

TERMS AND CONDITIONS OF SALE

(Subject to the provisions of the Competition & Consumer Act)

SCOPE AND DEFINITIONS: Unless otherwise expressly agreed in writing these Terms and Conditions, which supersede any earlier conditions appearing in catalogues or elsewhere, shall override any terms, conditions or warranties stipulated, incorporated or referred to by the applicant named in this application.

All contracts of sale for the sale of goods by CSR Building Products Ltd [ABN 55 008 631 356] "CSR" (the Seller) to the Applicant (the Buyer) shall be subject to these Conditions (as amended from time to time by CSR and appearing on the CSR website).

"Goods" means all property sold by CSR to the Applicant under this agreement as described in any invoice or other commercial document evidencing sale.

"Officer" includes any of CSR's employees whose title includes the word Manager, President, Secretary or Director or any other person authorized by CSR to act in any capacity.

"Consequential Loss" means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

"Loss" means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.

ACCEPTANCE: No binding contract shall exist until the Applicant's order has been accepted by CSR.

1. INTELLECTUAL PROPERTY:

Intellectual Property means all registered and unregistered rights in relation to present information, moral rights and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

2. QUOTATIONS AND ORDERS:

Quotations given and orders accepted are subject to the following conditions:

- a) Unless otherwise agreed in writing, quotations given and orders accepted are based on CSR's rates and costs as at the date of quotation of materials, transport, labour and other costs. The price may be increased by the amount of any increase in the cost to CSR of any such item or any other factors (including any change in exchange rates) affecting CSR's cost of supply, production, labour or delivery of the goods.
- b) Without limiting the generality of the foregoing, any alteration in quantity, sizes, specification, complexity of work or delivery may necessitate an adjustment of prices.
- c) No order may be suspended, cancelled or amended without CSR's agreement in writing and the Applicant shall accept liability for all costs incurred by CSR, including but not restricted to purchases, stocks, work in progress, labour costs or unrecovered overheads consequent upon the suspension, cancellation or amendment of any order agreed to by CSR.
- d) Orders are accepted subject to CSR's minimum order conditions and manufacturing limitations for various items.

3. DESPATCH & DELIVERY:

- a) Despatch and delivery times shall be agreed in writing between the parties and should no written agreement exist any time given or accepted by CSR for despatch or delivery shall be treated only as an estimate in good faith. No contractual obligation as to time or date shall be binding upon CSR other than to expect that all despatches and deliveries will be made within a reasonable time.
- b) Where delivery or despatch is to be made by installments, each delivery or despatch shall be deemed for such purpose to be the subject of a separate contract and any delays whatsoever in respect of any particular despatches or deliveries shall not entitle the Applicant to repudiate the order or any installments remaining to be delivered. In the event of the Applicant making default in respect of any installment, CSR may elect to treat the default as a breach of contract relating to each other installment.
- c) If for any reason the Applicant is unable to accept delivery of the goods at the time when the goods are due and ready for delivery, CSR may either store the goods at its own premises or arrange for suitable outside storage until actual delivery and the Applicant shall be liable to CSR for the costs of such storage, including any additional handling insurance and transport costs. This provision shall be in addition to and not in substitution of any other payment of damages for which the Applicant may become liable due to its failure to take delivery at the appropriate date. Without limiting the generality of the foregoing, the Applicant will pay for the goods after 60 days of storage. In addition, CSR may, at its sole discretion, sell the goods in storage to others if the Applicant fails to pay for the goods or fails to pay storage charges when due.
- d) CSR reserves the right to apply delivery charges to all deliveries into the Applicant's premises or to site or other locations specified by the Applicant. CSR may also apply additional freight charges for deliveries outside capital cities or by alternative means of transport. CSR shall be under no obligation to insure goods while in transport.
- e) Risk of any loss damage or deterioration in the goods ordered shall pass to the Applicant as soon as goods are clear of the delivery vehicle or have been loaded on the Applicant's vehicle or the Applicant's contractor's vehicle.

- f) CSR accepts no liability for off-loading the goods from the delivery vehicle and the Applicant shall keep CSR indemnified from and against all claims whatever arising from such off-loading.
- g) CSR reserves the right to despatch the goods by the most suitable form of transport and to pack the goods in the most suitable manner.
- h) Once an order is placed into production and subsequently cancelled by the Applicant, all freight or other charges will be applied and no credit or claim will be accepted by CSR.

