

TERMS AND CONDITIONS OF SALE

SCOPE AND DEFINITIONS:

Unless otherwise expressly agreed in writing these Terms and Conditions supersede any earlier conditions appearing in catalogues or elsewhere and override any terms, conditions or warranties stipulated, incorporated or referred to by the Applicant named in the credit application.

All contracts for the sale of goods and/or supply of services by CSR Building Products (NZ) Limited (CSR) to the Applicant shall be subject to these Terms and Conditions (as amended from time to time by CSR and notified in writing to the Applicant or appearing on the CSR website at www.csr.co.nz).

In these Terms and Conditions:

"Goods" means all products and associated services supplied by CSR to the Applicant under these Terms and Conditions as described in any invoice or other commercial document evidencing sale.

"Officer" means any director of CSR, any of CSR's employees whose title includes the word Manager or any other person authorized by CSR to act in any capacity.

1. QUOTATIONS, ORDERS AND ACCEPTANCE:

- a) Unless otherwise agreed in writing, prices are based on CSR's rates and costs as at the date of quotation of materials, transport, labour and other costs. Subject to any previous quotation agreed with the Applicant, prices may be increased by the amount of any increase in the cost to CSR of any such item or any other factors (including any change in exchange rates) affecting CSR's cost of supply, production, labour or delivery of the goods.
- b) Without limiting the generality of the foregoing, any alteration in quantity, sizes, specification, complexity of work or delivery may necessitate an adjustment of prices.
- c) Orders are subject to CSR's minimum order conditions and charges, and manufacturing limitations for various items.
- d) Orders must be in writing. No binding contract shall exist until the Applicant's order has been accepted in writing by CSR.
- e) No order may be suspended, cancelled or amended without CSR's agreement in writing and the Applicant shall be liable for all costs incurred by CSR, including but not restricted to purchases, stocks, work in progress, labour costs or unrecovered overheads consequent upon the suspension, cancellation or amendment of any order agreed to by CSR.

2. DISPATCH & DELIVERY:

- a) Dispatch and delivery times are estimates only. CSR shall use reasonable endeavours to ensure that goods are dispatched and delivered within any time stipulated, or if no time is stipulated, within a reasonable time from the acceptance of an order, but CSR shall not be liable for any delay in dispatch or delivery.
- b) Where goods are delivered by installments, each installment shall be deemed for such purpose to be the subject of a separate contract and any delay in dispatch or delivery of any installment shall not entitle the Applicant to cancel the order or any installments remaining to be delivered. In the event that the Applicant breaches these Terms and Conditions in respect of any installment, CSR may treat the default as a breach of contract relating to each other installment.
- c) If the Applicant is unable to accept delivery of the goods at the time when the goods are due and ready for delivery, CSR may either store the goods at its own premises or arrange for suitable storage by a third party until actual delivery and the Applicant shall be liable to CSR for the costs of such storage, including any additional handling, insurance and transport costs. This provision shall be in addition to and not in substitution of any other loss or damage for which the Applicant may become liable due to its failure to take delivery at the appropriate date.
- d) CSR reserves the right to apply delivery charges to all deliveries into the Applicant's premises or to site or other location specified by the Applicant. CSR may also apply additional freight charges for deliveries outside the city from which the goods are dispatched or by alternative means of transport.
- e) Risk of any loss, damage or deterioration in the goods ordered shall pass to the Applicant as soon as the goods are delivered into the Applicant's premises or to site or other location specified by the Applicant or, where goods are collected, as soon as the goods have been loaded on the Applicant's vehicle or the Applicant's contractor's vehicle.
- f) CSR accepts no liability for off-loading the goods from the delivery vehicle and the Applicant shall keep CSR indemnified from and against all claims whatever arising from such off-loading.
- g) CSR reserves the right to dispatch the goods by the most suitable form of transport and to pack the goods in the most suitable manner.

3. TITLE:

- a) Property in the goods shall pass to the Applicant only upon CSR receiving payment for the goods and all other moneys owing by the applicant to CSR, and until payment is received the Applicant shall (unless instructed in writing to the contrary by CSR):
 - i) Keep the goods in a good and secure condition;
 - ii) Where practical, store the goods so that they are clearly identifiable as goods belonging to CSR;

- iii) Keep the goods fully insured to their full replacement value against all risks; and
- iv) Not encumber the goods in any way.

