

TERMS AND CONDITIONS OF SALE OF GOODS

1 SCOPE

- 1.1 These Terms and Conditions apply if goods are supplied by CoBond Material Solutions Pty Limited ACN 159 805 482 (**Us/We/Our**) to you (**Goods**). These Terms and Conditions form part of any quotation, purchase order, invoice or contract to which they are attached and replace any previous Terms and Conditions issued by Us or you. Any order by you for supply of Goods which includes terms not expressly included in these Terms and Conditions is of no effect and the Goods will only be supplied by us exclusively on the basis of these Terms and Conditions.
- 1.2 Any acceptance by you of any Goods on terms which contain any provision inconsistent with, or purporting to vary or reject any of these, Terms and Conditions is only binding on Us to the extent We expressly agree in writing that such provisions override these Terms and Conditions.
- 1.3 You agree to provide Us with sufficient information to enable Us to commence work and proceed without interruption. You are responsible for, and warrant the accuracy of any information you provide to Us. You will be responsible for and bear the cost of any alteration to Goods required due to any discrepancy, error or omission in any drawing, specification or other information provided by, or approved by, you. You warrant that provision of this information does not infringe the intellectual property rights of any person.

2 PAYMENT

- 2.1 Invoices are due and payable within 7 days of the date of any invoice submitted by Us to you. We reserve the right to require payment in full before shipment of any Goods for new buyer accounts, accounts in arrears and for credit rating purposes.
- 2.2 Goods will not be supplied to you if you have an overdue account until the overdue account is paid in full.
- 2.3 Payment must be made in Australian dollars to the account nominated by Us.

3 PRICE

- 3.1 You agree to pay Us the price set out on any purchase order issued or agreed to by Us in connection with the sale of Goods (**Purchase Order**).
- 3.2 The price given by Us may be varied by Us at any time prior to delivery to take into account increased costs to Us or revisions to the order as requested by you. All prices listed in the pricelist are subject to GST & change for any variances in rates of freight, insurance, duties, shipping expenses, sorting and stacking charges, cost of materials and other charges affecting the cost of production.
- 3.3 If we become liable to pay GST or any other taxes or duties in connection with the sale of the Goods, the price of those Goods is increased so that after payment of GST or other taxes or duties the net amount retained by Us is the same as before the GST or other taxes or duties (as applicable) is applied.

- 3.4 You are not entitled to withhold payment or make any deduction from the price notified by Us to you in respect of any set-off or counter-claim.

- 3.5 If you default in making any payment due to Us by the time due for payment, in addition to Our rights at law, you also agree We have the right to charge you interest on the overdue amount at 3% above the rate charged to Us by our banker for overdraft accommodation any calculated from the due date until actual full and final payment. We may also suspend all deliveries of Goods and other work to you.

4 ORDERING

- 4.1 Orders will only be accepted by fax, email or written orders sent by post. Verbal orders will not be actioned until written authorisation is received.
- 4.2 Any quotation by Us is not to be construed as an obligation to sell any Goods but is an invitation on you to make an offer to purchase the Goods subject to these Terms and Conditions.
- 4.3 Any quotation by Us to supply any Goods is valid for a period of 30 days unless otherwise specified in the quotation.
- 4.4 To minimize risk of damage during shipment, We only accept orders in inner or outer carton quantities. Any backorders held will be supplied with your next order at Our discretion, if you nominate for Us to keep backorders. Any specified packaging or handling required by you will be at your cost regardless of whether such cost has been specified in any Purchase Order.
- 4.5 If you nominate for Us to keep a backorder, you are responsible for reasonable charges for storage of any backorders. You are also responsible for promptly advising Us if any Goods ordered are no longer required. Cancellations will only be accepted in Our absolute discretion and if We expressly agree in writing. Cancellations may only be accepted on payment of a reasonable fee in Our discretion. No cancellations will be accepted for anything other than standard stock which can be resold to other customers.
- 4.6 Each Purchase Order agreed by Us and you constitutes a separate contract for the supply of Goods, and unless otherwise permitted in these Terms and Conditions, the breach of any one such contract will not be grounds for the termination of any other contract so formed between Us and you.