4. RETENTION OF TITLE:

- a) CSR retains legal and equitable title in any goods supplied to the Applicant until payment in full for or in connection with the supply of the relevant goods has been received by CSR. Until payment in full has been received, the following terms apply.
- b) Notwithstanding that title in the goods remains with CSR until payment has been received in full, the Applicant may sell such goods or use the goods in a manufacturing or construction process in the ordinary course of the Applicant's business. As between the Applicant and the purchaser of any item of the Goods, the Applicant sells as principal and not as agent of CSR. The proceeds of sale of each item of Goods must be held by the Applicant in a separate fund on trust for CSR and the Applicant is under a duty to account to CSR for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Applicant to pay an amount to CSR for Goods supplied.
- c) Until goods are sold or used in a manufacturing or construction process, the Applicant must keep the goods safe and free from deterioration, destruction, loss or harm, clearly designate the goods as the property of CSR, store them in such a way they are clearly identified as the property of CSR and keep full and complete records, firstly, of the physical location of the goods and, secondly, the ownership of the goods by CSR.
- d) CSR is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Applicant to inspect or to recover and take possession of such goods and otherwise exercise in relation to the goods any of its rights whether those rights are as owner and/or unpaid CSR or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, CSR and its agents are irrevocably authorised by the Applicant to enter any of the Applicant's premises or vehicles or those of any third party. The Applicant agrees to obtain the consent of any such third party to such entry by the Applicant and to indemnify CSR and its agents for any liability arising from any entry upon such third parties' premises or vehicles. CSR and its agents agree to take all reasonable care in removing the goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the goods.
- e) This reservation of title and ownership is effective whether or not the goods have been altered from their supplied form, or commingled with other goods.

4A. Security interest

- a) The retention of title arrangement described in clause 4 constitutes the grant of a purchase money security interest by the Applicant in favour of CSR in respect of all present and after-acquired goods supplied to the Applicant by the Supplier.
- b) The Applicant must immediately, if requested by CSR, sign any documents, provide all necessary information and do anything else required by CSR to ensure that CSR's purchase money security interest is a perfected security interest.
- c) The Applicant will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the goods or any proceeds from the sale of the goods until CSR has perfected its purchase money security interest.
- d) For any goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the goods.
- e) The Applicant hereby waives any rights the Applicant may otherwise have to:
 - (i) receive any notices the Applicant would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135
 - (ii) apply to a Court for an order concerning the removal of an accession under section 97
 - (iii) object to a proposal of the Applicant to purchase or retain any collateral under ss 130 and 135
 - (iv) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest CSR may have in goods supplied to the Applicant from time to time.
- f) For the purposes of this clause "PPSA" means the Personal Property Securities Act 2009. The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.

RISK AND TRANSIT LOSS: Goods are at the Applicant's risk from the moment of delivery or collection. If the Applicant establishes to the satisfaction of CSR that goods have been lost in transit, or were not handed over by the carrier complete and without shortage, CSR will at its discretion, replace the damaged or missing goods free of charge or credit the Applicant with the value of them, provided that the Applicant shall have given to CSR written notification (otherwise than on the carrier's delivery document) of such damage, loss or shortage as follows:

- (a) Within seven days of delivery of the consignment in the case of damage, loss or part of the consignment or shortage of goods.
- (b) Within 28 days of the dispatch of the consignment where the whole of the consignment is lost. CSR shall be permitted a reasonable opportunity to inspect any damaged consignment in the case of (a) above and to investigate any loss in the case of both (a) above or (b).

To the extent permitted by law, CSR shall not be liable for consequential or incidental damage or loss whether in contract or in tort for the loss damage or injury arising from breach of any of CSR's obligations, cancellation of the contract or for any negligence on the part of CSR. CSR's liability in all other respects shall not, to the extent permitted by law, in the aggregate exceed the tax invoice value of the goods.

The written notification to CSR under (a) above shall state whether any damaged goods have been salvaged by the Applicant and upon CSR replacing or crediting any damage or loss under (a) above any salvaged goods shall be available to and at the disposal of CSR. Failure by the Applicant to state whether or not any goods have been salvaged shall relieve CSR from all liability or obligation under (a) above.

Except as provided in the foregoing provisions, CSR shall not, to the extent permitted by law, be liable to the Applicant for any loss or damage arising out of or in connection with goods damaged or lost in transit.

5. SYSTEM PERFORMANCE, CUTTING, HANDLING, STORAGE, INSTALLATION, SAFETY & APPLICATION OF SURFACE COATINGS: The Applicant acknowledges the existence of various guidelines made available by CSR dealing with the topics outlined in this heading (including, without limitation, those made available on the relevant CSR website). The Applicant indemnifies CSR in respect of any non-compliance, or failure to act, by the Applicant (including, without limitation, its' agents and subcontractors) in respect of such guidelines.

