

Terms and Conditions

1. These conditions of sale apply to all transactions between the Buyer and Australian Timber Supplies Pty Ltd ABN 86 149 787 431 ACN 149 787 431 ("ATS"), including all quotations, offers, orders or sales.
2. These conditions (which may only be waived or varied in writing signed by ATS) shall prevail over all conditions of the transaction to the extent of any inconsistency.
3. While ATS endeavours to keep delivery dates, any delay of delivery, for any reason whatsoever, shall not entitle the Buyer to claim for any consequential loss or damage or to cancel, rescind or terminate the agreement.
4. Should circumstances beyond the control of ATS prevent or hinder delivery, ATS shall be free from any obligation to deliver goods while such circumstances continue. For as long as such circumstances exist, ATS may, at its option, cancel, rescind or terminate all or any part of the contract or keep the contract on foot until such circumstances have ceased. Such circumstances beyond the control of ATS include, but are not limited to: strikes, lockouts, rebellions; fire; acts of God; natural disasters however caused; shortages of raw materials; Government decrees, proclamations or orders; transport difficulties; and failures or malfunctions of computers or other information technology systems.
5. Risk in each order shall pass to the Buyer upon delivery of that order to the Buyer or upon collection of that order by the Buyer's agent or courier whichever is sooner. In all cases in this agreement where there is an agent and or courier on behalf of the Buyer, ATS shall be entitled to rely upon the ostensible authority of the agent and or courier as the case may be to act on behalf of the Buyer and the Buyer shall indemnify ATS against any and all liability arising from ATS's reliance upon the ostensible authority of the agent and or courier.
6. Where, in accordance with these terms, ATS accepts return of any goods, risk in those goods shall revert to ATS upon delivery of the goods to ATS or upon collection of the goods by ATS's agent or courier which ever is the earlier.
7. It shall be the responsibility of the Buyer to effect insurance in the goods for all commercial and other perils and the Buyer indemnifies ATS from all and any claims suits liabilities and causes to which ATS may otherwise but for this clause be liable. The Buyer shall make certain that any policy of insurance includes the endorsement of the interest of ATS in the goods insured.
8. Any property of the Buyer under ATS's custody or control shall be entirely at the Buyer's risk as regards loss or damage caused to the property or by it.
9. Notwithstanding delivery of the goods to the Buyer, until the Buyer has effected full payment for the goods and any other goods previously supplied by ATS:
 - (a) legal and equitable title to the goods shall remain with ATS;
 - (b) the risk in the goods shall pass to the Buyer upon delivery to the Buyer or its agent;
 - (c) the relationship between ATS and the Buyer shall be fiduciary and the Buyer shall hold the goods as bailee for ATS and keep them separate from other goods and the Buyer will label the goods so that they are identifiable as the goods of ATS; and
 - (d) in the event that the Buyer uses the goods/product in some manufacturing or construction process of its own or of some third party, then the Buyer shall such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for ATS. Such part will be deemed to equal in dollar terms the amount owing by the Buyer to ATS at the time of the receipt of such proceeds
 - (e) This agreement constitutes a purchase money security interest in accordance with Section 14(1)(a) and (b) of the *Personal Property Securities Act 2009* (Cth) and is registrable at the absolute discretion of ATS. The Buyer and the Guarantor agree to do all things necessary, and executed all documents, to perfect the purchase money security interest referred to in this paragraph. In the absence of the Buyer's co-operation within a reasonable time, the Buyer constitutes and appoints the Director and Secretary for the time being of ATS as the attorney of the Buyer for the purpose of executing and perfecting the security interest.
10. The Buyer is not an agent of ATS in any sale by the Buyer of the goods.
11. If the goods are resold (save where products manufactured using the goods are sold), by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the invoice price of the goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of ATS and shall pay such amount to ATS upon request.
12. Notwithstanding the provisions above ATS shall be entitled to maintain an action against the Buyer for the purchase price. If any money payable by the Buyer under this agreement remains unpaid for 30 days after the due date for payment then the Buyer shall pay to ATS interest on that money at the annual percentage rate equivalent to the prime overdraft rate for the time being plus 3% per annum applied by the Commonwealth Bank of Australia ('the Bank') in respect of an overdraft limit in excess of \$100,000 (or in the event of the Bank ceasing to quote such a rate then such a rate as in the opinion of the Bank is equivalent thereto in respect of similar overdraft accommodation afforded to prime borrowers) plus 3% per annum calculated from the due date to the date of payment (both dates included) and ATS shall be entitled to recover that money and/or that interest in addition to the whole or part of the purchase price as a liquidated debt or demand, and its legal costs incurred directly or indirectly in connection with the recovery of that money on a solicitor and own client (indemnity) basis.
