



1 DEFINITIONS

In the following Conditions of Sale the "Seller" means Metz Specialty Materials Pty Ltd and/or Metz Projects Services Pty Ltd and the "Buyer" means the entity purchasing the Goods or Services the subject of these Conditions of Sale. "Goods" means any item of whatsoever nature which is sold by the Seller to the buyer. "Services" means any service of whatsoever nature which is supplied by the Seller to the Buyer.

2 PRICES

(a) The prices charged and payable will be the Seller's price at the date the Goods are delivered to the Buyer as agreed to on the order form.

(b) All prices shown are subject to alteration at any time without prior notice. Suggested list prices are recommended only and there is no obligation to comply with these.

3 TERMS

Unless otherwise agreed to in writing by the Seller payment for the Goods and all other costs and expenses will be made strictly net cash prior to the Goods being delivered to the Buyer.

4 CREDIT TERMS

Subject to clause 3, the Seller may offer credit terms to the Buyer and these credit terms will form part of this contract. These terms will be strictly net cash within thirty (30) days from the date of invoice of Goods to the Buyer. Alternative credit terms will only become applicable if agreed to in writing by the Seller.

For the avoidance of any doubt any breach of the credit terms will be a breach of this contract and remedies available to the Seller under this contract for breach of contract will be available if the credit terms are breached. The Buyer acknowledges and agrees that the Seller may withdraw credit facilities at any time at its discretion.

Should the Buyer delay or default in respect of any payment due to the Seller, the Seller will have the right, in addition to all other rights granted in this contract or which are conferred by law, to charge interest at rate of 1.75% per month. Such interest will be calculated from the date payment is due to the date full payment by the Buyer. Any payment by the Buyer will be credited first against the interest accrued to the date of payment.

5 GST

The Seller's price excludes GST. If GST is payable on the supply an additional amount equal to the amount of GST payable on the supply will be payable by the Buyer. The Seller will provide a tax invoice to the Buyer in respect of that supply.

6 DELIVERY

(a) Unless specified in writing otherwise terms of sale shall be ex works Metz Sydney or Melbourne.

(b) The Goods will be delivered by the Seller according to the Buyer's instructions as per the order form unless notice is received from the Buyer that it wishes to take delivery of the Goods from the Seller's warehouse. The Seller is not a common carrier and that in the event of loss or damage to the Goods in transit caused by or resulting from any act, neglect or default attributed to the Seller, the Seller's liability to the Buyer will be limited to and completely discharged by either replacement or the repair of any Goods so lost or damaged. Any claims against the Seller for such loss or damage to the Goods must be made within seven (7) days of the date of delivery.

- (c) Unloading of delivered orders is the responsibility of the Buyer.
- (d) The Seller reserves the right to deliver by instalments and each instalment will be deemed to be sold under a separate contract. Failure of the Seller to deliver an instalment will not entitle the Buyer to rescind or repudiate the contract governing delivery of that instalment or any other contract with the Seller.
- (e) The Seller will make all reasonable efforts to have the goods delivered to the Buyer on the date agreed between the parties as the delivery date but any date named or accepted by the Seller for completion, delivery, despatch, shipment or arrival of the Goods or for tender of any documents is an estimate only and does not constitute a condition of the contract. The Seller will be under no liability whatsoever should delivery not be made on the date.

7 TITLE AND RISK

- 7.1 Unless otherwise agreed in writing, risk in the Goods will pass to the Buyer upon the sooner of the happening of:
 - (a) The loading of the Goods on an outside carrier vehicle of the Buyer's carrier; or
 - (b) Delivery to the Buyer, his carrier or agent.
- 7.2 Property and ownership in the Goods supplied by the Seller to the Buyer will not pass to the Buyer until all Goods subject of this contract and all Goods supplied on similar terms by the Seller to the Buyer ('Current Account Goods') have been paid in full.
- 7.3 Until property and ownership in the Current Account Goods passes from the Seller to the Buyer:
 - (a) the Buyer will, at its expense insure the Goods for their full value; and
 - (b) the Buyer as a fiduciary for the Seller may sell them in the ordinary course of its business and the proceeds of such sale shall be subject to the security interests of the Buyer created by this document.
- 7.4 If the Buyer defaults in payment of the purchase price in accordance with the terms of this contract, or if the contract terminates in accordance with these terms and conditions for any reason, The Seller and its employees or agents will have the right to enter upon the Buyer's premises or any other premises where the Goods are known to be stored to repossess the Goods and for this purpose the Buyer will grant all reasonable access rights. Upon repossession of the Goods by the Seller, but not until then, the risk in the Goods must revert to the Seller.