6. DEFECTIVE GOODS: Without limiting the obligations of CSR at law:

- (a) Goods alleged by the Applicant to be defective, if notified in writing to CSR within 30 days of receipt by the Applicant, (time being of the essence) and accepted by CSR as defective, will at the discretion of CSR be replaced free of charge (to the original delivery point) or credited to the account of the Applicant. CSR reserves the right to inspect goods prior to determining as above. If the goods are in the custody of CSR for investigation or repair they shall be at the risk of the Applicant and no liability shall attach to CSR its servants or agents for any damage occasioned to the goods howsoever arising.
- (b) It is the responsibility of the Applicant to inspect the goods as soon as practically possible after delivery. Inspection procedures should have due regard to the nature of the goods and their intended application.
- (c) The Applicant shall not assert any claim for any reason after the goods are used, sold, cut, processed or otherwise altered or if the Applicant is in default of any of the terms for payment stipulated herein.
- (d) In no case shall any claim exceed the invoice value of the goods in respect of which that claim is made. Only one claim may be made with respect to any particular goods and that claim must clearly identify the specific transaction number to which the allegedly defective goods relate.

7. SUITABILITY FOR APPLICATIONS: to the extent permitted by law, no condition is made or to be implied; nor is any warranty given or to be implied as to the life or wear of the goods supplied or that they will be suitable for any particular purpose or for use under specific conditions, notwithstanding that such purposes or conditions may be known or made known to CSR. Whilst CSR manufactures its products in accordance with specific Australian manufacturing standards, which are available on request, it is the Applicant's responsibility to ensure that the goods comply with the requirements of the use of the material. CSR reserves the right to sub-contract the production, manufacture or supply of the whole or any part of the goods or any materials or services to be supplied.

8. PAYMENT:

- (a) Payment of goods purchased and services rendered inclusive of freight, handling and other expenses shall be made within 30 days of the date of the statement where upon that transaction appeared. Time will be of the essence for the performance of the Applicant's obligations for payment. If at any time monies are overdue and owing upon any Tax Invoice then the whole amount of all invoices then outstanding shall become immediately due and payable together with the costs of collection of any monies then due and payable including but not exclusively fees of any mercantile agent or solicitor engaged by CSR shall be recoverable in full against the Applicant.
- (b) Payment shall be net cash at the end of the month following the month in which goods are ready for dispatch.
- (c) CSR accepts payment of accounts by MasterCard or Visa. Amex is also accepted at some sites and through the CSR customer web site, www.csrconnect.com.au. Fees may be applied for credit card payments. The Applicant agrees and accepts that credit card fees will be charged at a rate that is set by CSR and at the sole discretion of CSR.
- (d) The Applicant shall pay interest at the rate of 1% per month on daily balances in respect of any amounts as may from time to time be overdue until paid and such money, together with all interest, shall be recoverable from the Applicant as a liquidated debt.
- (e) CSR reserves the right to vary the terms of payment and total value of credit allowed by notice in writing to the Applicant at any time and to require payment in cash in full prior to delivery should the credit worthiness of the Applicant at any time in CSR's opinion become unsatisfactory.
- (f) CSR may at its sole discretion enforce its rights under provisions of the Building & Construction Industry Security of Payments Act in the recovery of moneys that are owed to CSR.

9. DEFAULT: If the Applicant commits any default whether under this or any other contract between CSR and the Applicant, CSR will be entitled to withhold further deliveries or cancel the contract without prejudice to any rights to recover any debt or damages arising prior to the date of default.

10. APPLICANT'S INSOLVENCY: In addition to any lien to which CSR may by Statute or otherwise be entitled, CSR shall, in the event of the Applicant's insolvency, bankruptcy or winding up, be entitled to a general lien on all property or goods belonging to the Applicant in CSR's possession, (although such goods or some of them may have been paid for), and for the unpaid price of any other goods sold and delivered to the Applicant under any contract pursuant to these Terms and Conditions of Sale.

11. SECURITY: By accepting these Terms and Conditions of Sale the Applicant charges in CSR's favour all the Applicant's estate and interest in real property that the Applicant owns either beneficially and/or as trustee of any trust which the Applicant now has or may later acquire with due payment to CSR of all monies that may become payable by the Applicant and the Applicant irrevocably appoints as the Applicant's duly constituted attorney CSR's Officers or CSR's solicitors to execute in the Applicant's name, and as the Applicant's act and deed, any real property mortgage, or consent to any caveat CSR may choose to lodge against real property that the Applicant may own in any Land Titles Office in any State or Territory of Australia even though the Applicant may not have defaulted in carrying out their obligations.

