



1. Application

- a. The Customer is deemed to have accepted these Terms on and from the date that the Customer submits to Metz an application to open a credit account.
- b. These Terms apply to the supply of Goods and/or Services to the Customer by Metz, to the extent that Metz supplies Goods and/or Services to the Customer from time to time; and govern the relationship between the Customer and Metz in relation to that supply.
- c. These Terms apply to all transactions and dealings from time to time between the Customer and Metz relating to the supply of Goods and Services.
- d. These Terms take precedence over terms of trade contained in any document of the Customer or elsewhere.
- e. Capitalised terms used in these Terms are defined in clause 21.

2. Prices

- a. The price payable by the Customer for Goods and/or Services will be:
 - i. the price for the relevant Goods and/or Services indicated to the Customer by Metz in any written quote, provided that quote expressly states that the price indicated will apply; or
 - ii. otherwise, the current standard price for the relevant Goods and/or Services (as set by Metz from time to time) as at the date the Goods and/or Services are supplied to the Customer.
- b. Suggested list prices and verbal quotes are indicative only and are not binding.

3. GST

- a. Metz's prices exclude GST unless otherwise indicated in writing.
- b. The parties agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.
- c. The Customer agrees that in respect of any supply pursuant to, or arising as a result of, these Terms:
 - i. consideration for such supply is exclusive of GST;
 - ii. the Customer will pay the amount of GST to Metz at the same time as the consideration is payable subject to the receipt of a tax invoice;
 - iii. the Customer indemnifies Metz in respect of Metz's liability for GST; and
 - iv. this clause survives any termination of these Terms

4. Payment

- a. Following receipt of an order from the Customer for Goods and/or Services, Metz will issue an invoice to the Customer for the cost of those Goods and/or Services (**Invoice**).
- b. Unless otherwise agreed to in writing by Metz, Metz must receive payment in full of the amount stated in an Invoice before Metz will dispatch or deliver to the Customer the Goods and/or Services to which that Invoice relates.
- c. If Metz agrees in writing to supply Goods and/or Services to the Customer on credit, or if Metz otherwise dispatches or delivers Goods and/or Services to the Customer before payment in full of the amount stated in the Invoice for those Goods and/or Services is received by Metz:
 - i. payment for the Goods and/or Services must be received by Metz within thirty (30) days after the date of the Invoice (**Due Date**);
 - ii. if payment is not received by Metz on or before the Due Date, Metz may charge the Customer interest, calculated daily, at a rate of 1.75% on and from the due date of the Invoice up to and including the date on which the full payment is received by Metz (including any interest);
 - iii. any payment by the Customer to Metz in respect of any overdue amount will be credited first against any interest accrued; and
 - iv. alternative credit terms will only apply if agreed to in writing by Metz at its discretion.
- d. Metz may withdraw credit facilities offered to the Customer at any time at its discretion.

- e. The Customer is not entitled to retain any money owing to Metz notwithstanding any default or alleged default by Metz of these Terms, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods and/or Services. Nothing in this clause affects the Customer's rights (if any) for any alleged failure of a guarantee under the Australian Consumer Law.
- f. All costs and expenses associated with collecting overdue amounts from the Customer, including (but not limited to) Metz's legal fees and internal costs and expenses, are to be paid by the Customer to Metz immediately on demand as a debt due and payable under these Terms.

5. Delivery of Goods

- a. Unless agree otherwise in writing, Goods will be supplied from Sydney, Melbourne or Brisbane.
- b. Metz will use its reasonable endeavours to deliver Goods to the Customer in accordance with the Customer's written instructions and on the date agreed in writing between the parties as the delivery date.
- c. Metz will not be liable for any Loss incurred by the Customer arising directly or indirectly as a result of Metz's failure to comply with the Customer's written instructions or delivery date.
- d. Metz reserves the right to deliver Goods by instalments and each instalment will be deemed to be sold under a separate contract (in each case, subject to these Terms).
- e. Failure of Metz to deliver an instalment of Goods will not entitle the Customer to rescind or repudiate the contract governing delivery of that instalment or any other contract with Metz.
- f. Unloading of delivered Goods is the responsibility of the Customer.
- g. The Customer may collect Goods from Metz's warehouse, provided the Customer has given Metz reasonable notice of its intention to do so.

