
Auswood International Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 “Auswood” means Auswood International Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Auswood International Pty Ltd.
- 1.2 “Customer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Auswood to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between Auswood and the Customer in accordance with clause 6 below.
- 1.5 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 Any variation of the terms and conditions contained in this contract must be agreed to in writing by Auswood for it to have any legal effect.

3. Precedence

- 3.1 The Customer acknowledges that these Terms and Conditions of Trade take precedence over any terms and conditions contained in any document provided by the Customer.

4. Electronic Transactions Act 2000

- 4.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

5. Change in Control

- 5.1 The Customer shall give Auswood not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Auswood as a result of the Customer’s failure to comply with this clause.

6. Price

- 6.1 At Auswood’s sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by Auswood to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to Auswood’s current price list; or
 - (c) Auswood’s quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Auswood reserves the right to change the Price if a variation to Auswood’s quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as changes to quantities ordered, stock availability, or as a result of any increase to Auswood in the cost of materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) and labour) will be charged for on the basis of Auswood’s quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by Auswood within ten (10) working days. Failure to do so will entitle Auswood to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 At Auswood’s sole discretion, a deposit may be required.

7. Payment

- 7.1 Time for payment for the Goods being of the essence, the Price will be payable by the Customer within thirty (30) days following the date of any invoice given to the Customer by Auswood.
- 7.2 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Auswood.
- 7.3 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Auswood nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.4 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Auswood an amount equal to any GST Auswood must pay for any supply by Auswood under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7.5 Payment for any amount outstanding shall be immediately due and payable in any of the following circumstances:
 - (a) there is a non-payment of any sum by the due date;
 - (b) Auswood forms the view that the Customer will not pay any sum by its due date;
 - (c) the Customer is bankrupted or enters administration, liquidation or receivership;
 - (d) a Court judgment is entered against the Customer and remains unsatisfied for seven (7) days;
 - (e) any material adverse change in the financial position of the Customer.

8. Delivery of Goods

- 8.1 Goods shall be supplied Free on Board (FOB) ex Auswood's warehouse and Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Auswood's address; or
 - (b) Auswood (or Auswood's nominated carrier) loads the Goods for delivery to the Customer's nominated address even if the Customer is not present at the address.
- 8.2 At Auswood's sole discretion, the cost of delivery is in addition to the Price.
- 8.3 Auswood may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.4 Any time specified by Auswood for delivery of the Goods is an estimate only and Auswood will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Auswood is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Auswood shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8.5 Auswood shall be entitled to accept signed delivery dockets as being conclusive proof of delivery of the Goods in good condition.

9. Risk

- 9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Auswood is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Auswood is sufficient evidence of Auswood's rights to receive the insurance proceeds without the need for any person dealing with Auswood to make further enquiries.
- 9.3 If the Customer requests Auswood to leave Goods outside Auswood's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 9.4 Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst Auswood will make every effort to match sales samples to the finished Goods Auswood accepts no liability whatsoever where such samples differ to the finished Goods supplied.
- 9.5 Timber is a hydroscopic material subject to expansion and contraction, therefore Auswood will accept no responsibility for gaps that may appear in surfaces during prolonged dry periods.
- 9.6 The Customer acknowledges that Goods supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 9.7 The Customer acknowledges and agrees that timber will not fully seal a floor around the edges particularly around showers or baths; the Customer also agrees water can get underneath and therefore bubble and/or discolour the timber. Auswood shall not be held liable for any loss, damages or costs however arising due to the same.
- 9.8 Auswood hereby requests the Customer to remove any and all appliances in the installation area prior to the commencement of any Services. The Customer acknowledges and agrees that Auswood shall not be held liable for any loss, damages or costs arising due to the Customer's failure to comply with this clause.
- 9.9 Auswood shall advise the Customer if Auswood believes that there are any issues with the sub floor (including, but not limited to, moisture problems which may cause the timber to bubble and discolour) however the Customer acknowledges that it is not always possible to identify such problems therefore the Customer agrees that Auswood shall not be held liable in any way whatsoever should any such issue go undetected causing damage to the Goods.
- 9.10 The Customer acknowledges that whilst floor levelling compound and floor preparation may help smooth out rough floors; this will not necessarily level a floor.

**10. Title and Personal Property Securities Act 2009 (PPSA)
Goods**

- 10.1 Whilst risk in the Goods passes on delivery, legal and beneficial title in the Goods shall remain with Auswood until it has received payment in full for all monies owed by the Customer.
- 10.2 Until Auswood has received payment in full for all monies owed by the Customer, Auswood retains the legal and beneficial ownership of the Goods and reserves the following rights:
- (a) the right to enter the Customer's premises and retake possession of the Goods;
 - (b) the right to keep or resell any Goods repossessed under sub-clause 10.2 (a); and
 - (c) any other rights it may have at law or under the PPSA.
- 10.3 Where, pursuant to sub-clause 10.2 (b):
- (a) Auswood resells the Goods repossessed, it is agreed that Auswood may credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or
 - (b) Auswood retains possession of the repossessed Goods, it is agreed that Auswood may credit the Customer's account with the invoice value less such sum as Auswood reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 10.4 Auswood shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken to repossess the Goods.

