

## 1. GENERAL

"The Company" means James Hardie Australia Pty Ltd  
"buyer" means any person or entity that acquires goods from the Company.

- 1.1 It is expressly acknowledged and agreed that these terms operate to the exclusion of all and any terms and conditions issued by the buyer whether before or after the date these terms of sale come into effect.
- 1.2 The Company may at any time change its terms and conditions by publishing new terms and conditions which will be deemed to come into effect 45 days after those new terms are published.
- 1.3 Where a buyer has a credit account with the Company, the Company's credit conditions will also apply to the buyer. In the case of orders for non standard goods additional conditions will also apply as notified to the buyer at the time of placing the order and to the extent of any inconsistency the specific conditions notified at the time of placing the order will prevail over these conditions.

## 2. RISK AND TITLE TO PRODUCTS

Risk of damage to, or loss or deterioration of any goods supplied will pass to the buyer in accordance with clause 7, but property in and title to the goods will not pass to the buyer until all goods and services supplied by the Company to the buyer have been paid for in full. Until then:

- (a) the buyer will hold the goods supplied as bailee of the Company;
- (b) the buyer may sell the goods supplied in the ordinary course of its business as agent for the Company and will account to the Company for any sale proceeds; and
- (c) the Company may require the buyer to return the goods supplied on demand and may go onto the premises of the buyer and repossess the goods.

## 3. GOODS AND SERVICES TAX

The buyer must pay the Company a total price which includes the goods and services tax paid or payable by the Company in respect of goods and services supplied by the Company to the buyer. The amount payable by the buyer will be stated in an invoice to the buyer. Any other relevant taxes on the goods supplied will be payable by the buyer to the extent that they are not already included in the price.

## 4. PAYMENT

- 4.1 Payments are to be net and no settlement discount will be allowed.
- 4.2 Payments must be made without set-off, deduction or counterclaim by either:
  - (a) electronic funds transfer to the Company's nominated account; or
  - (b) by a MasterCard or Visa credit card. For any payments made by credit card a merchant fee of 1.65% (inclusive of GST) applies.
- 4.3 Where a buyer has a credit account with the Company, payment is required by not later than 30 days after the date of the Statement issued by the Company (or such other time agreed to in writing by the Company) otherwise payment must be made and cleared funds received prior to despatch of the goods.
- 4.4 If the buyer fails to make payment in respect of a Statement issued by the Company in full to the Company when due, for whatever reason, the Company will be entitled (without prejudice to any other right or remedy it may have) to:
  - (c) cancel or suspend any existing orders of or delivery under any order to the buyer or refuse to accept any new orders; and
  - (d) charge the buyer interest on the overdue amount at the rate determined by the Commonwealth Bank of Australia from time to time on unsecured overdraft accounts not exceeding \$100,000.
- 4.5 All payments by the buyer must refer to the specific Statement or liability for which the payment is being made otherwise the Company may allocate the payment towards discharging the buyer's debts that have been outstanding for the longest period.

## 5. PRICE FLUCTUATIONS

Unless otherwise agreed in writing all prices and charges are subject to alteration without notice. Subject to any other conditions agreed in writing with the Company, orders are accepted by the Company on the condition that the buyer agrees to pay the Company the price for goods as set out in the Company's published price list applicable at the time of delivery of the goods. If the Company publishes a new price list or otherwise alters its prices, the new or altered prices apply to all deliveries

on or after the date that the new price list or altered prices become effective.

## **6. ABILITY TO SUPPLY**

- 6.1 The Company may accept or refuse any order for goods in its absolute discretion and may make its acceptance of an order conditional upon a satisfactory credit assessment of the buyer.
- 6.2 Reasonable commercial efforts will be made to fulfil accepted orders placed with the Company, but if the Company's ability to do so be affected (directly or indirectly and whether by circumstance already existing or otherwise) by strikes, lockouts, rise in freight, duties or other charges, Acts of God, or by any cause whatsoever beyond the reasonable commercial control of the Company, it shall have the right:
- (a) to elect to extend the time for fulfilment of the order or compliance with any delivery or completion date;
  - (b) to alter the specifications for the goods so as to allow the substitution of equivalent goods; or
  - (c) to terminate the order without liability for breach of contract or for any antecedent breach.