6. Title and Risk

- a. Risk in the Goods passes to the Customer immediately upon Metz's dispatch or delivery of the Goods to the Customer (or its carrier or agent), or the loading of the Goods onto the Customer's carrier's or agent's vehicle, whichever occurs first.
- b. Property and title in the Goods supplied to the Customer under these Terms does not pass to the Customer until all money (including money owing in respect of other transactions between Metz and the Customer) due and payable to Metz by the Customer has been fully paid.
- c. Until property and title in the Goods passes from Metz to the Customer, the Customer must, at its expense, insure the Goods for their full value.
- d. Where Goods are supplied by Metz to the Customer on credit, the Customer:
 - i. is a bailee of the Goods until property in them passes to the Customer;
 - ii. irrevocably appoints Metz to be its attorney to do all acts and things necessary to ensure the retention of title to the Goods, including the registration of any security interest in favour of Metz with respect to the Goods under applicable law;
 - iii. must be able upon demand by Metz to separate, and identify as belonging to Metz, Goods supplied by Metz from other goods that are held by the Customer; and
 - iv. must not allow any other person to have or acquire any security interest in the Goods.
- e. Despite clause 6(d), the Customer may transfer, sell or dispose of Goods to a third party in the ordinary course of business, provided that if the Customer:
 - i. is paid by a third party in respect of Goods, the Customer holds the whole of the proceeds of sale, less any GST, on trust for Metz in a separate account, until all amounts owed by the Customer to Metz have been paid; and
 - ii. is not paid by a third party, the Customer agrees to assign all of its rights against the third party to Metz upon Metz giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints Metz and its agents as the Customer's attorney.

7. Returning Goods

- a. The Customer must notify Metz in writing of any fault in the Goods within 5 Business Days after the Customer's receipt of the Goods and such notice must provide a detailed description of the fault and

specify the invoice number for the Goods, the date of that invoice and the date on which the Goods were received by the Customer.

- b. If the Customer fails to advise Metz in writing pursuant to clause 7(a), the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty.
- c. Subject to clause 7(a), if there is any fault in the Goods, unless Metz directs the Customer otherwise in writing or the Goods are non-returnable pursuant to this clause 7, the Customer must return the Goods (including the packaging in which the Goods were supplied) to Metz for Metz's inspection.
- d. If after inspecting the Goods Metz determines that the Goods are faulty, Metz may (at its discretion) offer the Customer a credit for the faulty Goods, but no credit will be given for Goods that:
 - i. have been made to order or specially procured for the Customer;
 - ii. are Metz's manufactured items (including adhesives, membranes, mortars, movement joints and various coating products);
 - iii. are tiles which have been laid (regardless of the basis for the alleged fault, including claims related to the tiles' size, shape, colour, finish or any other aspect of appearance); or
 - iv. are not in a condition that allows their resale to another buyer,and Goods of this nature are non-returnable.
- e. If Metz determines that the Goods returned pursuant to clause 7(c) are not faulty, the Customer must collect the Goods within 5 Business Days after Metz has notified the Customer that the Goods are not faulty. If the Customer does not collect the Goods from Metz by that deadline, Metz may dispose of the Goods at Metz's discretion and the Customer will have no Claim against Metz in respect of the Goods.
- f. The Customer is not entitled to any remedy in the event that the Goods have been ordered in error or the Customer has changed its mind regarding the Goods.
- g. The Customer must pay all expenses associated with the return of Goods to Metz, including freight and insurance costs.