13.
 - (a) The buyer however described charges as a security in favour of ATS and grants to ATS all the buyer's assets and undertaking stock in trade and chattels held by it from time to time as a general charge under the Personal Property Securities Act 2009 (Cth) to secure all monies outstanding from time to time pursuant to this new account/credit application terms and conditions.
 - (b) The buyer however described charges as a security in favour of ATS and grants to ATS a purchase money security interest pursuant to the Personal Property Securities Act 1999 (Cth) as the unpaid seller of the goods supplied to the buyer and the buyer acknowledges and consents that they are a grantor of that purchase money security interest over the unpaid goods which ATS has provided to the buyer. This security interest shall attach over such goods (notwithstanding that they may have been paid for as an itemised or invoiced delivery) to the extent that other goods supplied by ATS to the buyer remain unpaid and such goods have not been on-sold or incorporated into a construction or manufacturing process and in accordance with clause 9 above.

- (c) The guarantor or guarantors however described in the guarantee set out on page 1 of this new account/credit application form charge as a security interest in favor of ATS under the Personal Property Securities Act 2009 (Cth) all its their his and her personal property jointly and severally as guarantors to secure the payment of all and any monies due by the buyer to ATS from time to time under these terms and conditions of new account/credit application.
 - (d) The buyer however described and/or the guarantor or guarantors as the case may be consents to ATS executing and shall assist ATS in registering any interests, or performing any searches or discharging any interests pursuant to this agreement in the Personal Property Securities Register or any other register or search system maintained under the Personal Property Securities Act 1999 (Cth) and the buyer, and/or guarantor or guarantors as the case may be shall do all things and take all steps necessary to enable ATS to perfect, register and search any security interest pursuant to this agreement terms and conditions new account/credit application in the said Personal Property Securities Register. This includes the buyer's and or guarantor's payment of any fees for registration and searching of security interest and discharge and the execution by the buyer or guarantor of any document including but not limited to Privacy Act 1988 waiver for those purposes
 - (e) In the absence of the Buyer's co-operation within a reasonable time, the Buyer constitutes and appoints the Director and or secretary for the time being of ATS as the attorney of the Buyer for the purpose of executing and perfecting any security interest.
14. The Buyer shall pay the full price of each order to ATS on or before the 30th day following the date of supply. If payment is not made on or before the 30th day following the date of supply ATS may without demand retake possession of the goods and may without notice sell the goods on such terms and in such manner as it may determine and shall be entitled to deduct all expenses incurred. For the purpose of recovering possession, and without limiting the generality of the foregoing the Buyer hereby irrevocably authorises and licences ATS and its servants and agents to enter upon any premises where any goods may be stored and to take possession of the goods and remove them from those premises.
15. All applicable taxes, duties or levies (including GST) on the sale of the goods shall be to the Buyer's account.
16. ATS may, at its absolute option and without prejudice to any of its rights, either suspend further deliveries, require payment in advance or terminate any contract by written notice to the Buyer where the Buyer:
- (1) Defaults on any payment due under the agreement:
 - (a) Being a natural person:
 - i) commits an act of bankruptcy;
 - ii) enters into a composition agreement or personal insolvency agreement or similar; or
 - iii) becomes of unsound mind whether temporarily or permanently.
 - (b) Being a corporation is subject to:
 - i) a petition being presented, an order being made or a meeting being called to consider a resolution for the Buyer to be wound up, deregistered or dissolved;
 - ii) a receiver, receiver and manager or an administrator under Part 5.3A of the *Corporations Act 2001* being appointed to all or any part of the Buyer's property and undertaking.
 - iii) the entering of a scheme of arrangement (other than for the purpose of restructuring); or
 - iv) makes any assignment for the benefit of creditors.
17. The Buyer and the Guarantor(s) agree to charge with the due and punctual payment and the due and punctual performance of their respective liabilities and obligations under these terms and conditions all their legal and or equitable interest of whatsoever nature held in any or all real property both present and future and each of the Buyer and the Guarantor(s) consents to ATS lodging a caveat or caveats over such property at any time after the happening of an event as set out in the preceding paragraph of these terms.
