

TERMS AND CONDITIONS

Wright Forest Products Pty Ltd ABN 15 087 525 657 ("Supplier")

All Goods supplied by the Supplier are supplied on the following Terms:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Terms unless the context otherwise requires:

- (a) "Account Holder" means a Customer who has made a Customer Credit Application which the Supplier has accepted.
- (b) "Claim" means any claim, action, demand or proceeding however arising (including under contract, statute, common law or equity).
- (c) "Customer" means any person, company, firm or other entity that has requested to purchase Goods from the Supplier.
- (d) "Customer Credit Application" means the Customer application for the provision of a credit facility in connection with Goods supplied by the Supplier to the Customer, including all relevant documents attached thereto.
- (e) "Goods" means the purchase goods set out in a Purchase Order or Quotation.
- (f) "Insolvency Event" means:
 - (i) if a person, commits an act of bankruptcy, is made bankrupt, has a bankruptcy petition presented against it, or makes an assignment of its estate for the benefit of its creditors; or
 - (ii) if a company, becomes insolvent, has a liquidator, provisional liquidator, administrator or receiver appointed, takes or has taken or instituted against it any action which may result in the liquidation of the company, or if it enters into any agreement with its creditors, or is otherwise insolvent within the meaning of section 95A of the Corporations Act.
- (g) "PPSA" means the Personal Property Securities Act 2009 (Cth).
- (h) "Privacy Act" means the Privacy Act 1988 (Cth).
- (i) "Purchase Order" means a written request for supply of Goods submitted by the Customer.
- (j) "Quotation" means a quotation for goods ordered by the Customer.
- (k) "Terms" means these terms and conditions.

1.2 Interpretation

In these Terms unless the context otherwise requires:

- (a) a word denoting the singular includes the plural and vice versa.
- (b) a reference to a thing is a reference to the whole or any part of it, and a reference to a group of things is a reference to any one or more of them.
- (c) all references to "\$" and "dollars" are to the lawful currency of Australia.
- (d) specifying anything after the words "including", "includes" or "for example" or similar expressions does not limit what else is included unless there is express wording to the contrary.
- (e) headings are for convenience of reference only and do not affect interpretation.

- (f) words or expressions which are defined in the PPSA have the same meaning in these Terms.
- (g) words or expressions which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in these Terms.
- (h) a reference in these conditions to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations
- (i) the Supplier reserves the right to change, update, integrate or vary these Terms from time to time.
- (j) if the Customer is the trustee of a trust, these Terms bind the Customer in its own capacity and in its capacity of trustee of that trust.

2. ACKNOWLEDGEMENTS AND WARRANTIES

2.1 The Customer warrants and represents to the Supplier that:

- (a) it has read and agrees these Terms and has the power to enter into this Agreement;
- (b) the Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of control of the Customer, any change in the Customer's company or trading name and/or any other change in the Customer's address or contact details;
- (c) it will immediately advise the Supplier in writing in the event of a breach of any of the warranties set out in these Terms;
- (d) where it is a body corporate, it has full corporate power and lawful authority to execute and deliver, and to perform or cause to be performed its obligations under, these Terms;
- (e) to its knowledge there are no actions, Claims, proceedings or investigations pending or threatened against it or by, against or before any person which may have a material effect upon the subject matter of this Agreement
- (f) if the Customer is the trustee of a trust, it has full complete and valid authority pursuant to the trust to agree these Terms and the consent of the beneficiaries is not required or if required has been obtained.

2.2 The Customer expressly acknowledges and agrees that the supply of the Goods is subject only to these Terms. These Terms apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, whether in a Purchase Order or by course of dealing or otherwise.

3. CREDIT FACILITY

3.1 Account Holders

The terms of this Clause 3 (Credit Facility) only apply to Customers who are Account Holders.

3.2 Purpose for which credit is available

Credit (if approved) will be made available to the Customer for the purpose of purchasing the Goods subject to these Terms.

3.3 Credit Limits

Credit limits are as approved by the Supplier in its absolute discretion and notified to the Customer pursuant to the Customer's Credit Application. The Customer remains liable to pay all amounts due to the Supplier regardless of whether the Customer has exceeded the

Customer's credit limit.

3.4 Credit Variation

All credit terms extended by the Supplier to the Customer, are done so in the Supplier's sole discretion, and the Supplier may vary its terms of credit (including reducing, suspending or withdrawing credit) terms at any time, for any reason without giving notice to the Customer.

