

## TERMS AND CONDITIONS OF TRADE

### 1. INTRODUCTION

1.1 These terms and conditions apply to all goods sold and all services supplied (collectively "Goods") by Walmay Architectural Products Pty Ltd ACN 600 209 194 or any subsidiary of it ("the Seller") to the purchaser or recipient of such Goods ("the Buyer") unless the Seller has agreed to vary them at the time of order.

1.2 These terms and conditions constitute the entire agreement between the parties and prevail over any oral, written, previous, contemporaneous and all other communications between the parties unless otherwise expressly agreed in writing and signed by or on behalf of the Seller.

1.3 "Act" means the Competition and Consumer Act 2010 (Cth),

1.4 "Australian Consumer Law" means Schedule 2 of the Act.

1.5 "Consequential Loss" means:

(a) any:

- loss of profits, revenue, production, use, interest, anticipated savings and contract;
- loss or denial of opportunity;
- loss of or damage to goodwill;
- loss of business reputation, future reputation or publicity;
- losses arising from claims by third parties; and
- loss of or damage to credit rating;

whether direct, indirect or consequential; and

(b) any other loss, damage or cost incurred that is indirect or consequential.

1.6 "Consumer Guarantees" means a right or guarantee the Customer may have under the Australian Consumer Law or other rights in relation to the supply of goods or services (such as terms implied into a contract) that cannot lawfully be excluded.

### 2. QUOTATION

2.1 All quotations remain valid for 60 days from the quotation date unless otherwise specified and are subject to confirmation by the Seller at the time of receipt. Acceptance of the order by the Seller is deemed to constitute acceptance of these terms and conditions by the Seller and Buyer.

2.2 Quotations costed from sketches, plans, schedules or specifications provided by the Buyer are subject to the accuracy of the information provided. The Seller will not be held liable for costs exceeding the quotation as a result of inaccuracy in the information provided by the Buyer.

2.3 Goods exceeding those that are the subject of a quotation may be re-quoted by the Seller. In the event of a price not being agreed upon for such additional Goods prior to supply these additional Goods shall be supplied to the Buyer at the normal rates in force by the Seller at the time of performance of the work.

### 3. DEPOSIT

3.1 The Seller may require a deposit of the contract price to be paid by the Buyer for the Goods prior to delivery. The Seller at its sole discretion will determine the sum of the deposit required and will provide the Buyer with reasonable notice of the deposit required.

### 4. PRICE AND PAYMENT

4.1 The price of the Goods and/or services will be that prevailing at the date of quotation but are subject to variation, extras, deletions, increase or decrease in material costs, supply, production, delivery and applicable taxes incurred arising between the date of quotation and the date of delivery as notified to the Buyer.

4.2 Any variation in price will be to the Buyer's account and the contract price will be adjusted according to the amount of the variation.

4.3 If the Seller grants Credit to the Buyer, payment for all Goods must be made without deduction on the last day of the Credit Term following the date of installation/delivery of the Goods, time being of the essence. An account is not deemed paid until funds have been irrevocably cleared into the Seller's bank account.

4.4 All prices quoted exclude Goods and Services Tax.

4.5 Without prejudice to any other rights the Seller may have at law or under these terms and conditions, if full payment is not made by the due date then:

- The Buyer is liable for interest at a rate of 2% per month, calculated daily, until payment is received in full;
- The Seller may limit and/or withdraw any credit facility at any time during such time that any overdue amount remains unpaid;
- The Buyer is liable for all costs of collection and expenses including legal costs on a solicitor and own client basis incurred by the Seller in recovering or attempting to recover from the Buyer any overdue account.

4.6 If the Buyer fails to give on or before the delivery date, all instructions reasonably required by the Seller for delivering the Goods, or otherwise causes or requests a delay in the delivering of such Goods, the Buyer must pay the Seller all costs and expenses incurred by the Seller as a result of such delays.

### 5. DELIVERY

5.1 The Seller is not liable for delays or faults in delivery or transportation costs incurred, except where agreed in writing. Any delayed delivery shall not invalidate the contract or subject the Seller to any penalty.

5.2 The Buyer must provide suitable access for unloading and appropriate labour or mechanical means to unload the Goods upon delivery to the Buyer's nominated premises. The Buyer is liable for all costs and charges therein.

5.3 Risk of any loss, shortage, damage, theft or deterioration of the Goods will be borne by the Buyer from the time of delivery of the Goods as set out in clause 5.4.