8. Exclusions and limitation of liability

- a. The Customer expressly agrees that use of the Goods and/or Services is at the Customer's risk.
- b. To the fullest extent permitted by law, Metz's liability for breach of any term implied into these Terms by any law is excluded.
- c. All information, specifications or samples provided by Metz in relation to the Goods and/or Services are approximations only and, subject to any guarantees under the Australian Consumer Law that cannot be excluded, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods and/or Services will not entitle the Customer to reject the Goods upon delivery, or to make any Claim in respect of them.
- d. Any advice, recommendation, information, assistance or service given by Metz in relation to the Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty of accuracy, appropriateness or reliability. Metz does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- e. To the fullest extent permitted by law, Metz is not liable for any Loss or direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide the Goods and/or Services, any failure, breakdown, defect or deficiency of whatsoever nature or kind of or in the Goods and/or Services, or otherwise arising out of the provision of the Goods and/or Services, whether based on these Terms, negligence, strict liability or otherwise, even if Metz has been advised of the possibility of damages.

9. Australian Consumer Law

- a. The Australian Consumer Law may give to the Customer certain guarantees in respect of the Goods and/or Services.
- b. If liability for a breach of any guarantee under the Australian Consumer Law can be limited, Metz's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of:
 - i. Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods; or

- ii. Services, to the supply of Services again or cost of re-supplying the Services again.
- c. Notwithstanding any other provision of these Terms, to the extent that the Customer has rights under the Australian Consumer Law that:
 - i. cannot be excluded, the other provisions of these Terms apply subject to those non-excludable rights; and
 - ii. can be limited or excluded, the parties agree that those rights are limited or excluded to the fullest extent permitted by law.

10. Default by Customer

- a. This clause 10 is subject to any statutory provisions that may restrict Metz's ability to terminate these Terms as a result of the Customer's financial position.
- b. Each of the following occurrences constitutes an event of default:
 - i. the Customer breaches or is alleged to have breached these Terms (other than by failing to make a payment due pursuant to these Terms by the applicable due date) for any reason and fails to remedy that breach within 10 Business Days of being given notice by Metz to do so;
 - ii. the Customer fails to make a payment due pursuant to these Terms by the applicable due date for any reason;
 - iii. the Customer, being a natural person, commits an act of bankruptcy;
 - iv. the Customer, being a corporation, is subject to:
 - 1) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - 2) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertakings;
 - 3) the entering of a scheme of arrangement (other than for the purpose of restructuring); or
 - 4) any assignment for the benefit of creditors;
 - v. the Customer purports to assign its rights under these Terms without Metz's prior written consent; or
 - vi. the Customer ceases or threatens to cease conduct of its business in the normal manner.
- c. Where an event of default occurs, Metz may (at its sole discretion) do one or more of the following:
 - i. terminate these Terms;
 - ii. terminate any or all orders with the Customer;
 - iii. refuse to deliver Goods or provide further Services;
 - iv. retain (where applicable) all money paid by the Customer on account of Goods or Services or otherwise; or
 - v. repossess any Goods and deal with those Goods in accordance with clause 10(f).
- d. For the purpose of repossessing Goods pursuant to these Terms, the Customer grants an irrevocable licence to Metz and its agents to enter the Customer's premises in order to recover possession of Goods and the Customer indemnifies Metz for any damage to property or personal injury which occurs as a result of Metz entering the Customer's premises or repossessing Goods.
- e. In addition to any action permitted to be taken by Metz under clause 10(c), on the occurrence of an event of default the following will occur:
 - i. all invoices in respect of Goods and/or Services will immediately become due and payable;
 - ii. any right of the Customer to sell any Goods in the normal course of its business ceases; and
 - iii. Metz will be deemed for the purposes of the Corporations Act 2001 to have entered into possession, assumed control or exercised a power in relation to any Goods supplied to the Customer pursuant to these Terms.
- f. If Metz repossess any Goods pursuant to these Terms:
 - i. in the one month period following such repossession, Metz will exercise reasonable endeavours to sell all or part of the Goods for a reasonable price in all of the circumstances;
 - ii. if any of the Goods can be resold within that period, the value of the repossessed Goods sold will be deducted from any amount due to Metz less an amount for handling (being an

- amount equivalent to a minimum of 15% of the Goods' value) calculated by reference to the price paid by a third party purchaser for all or part of the Goods sold;
- iii. until any of the Goods are resold, there will be no reduction in any amount owed to Metz by the Customer; and
 - iv. if any of the Goods remain unsold after that one month period, then there will be no reduction in the Customer's liability as a consequence of the repossession of those unsold Goods and Metz may dispose of the Goods at Metz's discretion and the Customer will have no claim against Metz in respect of the Goods.