3.5 Notification of changes

As a condition for the continued extension of credit, the Customer agrees to provide the Supplier with current and updated credit information from time to time, including but not limited to the latest annual financial statement.

3.6 Security

If the Customer is a company, each director of the Customer must provide the Supplier with a personal guarantee and indemnity in the form reasonably required by the Supplier from time to time.

3.7 Purchase Orders

Acceptance of a Purchaser Order from takes effect on delivery (and not before) by the Supplier of the subject Goods to the delivery point nominated in the Purchase Order. Upon delivery an agreement for the supply of the subject Goods comes into existence between the Supplier and the Customer.

3.8 Acceleration

If any amount due and payable by the Customer under these Terms or to any related body corporate of the Supplier is not paid on time, all amounts actually or contingently owing, whether or not due and payable, become immediately due and payable.

3.9 Acknowledgements and warranties

The Customer warrants and represents to the Supplier that:

- (a) all information provided to the Supplier by the Customer as part of the Customer Credit Application is true, complete and correct and not misleading;
- (b) it has not experienced an Insolvency Event;
- (c) it will promptly and immediately inform the Supplier of any change to the Customer's financial position which would cause the Supplier to alter or amend the credit terms offered to the Customer.

3.10 Information

- (a) The Customer agrees that the Supplier may give information about the Customer to any credit reporting agency to obtain a credit report containing personal credit information about the Customer in relation to credit provided by the Supplier.
- (b) The Customer agrees that the Supplier may obtain information about the Customer from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing the Customer's application for credit and/or the credit worthiness of the Customer.
- (c) Information collected can include details of the Customer's credit history, credit standing and credit capacity and may also be exchanged with other credit providers as allowed under the Privacy Act.
- (d) The Customer agrees that the Supplier may exchange information about the Customer with those credit providers either named as trade credit references by

the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (i) to assess a Customer Credit Application by the Customer;
 - (ii) to notify other credit providers of a default by the Customer;
 - (iii) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers;
 - (iv) to assess the credit worthiness of the Customer; and/or
 - (v) to provide a reference to another credit provider or to receive a reference from another credit provider in relation to assessing an application by the Customer for credit.
- (e) In the event of default by the Customer under these Terms, the Supplier may disclose information to credit reporting agencies, collection agents, solicitors and/or other authorised parties as permitted by the Privacy Act.
- (f) The Customer agrees that personal credit information it provides to the Supplier may also be used and retained by the Supplier for the following purposes:
- (i) supply of the Goods to the Customer;
 - (ii) marketing by the Supplier, its agents or distributors in relation to the Supplier's goods and services;
 - (iii) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to supply of the Goods;
 - (iv) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer;
 - (v) enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account; and/or
 - (vi) as otherwise set out in the Supplier's privacy policy which is published on its website at: <https://www.wrightforestproducts.com.au/privacy-policy/>

4. ORDERS AND QUOTES

- 4.1 The Customer may order Goods from the Supplier either in writing, by telephone, by electronic means or by such other method as the parties may agree from time to time. The Customer must at the time of placing an order with the Supplier provide a Purchase Order unless otherwise agreed with the Supplier.
- 4.2 A Purchase Order constitutes an offer to purchase the Goods by the Customer on and subject to these Terms.
- 4.3 The price of Goods comprised in a Purchase Order is to be calculated by reference to the Supplier's then current price list. The Customer must ensure that they are in possession of the Supplier's then current price list for the Goods.
- 4.4 The Supplier may at its absolute discretion accept or decline any Purchase Order either in whole or in part.
- 4.5 Quotations issued by the Supplier shall remain open for 14 days unless otherwise indicated in the Quote and may be withdrawn or amended by notice in writing from the Supplier.

