

Carpenter Products Pty Limited
Trading Terms and Conditions
(Effective 11th July 2011)

1. Application

1.1 These Trading Terms and Conditions (**Terms**) as amended from time to time, apply to any goods supplied or to be supplied to us or to any third party on our behalf from time to time.

1.2 To the extent permitted by law, we agree that any order for goods once placed by us cannot be cancelled unless you otherwise agree in your absolute discretion.

2. Definitions and Interpretations

2.1 Definitions

Australian Consumer Law means schedule 2 of the *Competition and Consumer Act 2012* (Cth). **ACL** has a similar meaning.

Business Day means a weekday on which banks are open in Melbourne.

Buyer means the buyer of any goods from the seller or anyone who holds goods on consignment from the seller.

Consumer, consumer goods, consumer guarantee, consumer services, express warranty, fair or reasonable have the meanings given by the ACL.

Force majeure event means any event outside of the control of the Seller and includes without limitation any act of God, fire, flood, storm, earthquake, strike, lockout, trade dispute, breakdown, theft, crime, delays in shipping, or the inability of the Supplier to procure necessary materials or articles preventing or retarding performance of the contract or any other cause not reasonably within the control of the Supplier (each a **force majeure event**).

Event of Default means:

- (a) we fail to pay when due any moneys owing to you under these Terms.
- (b) we give any third party a security interest in accounts as original collateral in respect of any proceeds of any goods you supply us.
- (c) an Insolvency Event occurs or is continuing.
- (d) any representation or warranty made or issued by us proves to have been untrue in any material respect when made.
- (e) we breach any other provision of these Terms and fail to cure it within 5 business days notice from you to do so.

Default has a corresponding meaning.

Goods mean any goods supplied to us whether on consignment or otherwise under these Terms. They include goods described in any invoice, quotation, work authorisation or any other forms provided by you or any order we give you.

GST means any goods and services or similar tax, together with any related interest, penalties, fines or other charge. **Tax invoice, taxable supply and value** have the meaning given to them by the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantor means that person, or entity, who agrees to be liable for the debts of the buyer whether on a principal debtor basis or who is otherwise a surety for the buyer.

Insolvency Event:

- (a) An administrator is appointed in respect of the buyer or any guarantor.
- (b) Except for the purpose of a solvent reconstruction or amalgamation previously approved by the Seller
 - (A) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
 - (i) our winding up, dissolution or administration or any guarantor; or
 - (ii) we or any guarantor entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them; or
 - (B) We or any guarantor cease, suspend or threaten to cease or suspend the conduct of all or a material part of our or their business or dispose of or threaten to dispose of a material part of our or their assets.
- (c) We or any guarantor is, or under legislation is presumed or taken to be, insolvent or ceases to carry on our or their business.
- (d) A receiver, receiver and manager, administrative receiver or similar officer is appointed in respect of us or any guarantor.
- (e) Any distress, attachment, execution or other legal process is levied, enforced or sued out on or against all or any material part of our assets or those of any guarantor and is not discharged or stayed within 14 business days.
- (f) A security interest becomes enforceable or is enforced.

Intellectual Property means any intellectual property of any kind, including these Terms. Without limitation, it includes patents, trademarks, copyright, designs, layouts, circuit boards, knowhow, software, object codes, source codes and any confidential information.

PPSA means the *Personal Property Securities Act 2009* (Cth).

The expressions **account, financing statement, financing change statement, proceeds, purchase money security interest (pmsi), security agreement, security interest, verification statement** have the meanings given by the PPSA. Without limitation, security interest bears its natural meaning. It also applies to all land and licences and personal property that is not personal property covered by the PPSA.

Seller means Carpenter Products Pty. Limited ACN 119 150 533

Terms mean these terms and conditions as amended from time to time.

2.1. Interpretation

- (i) “You” means the seller and “we” and “us” means the buyer.
- (ii) Defined terms have the meaning given to them by these Terms unless the context otherwise requires, whether or not they bear initial capitals.
- (iii) The singular includes the plural and the converse.

- (iv) A reference to party includes its successors and permitted substitutes or assigns.
- (v) A right or obligation of any 2 or more persons (other than the seller) is joint and several.
- (vi) All references are to Melbourne time.
- (vii) An event of default subsists until waived in writing by the seller.
- (viii) Nothing in these Terms is to be interpreted against a party on the ground that the party put it forward.