5.4 Unless otherwise agreed, delivery shall be deemed to have taken place:

(a) if the Goods are to be collected from the Seller's premises, then:

(i) just prior to the Goods being loaded onto the carrier organised by the Buyer; or

(ii) at the time and date when the Goods are scheduled to be collected by the Buyer,

whichever occurs first; or

(b) if the Goods are to be delivered to Buyer's address as nominated by the Buyer on the order, then just prior to the Goods being unloaded from the carrier at the nominated address in accordance with the order, which order is delivered to the Buyer at the Buyer's expense.

5.5 Signature of any delivery note by any agent, employee or representative of the Buyer or where delivery is to any independent carrier, by such carrier or its agent, shall be conclusive proof of delivery.

### 6. RETURNS

6.1 Subject always to the Act, return of Goods will not be accepted by the Seller except by prior agreement in writing by the Seller. Goods authorised for return must be returned within 7 days of the date of invoice, for replacement, repair or credit, stating invoice number.

6.2 Any Goods returned may at the discretion of the Seller be subject to a restocking fee of 15% of the purchase price to cover the Seller's costs, which may include administration costs and transport costs. The Buyer will be responsible for the costs of returning the Goods, including but not limited disassembly, alteration and transport to the Seller or from such depot as were originally obtained.

### 7. RETENTION OF TITLE

7.1 Legal and beneficial ownership of any and all Goods remains with the Seller until such time as the Buyer has paid the purchase price for the Goods together with all other monies payable by the Buyer to the Seller on any account in full.

7.2 Until all monies owing are paid in full, the Buyer holds the Goods as bailee for the Seller. The Buyer may sell the Goods under a bona fide transaction in the ordinary course of business subject to the following provisions:

(a) the Buyer must ensure that the Goods are readily identifiable as the property of the Seller;

(b) The Buyer must account to the Seller for all proceeds delivered from such sale as bailee in a fiduciary relationship with the Seller clearly identifying them as the property of the Seller.

7.3 Without prejudice to any other rights the Seller may have at law or under these terms and conditions, the Seller may at its discretion at any time and without prior notice retake possession of the Goods supplied by it and the Buyer irrevocably authorises the Seller and all persons authorised by the Seller in that behalf unimpeded access to enter upon any premises where the Goods may be located in order to retake possession and the Buyer agrees to indemnify and keep indemnified the Seller against all costs, loss, damage and other expenses suffered by the Seller or any other party as a result of such action on the part of the Seller. Any diminution in value shall be payable to the Seller by the Buyer following subsequent sale.

7.4 In the event the Buyer uses the Goods in some manufacturing or construction process of its own or some third party, then the Buyer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for the Seller. Such part will be an amount equal in dollar terms to the amount owing by the Buyer to the Seller at the time of the receipt of such proceeds. The Buyer will pay the Seller such funds held in trust upon the demand of the Seller.

7.5 Where the Goods are incorporated with or fixed to any property owned by the Buyer or other third party, such incorporation shall be deemed owned in common by the Buyer and Seller in such shares as the value of the Goods and the value of the property into which such Goods have been incorporated. Accordingly, this contract shall create an equitable interest entitling the Seller to protect such interest by way of any legal mechanism including caveat of title.

### 8. PERSONAL PROPERTY SECURITIES ACT ("PPSA")

8.1 Defined terms in this clause that are not defined in these terms and conditions have the same meaning as given to them in the PPSA.

8.2 The Seller and the Buyer acknowledge that these terms and conditions constitute a Security Agreement and gives rise to a Purchase Money Security Interest ("PMSI") in favour of the Seller over the Goods supplied or to be supplied to the Buyer as Grantor pursuant to the terms and conditions.

8.3 The Goods supplied or to be supplied under these terms and conditions fall within the PPSA classification of "Other Goods" acquired by the Buyer pursuant to these terms and conditions.

8.4 The Seller and the Buyer acknowledge that the Seller as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Buyer as Grantor under the terms and conditions on the PPSA Register as Collateral.

8.5 To the extent permissible at law, the Buyer:

(a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Buyer, as Grantor, to the Seller;

(b) agrees to indemnify the Seller on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;

registration or amendment or discharge of any Financing Statement registered by or on behalf of the Seller; and

(ii) enforcement or attempted enforcement of any Security Interest granted to the Seller by the Buyer.

(c) agrees that nothing in sections 130 to 143 of the PPSA will apply to the terms and conditions or the Security under the terms and conditions;

(i) receive notice of removal of an Accession under section 95;

(ii) receive notice of an intention to seize Collateral under section 123;

- (iii) object to the purchase of the Collateral by the Secured Party under section 129;
- (iv) receive notice of disposal of Collateral under section 130;
- (v) receive a Statement of Account if there is no disposal under section 132(4);
- (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- (vii) receive notice of retention of Collateral under section 135;
- (viii) redeem the Collateral under section 142; and
- (ix) reinstate the Security Agreement under section 143.