- 4.6 Written confirmation from the Customer of its acceptance of a Quote shall give rise to a binding contract for supply of the Goods outlined in the Quote on and subject to these Terms.
5. PRICE
- 5.1 The price payable for the Goods shall be the price set out in the Supplier's then current price list.
- 5.2 The price of the Goods:
- (a) excludes amounts in respect of goods and services tax ('GST'), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid GST invoice; and
 - (b) excludes the costs and charges of packaging, insurance, and transport of the Goods, which shall be invoiced to the Customer.
- 5.3 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities, or types of Goods ordered; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
6. PAYMENT
- 6.1 The Supplier may invoice the Customer for the Goods before, on or after the completion of delivery.
- 6.2 The Customer must pay the Supplier's invoice for the Goods within the time period stipulated in the Supplier's invoice, and if no time period is stipulated, then payment must be made within twenty-five (25) days from the end of month of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 6.3 The Customer shall pay all amounts due to the Supplier in full without any set-off, counterclaim, deduction, or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount due and owed to it by the Customer against any amount payable by the Supplier to the Customer.
- 6.4 A statement in writing setting out the amount due or owing by the Customer to the Supplier as at the date mentioned in the statement will be conclusive evidence that such amount is due or owing by the Customer and of all other matters set forth in the statement.
- 6.5 If a cheque tendered by or on behalf of the Customer in payment of any invoice is not honoured upon presentation, the Customer shall be liable to pay to the Supplier, as a liquidated debt, a dishonour fee of \$25.00, which the Supplier shall be entitled to debit to the Customer's account. A dishonour fee shall apply each instance that an invoice is not honoured upon presentation.
- 6.6 Acceptance by the Supplier of payment of a sum less than the full sum due to the Supplier will not be an acknowledgment of payment in full or an accord and satisfaction and will not prejudice the Supplier's rights to recover the balance due or to pursue any other remedy in respect of any unpaid money.
7. DEFAULT

- 7.1 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in pursuing the debt including legal costs on a solicitor and own client basis and the Supplier's collection agency costs.
- 7.2 Interest on overdue invoices shall accrue daily from the date when payment becomes due until the date of payment at a rate of 4% per annum above the interest rate fixed from time to time by the *Penalty Interest Rates Act 1983* (Vic) and such interest shall compound monthly.
- 7.3 If the Customer:
- (a) fails to pay any amount due to the Supplier, or exceeds the credit limit, or is otherwise in breach of any obligation under these Terms; or
 - (b) is the subject of an Insolvency Event or there is any matter likely to prejudice the trading ability or asset position of the Customer;
- then in addition to any other rights it may have, the Supplier may:
- (c) withhold, suspend or terminate delivery of any further Goods ordered by the Customer but not yet delivered;
 - (d) suspend the provision of credit to the Customer; and/or
 - (e) cancel the Customer's credit account.
- 7.4 If the Supplier withholds, suspends or terminates all or any part of any order pursuant to Clause 7.3 the Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under that Clause.

8. DELIVERY

- 8.1 All deliveries shall be made to the address nominated by the Customer in writing. The Customer is responsible for providing adequate delivery instructions and any other instructions relevant to the supply of the Goods. The cost of transportation of the Goods must be paid by the Customer.
- 8.2 The Supplier does not undertake to deliver the Goods on any particular date or at any particular time, notwithstanding a request by the Customer contained in the Purchase Order for the Goods or elsewhere.
- 8.3 Delivery dates or times agreed to by the Supplier, are to be taken as estimates only, and the time of delivery is not of the essence. The Supplier will not be liable in any way for a delay in delivery.
- 8.4 If there is a delay in delivery, the Supplier has the right to extend the time for delivery accordingly. If expedited or postponed delivery is requested by the Customer, then the Customer must pay any additional costs incurred by the Supplier as a result including, but not limited to, storage and insurance costs.
- 8.5 Where Goods are delivered to the Customer in instalments, the Customer must pay the invoice price for each instalment, even if non-delivery or delay in delivery of any other instalment has occurred.
- 8.6 If delivery of Goods is refused by the Customer or anyone on its behalf, the Customer must pay to the Supplier:
- (a) the invoice price of the Goods together with interest on that amount at the overdraft rate on business accounts charged by Supplier's bank on similar amounts from the date of refusal until payment of the invoice price; and
 - (b) any additional costs incurred by the Supplier including, but not limited to, carriage, storage and insurance costs incurred by the Supplier in relation to those Goods and their re-delivery.

8.7 If the Customer varies or cancels an order for Goods prior to delivery, the Customer must pay to the Supplier as a liquidated and ascertained debt the cost (if any) to the Supplier, including but not limited to overheads and administrative costs, of producing the Goods or partly producing the Goods up to that time.

9. NON-CONFORMING GOODS

9.1 Any Claims by the Customer for any non-conformances in a delivery will be waived unless the Supplier receives written notice thereof within seventy-two (72) hours of receipt of the Goods by the Customer. Failing such notice, the goods will be deemed to have been accepted.

9.2 Where the Supplier receives written notice pursuant to Clause 9.1 and the Supplier is satisfied that the Goods are not in conformance with the Customer's order, the Customer will receive a credit for the Goods provided they are returned to the Supplier in a saleable condition.

