company or its transport contractor enters the Customer's premises or the premises of a third party nominated by the Customer as a delivery point, the Customer:

4.3.1 releases the Company from any claim the Customer may at any time have had against the Company but for this release in respect of damage occasioned to the Customer's premises or injury to persons arising out of the delivery by the Company or its transport contractor of Goods to such premises; and

4.3.2 indemnifies and holds the Company harmless from and against any loss, damage or liability suffered or incurred by the Company in respect of damage occasioned to the third party's premises or injury to persons arising out of the delivery by the Company or its transport contractor of Goods to the premises of the third party except for and to the extent that such loss, damage or liability suffered or incurred by the Company arises out of the negligence or wilful misconduct of the Company or its transport contractor.

4.4 No defect or claim in respect of Goods delivered shall entitle the Company to reject delivery of other Goods, which are not subject to any defect or claim, delivered as part of the order.

4.5 If the Company is prevented either directly or indirectly from performing any of its obligations under these Conditions, including without limitation, making a delivery of the Goods or any part of the Goods by reason of Force Majeure it shall be entitled, at its option, by notice to the Customer, either to:

4.5.1 extend the time for delivery of the Goods for a reasonable period; or

4.5.2 subject to refunding the Customer for any payment already made to the Company in respect of those particular Goods (if any), terminate this contract, and the Customer shall not have any claim against the Company for damages or any other remedy for breach of contract.

5. Claims

5.1 The Customer shall check all Goods received immediately upon unloading and shall notify the Company in writing of any inaccuracies or short supply of Goods or any fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract made pursuant to these Conditions within 2 Business Days of the date of delivery of the Goods.

5.2 If the Customer does not notify the Company in writing within 2 Business Days of the date of delivery, the Company will not be responsible for any loss or damage whatsoever and howsoever caused arising out of or resulting from such inaccuracies or short supply of Goods, or fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract.

5.3 If the Customer notifies the Company in writing of a fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract made pursuant to these Conditions within 2 Business Days of delivery then the Company will, if in its opinion, the Customer's notice is reasonable and the Customer has not used the Goods, at the Company's option, repair or replace the Goods that appear to be faulty, damaged or defective or not in compliance with the terms of a contract made pursuant to these Conditions and the Company shall have no additional liability to the Customer.

- 5.4 Any queries regarding items shown on invoices issued by the Company shall be lodged by the Customer with the Company within 7 days of the issue date of the relevant invoice.
- 5.5 The Company shall not be liable for any direct or consequential loss or damage attributable to defects in the Goods or Services nor in respect of conditions or warranties whether expressed or implied by statute or at common law which have not been confirmed by the Company in writing.
- 5.6 The Customer shall indemnify the Company against all proceedings, claims, demands, losses, damage, costs and expenses made against or incurred by the Company in respect of the Goods and Services provided hereunder by the Customer or its employees, agents or representatives.

6. Force Majeure

- 6.1 No liability will be accepted for any failure of or delay in performance when performance is wholly or partially delayed hindered or prevented by any circumstances which are not within the Company's immediate control including but not limited to: strikes, lockouts, labour disputes of any kind, fires, accidents, breakdown of part, delay of transport, unavailability of materials, any local or national emergencies or Force Majeure of any kind.

7. Miscellaneous

- 7.1 The Customer agrees that it does not rely on the skill or judgement of the Company in relation to the suitability of any of the Goods unless it has indicated that purpose in writing to the Company and the Company has acknowledged in writing that the Goods will be fit for the particular purpose.
- 7.2 No statement or recommendation made or advice, supervision or assistance given by the Company, its employees, agents, transport contractors or representatives whether oral or written must be construed as or constitutes a warranty or representation by the Company or a waiver of any clause in these Terms and Conditions. The Company is not liable for loss or damage arising directly or indirectly from any act or omission to act arising directly or indirectly from any such statements, recommendations, advice, supervision or assistance.
- 7.3 The law of the State of Victoria is the proper law governing these Terms and Conditions and the parties accept and submit to the exclusive jurisdiction of the Courts of that State.
- 7.4 A party waives a right under these Terms and Conditions only if it does so in writing.
- 7.5 If a provision in these Terms and Conditions is wholly or partly invalid or unenforceable, that provision or part thereof must be treated as deleted without effect on the validity or enforceability of the remaining provisions.