5 TITLE & RISK

- 5.1 Property and ownership of the Goods will not pass to you but will remain with Us until payment of the purchase price of the Goods and of all other amounts owing by you to Us is received in cleared funds. Prior to the passing of title in any Goods, the Goods must not be resold, pledged or given in security by you in any circumstances whatsoever. We reserve the following rights in relation to the Goods until all accounts owed by you to Us are fully paid:
- (a) ownership of the Goods;
 - (b) to enter your premises (or the premises where the Goods are stored) without liability for trespass or any resulting damage and to re-take possession of the Goods; and

- (c) to keep or re-sell any Goods repossessed.
- 5.2 All risk of loss, damage or destruction of the Goods passes from Us to you on dispatch of the Goods from Our premises. You are responsible at your cost for obtaining appropriate insurance in relation to any Goods in transit.

- 5.3 We retain a purchase money security interest in all Goods dispatched but not paid for in full, and in their accessories, replacements, accessions, proceeds and products, including accounts receivable (**Collateral**) to secure payment of all amounts due under any contract between Us and you. Your failure to pay all amounts in full when and as due constitute a default and give us all rights of a secured party. If you fail to pay Us any amount when due We have the right to repossess and remove all or any part of the Collateral from you, but not from your customers. Any repossession or removal is without prejudice to any other remedy of Ours, whether under these Terms and Conditions or at law or otherwise. We may at any time register a financing statement on the Personal Property Securities Register to register Our security interest. You agree to take any action and execute and deliver any document reasonably requested by Us to transfer, create, perfect, preserve, protect and enforce Our security interest. You waive any right to receive from us a copy of any financing statement, financing change statement or verification arising in connection with any registration made by us in connection with Our security interest. To the fullest extent permitted by law you waive all rights under the Personal Properties Securities Act which would otherwise arise on enforcement by Us of any security interest.

6 DELIVERY

- 6.1 Subject to circumstances outside Our reasonable control, We will use reasonable endeavours to ensure Goods will be processed and shipped within the period specified by Us in any Purchase Order. Under no circumstances will We be liable to you for any delays incurred in transit, which is at your risk. You are not relieved of any obligation to pay for Goods which are delayed in either delivery or dispatch. Goods are deemed delivered on delivery of those Goods at the point of delivery. Delivery to your agent, carrier or representative constitutes delivery to you.

7 FREIGHT

- 7.1 All prices quoted are, unless expressly stated in the Purchase Order to the contrary, exclusive of freight, which will be added to the price of any order.
- 7.2 We reserve the right to make partial deliveries of any Goods the subject of existing contracts between Us and you and to invoice such deliveries separately. Partial delivery of an order does not constitute any repudiation of any contract of sale formed by these Terms and Conditions.

8 INSPECTION

- 8.1 You must inspect the Goods for defects, including visible faults prior to installation or combination with any other goods or services. Any defective Goods must be returned to Us within 2 days of you receiving the Goods. If you fail to inspect and give

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Us notice within that period you will be deemed to have waived your right to bring any claim in connection with any such fault.

9 DRAWINGS, INTELLECTUAL PROPERTY AND LICENCES

- 9.1 After acceptance of a Purchase Order, We will at your request provide you with such drawings relating to the Goods as We determine necessary. All intellectual property rights in the Goods and in any drawings provided in connection with the Goods remains at all times vested in Us. Unless expressly agreed in writing by us to the contrary, no intellectual property rights whatsoever are granted to you in connection with the sale of the Goods or provision of any such drawings.
- 9.2 All information relating to the Goods, including the Goods and any drawings, specifications, information, samples and the like provided by Us in connection with the Goods must be regarded as confidential and you agree not to copy or disclose or reverse engineer any such items.
- 9.3 All Goods are sold on the basis that all licences, permits and approvals required under any law to be held in connection with the Goods have been obtained by you.

10 PERFORMANCE

- 10.1 Any performance values or specifications provided by Us are based on Our experience and are such as We could expect to obtain on testing. We are under no liability for any claims from or on behalf of you, and you release us from all liability in connection with, the failure of the Goods to attain such performance values or specifications unless We have expressly agreed to the contrary in writing, and subject always to recognised tolerances applicable to such values and specifications.

