

TERMS OF TRADE

By agreeing to purchase any Mezzanine Floor Builders product or service the Buyer agrees to the following Terms of Trade including full and prompt payment of Goods.

1 Definitions

- 1.1 "Seller" shall mean Mezzanine Floor Builders -,and any Licensee acting on behalf of and with the deemed authority of the Seller.
- 1.2 "Buyer" shall mean the buyer and or any person acting on behalf of and with the deemed authority of the buyer.
- 1.3 "Goods" shall mean any product, project, goods or services supplied by the Seller to the Buyer.
- 1.4 "Services" shall mean all services and products supplied by the Seller to the Buyer and includes any advice or recommendations.
- 1.5 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.

2 Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute full and total acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Buyer, the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the Seller's Managing Director.
- 2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Seller's Managing Director in writing, nor is the Seller bound by any such unauthorised statements.
- 2.5 The Buyer undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, telephone number, facsimile number, or business practice).
- 2.6 The Seller only enters into an agreement with the Buyer to supply Goods or Services when the following is received;
 - (a) a signature of acceptance representing the project details as outlined in the Quotation.
 - (b) the deposit as outlined in the Quotation has been received.
- 2.7 The Buyer undertakes to certify the facilities where Goods or Services are to be supplied including any Council or engineering requirements including but not limited to the concrete floors and walls of the Buyers facility. The Seller's engineering and certification relates only to the Goods and Services provided. Facility structural certification is the sole and total responsibility of the Buyer.

3 Goods

- 3.1 The Goods are as described on the invoices, quotation, proposal, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

4 Price And Payment

- 4.1 At the Seller's sole discretion the Price shall be either;

- (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
 - (b) the Seller's quoted Price which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's quotation within twenty one (21) days.
- 4.2 once the signature of acceptance has been obtained the Buyer accepts the liability to pay for the product, according to the Terms of Trade, and to pay as soon as the payments fall due.
- 4.3 If the Buyer decides to withdraw from the sale for any reason the Buyer forfeits the deposit, and any monies paid to date, and is liable for the full amount of the sale.
- 4.4 At the Seller's sole discretion the terms of payment shall be;
- (a) A 50% deposit is required at the time of placing an order and is deemed the first of three part-payments. The deposit represents an amount or percentage of the total Price and shall become immediately due and payable. The Sale transaction is not considered complete until the total deposit is received, along with signature of acceptance (on the quotation).
 - (b) A further 40% part-payment is then required immediately upon supply of Goods and represents an amount or percentage of the total Price and shall become immediately due and payable at this point, at the sole discretion of the Seller. It is deemed as the second part-payment. If the second part-payment is not received on supply of Goods, the installation will not start. The Goods will be removed and the cost to remove and return (two transfers) will be charged to the Buyer plus a fee of \$500 to cover the redirect of staff and resources.
 - (c) A 10% final payment is due immediately upon Project Completion and represents an amount or percentage of the total Price and shall become immediately due and payable. It is deemed the third and final part-payment and is due at the Sellers sole discretion.
 - (d) A, B ,C – 4.4 can only be changed by a authorise proposal then the proposal becomes section A,B,C,4.4
 - (e) At the Seller's sole discretion some Projects, Services or Supply of Goods may necessitate additional part-payments. Projects representing Goods or Services over \$50,000 in total value will have additional part-payments representing a percentage of the total project and is at the sole discretion of the Seller, which payments shall also become immediately due and payable. If the part-payment is not received, Goods will be removed and the cost to remove and return (two transfers) will be charged to the Buyer plus a fee of \$500 to cover the redirect of staff and resources.
 - (f) Additional expenses and allowances beyond the Sellers control shall be paid for by the Buyer including but not limited to, union fees and union delays at work sites. Any such union matters remain the responsibility of the Buyer and any costs incurred must be met by the Buyer.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated full and final payment shall be upon manufactured completion and/or practical supply and/or delivery of the Goods, or at the Seller's sole discretion.
- 4.6 At the Seller's sole discretion, and if not otherwise stated on the invoice, the Buyer's payments shall be due immediately upon receiving Goods as set out above in clause 4.4.
- 4.7 Payment will be made by cash on delivery, or by bank cheque, or by direct credit into Seller's nominated bank account.
- 4.8 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such tax is expressly included in any quotation given by the Seller.
- 4.9 The Price of Payment shall increase at 1.5% on any overdue or outstanding amounts, calculated on a weekly basis. Payment is required immediately as set out in clause 4 and as such any overdue payments shall incur an additional fee.

