

TERMS AND CONDITIONS OF TRADE

- 1 Interpretation
- 1.1 Unless otherwise inconsistent with the context the word "person" shall also mean corporation;
- 1.2 Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.
- 1.3 "Supplier" shall mean Mills Styrox Pty Ltd its successors and assigns.
- 1.4 "Purchaser" shall mean the Purchaser named and described in the Credit Application or any person who purchases goods from the Supplier.
- 1.5 "goods" shall include goods, products, materials and services supplied by the Supplier.
- 2 Quotations, orders and agreement
- 2.1 A written quotation issued by the Supplier to the Purchaser is an offer to sell and overrides the Supplier's prevailing price list, if any. A written quotation expires on the date specified as an expiry date. If no expiry date is specified, the written quotation expires 30 days after the date of the written quotation.
- 2.2 The Supplier may withdraw, revoke or vary a written quotation at any time prior to the Purchaser submitting an order which accepts the offer to sell comprised by the written quotation.
- 2.3 The price quoted is subject to the Purchaser ordering all of the goods described in the quotation. If the Purchaser does not order all of the goods described in the quotation then the Supplier reserves the right to revise the pricing of the goods ordered, and the Purchaser shall pay the revised price as invoiced by the Supplier.
- 2.4 An agreement for the sale of the goods is made when the Purchaser communicates (by writing or conduct) to the Supplier its acceptance of a written quotation.
- 2.5 The price of the goods in the agreement may be increased or changed by the Supplier if:
- (a) supply of the quoted goods does not start within 30 days after acceptance of the quotation,
 - (b) supply under the agreement is stopped or suspended for more than 30 days,
 - (c) supply under the agreement is changed in any way before, during or after commencement of supply, including but not limited to re-design of the project, the start date of supply, the completion date of supply and the agreed rate of supply, or
 - (d) supply under the agreement has not been completed within 12 months of the date of the quotation.
- 2.6 Where in the period between acceptance of the quote and delivery of the goods, the Supplier incurs an increase in the cost of producing and/or delivering the goods, the Supplier may increase the quoted price of those goods at any time prior to delivery.
- 2.7 Unless otherwise agreed in writing the price of goods ordered by the Purchaser is the price applying at the time of despatch. Any price indications or price lists are subject to change at any time.
- 2.8 The Purchaser must take delivery of stock ordered on its behalf within a period of 6 (six months) of the order being placed. In respect of any goods remaining undelivered at the end of the 6 (six) month period the Supplier may invoice the purchaser for those goods.
- 2.9 These terms and conditions shall be deemed to be incorporated into any agreement between the Supplier and the Purchaser. Any terms and conditions contained in any order, offer, acceptance or other document of the Purchaser and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
- 2.10 The agreement herein constitutes the entire agreement between the Supplier and the Purchaser and all prior negotiations, proposals and correspondence are superseded by this agreement.
- 2.11 Unless agreed otherwise in writing, the Supplier may, by written notice, terminate the agreement constituted by the acceptance of any quotation 12 months after the date of the first delivery of the goods.
- 3 Specifications and Working Documentation
- 3.1 If the Purchaser's order refers to a Specification or Working Documentation then:
- (a) the Purchaser represents and warrants to the Supplier that any such Specification or Working Documentation does not and any Goods produced by the Supplier pursuant to such Specification or Working Documentation will not breach or infringe upon the rights or property of any third party including, without limitation, patent, design, copyright or other intellectual property rights and the Purchaser indemnifies and hold harmless the Supplier from and against any loss, damage, liability or costs suffered or incurred by the Supplier arising out a breach by the Purchaser of the representations and warranties made by it pursuant to this clause;