18. The Buyer shall inspect the goods immediately upon delivery to the Buyer or upon collection of that order by the Buyer's agent or courier whichever is the sooner.
19. All claims against ATS regarding the quality, nature, fitness, suitability, conformance with description or defects of the goods must be made writing to the ATS within 7 days of delivery. ATS does not accept liability for any such claim not made in accordance with these terms.
20. The goods supplied by ATS come with guarantees that, on or after 1 January 2012, cannot be excluded under the Australian Consumer Law ("ACL").
- (a) On or after 1 January 2012, the Buyer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Buyer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. This is without prejudice to any abatement of price or other settlement the Buyer and ATS may agree in writing to accept in full and final satisfaction of any objection in which case no additional claims of any nature whatsoever may be made against ATS.
 - (b) On or before 31 December 2011, in the event of justified objection notified by the Buyer to ATS the determination of which shall be in ATS's absolute discretion, in accordance with these terms, ATS may, at its absolute option:
 - i. reduce the purchase price by agreement with the Buyer;
 - ii. accept the return of the goods and, subject to the goods being returned in the same condition as when they were delivered to the Buyer, refund to the Buyer the purchase price; or
 - iii. replace the goodsand no additional claims of any nature whatsoever may be made against ATS.
21. In the event that ATS agrees in its absolute discretion to accept any return of goods supplied to the Buyer under these terms, in circumstances where ATS is not otherwise obliged so to do, the Buyer must pay to ATS a handling fee equivalent to 15% of the invoiced value of the goods returned.

22. Any advice, recommendation, information, assistance or service given by ATS in relation to goods sold by ATS or their use or application is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty undertaking or promise as to accuracy, appropriateness or reliability and ATS does not accept any liability or responsibility for any loss suffered from the Buyer's reliance on such advice, recommendation, information, assistance or service and the Buyer indemnifies ATS from any loss, suit or claim arising therefrom.
23. The terms in this agreement that exclude or limit the liability of ATS shall apply only to the extent permitted by law. This agreement must be read and construed subject to any such statutory provisions. If any such statutory provisions apply, then to the extent to which ATS is entitled to do so, its liability under those statutory provisions shall be limited at its absolute option to:
 - (a) the replacement of the goods or the supply of equivalent goods, or
 - (b) the repair of the goods; or
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (d) the payment of the cost of having the goods repaired.
24. Where this New Account/Credit Application and Agreement and Buyer/ Directors' Guarantee is executed simultaneous to or in contemplation of a General Deed of Guarantee and Indemnity, then they shall be read together. To the extent of any inconsistency between this document and the General Deed of Guarantee and Indemnity, this document shall prevail. This document together with any General Deed of Guarantee and Indemnity (if any) constitutes the entire agreement of the parties and supersedes any other prior writing or agreement or representation.
25. If ATS is required to engage legal representation in connection with these conditions and/or to enforce any right under these conditions and/or to recover any payment for the Buyer, the Buyer must pay ATS its legal costs on a solicitor and own client (indemnity) basis incurred directly or indirectly in connection with taking such action that is contemplated by this clause.
26. The legal costs payable under 26 are payable by the Buyer on demand by ATS.
26. These terms and conditions are governed by the law in force in New South Wales. The parties submit to the jurisdiction of the courts of New South Wales.
27. If any part of these terms and conditions is for any reason unenforceable, that part must be read down to the extent necessary to preserve its operation. If it cannot be read down, it must be severed.
28. Parties shall act in good faith, honestly and reasonably in carrying out their obligations borne under these terms and conditions.
29. The liability of the Buyer is not affected if ATS, for any reason, has not exercised, or does not exercise, all or any of the rights or remedies available to ATS against the Buyer or any other security or surety upon which ATS may make claim to satisfy any liability of the Buyer, including but not limited to ATS granting forbearance, or providing accommodations or indulgences.
30. Should the Buyer make an order and subsequently cancel that same order, the Buyer will owe ATS an amount equivalent to 30% of the total amount listed on the invoice containing the cancelled order, if ATS has left the premises with the order for the purpose of delivering the order (*'handling fee'*).
31. No goods will be able to be returned to ATS, if those goods are in a condition which is not exactly as it was, when sold to the Buyer.
32. Goods which the Buyer purports to return after 2 days from the date of purchase, will not be entitled to return the goods.
33. Any claim of damaged or incorrect goods will not be accepted nor refunded by ATS, unless the claim is drawn to the attention of ATS at the time of delivery.