11. Personal Property Security Interest

- a. Without limiting any other rights or remedies available to Metz pursuant to these Terms or at law, as security for any payments due to Metz by the Customer pursuant to these Terms, the Customer grants to Metz an irrevocable and unconditional right to register and perfect (at Metz's discretion):
 - i. a personal property security interest over all of the Customer's present and after acquired property; and
 - ii. to the extent applicable, a purchase money security interest over any or all Goods.
- b. For the purposes of enforcing the security interests granted pursuant to clause 11(a), the Customer grants an irrevocable licence to Metz and its agent to enter the Customer's premises and the Customer indemnifies Metz for any damage to property or personal injury which occurs as a result of Metz entering the Customer's premises or enforcing those interests.
- c. To the extent applicable, the Grantor waives its rights to receive notice of:
 - i. a verification statement under section 157 of the PPSA;
 - ii. the removal of an accession under section 95 of the PPSA;
 - iii. action to enforce security over liquid assets under section 121(4) of the PPSA;
 - iv. a proposal to dispose of Secured Property under section 130 of the PPSA;
 - v. a statement of account under section 132(3)(d) and 132(4) of the PPSA; and
 - vi. any proposal of the Secured Party to retain Secured Property under section 135 of the PPSA.
- d. To the extent applicable, the Grantor waives its right to:
 - i. redeem Secured Property under section 142 of the PPSA; and
 - ii. reinstate these Terms under section 143 of the PPSA.
- e. For the purposes of this clause 11, **Secured Property** means (as applicable) the Customer's present and after acquired property and the Goods.

12. Indemnity

- a. The Customer indemnifies Metz from and against all Claims made against Metz, and from and against any Loss which Metz incurs, directly or indirectly arising in connection with the negligence of, any act or omission by, or any breach of these Terms by the Customer.
- b. For the avoidance of doubt, the Customer indemnifies Metz in respect of all legal and other costs and disbursements incurred by Metz arising from or as a result of Metz exercising or enforcing, or seeking to exercise or enforce, a right under these Terms, including in connection with any security provided by the Customer (or any guarantor for the Customer) in respect of these Terms.
- c. The Customer is not liable for any proportion of Loss to the extent that such Loss has arisen in connection with the negligence of, any act or omission by, or any breach of these Terms by Metz.
- d. It is not necessary for Metz to incur expense or make any payment before enforcing a right of indemnity conferred by these Terms.
- e. This clause 12 remains in force after any termination of these Terms.

13. Packaging

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

14. Health and Safety

- a. The Customer must 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, if information is supplied to the Customer on potential hazards relating to the Goods, bring such information to the attention of its employees, agents, subcontractors, visitors and customers.
- b. Without prejudice to the foregoing, it is also the Customer's responsibility to provide safe facilities for the reception of the Goods into storage.

15. Force majeure

- a. If circumstances beyond Metz's control prevent or hinder its provision of the Goods and/or Services (Force Majeure Event), Metz is free from any obligation to provide the Goods and/or Services while those circumstances continue. Metz may elect to terminate these Terms or keep these Terms on foot until such circumstances have ceased.
- b. Circumstances beyond Metz's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.
- c. During any Force Majeure Event, the Customer will be free to purchase elsewhere at its sole risk and cost, such quantities of alternative goods necessary to cover the shortfall of any Goods not delivered by Metz.
- d. Notwithstanding anything else contained in these Terms, Metz will not incur any liability whatsoever as a result of its failure to comply with these Terms due to a Force Majeure Event and Metz will be under no obligation to subsequently deliver Goods not delivered as a result of that event.