 - (b) the Purchaser releases the Supplier from and waives any rights or causes of action it may at any time have had against the Supplier in relation to any default or defect in any Goods made pursuant to the Purchaser's Specification or Working Documentation provided by the Purchaser to the Supplier; and
 - (c) the Purchaser indemnifies the Supplier and must hold it harmless from and against any loss, damage, liability or cost suffered or incurred by the Supplier attributable, whether directly or indirectly to the terms of any Specification or Working Documentation provided by the Purchaser to the Supplier.
- 3.2 Unless otherwise stated on a quotation, Goods will be supplied by the Supplier within the tolerances in regard to quantity, weight, dimension and chemical composition as specified in the relevant order, if not specified, as consistent with usual industry practice. Where the total mass or length of any item supplied includes a fraction of a tonne, the Purchaser must pay for that fraction on a pro rata basis.
- 3.3 Unless otherwise agreed the Purchaser must deliver all working documents without charge to the Supplier prior to commencement of the supply of the goods. Where the Purchaser submits electronic copies of working documents to the Supplier then the Supplier reserves the right to charge for the printing costs associated with those working documents.
- 4 Delivery
- 4.1 Any date quoted for delivery is an estimate only unless a guarantee shall have been given by the Supplier in writing. The Purchaser shall accept and pay for goods if and when tendered notwithstanding any failure by the Supplier to deliver by the quoted date. Written advice to the Purchaser that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.
- 4.2 The Supplier reserves the right to deliver by instalments and if delivery is made by instalments the Purchaser shall not be entitled to terminate or cancel the agreement.
- 4.3 The Purchaser shall take delivery of the goods within 7 days of notification from the Supplier that the goods are ready for delivery.
- 4.4 Where the Purchaser does not accept delivery of goods when the goods are ready for delivery by the Supplier, the Purchaser shall be liable for additional charges at the Supplier's current rates for storage and/or double handling or if there is no current rate then at a rate determined by the Supplier in its absolute discretion.
- 4.5 Any quotation containing a provision to supply goods "ex stock" is subject to fulfilment of prior orders at the date of receipt of the Purchaser's order.
- 4.6 If the Supplier quotes the price as "ex factory" the Purchaser shall take delivery of the Goods at the premises of the Supplier.
- 4.7 The Purchaser bears the sole responsibility for and the risk of unloading the goods.
- 4.8 The Supplier, its officers, employees and agents shall not be liable to any Purchaser or any other party for any loss or damage including direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery or non delivery whether the same is due to the negligence of the Supplier or any other party, actions constituting fundamental breach of contract, strike or any other industrial action, or any other cause whatsoever.
- 4.9 The Purchaser is responsible for all freight costs unless otherwise stated. Despatch is normally by receipted post or common carrier. The Purchaser has the option of arranging for collection of the ordered goods with alternate freighting services.
- 5 Price and Payment
- 5.1 Unless otherwise agreed in writing payment terms are net 30 days from the end of the month in which the goods are invoiced to the Purchaser.
- 5.2 In addition to the provisions of clause 2 the Supplier may increase the price of goods and/or services where it incurs an increase in its costs of supplying the goods.
- 5.3 The Supplier may apply any monies paid to it by the Purchaser in such manner and at such times as the Supplier, in its absolute discretion, determines.
- 5.4 Amounts due to the Supplier by the Purchaser must be paid without deduction, retention or set-off of any kind and for any reason.
- 5.5 This term as to the payment shall be of the essence of the agreement.