11 RETURNS

- 11.1 Returned Goods will not be accepted for credit or exchange without a returns authorisation number issued by Us. We are not under any duty to accept Goods returned by you unless We otherwise expressly agree in writing.
- 11.2 If We agree to accept returned Goods from you, you must, at your cost, return the Goods to the address nominated by Us.
- 11.3 You acknowledge that We will not be responsible to you if you replace Goods prior to inspection and approval of any warranty claim by Us or if you have installed or combined Our Goods with any other goods or services.
- 11.4 You acknowledge We will only accept returned Goods directly from you and not from any customers of you.

12 ADVICE

- 12.1 We may, at your request, but without obligation to do so, furnish technical advice or assistance or recommendation with reference to the use of Goods sold to you, on the express condition that any such advice, assistance or recommendations are given and accepted at your sole risk and that We are not liable for any damage, loss, costs or claims arising directly or indirectly from or in connection with such advice, assistance or recommendation.

13 CIRCUMSTANCES OUTSIDE OUR CONTROL

- 13.1 If We are unable to perform in whole or in part any obligation in relation to any contract made for the supply of Goods to which these Terms and Conditions apply due to circumstances beyond our reasonable control, We are relieved of those obligations to the extent and for the period that We are so unable to perform and you release Us from all liability in connection with such inability.

14 LIABILITY

- 14.1 Except as otherwise provided in these Terms and Conditions, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the supply of Goods are excluded to the fullest extent permitted by law.
- 14.2 To the fullest extent permitted by law, Our liability for a breach of any non-excludable rights or any express warranty is limited, at Our option, to:
- (a) the replacement value of the Goods or supply of equivalent goods;
 - (b) the repair of the Goods;
 - (c) the payment of the costs of replacing the Goods or of acquiring equivalent goods; or
 - (d) the payment of the cost of having the Goods repaired.
- 14.3 We will not be liable for damages to Goods whilst in transit, damage to the Goods not inspected by you within the time period required in these Terms and Conditions, Goods which have been on-sold, Goods which have been combined with other goods or services, Goods not operated or used strictly in accordance with instructions provided by Us, Goods tampered with or Goods which have had any original identification marks removed. Nor will we be liable for damages to Goods for circumstances beyond Our reasonable control or for fair wear and tear.
- 14.4 Despite any other provision in these Terms and Conditions, We will not be liable for any consequential, indirect or special loss, or loss of profits or revenue, loss of business opportunity, loss of production or loss of goodwill, suffered by you whether arising from or in connection with the supply of Goods or anything incidental to the supply of Goods.
- 14.5 You agree that you will not make any claim against Us and We have no further liability to you after a period of 6 months has passed from when the Goods were delivered to you.
- 14.6 You agree that Our total liability to you in connection with any Goods the subject of a Purchase Order is capped at an amount not exceeding the aggregate price of all Goods supplied by Us to you under that Purchase Order.

15 TERMINATION

- 15.1 We may immediately terminate or cease supply of the Goods in whole or in part at any time on notice to you.

16 SUBCONTRACTING

- 16.1 We reserve the right to subcontract any part of the manufacture and/or supply of the Goods.

17 SEVERABILITY

- 17.1 If any of these Terms and Conditions is deemed invalid, illegal or unenforceable, the remaining provisions will remain in full force and effect.

18 INTERPRETATION

- 18.1 Headings are for reference only and do not affect interpretation. No rule of interpretation applies to the disadvantage of the party who prepared these Terms and Conditions.

19 WAIVER

- 19.1 No delay by Us in exercising or enforcing any of Our rights constitutes a waiver of any of Our rights. No waiver of any right or any contractual breach by you constitutes a waiver of any other right or breach.

20 GOVERNING LAW

- 20.1 These Terms and Conditions will be governed in accordance with the law of New South Wales. The parties submit to the non exclusive jurisdiction of the courts of New South Wales and any court competent to hear appeals from those courts.