In any event the Company will be entitled to full payment for all goods which have been delivered. The Company will not be liable for any loss, including consequential loss and loss of profits, arising from any delay in its performance of the contract or the early termination of any order.

## **7. DELIVERY AND INSURANCE**

- 7.1 Products in transit are not insured by the Company unless the Company agrees in writing to do so. Charges for agreed insurance will be payable by the buyer.
- 7.2 Where the buyer's carrier is to collect goods from the Company's premises, if the goods are not collected within 14 days after the Company notifies the buyer of their availability the Company may cancel the order and charge the buyer a 10% handling charge based on invoice value.
- 7.3 Where goods are consigned by rail or ship or taken by transport organised by the buyer from the Company's premises, risk of damage to, or loss or deterioration of any such goods passes to the buyer on delivery to the rail, ship or buyer's carrier and the Company's delivery obligations are complete at that stage. Any claim for loss or damage in transit should be made direct to

the railway or shipping authority or the carrier concerned.

- 7.4 Where goods are delivered by a carrier organised by the Company, delivery is deemed to occur when the goods are delivered to a destination agreed by the Company and the buyer and risk of damage to, or loss or deterioration of any such goods passes to the buyer at that time.
- 7.5 All claims for credit for damaged or missing goods, incorrect good and overcharges must be made in writing within seven days of date of delivery and quote the date and invoice number on which the goods to be credited were purchased.
- 7.6 Where prices in the Company's price list include delivery this shall mean delivery to a destination within the boundaries nominated by the Company and does not include any charges incurred at rail-head or wharf. Where the delivered price of any order is less than \$500, a delivery surcharge of \$50 will be added to the invoice.
- 7.7 If requested, goods will be crated and the costs incurred in crating, will be payable by the buyer. No allowance will be made for return of crates or materials from which crates are manufactured.

## **8. RETURNS**

- 8.1 Return of goods to the Company by the buyer may only be made if the Company has agreed to that return and all such returns will be subject to a 10% handling charge based on invoice value of returned goods to cover cost of sorting, restacking, testing etc with freight costs and risk remaining the responsibility of the buyer.
- 8.2 Any agreement by the Company to accept the return of goods is subject to the goods being in resaleable condition as determined by the Company following inspection of the returned goods at the Company's premises.

## **9. WARRANTY**

The relevant warranty provided by the Company for its goods and the conditions that apply to that warranty are either set out in the Company's current technical literature for the relevant goods or on the Company's website ([www.jameshardie.com.au](http://www.jameshardie.com.au)). The warranties and their conditions are deemed to form part of these terms.

## **10. PPSA**

This Agreement creates a security interest in the goods for the purposes of the

Personal Property Securities Act 2009 (Cwlth) (“PPSA”).

The buyer agrees upon request to do anything (such as obtaining consents, completing, signing and/or producing documents and supplying information) which the Company considers necessary for the purposes of:

- a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- b) enabling the Company to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by the Company; and
- c) enabling the Company to exercise rights in connection with the security interest.

The buyer agrees that to the extent the law permits them to be excluded by Agreement:

- d) sections 142 and 143 of the PPSA are excluded and the Company need not comply with the following provisions of the PPSA: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other provision of the PPSA notified to the buyer by the Company after the date of this Agreement; and
- e) the Company is not required to give any notice required under the PPSA (including a notice of a verification statement).

The buyer and the Company agrees not to disclose information provided by any other party that is not publicly available except:

- f) to any person in connection with any person exercising rights or dealing with rights or obligations under this Agreement (including in connection with preparatory steps such as negotiating with any potential assignee of the Company's rights or other person who is considering contracting with the Company); or
- g) to officers, employees, agents, contractors, legal and other advisers and auditors of the buyer or the Company;

- h) to any party to this Agreement or any related entity of any of them, provided the recipient agrees to act consistently with this clause; or
- i) with the disclosing party's consent (not to be unreasonably withheld); or
- j) any disclosure the disclosing party reasonably believes is required by any law, or stock exchange or rating agency (except this paragraph does not permit the Company to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7) of the PPSA applies).

Each party consents to disclosures made in accordance with clauses 10(f)-(j) above.