- b) The Applicant agrees that a certificate signed by an Officer of CSR identifying goods as "unpaid for" shall be conclusive evidence that the goods have in fact, not been paid for, and of CSR's title to the goods.

4. PPSA:

- a) The Applicant acknowledges that CSR holds a "security interest" in the goods, any debt arising from the on-sale of the goods and any proceeds of the sale of the goods pursuant to Section 17 of the Personal Property Securities Act 1999 (PPSA) and that CSR may register a financing statement in respect of the goods and any sale proceeds in accordance with the provisions of the PPSA.
- b) The Applicant shall provide all information, execute or arrange for the execution of all documents and do all other things that CSR may require to ensure that CSR has a perfected first ranking security interest in the goods under the PPSA. The Applicant shall immediately upon request by CSR, procure from any person considered by CSR to be relevant to its security position such agreements and waivers as CSR may at any time require.
- c) The Applicant waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by CSR under the PPSA and agrees that as between CSR and the Applicant, the Applicant shall have no rights under or by reference to sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where CSR has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.

5. LOSS IN TRANSIT AND SHORT DELIVERY:

- a) If the Applicant establishes to the satisfaction of CSR that goods have been damaged, destroyed or otherwise lost in Transit or short delivered (where CSR has agreed to deliver the goods into the Applicant's premises or to site or other location specified by the Applicant), or were not handed over to the Applicant or the Applicant's carrier complete and without shortage (where the goods are collected), CSR will at its discretion, replace the damaged, destroyed or missing goods free of charge or credit the Applicant with the value of them, provided that the Applicant shall have given to CSR written notification (otherwise than on the carrier's delivery document) of such damage, destruction, loss or shortage as follows:
 - i) Within seven days of delivery of the goods in the case of damage or loss of some (but not all) of the goods or shortage of goods.
 - ii) Within 28 days of the dispatch of the goods where all of the goods are lost.
- b) CSR shall be permitted a reasonable opportunity to inspect any damaged goods and to investigate any loss.
- c) The Applicant's notice shall state whether any damaged goods have been salvaged by the Applicant and upon CSR replacing the goods or crediting the Applicant as above any salvaged goods shall be available to and at the disposal of CSR. Failure by the Applicant to state whether or not any goods have been salvaged shall relieve CSR from all liability or obligation under this clause 5.

6. DEFECTIVE GOODS:

- a) Subject to any warranty provided by CSR in writing in respect of goods supplied, the following paragraphs set out the process for claims for defective goods:
 - i) It is the responsibility of the Applicant to inspect the goods as soon as practicable after delivery having due regard to the nature of the goods and their intended application.
 - ii) The Applicant must give notice in writing to CSR of any goods alleged by the Applicant to be defective, within 30 days of delivery of the goods (time being of the essence).
 - iii) The Applicant shall not assert any claim that any of the goods are defective after the goods are used, sold, cut, processed or otherwise altered or if the Applicant is in default of any of its obligations under these Terms and Conditions.
 - iv) In no case shall any claim exceed the invoice value of the goods paid in respect of which that claim is made. Only one claim may be made with respect to any particular goods and that claim must clearly identify the specific transaction number to which the allegedly defective goods relate.
 - v) CSR reserves the right to inspect the goods subject to any claim. Any goods in the custody of CSR for investigation or repair shall be at the risk of the Applicant and no liability shall attach to CSR its servants or agents for any damage occasioned to the goods howsoever arising.
 - vi) Where CSR accepts a claim, CSR will at its discretion either replace the defective goods free of charge (by delivering the goods to the original delivery point) or credit the price of the defective goods to the account of the Applicant. This is the sole remedy available to the Applicant against CSR in respect of a claim for defective goods.