16. Agency and assignment

- a. The Customer agrees that Metz may at any time appoint or engage an agent to perform an obligation of Metz arising out of or pursuant to these Terms.
- b. Metz has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms provided that the assignee agrees to assume any duties and obligations of Metz owed to the Customer under these Terms.
- c. The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms without the prior written consent of Metz (which consent may be given or refused at Metz's discretion).

17. Waiver

No waiver by Metz with respect to any breach or default or any right or remedy will be effective unless it is in writing, signed by Metz 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 Metz.

18. Severability

Any provision of these Terms 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 or affecting the validity or enforceability of that provision in any other jurisdiction.

19. Legal construction

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

20. General

- a. These Terms supersede all oral and written negotiations and communications by and on behalf of either of the parties in relation to the Goods and Services.

- b. In entering into these Terms, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by Metz or any of its employees or agents relating to or in connection with the subject matter of these Terms.
- c. Nothing in these Terms creates a partnership between the parties or appoints the Customer as Metz's agent for any purpose whatever. The parties are not partners or joint venturers.
- d. Any notice given by a party under these Terms must be in writing and served either by hand, email, or by pre-paid post to the address notified by the party as their contact address.
- e. A notice delivered in accordance with clause 20(d) is deemed to have been received:
 - i. if delivered by hand, on the date it is delivered to the addressee;
 - ii. if mailed to an Australian address, three (3) days after posting or in any other case ten (10) days after posting; and
 - iii. if sent by email, at the time shown in the delivery confirmation report generated by the sender's email system or if the sender's email system does not generate a delivery confirmation report within twelve (12) hours after the time the email is sent.
- f. Where an act must be done or period of time expires on a specified day and that day is not a Business Day, the act must be done instead on the next Business Day.
- g. The rights provided in these Terms are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of these Terms.
- h. No provision of these Terms will be construed adversely to a party on the ground, irrespective of whether or not it is the only ground, that the party was responsible for the preparation of these Terms or the inclusion of a specific provision in these Terms.

21. Definitions

In these Terms, unless the context otherwise requires:

Australian Consumer Law means the national law for fair trading and consumer protection set out in Schedule 2 of the Competition and Consumer Act 2010;

Business Day means a day that is not a Saturday, Sunday or public holiday in New South Wales;

Claim means any claim, allegation, suit, action, demand, cause of action or proceeding, irrespective of when it arises, whether or not it is actual or contingent, or whether it is made under agreement or in tort (including in negligence), in equity, under statute or otherwise;

Customer means the person/entity on whose behalf an application to open a credit account has been submitted to Metz or, if no application has been submitted to Metz on behalf of the recipient of Goods and/or Services, that recipient;

Goods means any goods supplied by Metz to the Customer, including those supplied in the course of providing Services;

Loss means actual or contingent damage, debt, loss, penalty, fine, expense, liability or costs (including legal costs on a solicitor/client basis and investigative costs);

Metz means (as the context requires) Metz, if Metz has supplied Goods and/or Services to the Customer;

PPSA means Personal Property Securities Act 2009 (Cth);

Services means any services provided by Metz to the Customer; and

Terms means these terms and conditions of trade.

22. Interpretation

In these Terms, reference to:

- a. one gender includes the other;
- b. the singular includes the plural and the plural includes the singular;
- c. a person includes:
 - i. an individual, firm, body corporate, partnership, joint venture, unincorporated body or association or any statutory or government body or agency; and
 - ii. a person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- d. a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- e. another grammatical form of a defined term or expression has a corresponding meaning;

- f. a notice from, consent or approval of a party and agreement between the parties for the purposes of these Terms means a written notice, consent, approval or agreement;
- g. “including” and similar expressions are not words of limitation;
- h. “dollars” or “\$” is to Australian currency;
- i. an agreement, representation or warranty:
 - i. in favour of two or more persons is for the benefit of them jointly and each of them individually; and
 - ii. by two or more persons binds them jointly and each of them individually;
- j. a period of time that is calculated from a given day or the day of an act or event, is to be calculated exclusive of that day;
- k. time is a reference to Sydney time; and
- l. a document (including these Terms) includes any novation, variation or replacement of it.