5 Delivery Of Goods / Services

- 5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods (including the unloading of the Goods from the vehicle of the Seller, a carrier or other vehicle) whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Seller's address. If the Buyer is not available to take delivery at the time of delivery, a delivery fee shall be charged for re-delivery and an additional administration fee of \$500 will be charged.
- 5.2 As soon as Goods have been delivered to the Buyer they immediately become the property of the Buyer for insurance purposes and all risk including theft or damage thereafter shall be borne by the Buyer. The Buyer shall provide adequate security and insurance accordingly. Any later installation or on-site manufacture is deemed a separate process.
- 5.3 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.
- 5.4 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatsoever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
- 5.5 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5.7 Notwithstanding Item 5.2 delivered goods shall remain the property of the Seller until such time as full payment has been received.

6 Risk

- 6.1 If the Seller retains property in the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Buyer's Disclaimer

- 7.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he/she buys the Goods relying solely upon his/her own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

8. Defect/Returns

- 8.1 The Buyer shall inspect the Goods immediately upon delivery and shall within twenty-four (24) hours of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If

the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

- 8.2 For Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Buyer has complied with the provisions of clause 8.1;
 - (b) the Goods are returned at the Buyer's cost within seven (7) days of the delivery date;
 - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner;
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction, material in as new condition as is reasonable possible in the circumstances.
- 8.3 The Seller may (in its discretion) accept the Goods for credit but this may incur a handling fee of 10% of the value of the returned Goods plus any freight.

9. Warranty

The warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller provides a manufacturer's warranty for own manufactured products only. The Seller shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.

10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

11. Intellectual Property

- 11.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 11.2 Conversely, in such a situation, where the Buyer has supplied drawings, the Seller in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller).
- 11.3 Where any designs or specifications have been supplied by the Buyer for manufacture, by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

12 Default & Consequences Of Default

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due, calculated weekly until the date of payment at a rate of 1.5% compounding per week, and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements.
- 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will

not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

12.4 If any account remains unpaid at the end of the second month after supply of the Goods an immediate amount of the greater of \$500.00 or 10.00% of the amount overdue shall be levied for administration fees which shall become immediately due and payable in addition to the interest payable under clause 12.1 hereof.

12.5 In the event that:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer then without prejudice to the Seller's other remedies at law;
- (i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.
 - (d) the Buyer fails to take delivery of the product, necessitating storage for a period greater than 7 days, an additional fee shall be charged, at the sole discretion of the Seller, and shall be charged at the rate of \$500 per week.

13. Title

13.1 It is the intention of the Seller and agreed by the Buyer that property in the Goods shall not pass until:

- (a) The Buyer has paid all amounts owing for the particular Goods, and
- (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.

13.2 It is further agreed that:

- (a) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
- (b) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
- (c) The Buyer is then deemed only a storer of the Goods until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller.
- (d) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.
- (e) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
- (f) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.

- (g) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
- (h) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
- (i) Until such time the Buyer has the Seller's authority to convert the goods into other products and if the goods are so converted, the parties agree that the Seller will be the owner of the end products.

14. Security And Charge

14.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- (a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

15. Cancellation

The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation. At the Seller's sole discretion the Buyer may cancel delivery of the Goods. In the event that the Buyer cancels delivery of the Goods the Buyer shall be liable for any costs incurred by the Seller up to the time of cancellation as set out in clause 12.

16. Privacy Act 1988

- 16.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 16.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a) To assess an application by Buyer;
 - (b) To notify other credit providers of a default by the Buyer;
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
 - (d) To assess the credit worthiness of Buyer and/or Guarantor/s.
- 16.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
- (a) provision of Services & Goods;
 - (b) marketing of Services and or Goods by the Seller, its agents or distributors in relation to the Services and Goods;
 - (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Services/Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
 - (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.
- 16.5 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Buyer; and or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

17. Unpaid Seller's Rights to Dispose Of Goods and/or to charge Storage Fees

- 17.1 In the event that:
- (a) the Seller retains possession or control of the Goods; and
 - (b) payment of the Price is due to the Seller; and
 - (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
 - (d) the Seller has not received the full Price of the Goods or has failed to collect or take delivery of the Goods within 30 days, then the Seller reserves the right to sell the Goods and/or to charge a storage fee of \$500 or 10% of the Goods sale value, per month (whichever amount is the greatest).
 - (e) Whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods through sale and may claim from the Buyer the loss to the Seller on such disposal.

4.9.1 Lien & Stoppage in Transit

- 18.1 Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the Seller shall have:
- (a) a lien on the goods;
 - (b) the right to retain them for the price while the Seller is in possession of them;
 - (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale,

(e) the foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained.

19. General

- 19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 All Goods supplied by the Seller are subject to Australian law and the Seller takes no responsibility for changes in the law which affect the Goods supplied.
- 19.3 The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 19.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Services.
- 19.5 The Buyer shall not set off against the Price amounts due from the Seller.
- 19.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 19.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer of such change.
- 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.