- 5.6 The Purchaser must notify the Supplier in writing within 5 days of receipt of any order of any request to return goods. Goods returned without notification will never be accepted and therefore must be paid in full by the Purchaser. The Supplier, in its sole discretion, will decide whether or not to accede to any request that goods be returned and credited. In this event, a minimum 20% of the invoice value will be withheld from the credit as a restocking fee.
- 5.7 The Supplier will never credit and accept return of goods which were specially ordered on behalf of the Purchaser.
- 6 Title
- 6.1 Notwithstanding the delivery of the goods or part thereof the goods remain the sole and absolute property of the Supplier as full legal and equitable owner until such time as the Purchaser shall have paid the Supplier the full purchase price together with the full price of any other goods the subject of any other agreement with the Supplier.
- 6.2 The Purchaser acknowledges that it receives possession of and holds goods delivered by the Supplier solely as bailee for the Supplier until such time as the full price thereof is paid to the Supplier together with the full price of any other goods then the subject of any other agreement with the Supplier and that a fiduciary relationship exists between the Supplier and the Purchaser.
- 6.3 Until such time as the Purchaser becomes the owner of the goods, it will;
- (a) store them on the premises separately;
 - (b) ensure that the goods are kept in good and serviceable condition;
 - (c) secure the goods from risk, damage and theft; and
 - (d) keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Purchaser.
- 6.4
- (i) Until such time as the Purchaser becomes the owner of the goods, the Supplier authorises the Purchaser to sell the goods as its fiduciary agent. However, the Purchaser shall not represent to any third parties that it is acting in any way for the Supplier. The Supplier will not be bound by any agreements with third parties to which the Purchaser is a party.
 - (ii) Records shall be kept by the Purchaser of any goods owned by the Supplier.
 - (iii) The proceeds of any sale of the goods shall be paid into a separate account and held in trust for the Supplier. The Purchaser shall account to the Supplier from this fund for the full price of the goods.
 - (iv) Where the Purchaser is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale received the Purchaser shall account forthwith to the Supplier for the price of the goods.
 - (v) Should the Purchaser die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of or to go into liquidation or has a winding-up petition presented against it or has a receiver or administrator appointed, the Supplier may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this agreement suspend or cancel this agreement or require payment in cash before or on delivery or tender of goods or documents notwithstanding terms of payment previously specified or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.
- 6.5 In the event that the Purchaser uses the goods/product in some manufacturing or construction process of its own or of some third party, then the Purchaser shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for the Supplier. Such part shall be deemed to equal in dollar terms to the amount owing by the Purchaser to the Supplier at the time of the receipt of such proceeds.
- 6.6 If the Purchaser does not pay for any goods on the due date then the Supplier is hereby irrevocably authorised by the Purchaser to enter the Purchaser's premises or any premises under the control of the Purchaser as agent of the Purchaser and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Purchaser whatsoever.
- 6.7 On retaking possession of the goods the Supplier may elect to refund to the Purchaser any part payment that may have been made and to credit the Purchaser's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.
- 6.8 The Purchaser grants to the Supplier a purchase money security interest, as defined in the Personal Property Securities Act 2009 in the goods and any proceeds of the sale of the goods to secure the purchase price of the goods ("PMSI").
- 6.9 The cost of registering a financing statement shall be paid by the Purchaser and may be debited against the Purchaser's account.
- 6.10 The Purchaser agrees not to do or permit anything to be done that may result in the PMSI granted to the Supplier ranking in priority behind any other security interest, as defined in the Personal Property Securities Act 2009.
- 7 Risk
- Unless otherwise agreed in writing, risk in the goods shall pass to the Purchaser at the time when the goods have been placed on the vehicle which is to effect delivery from the Supplier's store or warehouse or delivery to the Purchaser whichever is the sooner. The goods shall remain at the Purchaser's risk at all times unless and until the Supplier retakes possession of the goods pursuant to these terms and conditions.
- 8 Claims, Shortages and Defects
- 8.1 The Purchaser agrees to check all goods received immediately upon delivery and all services immediately upon completion. The Purchaser will not make any claim after the expiry of 7 days from the date of delivery of the goods or the completion of the provision of services, for shortages or improper or defective or damaged goods or defective or improper services.
- 8.2 The Supplier will not be liable for any shortages or improper or defective or damaged goods or defective or improper services unless a written claim is made by the Purchaser within 7 days of the delivery of the goods or the completion of the provision of the services.
- 8.3 Except to the extent to which conditions and warranties implied by law are not at law able to be excluded, all implied conditions and warranties are hereby excluded.
- 8.4 Insofar as goods or services supplied by the Supplier are not of a kind ordinarily acquired for personal domestic or household consumption, and unless the Purchaser establishes that reliance on this provision would not be fair and reasonable, the liability for breach of a condition or warranty; implied into this agreement by the Competition and Consumer Act 2010 is limited:
- (a) in the case of goods to any one of the following as determined by the Supplier ;
 - (i) the replacement of the goods or the supply of equivalent goods; or
 - (ii) the repair of the goods; or
 - (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 the case of services to any one of the following as determined by the Supplier;
 - (i) the supplying of the services again, or
 - (ii) the payment of the cost of having the services supplied again.
- 8.5 The Supplier shall not be liable in any circumstances for any;
- (i) defects or damages caused in whole or in part by misuse, abuse, neglect, electrical or other overload, unsuitable lubricant, improper installation repair or alteration or accident.
 - (ii) any transport freight charges installation removal labour or other costs;
 - (iii) defects in goods not manufactured by it but will endeavour to pass on to the Purchaser the benefit of any claim made by the Supplier and accepted by the manufacturer of such goods under a warranty given by the manufacturer of such goods provided that nothing contained in this subparagraph shall limit the rights of the Purchaser to proceed against the Supplier pursuant to the Competition and Consumer Act 2010.
 - (iv) technical advice or assistance given or rendered by it to the Purchaser in connection with the manufacture construction or supply of goods for or to the Purchaser.
 - (v) product supplied which is modified or re-manufactured or used in a sub-assembly without the manufacturer's or supplier's consent.
- 8.6 Subject to clause 8.4 herein, the Supplier, its officers, employees or agents shall not be liable for any loss or damage whatsoever and howsoever arising whether direct indirect special or consequential or in respect of any claim whenever and however made for any loss or damage deterioration deficiency or other fault or harm in the goods supplied, work executed or services provided by or on behalf of or in any arrangement with the Purchaser or occasioned to the Purchaser or any third or other party or to his or their property or interest and whether or not due to the negligence of the Supplier its officers, employees or agents or actions constituting fundamental breach of contract.
- 8.7 The Purchaser releases the Supplier, its officers, employees and agents, from all sums, money, actions, proceedings, accounts, claims, demands,