## 9. LIABILITY

9.1 Subject to clause 9.2, the liability of the Seller in respect of a breach of a Consumer Guarantee is limited to the following:

- (a) in relation to goods, to:
  - (i) replacing the Goods or the supply of equivalent Goods;
  - (ii) the repair of the Goods;
  - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
  - (iv) the payment of the cost of having the Goods repaired.
- (b) in relation to services, to:
  - (i) the supply of the services again; and
  - (ii) the payment of the cost of having the services supplied again.

9.2 The liability of the Seller in respect of a breach of or a failure to comply with a Consumer Guarantee will not be limited in the way set out in clause 9.1 if:

- (a) the goods or services supplied are goods or services 'of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 64A of the Australian Consumer Law;
- (b) it is not 'fair or reasonable' for the Seller to rely on such limitation in accordance with section 64A(3) of the Australian Consumer Law; or
- (c) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the Australian Consumer Law.

## 10. COMPLIANCE

10.1 The Buyer must at all times comply with all legal recognised codes of practice in respect of the continued installation of the Goods and site safety.

## 11. WARRANTY

11.1 With the exception of Consumer Guarantees and unless otherwise agreed by the Seller in writing, the Seller excludes:

- (a) any term, condition or warranty that may otherwise be implied into this agreement;
- (b) any liability for loss or damage incurred as a result of or in connection with the negligence of the Seller, and
- (c) any liability for Consequential Loss.

## 12. EXCLUSIONS

12.1 Subject to the Act, the indemnities or warranties referred to above shall not apply where the damage, incurred or loss arises when:

- (a) service is required as a result of misuse, abuse, neglect, operator error, use of improper supplies or installation by the Buyer or a third party; or
- (b) where any Goods are tampered, interfered, adjusted or worked on by the Buyer or a third party.

## 13. FORCE MAJEURE

13.1 The Seller shall not be liable for failure to perform any term of this contract occasioned directly or indirectly any act of God, labour dispute, difficulty in procuring materials, accidents, legislative restrictions or other act whatsoever (where similar or not to the foregoing) beyond the Seller's reasonable control.

## 14. JURISDICTION

14.1 This agreement shall be construed under New South Wales Law and will be subject to the exclusive jurisdiction of the New South Wales Courts.

## 15. DISPUTES

15.1 In the event of any dispute, the undisputed portion of the account shall be payable forthwith without any deduction by way of set off, counterclaim or other legal or equitable claim.

15.2 Disputes unresolved by discussion or alternative medium shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration (Civil Actions) Act 1983 and its amendments or statutory modification. Before arbitration the arbitrating party is to:

(a) Supply and deliver to the other party specifying the matters of issue and details of the particulars of dispute, such list shall be binding and final as to the matters to be put to arbitration;

(b) continue to perform their respective operations and duties under these terms and conditions, despite any matter referred to, negotiation, mediation or arbitration

## 16. PRIVACY ACT (1988) CTH

16.1 The Buyer irrevocably authorises any person or company to provide the Seller with such information as may be required by the Seller in response to credit assessment, debit collection or direct marketing activities. The Buyer further authorises the Seller to furnish to any third party details of any application and any subsequent dealings as a result of any application being actioned by the Seller or by way of payment default.

## 17. CANCELLATION / TERMINATION

17.1 If the Buyer wishes to cancel its order and the Seller accepts such cancellation in writing, the Buyer will be liable to pay the Seller upon demand, the value of all work done, and materials used up to the date of cancellation.

17.2 The Seller may, without prejudice to any other right or remedy, suspend or terminate the contract, and all other monies payable by the Buyer to the Seller, shall immediately become due and payable if the Buyer:

(a) fails to pay for the Goods or services on the due date for payment; or

(b) breaches any provision of these terms and conditions; or

(c) commits any act of bankruptcy, enters into any composition or arrangements with creditors, commences a liquidation, has a receiver or statutory manager appointed, is insolvent or is in the unfettered opinion of the Seller in any adverse financial status in respect of any or all of its assets.

## 18. ASSIGNMENT

18.1 The Buyer must not assign, sublet or transfer any rights or obligations implied under these terms and conditions without the prior written consent of the Seller.

## 19. SEVERABILITY

19.1 If any part, term or provision of these terms and conditions is found to be unenforceable or rendered to be ineffective by virtue of non-registration, illegality of otherwise, then such provision shall be severed without effecting the validity or enforceability of these terms and conditions.

I am duly authorised to sign on behalf of the Buyer and agree that these terms and conditions are understood and accepted.

(Name)

(Position)

(Signature)

(Date)