8 RETURNING GOODS

No returns will be recognised by the Seller unless they are made by the Buyer within seven (7) days from the date of delivery. Invoice number and date must accompany all returns. All acceptance of returns for credit is at the discretion of the Seller.

Goods which have been made to order or specially procured, are not returnable under any circumstances and no credit will be given. Metz manufactured items – including adhesives, membranes, mortars, movement joints and various coating products are not returnable for credit.

Any tiles supplied by the Seller should be carefully inspected prior to laying. No claims regarding size, shape, colour, finish or any other aspect of appearance will be accepted after tiles are laid.

The Buyer acknowledges that it must pay all expenses associated with this transaction, including freight and insurance costs. If the Seller accepts the Goods, a credit will be provided to the Buyer less an amount for handling which is a minimum of 15% of goods value. Goods must be in a condition to allow their resale for Buyer to be entitled to any credit.

9 BUYERS LIABILITY AND DEFAULT

9.1 If the Buyer:

- (a) fails to make any payment due under this contract or commits any other breach of any of the Buyer's obligations under this contract;
- (b) is unable or deemed to be unable to pay its debts as and when they fall due;
- (c) suffers execution against it, or a Mortgagee or Agent of a Mortgagee enters into possession of all or any part of the property of the Buyer;
- (d) commits an act of bankruptcy;
- (e) makes any composition or arrangements with creditors; or
- (f) in the event that the Buyer, being a company, passes any resolution or takes any step in connection with the appointment of an Administrator or liquidator. Or any step is taken by the holder of a security of all or nearly all of the property of the company to enforce its security, the Seller (in addition to any other remedies hereby or by any statute conferred) may at its option withhold further deliveries and treat the contract as terminated and any part of the purchase price then unpaid whether or not payable under the terms of the contract will immediately become due and payable and such termination will be without prejudice to any claim or rights the Seller may possess.

9.2 For avoidance of doubt the Buyer's rights, in the ordinary course of its business in a fiduciary capacity for the Seller, to sell the Goods ceases automatically upon the occurrence of any of the events referred to in clause 9.1. unless otherwise agreed by the Seller.

9.3 Subject to any restriction imposed by law, if any event described in clause 7.2 occurs, the Seller will be deemed for the purposes of the Corporations Act to have entered possession, assumed control or exercised a power in relation to Goods supplied under this contract

- 9.4(a) In the event that the Seller repossesses the Goods, the Buyer's liability to the Seller will be reduced according to the value of the Goods which are repossessed but such reduction cannot be utilised by the Buyer until the value of the repossessed Goods is established in accordance with the following paragraphs (b) and (c) and until the value is established the Buyer will be liable to the Seller without reduction in respect of the repossessed Goods.
- (b) In the three month period following repossession of the Goods, the Seller will exercise reasonable endeavours to sell all or part of the Goods for a reasonable price in all of the circumstances.
- (c) The value of the repossessed Goods will be calculated by reference to the price paid for all or part of the Goods sold at any sale achieved within three months of the date of repossession of those Goods by the Seller, but if any of the Goods repossessed remain unsold after that three month period then there will be no reduction in the Buyer's liability as a consequence of the repossession of those Goods.

10 ADVICE

Subject to clause 11, any advice, recommendation, information or assistance provided by the Seller in relation to the Goods or their use or application (except to the extent that the Seller has expressly agreed in writing to provide the same) is given in good faith and is believed by the Seller to be appropriate and reliable. However any such advice, recommendation, information or assistance is provided without liability or responsibility on the part of the Seller.