costs and expenses whatsoever arising from or in relation to this Agreement.

- 8.8 The Purchaser indemnifies the Supplier, its officers, employees and agents, in respect of all loss, damages, and expenses arising from or in relation to any claim, actions, proceedings, accounts, or demands.

9 Force Majeure

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Supplier, the Supplier is unable to perform in whole or in part any obligation under this agreement, the Supplier shall be relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and shall not be liable to the Purchaser in respect of such inability.

10 Default

Upon the occurrence of default by the Purchaser in compliance with these terms or any other agreement with the Supplier;

- 10.1 The Supplier may at its discretion withhold further supplies of goods or cancel this agreement, or vary the terms of this agreement without prejudice to its rights hereunder **PROVIDED HOWEVER** that the Supplier may at any time and from time to time upon such terms as it may determine waive any of its rights under this Clause, but without prejudice to its rights thereafter of any of the events hereinbefore referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.
- 10.2 The Supplier may at its discretion cancel any credit facility provided to the Purchaser and by reason of the cancellation all monies due on all invoices issued to the Purchaser but not paid shall be due and payable forthwith. The Supplier need not give any notice of the cancellation of the credit facility to the Purchaser.
- 10.3 The Purchaser shall pay to the Supplier interest at the rate of 15% per year on daily balances in respect of any amounts as may from time to time be overdue until paid and such money together with all interest shall be recoverable forthwith from the Purchaser.
- 10.4 Without prejudice to any other right or remedy the Purchaser shall indemnify the Supplier against any costs fees charges and disbursements charged by any solicitor engaged for the purpose of the collection or recovery of moneys due and payable by the Purchaser to the Supplier on an indemnity basis and any fees, charges, disbursements or commissions charged by any mercantile agency or debt collecting firm.
- 10.5 The Purchaser shall pay to the Supplier an administration fee of \$50.00 on the occurrence of every event of default.