8. Title

- 8.1 The Customer agrees that legal and equitable title to the Goods is retained by the Company until the Company receives payment in full from the Customer for the Goods and all other monies owing by the Customer to the Company at any time. Prior to title in the Goods passing to the Customer, the Customer:
- 8.1.1 must hold the Goods as bailee and fiduciary agent of the Company;
 - 8.1.2 where the Customer processes the Goods, either by using the Goods to manufacture other goods or by incorporating the Goods in or with any other goods, must hold such part of the new goods ("Processed Goods") on trust for the Company as bailee and fiduciary agent of the Company;
 - 8.1.3 any proceeds of re-sale, insofar as they relate to the Goods shall be held on trust for the Company; and
 - 8.1.4 must not create any encumbrance over the Goods which is inconsistent with the Company's title and ownership of the Goods.
- 8.2 For purpose of the above clause, "such part" means an amount equal in dollar terms to the amount owing by the Customer to the Company at the time the Goods are used in the manufacture of, or incorporated into, the Processed Goods.
- 8.3 If the Customer is in breach of these Conditions including, without limitation, failure by the Customer to make payment for the Goods by the date specified by the Company to the Customer or in the Company's reasonable opinion the payment of any amount in respect of the Goods supplied by the Company is in jeopardy, the Customer must return the Goods to the Company immediately on demand.
- 8.4 If the Customer does not return the Goods to the Company on demand under the above clause, the Customer irrevocably authorises representatives of the Company to enter upon any site where the Goods are located to take possession of the Goods without prior notice, and the Customer indemnifies the Company for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against the Company in connection with the retaking possession of the Goods or the exercise by the Company of its rights under this clause, and the Customer shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.
- 9. Personal Property Security**
- 9.1 In this clause, PPSA means the Personal Property Securities Act 2009. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 9.2 This clause applies to the extent that the Company's interest in any Goods is a security interest.
- 9.3 The Goods are timber building products.

- 9.4 The Customer acknowledges and agrees that the Company may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Customer waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- 9.5 the Company can apply amounts it receives from the Customer towards amounts owing to it in such order as the Company chooses.
- 9.6 If the Customer defaults in the performance of any obligation owed to the Company under these Conditions or any other agreement for the Company to supply Goods to the Customer, the Company may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions or the PPSA. To the maximum extent permitted by law, the Customer and the Company agree that the following provisions of the PPSA do not apply to the enforcement by the Company of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- 9.7 The Customer and the Company agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
- 9.8 The Customer must promptly do anything required by the Company to ensure that the Company's security interest is a perfected security interest and has priority over all other security interests in the Goods
- 9.9 Nothing in this clause is limited by any other provision of these Conditions or any other agreement between the parties.

10. Interpretation

- 10.1 In these Terms and Conditions:

Goods means the goods supplied by the Company to the Customer.

Services means services supplied by the Company to the Customer, including services provided in the supply of Goods to the Customer.

GST means tax payable on Taxable Supplies within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* or any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Company means Bord Products Pty Ltd (ACN 169 711 086).

Customer means a person or other entity who contracts with the Company for the supply of Goods and/or Services provided by the Company and includes to the extent permissible by law, any disclosed or undisclosed agent or principle of a person or other entity that so contracts.

Working Hours means between 7.00am and 5.00pm, Monday to Friday (inclusive) excluding public holidays.

10.2 In these Terms and Conditions:

- 10.2.1 a reference to this agreement or another instrument includes any variation or replacement of them;
- 10.2.2 the singular includes the plural and vice versa;
- 10.2.3 the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- 10.2.4 a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns; and
- 10.2.5 any agreement or representation on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally.