

TERMS & CONDITIONS OF TRADE (8/2008)

To the fullest extent legally possible, all dealings between Gunns and any Customer relating to any products (“products”), services or transactions are subject to the following (“these Terms”) unless otherwise expressly agreed in writing.

1 Payment

- a) The Customer agrees that a Certificate signed by a director, secretary or manager, or other authorised officer or representative for the time being of Gunns and stating the balance of monies due by the Customer shall be conclusive evidence of the indebtedness of the Customer as the date of the Certificate. b) Payment is to be by Electronic Funds Transfer, cash, cheque or bank cheque within 30 days from the end of month in which the relevant invoice was issued, without deduction offset or otherwise and irrespective of any dispute the Customer may have with Gunns and/or in respect of the products unless specifically agreed to in writing by Gunns.

2 Interest

Interest on overdue accounts will be charged, at Gunns’ discretion, at the Penalty Interest Rates Act 1983 (Vic) rate, plus additional 2%.

3 Retention of Title

- a) The Customer agrees that legal and equitable title to the products is retained by Gunns and shall not pass until payment in full for the products and of all monies owed by the Customer to Gunns who reserves the right to take possession & dispose of products at any time until full payment
- b) The Customer grants Gunns and any person authorised by Gunns full leave, permission, irrevocable licence to enter without notice and at any time any property where any product is placed or stored and do all things necessary and use such force as is necessary in order to recover or retake possession of the products and the Customer further agrees to fully indemnify Gunns for any losses incurred or damages suffered by Gunns (including without prejudice to Gunns’ right for damages generally for breach of contract) or the Customer or any third party as a result of Gunns’ entry.
- c) Upon delivery the Customer accepts liability for the safe custody of the products & indemnifies Gunns for any losses relating thereto.
- d) The Customer agrees that a certificate purporting to be signed by an officer of Gunns identifying products as unpaid for shall be conclusive evidence that the goods have not been paid for & of Gunns’ title thereto.
- e) Upon sale or disposition of any products prior to payment in full, the Customer agrees to deposit all proceeds in a separate bank account, not to mix proceeds with any other monies & will forthwith account to Gunns therefore notwithstanding that Gunns having at any time granted any credit facility &/or time to pay.
- f) Until payment in full the Customer agrees:-
- (i) to keep all products unpaid for as bailee and fiduciary agent for Gunns, properly and securely store them and in a manner which shows Gunns as owner and providing adequate insurance for the products
 - (ii) only to sell products in the usual course of its business
 - (iii) sale on terms or for less than cost shall not be “in the usual course”.
- g) This clause 3 is not intended to create a charge over any products & shall be read down (but only to the extent necessary) to avoid creating a charge.
- h) The Customer agrees that products will be deemed at all times to be dealt with by the Customer on a “first in first out” basis for the purpose of all transactions between the Customer and Gunns.
- i) If the Customer uses products in any packaging, fabrication or manufacturing process, the Customer agrees to hold such part of the proceeds of sale of finished articles which equates to the invoiced price for the products used, upon trust for Gunns as bailee and fiduciary agent of Gunns until payment in full for those products and of all monies owed to Gunns.
- j) The Customer hereby agrees to accept this appointment as bailee and fiduciary agent of Gunns.

4 Limitation of Liability

These Terms set out the entire agreement between the parties in relation to their subject matter. The terms of the United Nations Convention on Contracts for the International Sale of Goods 1980 ("the Vienna Convention") and all other terms or conditions in relation to the subject matter of these Terms, whether implied by use, statute or otherwise, are expressly excluded including all rights and remedies conferred on the Customer, by statute, common law, equity trade, customs of usage otherwise.

- a) The Customer agrees to limit any claim it makes concerning any products to the cost of replacement of the subject products or their equivalent or to the provision of services again.
- b) Gunns shall not be liable for any claim, loss or expense arising after 14 days from date of delivery or at all once the products have been unpacked or otherwise used or applied, whichever first occurs, after which there shall be deemed to have been unqualified acceptance.
- c) Gunns will not be liable for any indirect, special or consequential loss or damage suffered or incurred by the Customer or any damage or loss arising in any way, whether due to a breach by Gunns of a contract made pursuant to these Terms or a negligent act or omission of Gunns or a breach of a statutory duty or obligation by Gunns or otherwise & the Customer acknowledges this express limit of liability & agrees to limit any claim accordingly. "Indirect, special or consequential loss or damage" means loss or damage arising from:-
 - (i) a breach of contract
 - (ii) tort (including negligence)
 - (iii) under statute or
 - (iv) any other basis in law or equity including, but without limitation, the following:-
 - (a) loss of profits
 - (b) loss of revenue
 - (c) loss of production
 - (d) loss or denial of opportunity
 - (e) loss of access to markets
 - (f) loss of goodwill
 - (g) loss of business reputation, future reputation or publicity
 - (h) damage to credit rating
 - (i) loss of use; and
 - (j) indirect, remote, abnormal or unforeseeable loss, or any similar loss whether or not in the reasonable contemplation of the parties at the time of execution of the contract and/or in connection with claims made against the Customer by third parties, liquidated sums or liquidated damages.
- d) No statement or recommendation made or advice, supervision or assistance given by Gunns, its employees, agents, transport contractors or representatives whether oral or written must be construed as or constitutes a warranty or representation by Gunns or a waiver of any clause in these Terms. Gunns is not liable for loss or damage arising directly or indirectly from any act or omission to act arising directly or indirectly from any such statements, recommendations, advice, supervision or assistance.
- e) If the Trade Practices Act 1974 or any other legislation implies a condition or warranty into these Terms in respect of the products supplied and Gunns' liability for breach of that condition or warranty may not be excluded but may be limited: - in the case of supply of products, Gunns may do any one or more of the following: 1. replacing the products or supplying equivalent products; 2. repairing the products; 3. paying the cost of replacing the products or of acquiring equivalent products; 4. paying the cost of having the products repaired.
- f) No other term, condition, agreement, warranty, representation or understanding, whether express or implied in any way extending to, otherwise relating to or binding upon Gunns, other than these Terms, is made or given.

5 Exclusions

- a) Sample: No contract between Gunns & the Customer shall be or be deemed to be a sale by sample.
- b) If Gunns publishes material concerning its products & prices anything so published which is incompatible with these Terms is expressly excluded
- c) The Customer will rely on its own knowledge & expertise in selecting any products for any purpose and agrees that it does not rely on the skill or judgement of Gunns in relation to the suitability of the products for a particular purpose.
- d) If Gunns sells any products made or processed by another, it shall not be liable for any damage, claim or loss arising in relation thereto.

6 Returns

Any claims against Gunns must be made in writing and within 14 days of delivery of the product. Except as expressly provided herein, Gunns shall not be under any obligation to accept the return of any product supplied to the Customer. Products returned at the volition of the Customer will be at the Customer's expense and risk. Gunns may elect to take back product if the Customer can establish proof of purchase by providing Gunns with original invoice and provided the product is in as new & saleable condition & upon terms agreed. A re-stocking fee of not less than 20% of invoice value will apply.

7 Specific Orders

- a) Custom made or custom processed products or products acquired by Gunns specifically for the Customer will not be returnable.
- b) Such specific orders may be rejected by Gunns unless accompanied by a non-refundable deposit of at least 50% of the total order price.

8 Placement of Orders

The Customer agrees:-

- a) in the event of any dispute arising concerning any order (& including any question of identity or authority or any telephone, facsimile, e-mail or computer generated order) that the internal records of Gunns will be conclusive evidence of what was ordered in all respects
- b) each order it places shall be & be deemed to be a representation by it, made at the time that the Customer is solvent & able to pay all of its debts as & when they fall due
- c) failure to pay Gunns in accordance with these Terms shall be & be deemed conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in 8.b) & that the representations were unconscionable, misleading and deceptive
- d) when any order is placed, the Customer shall inform Gunns of any material facts which would or might reasonably affect the commercial decision by Gunns to accept the order &/or grant credit in relation thereto & any failure to do so by or on behalf of the Customer shall create & be deemed to create an inequality of bargaining position, shall constitute & be deemed the taking of an unfair advantage of Gunns & to be unconscionable, misleading and deceptive.

9 Purchase Price

- a) All sales are made by Gunns at its ruling price at the time of delivery.
- b) Sales tax, GST, government imposts etc will be to the Customer's account.
- c) Gunns' price lists, invoices and statements exclude sales tax, GST & government imposts unless expressly noted thereon.
- d) The Customer will provide its tax file number, ABN and any information required for any GST or equivalent charges prior to any dealings.

10 Delivery

The Customer acknowledges & agrees that:-

- a) Gunns accepts no responsibility for (nor is it under a duty to) delivery but may elect to arrange delivery at its discretion & without any liability & at the Customer's costs (including without limitation Gunns' reasonable expenses arising from frustrated delivery) & risk in all things.
- b) Gunns reserves the right to charge for any delivery.
- c) The Customer shall be deemed to have accepted delivery & liability for the products immediately Gunns notifies the Customer that they are ready for collection or they are delivered to a carrier or to the Customer's business premises or site whether attended or not and the Customer must provide reasonable safe and proper access to any site specified for delivery.
- d) A certificate purporting to be signed by an officer of Gunns confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket
- e) Gunns will not be liable for delay, failure or inability to deliver.
- f) Once the Customer has been notified that products are ready for collection or delivery, the Customer agrees to pay all costs of Gunns in holding those products.

11 Products

- a) General: the Customer acknowledges that Gunns may from time to time update, modify, make substitution and/or alter any of its products or any component, program or raw material incorporated in or used in any way in forming any part of any products, as part of Gunns' ongoing business development, and agrees to accept current products in substitution, provided they are not materially different
- b) Gunns disclaims any responsibility or liability relating to any products:-
 - i) made to designs, drawings, specifications &/or procedures etc or with materials which are provided or approved, in part or full by or on behalf of the Customer
 - ii) utilised, stored, handled or maintained incorrectly or inappropriately.
- c) The Customer agrees to check all products for compliance with all relevant applicable standards & regulatory bodies before use, on-sale or application & to use, apply and on-sell products in accordance with all applicable standards, regulations & guidelines, with all Gunns recommendations & directions as well as with good trade practice.

12 Timber

The Customer acknowledges that Gunns' timber product has (inter alia) the following characteristics:-

- (i) it is a natural product and variations in colour texture and inherent quality occur;
- (ii) it is susceptible to exposure to the elements (sun, rain, temperature etc);
- (iii) it is susceptible to bending, warping, crushing, swelling and fungal growth if not stored or used properly;
- (iv) it is susceptible to damage and size variations which may be caused (inter alia) by relative humidity and/or moisture content;
- (v) may contain or be treated with poisons &/or potentially toxic chemicals (including formaldehyde, preservatives etc.) should be stored & worked upon in well ventilated areas & not burned except in a safe manner;
- (vi) product related dust & saw dust are inherently dangerous if inhaled.

13 Trusses

The Customer acknowledges and agrees to be bound by such terms and conditions as Gunns introduces into any contract between the Customer and Gunns relating to trusses in addition to these Terms. Where they are inconsistent with these Terms, these Terms will be read down to the extent necessary.

14 Other Terms & Conditions

No terms & conditions sought to be imposed by the Customer upon Gunns shall apply unless otherwise agreed to in writing by Gunns. If the Customer is provided with a rebate arrangement by Gunns then that rebate arrangement will form part of these Terms and any default of that rebate arrangement will be a breach of these Terms.

15 Recovery Costs

The Customer will pay the costs & expenses on a full indemnity basis incurred by Gunns and/or its solicitors, legal advisers, mercantile agents & any other parties acting on its behalf in respect of anything instituted or being considered against the Customer whether for debt, loss, damages, possession of any products, breach of these Terms or otherwise.

16 GST

The Customer agrees to pay for any applicable GST for the products.

17 Attornment

For the purpose of giving effect to the Customer's obligation in these Terms, the Customer hereby irrevocably appoints a director or any authorised representative of Gunns from time to time, as its attorney in all things.

18 Variation

Any variation or cancellation must be in writing.

19 Defaults

Upon any default or breach hereof by the Customer, Gunns may (inter alia) retain all monies paid &/or cease further deliveries & recover from the Customer all loss of profits arising &/or at its discretion take immediate possession of any product not paid for, without prejudice to any other of its rights & without being liable in any way to any party.

20 Severability

Any part hereof being a whole or part of a clause shall be capable of severance without affecting any other part of these Terms.

21 Customer Restructure

The Customer will notify Gunns in writing of any change in its structure or management including any change in director, shareholder, or management or change in partnership or trusteeship within 7 days of the date of any such change.

22 Jurisdiction

The Customer agrees that all contracts made with Gunns shall be deemed to be made in the State or Territory nominated by Gunns from time to time & agrees to submit to the jurisdiction of the appropriate Courts nearest the capital city of that State or Territory.

23 Credit Limit

If Gunns grants any credit facility or nominates any credit limit, this is an indication only of its intention at the time notwithstanding any other clauses in these Terms. Gunns can vary or withdraw any credit facility at any time at its discretion & for any reason & without any liability to the Customer or any other party, in which case all monies owing by the Customer to Gunns becomes immediately due and payable without notice by Gunns. Credit facilities granted, if any, are not transferable without the consent in writing of Gunns.

(a) Activity Threshold: The Customer must for any 6 month period maintain minimum monthly order of \$3000 or any other amount specified by Gunns from time to time, failing which Gunns may at its absolute and unfettered discretion stop supplying the product to the Customer on credit.

24 Waiver

If Gunns elects not to exercise any of its rights whether in part or in full arising as a result of any breach of these Terms it shall not constitute a waiver of any rights of Gunns relating to any subsequent or other breach.

25 Notice

The Customer agrees that it will be deemed to have notice of any change to these Terms immediately they are adopted by Gunns & whether or not the Customer has actual notice thereof. The Customer shall be bound by any terms & conditions of sale adopted by Gunns immediately they are adopted & notwithstanding any other purported or pre-existing terms & conditions.

26 On-Sale

The Customer agrees that upon on-sale of any products, the Customer will incorporate these Terms (as mutatis mutandis applicable) into any such on-sale and to inform any third party involved of these Terms.

27 Indemnity

The Customer indemnifies Gunns against any claim for any costs, loss or damage arising from or related in any way to any contract between Gunns & the Customer or anything arising therefrom, or arising as a result of or subsequent to any breach of these Terms. If the Customer is a Trust Company it is hereby acknowledged and agreed that the Trustee(s) will be liable on the account and that the assets of the Trust will be available to meet payment of the account.

28 Insurance

The Customer agrees to insure Gunns from liability arising in any way; whether directly or indirectly as a result of any dealings Gunns has with the Customer, whether arising under any part of the Trade Practices Act or otherwise, which insurance will note the insured interest of both the Customer & Gunns.

29 Security for Payment

- a) The Customer agrees on request to charge in favour of Gunns;
 - (i) by way of a fixed charge on all its books of account, financial records, goodwill, documents of title & current & later acquired real property & intellectual property; &
 - (ii) by way of a floating charge, the whole of the Customers other undertaking, property & assets, with payment of all monies owed to Gunns.
- b) The Customer further agrees and consent to Gunns lodging a caveat to note its interest conferred by this Clause.
- c) Upon demand by Gunns, the Customer agrees to immediately execute a mortgage on terms satisfactory to Gunns to more particularly describe the security interest conferred by this Clause and should the Customer fail to do so then Gunns is entitled to use the powers conferred by Clause 17 above.

30 Forward Orders

If the Customer places a forward order the Customer agrees: a) to pay for so much of any order as is from time to time invoiced by Gunns; b) no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment.

31 Force Majeure

Gunns will not be in breach of any contract as a result of Force Majeure. Force Majeure means any cause, events or occurrences beyond Gunns' reasonable control and includes strikes and lock-outs or any industrial action.

32 Insolvency

- a) If the Customer commits or is involved in any act of insolvency, it agrees that it is in breach of these Terms and that all monies owing by the Customer to Gunns becomes immediately due and payable without notice by Gunns.
- b) An act of insolvency is deemed to include bankruptcy, liquidation, receivership, administration, ceasing to trade or carry on business in the usual manner or the Customer is the subject of a winding up petition.

33 Abnormal payments

The Customer agrees to pay, if required, an administration fee of 2% (calculated on the amount paid) on any payment which is paid other than as provided in clause 1 hereof, which fee is agreed as the liquidated cost of processing such abnormal payments.

34 Supply

Notwithstanding any other provision of these Terms, it is a term of the contract made between the Customer and Gunns that Gunns has absolute and unfettered discretion to refuse to supply or delay in supplying products to the Customer (without liability) where:

- a) Products are unavailable or insufficient for any reason whatsoever.
- b) The Customer has failed to comply with terms on which Gunns has agreed to provide credit to the Customer.
- c) The Customer or a related corporation (as defined in section 50 of the Corporations Act 2001 as amended) of it has breached a contract with Gunns or a related corporation of it including these Terms.
- d) Gunns considers it necessary or desirable to do so for any reason at all.

35 Information

- a) The Customer agrees to from time to time on request by Gunns provide forthwith to Gunns such information as Gunns may request concerning the activities, financial position, standing or credit worthiness of the Customer, the proprietors or directors of the customer, any guarantor or any details in relation to any Trust of which the Customer is a Trustee.
- b) The Customer consents and grants to Gunns the authority to obtain from third parties any information Gunns requires pursuant to Clause 35(a).