11 Charge and Security Interest

- 11.1 The Purchaser hereby charges with payment of any indebtedness to the Supplier all legal and beneficial interest (freehold or leasehold) in land and property, other than Personal Property to which the Personal Property Securities Act 2009 applies, held now or in the future by the Purchaser. The Purchaser agrees that if demand is made by the Supplier, the Purchaser receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required, and against the event that the Purchaser fails to do so within a reasonable time of being so requested, the Purchaser hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by the Supplier to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto the Supplier may lodge a caveat noting the interest given by this charge on the title of any property of the Purchaser whenever it so wishes.
- 11.2 The Purchaser grants a security interest to the Supplier in all of its present and after acquired property and in all of its present and future rights in relation to any personal property as defined in the Personal Property Securities Act 2009.

12. GST

The Purchaser must pay to the Supplier any amount which is payable by the Supplier in respect of any supply to the Purchaser on account of GST. Each charge or fee for a supply rendered by the Supplier does not include an amount to cover the liability of the Supplier for GST on any supplies made under this agreement which are taxable supplies within the meaning of the GST Act. In relation to taxable supplies made under this agreement the Supplier agrees to issue the Purchaser with a tax invoice in accordance with the GST Act or a document satisfying the minimum information requirement set out in GSTR 2000/2003 to entitle a recipient of a taxable supply to claim an input tax credit without holding a tax invoice. "GST" means GST as defined in a New Tax System (Goods and Services Tax Act 1999). "Supply" means supply as defined in a New Tax System (Goods and Services Tax Act 1999).

13 Trusts

- 13.1 This clause applies if the Purchaser is a trustee and whether or not the Supplier has notice of the Trust.
- 13.2 Where the Purchaser comprises two or more persons and any of those persons is a Trustee this clause applies to such Trustee.
- 13.3 The Purchaser agrees that even though the Purchaser enters into this Agreement as Trustee of the Trust, the Purchaser also shall be liable personally for the performance and observance of every covenant to be observed and performed by the Purchaser expressed or implied in this Agreement.
- 13.4 The Purchaser warrants its complete, valid and unfettered power to enter into this Agreement pursuant to the provisions of the Trust including power to obtain the credit facility from the Supplier and to enter into the covenants to be observed and performed by them expressed or implied in this Agreement and warrants that its entry into this Agreement is in the due administration of the Trust.
- 13.5 The Purchaser covenants that the rights of indemnity which it may have against the property of the Trust have not been, and in the future will not be, excluded, modified, released, lost or diminished (whether by agreement, breach of trust or otherwise).
- 13.6 The Purchaser shall not, without the Supplier's prior written consent:
- (i) resign or be removed as Trustee of the Trust or appoint or allow the appointment of a new or additional Trustee of the Trust;
 - (ii) amend or revoke any of the terms of the Trust;
 - (iii) vest or distribute the property of the Trust or advance or distribute any capital of the Trust to a beneficiary or resettle any of the property of the Trust;
 - (iv) permit a beneficiary to have the use, occupation, employment or possession of the property of the Trust;
 - (v) do or permit or omit to do an act or thing in breach of the Trust or which would permit the Trustee to be removed as Trustee of the Trust;
 - (vi) exercise or permit or allow to be exercised a power to change the vesting date of the Trust or provide for an early determination of the Trust;
 - (vii) lend any money, give any guarantee or incur any debt other than in the ordinary course of business of the Trust; or
 - (viii) pay any of the income of the Trust to any beneficiary of the Trust if such payment will prejudice or affect the Purchaser's ability to pay all monies due to the Supplier.