7. PAYMENT:

- a) Subject to b), the Applicant shall pay CSR for goods purchased and services rendered inclusive of freight, handling and other expenses without deduction or set off by the 20th of the month following invoice, unless varied in writing by CSR.
- b) If at any time any amount is overdue, all amounts then outstanding shall become immediately due and payable.
- c) CSR may, at its sole discretion, accept payment of accounts by Mastercard or Visa. In the event CSR agrees to accept an account payment by Mastercard or Visa a fee may be applied. If a fee is to be charged, the Applicant will be informed by CSR of the fee amount and total payment amount including the fee before the payment is processed.
- d) The Applicant shall pay interest at the rate of 2% per month or part month calculated on a daily basis in respect of any amount which may be overdue from the due date for payment until paid in full and such amount, together with all interest, shall be recoverable from the Applicant as a liquidated debt.
- e) The Applicant shall pay all costs incurred by CSR in the collection of any amounts that may be overdue including the fees of any mercantile agent or solicitor engaged by CSR (which shall also bear interest as above).
- f) CSR reserves the right to vary the terms of payment and total value of credit allowed by notice in writing to the Applicant at any time and to require payment in cash in full prior to delivery should the credit worthiness of the Applicant at any time in CSR's opinion become unsatisfactory.

8. GOODS AND SERVICES TAX:

All amounts specified in any quotation, invoice or statement are expressed to be exclusive of GST and GST shall be payable in addition to the amounts specified in accordance with the Goods and Services Tax Act 1985.

9. DEFAULT:

If the Applicant commits any default whether under these Terms and Conditions or any other contract between CSR and the Applicant, CSR will be entitled to withhold further deliveries or cancel any contract without prejudice to any other rights or remedies that CSR may have in respect of such default and all amounts outstanding shall become immediately due and owing.

10. LIEN:

In addition to any lien to which CSR may by statute or otherwise be entitled, CSR shall be entitled to a general lien on all property or goods belonging to the Applicant in CSR's possession (even though such goods or some of them may have been paid for) for any amounts owing to CSR by the Applicant.

11. TOOLS, ETC. USED IN CONNECTION WITH ORDER:

All tools, gauges, jigs, drawings, plans, blue prints, specifications, check fixtures, screens, photographs, electronic or other images, stencils and similar items which are manufactured, paid for, supplied or used by CSR in connection with any order shall remain the property of CSR and may be used by CSR as it thinks fit and shall be treated as confidential by the Applicant and shall not be reproduced, sold, loaned or otherwise disposed of by the Applicant without the prior written consent of CSR.

12. RETURNABLE MATERIALS:

Ownership of pallets, blocks, gluts, packing cases or other containers except cardboard cartons (Returnable Materials) remains with CSR. The Applicant must return the Returnable Materials to CSR at the earliest opportunity. The Applicant shall be responsible for the care and safety of the Returnable Materials whilst on the Applicant's premises or job site or other location or in the Applicant's possession or control. The cost of replacement or repair of any Returnable Materials lost or damaged whilst in the possession or control of the Applicant shall be for the Applicant's account.

13. LIABILITY:

- a) Save for any warranties or conditions contained in these Terms and Conditions or otherwise conferred in writing by CSR on the Applicant in relation to particular goods sold by CSR, CSR makes no representation and gives no assurance, condition or warranty of any kind to the Applicant (including any assurance, condition or warranty implied by law or custom to the extent that the assurance, condition or warranty can be excluded) in relation to the goods and accepts no liability for any assurance, condition, warranty, representation, and services statement or term not expressly set out in these Terms and Conditions.
- b) Without limiting paragraph a) above, no warranty is given or to be implied as to the life or wear of the goods supplied or that they will be suitable for any particular purpose or for use under specific conditions, notwithstanding that such purposes or conditions may be known or made known to CSR. Whilst CSR manufactures its products in accordance with specific manufacturing standards (Standards), which are available on request, it is the Applicant's responsibility to ensure that the goods are satisfactory for the Applicant's requirements.
- c) The Standards shall form the sole specification for the goods. In the event of there being any conflict between the Standards and any specification provided by the Applicant, the Standards shall prevail unless otherwise specifically agreed in writing by CSR.
- d) All goods are manufactured subject to manufacturing tolerances. CSR does not warrant that all goods produced will comply exactly with the specification in every respect and the Applicant agrees to accept the goods provided that the variations from CSR's specification do not exceed reasonable commercial limits.