11 WARRANTIES

- (a) The only conditions and warranties which are binding on the Seller in respect of the state, quality or condition of any Goods and/or Services supplied by it to the Buyer are those imposed and required to be binding by statute (including the Competition and Consumer Act 2010). The liability, if any, of the Seller arising from the breach of such conditions or warranties will, in the case of terms applying to the provision of goods and services not of a kind ordinarily acquired for personal, domestic or household use or consumption, at the Seller's option, be limited to and completely discharged by either the replacement or the repair by the Seller of the Goods and/or resupply of Services supplied to the Buyer or payment of the cost of the same and otherwise, to the maximum extent permitted by law. Otherwise all other conditions and warranties whether express or implied or applied by law in respect of the Goods which may apart from this clause be binding on the Seller are expressly excluded and negated.
- (b) Except to the extent provided immediately above, the Seller will have no liability (including liability in negligence) to any person for any loss or damage whatsoever or otherwise however suffered or incurred by any person in relation to the Goods and/or Services. Without limiting the generality of this clause, in particular any loss or damage consequential or otherwise however suffered or incurred by any person caused by or resulting directly or indirectly from any failure, breakdown, defect or deficiency of whatsoever nature or kind of or in the Goods and/or Services.

12 PACKAGING

Palletising and shrink-wrapping is included in all orders in excess of 200kg. All packaging materials are non-returnable.

13 HEALTH AND SAFETY

It is the Buyer's responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and use of the Goods and where information is supplied to the Buyer on potential hazards relating to the Goods to bring such information to the attention of its employees, agents, subcontractors, visitors and customers.

Without prejudice to the foregoing, it is also the Buyer's responsibility to provide safe facilities for the reception of the Goods into storage.

The Buyer indemnifies and must keep indemnified the Seller against all actions, claims demands, summons, suits, proceedings, judgments, orders or decrees arising out of or in connection with any act or omission of the Buyer in respect of its obligations pursuant to this clause.

14 FORCE MAJEURE

Deliveries may be totally or partially suspended by the Seller in the event of Act of God, war, fire, explosion, accident, flood, power, raw materials, labour, containers or transportation facilities, governmental laws, failure of machinery or apparatus, national defence requirements or any other event beyond the reasonable control of the Seller or in the event of labour trouble which event prevents the manufacture, delivery, acceptance or consumption of a delivery of the Goods or of a material Upon which the manufacture of the Goods is dependent. If, because of any such event, the Seller is unable to supply the total demand for the Goods, the Seller may allocate its available supply of Goods without obligation to purchase similar Goods from other sources among itself and of its customers, including those not under contract, on such basis as it's determined to be equitable. During the period of total or partial suspension of delivery, the Buyer will be free to purchase elsewhere at its sole risk and cost, such quantities of alternative goods necessary to cover the shortfall of Goods not delivered by the Seller. Notwithstanding anything else contained in this contract, the Seller must not incur any liability whatsoever as a result of a suspension, and the Seller will be under no obligation to subsequently deliver Goods not delivered during the period of suspension, but this contract will otherwise remain unaffected.



15 WAIVER

No waiver by the Seller with respect to any breach or default or any right or remedy will be effective unless it is in writing, signed by the Seller and no such waiver will be deemed to constitute a continuing waiver of any other breach or default or any other right or remedy unless the same be expressed in writing and signed on behalf of the Seller.

16 SEVERABILITY

Any provision of these terms and conditions which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceable without invalidating the remaining provisions of these terms and conditions or affecting the validity or enforceability of that provision in any other jurisdiction

17 LEGAL CONSTRUCTION

These conditions will be governed and interpreted according to the laws in force in New South Wales in the Commonwealth of Australia and the Seller and the Buyer hereby consent and submit to the non-exclusive jurisdiction of the Courts of New South Wales held in Sydney, Australia.

18 PERSONAL PROPERTY SECURITIES LAWS

- (a) These terms create a purchase money security interest in the Goods and the Buyer must do all things reasonably required by the Seller to register and perfect that interest under the terms of the Personal Property Securities Act 2009 (Cth) (PPSA) or otherwise.
- (b) If the Seller repossesses the Goods Seller does not need to provide the Buyer with any notice under sections 130 or 135 of the Personal Property Securities Act 2009 (Cth).
- (c) The Buyer will, at the Seller's request, pay any or all of the Seller's costs and expenses, on an indemnity basis, related to registration and enforcement of any security interest related to these terms (including in relation to any security by a person guaranteeing the Buyer's performance of these terms) or related to ensuring the payment of the Buyer's overdue debt, commission and fees payable to a collection agency, solicitor or the like.