14. Personal Property Securities Act 2009 (Cth) ("the Act")

- 14.1 The Purchaser agrees that nothing in sections 125, 132(3)(d), 132(4), 135, 142 or 143 of the Act will apply to the agreement between the Purchaser and the Supplier, or the security under the agreement.
- 14.2 The Purchaser agrees to waive its right to do any of the following or to receive any of the following notices or for the Supplier to carry out the following obligations under the following provisions of the Act:
- (a) Receive notice of removal of an accession under section 95;
 - (b) Receive notice of a decision, under paragraph 117(2)(b), to enforce the security interest in the personal property in the same way as the interest in the land may be enforced under the land law under section 118.
 - (c) Receive notice of any action to be taken in accordance with subsection 120(2) under section 121(4);
 - (d) receive notice of intention to seize collateral under section 123;
 - (e) Receive notice of disposal of collateral under section 130;
 - (f) Receive a statement of account if there is disposal of collateral under section 132(3)(d);
 - (g) Receive every six months statements of account until there is disposal of collateral under section 132(4);
 - (h) Receive notice of retention of collateral under section 135;
 - (i) Receive notice to receive a verification statement in relation to registration events under section 157.
- 14.3 The Purchaser and Supplier also contract out of each other provision of Part 4.3 of the Act, under sections 115(7) and 116(2), but only to the extent that the provision impose obligations on the Supplier.
- 14.4 The Purchaser and Supplier agree that neither the Purchaser nor the Supplier will disclose information of the kind mentioned in section 275(1).

15. Service

The parties agree that service of any notices, demands, proceedings summons suits or actions ("process") upon the Purchaser may be effected by the Supplier or its solicitors sending such process by prepaid post to the address given in the Credit Application as the address of the Purchaser. Service shall be deemed to have been effected two business days after the posting of the process.

16.

Jurisdiction

The parties agree that the terms and conditions applying to any credit account opened in the name of the Purchaser and any other agreement between the Supplier and the Purchaser shall be governed by the laws of the State or Territory nominated by the Supplier, in its absolute discretion, or failing any nomination the laws of the State of Victoria in force for the time being and from time to time, and the parties irrevocably submit generally and unconditionally to the jurisdiction of the Courts of the State or Territory nominated or failing nomination the Courts of the State of Victoria in respect of claims, proceedings and matters arising out of or in respect of the said credit account or any said agreement.

17.

Miscellaneous

- 17.1 Nothing in these Conditions is intended to exclude, restrict or modify rights which the Purchaser may have under the Competition and Consumer Act 2010 or any other legislation which may not be excluded, restricted or modified by agreement.
- 17.2 A party waives a right under these Conditions only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of a term of these conditions does not operate as a waiver of another breach of the same term or any other term.
- 17.3 If a provision in these Conditions is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to the extent of its invalidity or unenforceability in that jurisdiction be severed from this agreement. All the remaining provisions shall be enforceable between the Supplier and the Purchaser.
- 17.4 The Supplier may assign or otherwise deal with the benefit of any agreement made pursuant to these Terms and Conditions of Trade without the consent of the Purchaser.
- 17.5 Unless specifically designed or indicated, the goods supplied by the supplier are made of generic materials for generic applications and not tested for extreme exposure (light, heat/cold, chemicals) or flammability.
- 17.6 The Purchaser is solely responsible to assess the placement / layout of any goods supplied by the Supplier and assess appropriate loading (to avoid failure / collapse, tipping).
- 17.7 The Purchaser is solely responsible to test the goods supplied under real life conditions and periodically inspect for structural integrity. The goods must not be used if damaged or showing signs of undue wear, such as crazing or cracking, or if the structural integrity is compromised.
- 17.8 The Purchaser warrants that all goods supplied by the supplier will be fitted by experienced or qualified trades persons.

18.

Variation of these Terms and Conditions

The supplier may unilaterally amend these Terms and Conditions of Sale. Notice of any amendments will be posted on the Supplier's website or will be notified in writing. The amendments will take effect 7 days after the amendments have been posted on the Supplier's website or 7 days after posting to the Purchaser. The Purchaser accepts that any agreements entered into with the Supplier after the terms and conditions taking effect will be subject to the amended terms and conditions.