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- 10.5 If the Goods are attached, fixed, or incorporated into any property of the Customer, title in the Goods shall remain with Auswood until the Customer has made payment for all monies owed to Auswood and where those Goods are mixed with other property so as to be part of or a constituent of any new product, title to these products shall be deemed to be assigned to Auswood as security for the full satisfaction by the Customer of the full amount owing between Auswood and the Customer.
- 10.6 Until Auswood receives payment for Goods in full, the Customer acknowledges that Auswood has a Purchase Money Security Interest ("PMSI") which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to Auswood.
- General**
- 10.7 Upon assenting to these Terms and Conditions of Trade, the Customer acknowledges and agrees that these Terms and Conditions of Trade constitute a Security Agreement for the purposes of the PPSA.
- 10.8 The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which Auswood asks and considers reasonably necessary for the purposes of:
- (a) ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
 - (b) enabling Auswood to apply for any registration, or give any notification, in connection with the Security Interest created under this Agreement so that the PMSI and/or Security Interest has the priority required by Auswood.
- 10.9 To the extent permitted by law, the Customer irrevocably waives its right to:
- (a) receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
 - (b) redeem the Goods under section 142 of the PPSA;
 - (c) reinstate the Agreement under section 143 of the PPSA;
 - (d) receive a Verification Statement.
- 10.10 Nothing in clause 10 prevents Auswood from taking collection or legal action against the Customer to recover any monies owed from time to time

11. Security and Charge

- 11.1 In consideration of Auswood agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged (including personal property), owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies Auswood from and against all Auswood's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Auswood's rights under this clause.
- 11.3 The Customer irrevocably appoints Auswood and each director of Auswood as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

12. Defects, Warranties and Returns

- 12.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Auswood in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Auswood to inspect the Goods.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 Auswood acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Auswood makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Auswood's liability in respect of these warranties is limited to the fullest extent permitted by law.

13. Liability

- 13.1 All implied conditions, warranties and undertakings other than the statutory guarantees set out in Schedule 2 of the Competition and Consumer Act 2010 are expressly excluded to the extent permitted by law.
- 13.2 Where the Goods are of a kind other than goods ordinarily acquired for personal, domestic or household use, then Auswood's liability is limited, at its option, to anyone or more of the following:
- (a) the replacement or supply of the equivalent of the Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the costs of replacing the Goods or acquiring their equivalent; or
 - (d) the payment of the costs of having the Goods repaired.
- 13.3 Subject to the Customer's rights under Schedule 2 of the Competition and Consumer Act 2010 ("CCA"), Auswood shall not be liable for:
- (a) any loss or damage of any kind whatsoever, arising from the Goods, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Goods; and
 - (b) the Customer shall indemnify Auswood against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Auswood or otherwise, brought by any person in connection with any matter, act, omission, or error by Auswood, its agents or employees in connection with the Goods.

14. Default and Consequences of Default

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- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Auswood's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes Auswood any money the Customer shall indemnify Auswood from and against all costs and disbursements incurred by Auswood in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, collection costs, Auswood's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies Auswood may have under this contract, if a Customer has made payment to Auswood, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Auswood under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 14.4 Without prejudice to Auswood's other remedies at law Auswood shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Auswood shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to Auswood becomes overdue, or in Auswood's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Auswood;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15. Cancellation

- 15.1 Without prejudice to any other remedies Auswood may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Auswood may suspend or terminate the supply of Goods to the Customer. Auswood will not be liable to the Customer for any loss or damage the Customer suffers because Auswood has exercised its rights under this clause.
- 15.2 Auswood may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Auswood shall repay to the Customer any money paid by the Customer for the Goods. Auswood shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Auswood as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

16. Privacy Act 1988 (As Amended)

- 16.1 Auswood collects personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy and its Credit Reporting Policy. Both of these policies may be located at www.auswood.com.au. A hardcopy of these policies can also be provided to the Customer free of charge, upon request.
- 16.2 The Privacy Policy sets out: the personal information Auswood collects; how Auswood collects and uses this information; how the Customer may access or correct it; and how the Customer may make a complaint in respect of Auswood management of the information;
- 16.3 The Credit Reporting Policy sets out: the types of credit related personal information Auswood collects; how it is collected, why it is collected; how Auswood may use and disclose the credit related personal information, including the credit reporting bodies to which Auswood is likely to disclose the Customer's credit related personal information to; and how a complaint may be made in respect of Auswood's management of the credit related personal information.
- 16.4 By the Customer providing instructions to Auswood for the supply of Goods, the Customer is consenting to Auswood collecting, handling, using, disclosing and otherwise dealing with the Customer's personal information (including credit related personal information) in accordance with the terms of Auswood's Privacy Policy, its Credit Reporting Policy and in accordance with Australia's privacy laws.

17. Other Applicable Legislation

- 17.1 At Auswood's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building and Construction Industry Payments Act 2004 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 17.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 17.1 (each as applicable), except to the extent permitted by the Act where applicable.

18. Service of Notices

- 18.1 Any written notice given under this contract shall be deemed to have been given and received:
 - (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;

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(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;

(e) if sent by email to the other party's last known email address.

18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

19. General

19.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which Auswood has its principal place of business, and are subject to the jurisdiction of the Bankstown Local Court in New South Wales.

19.3 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.

19.4 The Customer agrees that Auswood may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Auswood to provide Goods to the Customer.

19.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

19.6 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.