9.3 All non-conforming Goods will be held at the Customer's risk until returned to the Supplier.

9.4 Notwithstanding the above Clauses, the Supplier shall not be liable for any defects or non-conformances in the Goods in any of the following events:

- (a) the Customer makes any further use of the Goods after giving notice in accordance with Clause 9.1;
- (b) the Customer's acts or omissions, including the Customer failing to take reasonable steps to prevent them from becoming defective or the Customer failing to follow the Supplier's instructions or good trade practices;
- (c) the defect arises as a result of the Supplier following any drawing, design, or specification supplied by the Customer;
- (d) the Customer alters, modifies or repairs the Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) any accident or circumstance outside the reasonable control of the Supplier.

10. RETENTION OF TITLE

10.1 Title to Goods

- (a) Title to any Goods delivered to the Customer will not pass to the Customer until the Customer has paid all amounts that it owes to the Supplier in full.
- (b) The risk of loss of, or damage to, the Goods will pass to the Customer on delivery including but not limited to loading the Goods onto the Customer's nominated carrier (whichever occurs first).
- (c) The Customer must insure the Goods at its cost from delivery or receipt of the Goods until they are paid for in full against all usual risk. The policy of insurance must note the interest of the Supplier on the policy and produce a certificate to this effect to the Supplier upon written request.

10.2 Dealings with Goods

- (a) Until it has paid for them in full, the Customer must keep the Goods stored and marked in a manner which clearly identifies the Goods as the property of the Supplier.
- (b) Until it has paid for them in full, the Customer must not, except as permitted under Clause 10.2 (c), create or allow any interest in, or dispose or part with possession of, the Goods.

- (c) Notwithstanding Clauses 10.2 (a) and (b), the Supplier consents to the Customer:
 - (i) selling or otherwise disposing of the Goods in the ordinary course of the Customer's ordinary business; and
 - (ii) incorporating the Goods into another product of the Customer provided that the title and property in the resulting product becomes and remains the property of the Supplier until payment in full of all accounts by the Customer to the Supplier.
- (d) The Customer acknowledges that Goods supplied by the Supplier are resold by the Customer in the same order as the Goods are supplied by the Supplier.

10.3 Proceeds

- (a) If the Customer sells or disposes of any Goods before it has paid for them in full, the Supplier will hold the proceeds of sale or disposal on trust for the Customer to secure payment of the amount the Customer owes the Supplier for the Goods. The Supplier must pay all monetary proceeds, up to the amount owed, into a separate account until they are paid over to the Customer and must not mix them with any other amount or use them to pay a debt.
- (b) If the Customer sells or disposes of any Goods before it has paid for them in full, and the Customer has not been paid in respect of the Goods by a third party, the Customer acknowledges that the debt due by the third party is held by the Customer on behalf of the Supplier and must be assigned in writing to the Supplier upon demand.

10.4 Recovery of Goods

- (a) If the Customer does not pay the Supplier the amount the Customer owes the Supplier for the Goods when due, the Supplier may re-take possession of the Goods. The Supplier, its agents and servants, may enter any land or premises for the purpose of re-taking possession. If the Supplier re-takes possession of any Goods, it may deal with them as it thinks fit, without in any way being liable to the Customer or any persons claiming through the Customer.

10.5 Acceptance

- (b) The Customer will be deemed to have accepted the terms of this Clause 10 by placing an order for any Goods, taking or accepting delivery of any Goods, or using any Goods whether or not the Customer acknowledges or signs these Terms.

11. SECURITY AGREEMENT

11.1 Security Interest

To secure the payment of any monies owed to the Supplier, the Customer grants a security interest to the Supplier in all present and after-acquired property including any PPSA retention of title property of the Customer.

11.2 Accessions and commingling

If any Goods become an accession to or other property or become part of a product or mass, then:

- (a) the Supplier's security interest continues in the other property, product or mass; and
- (b) references to the Goods in Clause 10 and this Clause 11 include the other property, product or mass.

11.3 Waiver of notices and information requests

- (a) To the extent the law permits, the Customer waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA. However, this does not prevent the Supplier from giving a notice under the PPSA.
- (b) The Customer agrees not to exercise its rights to make any request of the Supplier under section 275 of the PPSA. However, this does not limit the Customer's rights to request information other than under section 275.