12. SPECIFICATIONS: Any description of goods contained in any contract pursuant to these Conditions is given by way of identification only and use of such description shall not constitute a contract of sale by description.

13. TOOLS, ETC. USED IN CONNECTION WITH ORDER: All tools, gauges, jigs, drawings, plans, blue prints, specifications, check fixtures, screens, photographs, electronic or other images, stencils and similar items which are manufactured, paid for, supplied or used by CSR in connection with any order or enquiry shall remain the property of CSR and shall be treated as confidential by the Applicant and should not be reproduced, sold, loaned or otherwise disposed of without the prior written consent of CSR. CSR reserves the right to sell to other Applicants any products made using the same items.

14. RETURNABLE EQUIPMENT: Unless otherwise advised in writing by CSR, ownership of pallets, blocks, gluts, packing cases or other containers except cardboard cartons remains with CSR which are returnable by the Applicant to CSR. The Applicant shall be responsible for the care and safety of returnable equipment whilst it is on the Applicant's premises or job site. The cost of replacement or repair of any returnable equipment lost or damaged whilst in the possession of the Applicant shall be for the Applicant's account.

15. INTELLECTUAL PROPERTY: All Intellectual Property of CSR shall remain the sole property of CSR and no licence, right or other interest of any kind in respect of such Intellectual Property is granted, created or transferred to the Applicant.

16. LIABILITY:

16.1. Exclusion of implied terms

The applicant acknowledges that CSR is not responsible for any related services including but not limited to building engineering, quantity surveying and systems design. The applicant acknowledges that it is the Applicant's responsibility to obtain its own advice and that it has not relied on any recognition from CSR about these matters.

The Applicant may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into CSR's terms and conditions or in connection with the supply of any goods by CSR under law or statute or custom or international convention are excluded.

16.2. Limitation of liability

To the maximum extent permitted by law and subject to subclauses 16.1 & 16.3, CSR's total liability arising out of or in connection with its performance of its obligations pursuant to these Conditions, CSR Terms & Conditions, or arising out of or in connection with the supply of specific goods (including pursuant to or for breach of these Conditions, Seller's Terms & Conditions or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (a) CSR shall have no liability to the Applicant for any Consequential Loss;
- (b) CSR's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Applicant to the Supplier for the specific goods that gave rise to the Loss in question. The limitations and exclusions in this sub-clause (b) do not apply to the extent that any Loss is directly attributable to:
 - (i) the personal injury or death caused by CSR's default, breach of these Conditions or the Supplier Terms & Conditions or negligence; or
 - (ii) fraud by CSR.
- (c) The Applicant indemnifies CSR (together with its related bodies corporate, employees and agents) against any loss or damage (including consequential and indirect loss or damage) incurred as a direct or indirect result of any act or omission of the Applicant, including any act or omission in breach of these Terms and Conditions or any law.

Each party must take reasonable steps to mitigate any Loss it suffers or incurs.

16.3. Limitation of liability under Australian Consumer Law Guarantees

To the extent that goods supplied by CSR are not goods of a kind ordinarily acquired for personal, domestic or household use and the Applicant is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Applicant agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit under the Australian Consumer Law (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of the Supplier, one or more of the following:

- (a) 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 or of acquiring equivalent goods; or
- (d) equivalent goods; or
- (e) the payment of the cost of having the goods repaired.

To the extent that services supplied by CSR are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, CSR's liability for failure to comply with a consumer guarantee that the Applicant may have the benefit of is limited to, at the option of the Seller:

- (a) the supply of the services again; or
- (b) the payment of the cost of having the services supplied again.

17. ASSIGNMENT: Any contract or order between CSR and the Applicant as principals and shall not be assignable by the Applicant without the express written consent of CSR.

18. SALES OUTSIDE AUSTRALIA: Unless otherwise advised in writing by CSR:

- (a) All good supplied will be invoiced in Australian dollars.
- (b) The Applicant agrees that it is responsible for payment of all costs and expenses arising after the goods leave CSR's warehouse.

19. DISPUTES AND JURISDICTION:

- (a) The Applicant's contract with CSR shall be governed by the laws of the State in which the majority of the debt in value was incurred or another State at the sole discretion of CSR and the Applicant irrevocably submits to the jurisdiction of the courts of the capital city of the State in which CSR initiates legal proceedings.
- (b) The Applicant agrees to pay a stakeholder nominated by CSR, any amount certified by CSR as payable, before the Applicant becomes entitled to dispute whether that amount is payable including but not limited to making any application under section 459G of the Corporations Act. Such amount will be held on trust and invested until the dispute is resolved and all accretions shall be payable to the party entitled to such amount.