- e) If any model or sample of the goods was shown to the Applicant, such model or sample was shown to illustrate the general type and quality of the goods and is not a representation that the goods will conform exactly to the model or sample.
- f) Any description of goods contained in any contract pursuant to these Terms and Conditions is given by way of identification only and use of such description shall not constitute a contract of sale by description.
- g) Notwithstanding anything else contained in these Terms and Conditions, to the maximum extent permitted by law, the liability of CSR in respect of any claim for loss, damage or injury arising from breach of any of CSR's contractual obligations, negligence or otherwise howsoever shall not in the aggregate exceed the price paid in respect of the goods or services to which the claim relates and under no circumstances will CSR be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Applicant or its servants agents and contractors.

14. FORCE MAJEURE:

If CSR is unable to perform any obligation under these Terms and Conditions as a result of force majeure, CSR shall be excused performance, provided that CSR shall use its reasonable endeavours to remove such cause(s) of non-performance and shall resume performance without delay when such cause(s) are removed. For the purposes of these Terms and Conditions the term "force majeure" includes acts of God, strikes, lock-outs, fire, accident, lightning, earthquakes, storms, floods, explosion, war, acts of terrorism, machinery breakdown, difficulty in procuring suitable materials, goods or substances required in the manufacture of the goods and any other circumstances, whether similar or dissimilar, beyond the reasonable control of CSR.

15. INTELLECTUAL PROPERTY:

The Applicant warrants that any designs or materials furnished to CSR do not infringe the intellectual property rights of any third party and the Applicant indemnifies CSR against all liability, loss, damages, penalties, costs and expenses suffered or incurred by CSR as a result of the use of such designs or materials which may infringe the intellectual property rights of any third party. The sale and purchase of the goods does not confer on the Applicant any license or rights in any intellectual property which is the property of CSR.

16. ASSIGNMENT:

- a) The Applicant shall not be entitled to assign any of its rights or obligations under these Terms and Conditions or any contract between CSR and the Applicant without the prior written consent of CSR. Any change in the effective control of the Applicant shall be deemed to be an assignment for the purposes of this clause.
- b) These Terms and Conditions and any contract between CSR and the Applicant shall be binding on the personal representatives, successors and permitted assigns of each party.

17. DISPUTES AND JURISDICTION:

- a) These Terms and Conditions and any contract between CSR and the Applicant shall be governed by the laws of New Zealand and the parties irrevocably submit to the jurisdiction of the courts of New Zealand.
- b) The Applicant agrees to pay a stakeholder nominated by CSR, any amount certified by CSR as payable, before the Applicant becomes entitled to dispute whether that amount is payable. Such amount will be held on trust and invested until the dispute is resolved and all accretions shall be payable to the party entitled to such amount.

18. ENFORCEMENT:

Failure by CSR to insist upon strict performance of any of these Terms and Conditions shall not be deemed a waiver thereof or of any rights CSR may have, and shall not constitute a waiver of any subsequent breach of any of these Terms and Conditions.

19. ILLEGALITY OR INVALIDITY:

If any provision of any contract between CSR and the Applicant shall be determined by any Court or tribunal to be illegal, invalid, void or voidable, the legality of the remainder of such contract shall not be affected and the illegal, void or voidable provision shall be deemed deleted from such contract and the remainder of the contract shall continue in full force and effect.

20. NOTICES:

- a) All notices, demands and other communications (notices relating to these Terms and Conditions and any contract between CSR and the Applicant shall be given or served by:
 - i) Prepaid post to the address of the addressee stated in this document;
 - ii) Prepaid post to the registered address of the addressee;
 - iii) Email to the email address of the addressee stated by the Applicant in this document, or to such other address or email address as may be notified by the addressee in writing to the other party from time to time.
- b) Any Notice shall be deemed to have been received by the addressee on the date of delivery or when posted, on the third working day after posting.

21. ENTIRE AGREEMENT:

These Terms and Conditions and any quotation for supply of goods agreed between the Applicant and CSR form the entire agreement between the parties in respect of the supply of goods, and any other communications in relation to the supply of goods are expressly excluded unless otherwise agreed in writing.