11.4 Enforcement of security interest

- (a) To the extent the law permits, the Supplier need not comply with, and the Customer may not exercise rights under, any provisions of chapter 4 of the PPSA that may be contracted out of.
- (b) If the Supplier exercises a right, power or remedy in connection with this document or a security interest that it provides for, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Supplier states otherwise at the time of exercise. However, this Clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

12. LIABILITY LIMITATIONS

- 12.1 Notwithstanding anything to the contrary in these Terms, the Supplier will not in any circumstances be liable for any special, incidental, indirect or consequential losses, liabilities or damages (including loss of profits, business interruption, loss of revenue, economic loss, loss of goodwill, loss of opportunity or expectation loss or loss of production) sustained or incurred by the Customer or any other person, including in connection with the supply of the Goods or services by the Supplier.
- 12.2 To the extent permitted by law, the maximum liability of the Supplier to the Customer in respect of acts, events or omissions, to the extent that the liability is incurred under, in relation to, or in connection with these Terms or the provision of Goods or services by the Supplier, whether under the law of contract, in tort (including negligence), in equity, under statute or otherwise, will be capped at the amount previously paid by the Customer to the Supplier for the relevant Goods.
- 12.3 Nothing in these Terms is intended to exclude any statutory or implied conditions and warranties the exclusion of which would contravene any statute or cause any part of these Terms to be void ("Non-excludable Conditions"). However, to the fullest extent permitted by law, the Supplier's liability for any breach of any Non-excludable Condition which is applicable is limited to, at the option of the Supplier, to:
 - (a) in the case of the supply of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired;
 - (b) in the case of the supply of services, the supplying of the services again or the payment of the cost of having the services supplied again.

13. RELEASES AND INDEMNITIES

- 13.1 The Supplier disclaims all implied conditions and warranties, and all rights and remedies conferred by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Conditions.
- 13.2 The Customer forever releases and indemnifies the Supplier against all costs, expenses, actions or Claims directly or indirectly incurred or suffered by the Customer as a result of any failure, fault, defect, flaw or error or any breach of warranty or guarantee or failure to uphold a warranty or guarantee by a third party supplier or service provider.
- 13.3 The Customer indemnifies the Supplier against, and holds the Supplier harmless from, any

losses (including any direct, indirect, special or consequential losses) and all interest, penalties, legal costs and other professional costs and expenses suffered or incurred by the Supplier (calculated on a full indemnity basis) arising out of or in connection with:

- (a) any enforcement of these Terms;
- (b) any Claim made against the Supplier and/or the Customer by a third party arising out of or in connection with the supply or use of the Goods;
- (c) any breach or default in performance of this Agreement by the Customer, including any failure to pay any fees on time;
- (d) any reliance by the Customer or a third party on the Goods or any advice, information or deliverable provided in connection with the provision of the Goods; and
- (e) any act, omission or wilful misconduct of the Customer or the Customer's Personnel (including any negligent act or omission).

14. PRIVACY

14.1 The Customer acknowledges that it has been made aware of the matters set out in the Supplier's privacy policy as published on its website at [\[insert link\]](#).

15. FORCE MAJEURE

15.1 The Supplier does not assume the risk of and shall not be liable for delay or failure to perform any of the Supplier's obligations by reason of circumstances beyond the reasonable control of the Supplier, including due to epidemic or pandemic, accidents, acts of God, strikes or labor disputes, acts, laws, rules or regulations of any government or government agency, fires, floods, delays or failures in delivery of carriers or suppliers, shortages of materials and any other causes beyond the Supplier's control.

16. TAXES, DUTIES AND FEES

16.1 The Customer is responsible for, and will indemnify the Supplier against, any taxes, duties or government charges payable on or incidental to any supply made under these Terms.

16.2 Where the Supplier incurs any additional charges related to taxes, duties, or fees in respect of the Goods, the Supplier shall have the right to invoice the Customer for such charges and the Customer will pay the invoice accordingly.

17. CLERICAL ERRORS

17.1 The Supplier reserves the right to correct clerical errors or omissions in quotations, acknowledgments, invoices, or other documents.

18. WAIVER

18.1 The failure by the Supplier to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.

19. SEVERANCE

19.1 Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of any state or federal legislation (including but not limited to the Australian Consumer Law), except to the extent permitted by such legislation where applicable.

19.2 If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20. GOVERNING LAW

20.1 These Terms shall be governed by the law of Victoria, Australia. The parties submit to the

non-exclusive jurisdiction of the courts of Victoria.