20. ENFORCEMENT: Failure by CSR to insist upon strict performance of any Condition herein shall not be deemed a waiver thereof or of any rights CSR may have, and shall not be deemed a waiver of any enforcement by CSR of any subsequent breach of any Condition.

21. FORCE MAJEURE: If the performance of the order or any obligation there under is prevented by force majeure, CSR shall be excused performance, provided that CSR shall use its best endeavours to remove such cause(s) of non-performance, and shall continue performance there under without delay when such cause(s) are removed. For the purposes of these conditions the term "force majeure" includes acts of God, strikes, lock-outs, fire, accident, lightning, earthquakes, storms, floods, explosion, war, acts of terrorism, machinery breakdown, difficulty in procuring suitable materials, goods or substances required in the manufacture of the goods and any other circumstances, whether similar or dissimilar, beyond the reasonable control of CSR.

22. INDEMNITY PATENTS: The Applicant warrants that any design or instruction furnished to CSR shall not be such as will cause CSR to infringe any patent registered design or trade mark in the execution of the Applicant's order and where CSR has followed a design or instruction furnished or given by the Applicant, the Applicant shall indemnify CSR against all damages, penalties, costs and expenses, to which CSR may become liable through any work required to be done in accordance with those instructions involving an infringement or unauthorised use of patent, trade mark, registered design, copyright or common law rights, it is specifically agreed that the sale and purchase of the goods does not confer on the Applicant any license or rights under any patent, trade mark or copyright which is the property of CSR.

23. MINIMUM CHARGE: Unless otherwise agreed there will be a minimum charge for any one order, as nominated by CSR from time to time.

24. CREDIT INFORMATION:

- (a) The Applicant irrevocably authorises CSR, its servants and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Applicant and its directors/principles from time to time including (inter alia) the making of enquiries with trade references, the bankers of the Applicant, any other credit provider or a credit reporting agency (hereinafter called "the information sources"). The Applicant authorises the information sources to disclose to CSR such information concerning the Applicant and its directors/principles which is within their possession and which is required by CSR.
- (b) The Applicant agrees that the information provided on any credit application signed by it may be disclosed to a credit reporting agency or any other interested person.

25. CHANGE IN CONTROL: In the event of the Applicant being a proprietary or private company transfers or sells shares totalling more than 50% of the issued share capital of the Applicant or of the controlling interest therein, the Applicant must notify CSR within 28 days of such transfer or sale occurring.

26. GOODS AND SERVICES TAX: All amounts payable in relation to these terms and conditions are expressed to be exclusive of GST. If GST is payable on a taxable supply as defined in A New Tax System (Goods and Services Tax) Act 1999 then the amount payable by the Applicant for that taxable supply will be the amount expressed plus GST.

27. ILLEGALITY OR INVALIDITY: If any provision of any contract between CSR and the Applicant shall be determined by any Court or tribunal to be illegal, invalid, void or voidable, the legality of the remainder of such contract shall not be affected and the illegal, void or voidable provision shall be deemed deleted from such contract and the remainder of the contract shall continue in full force and effect.

28. WEBSITE: CSR has made all reasonable efforts to ensure that all information provided on CSR's website is accurate at the time of inclusion but makes no representation or warranties, express or implied, except as imposed by law, regarding the information provided on the website, including any hypertext links or any other items used either directly or indirectly from the website and reserves the right to make changes or corrections at any time without notice. CSR takes no responsibility for and does not endorse, sponsor or recommend the contents, accuracy or performance of any links attached to the website. CSR accepts no responsibility for any inaccuracies or omissions in the website and any decisions based on information contained in the website are solely the responsibility of the Applicant. CSR accepts no liability for any direct, indirect, special, consequential or other losses or damages arising out of access to, or the use of the website or any information contained therein.

29. NOTICES: All documents or notices relating to any contract between CSR and the Applicant shall be deemed to have been received by the addressee on the date of delivery or faxing, or when posted, on the 3rd working day after posting.

30. SERVICE OF LEGAL PROCEEDINGS: The applicant agrees that service of any legal proceedings or other legal documents may be made by

- (a) Prepaid post to the address stated by the Applicant in this document and/or
 - (b) Prepaid post to the registered address of the Applicant as recorded with ASIC and/or
 - (c) Facsimile to any facsimile number stated in this document and/or
 - (d) Email to any email address stated by the Applicant in this document
- or to such other address/facsimile number/e-mail address as may be notified by the Applicant in writing to CSR and that such service will be effective regardless of any correspondence being returned to CSR or otherwise not being able to be transmitted.