3. Exclusions of conditions and warranties

3.1 You acknowledge that the ACL and similar legislation provides certain rights for consumers that cannot be excluded, and in relation to the supply of goods and services, the buyer may be a consumer.

3.2 Subject to this clause, you exclude all conditions, warranties, terms and consumer guarantees implied by statute, the general law or custom (without limitation, it includes the ACL) applicable to any supply of goods and services.

3.3 Consumer guarantees apply to any supply of goods where the buyer is a consumer. Your liability in connection with consumer guarantees is not limited except as set out in this clause 3.

3.4 Where we are a consumer in relation to the supply of goods and those goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then your liability in relation to consumer guarantees, in your sole discretion, is limited to (i) the replacement of the goods or the supply of equivalent goods; (ii) repair of the goods; (iii) the costs of replacing the goods or of acquiring goods similar to the goods; or (iv) the cost of having the goods repaired, except where it is not fair and reasonable to limit liability in this way.

3.5 If we are a consumer in relation to the supply of services under a contract arising under these Terms, and those services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then your liability in relation to consumer guarantees relating to that contract, in your sole discretion, is limited to (i) supplying those services again; or (ii) the cost of supplying the services again, except where it is not fair and reasonable to limit liability in this way.

3.6 To the extent permitted by law, you exclude any liability in contract, tort (including negligence) or otherwise, in connection with the supply of goods and services, for any indirect damages or losses, or for any special, punitive or exemplary damages. Without limitation, this includes any liability in connection with a claim that the goods and services are not fit for a particular purpose, except in the circumstances where paragraphs 3.4 and 3.5 apply.

3.7 To the extent permitted by law, we release and indemnify you, and your officers, employees, consultants and agents from and against liability in respect to the matters referred to in clause 3.6 and without limitation, we shall keep you indemnified against all costs, actions, claims, proceedings and demands (including those brought by third parties) expenses and liabilities of whatsoever nature of death, personal injury, damage to property and consequential loss

(including loss of profit) which may be made against us or which we may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the Goods unless such costs, actions, claim, proceedings and demands shall be solely attributable to any breach of contract or guarantee by, or negligence of the seller or its duly authorized employee or agent.

4. Payment terms

4.1 We must pay for all goods ordered by us immediately upon receipt of a tax invoice from you and in advance of delivery, unless a different period expressly stipulated by you applies. Any such payment must be free of set off or any other deduction.

4.2 Payment must be in cash, cheque, bank cheque or by direct credit or by any other method agreed between you and us.

4.3 The price is payable exclusive of GST and other applicable taxes and duties except where the price is expressed to be inclusive of GST.

4.4 If we fail to pay you in full on or before the due date stated in any invoice, then without prejudice to any other rights you may have against us, you shall be entitled to cancel or withhold supply or delivery of further goods.

4.5 We agree to pay you (in your discretion) interest on any amount overdue calculated on a daily basis from the due date until actual payment is received in full by you at the rate prescribed by the *Penalty Interests Rates Act 1983 (Vic)* plus 3% per month.

4.6 Any payments received by you will be applied first to any enforcement costs, then any interest and then toward any amount that is overdue.

4.7 You may recover from us the amount of any enforcement costs incurred by you in recovering any overdue payments or enforcing your rights under these Terms and any security interest, including legal costs on an indemnity basis.

4.8 All prices for goods, including delivery, are subject to change without notice.

5. Prices, Quotations, Orders, Delivery & Returns

Prices

5.1 In the absence of contrary express agreement, the price for Goods supplied shall be the seller's list price ruling at the date of shipping and the charge for services supplied shall be the seller's prevailing rates at the time of supply. Prices quoted in published price lists or by the seller's representatives are subject to change without notice and are not binding on the seller.

Quotations

5.2 A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise until the seller has accepted in writing the buyer's order. All quotations lapse 7 days after issue but the seller may vary or withdraw quotation at any time.

Orders

5.3 The seller shall not be bound by any condition attaching to the buyer's order or acceptance of a sale unless the seller in writing expressly accepts such conditions.

5.4 Placement of an order, either verbally or in writing, shall imply acceptance of the seller's offer and of these Terms.

5.5 We acknowledge that we can order Goods from you at any time either by your website address www.carpenterproducts.com.au, or by email to info@carpenterproducts.com.au or to any other email related to our employees, or by telephone (03) 98225994 between 9.00 am to 5.00 pm Monday to Friday (excluding Public Holidays) or by fax (03) 9822 5995 or any of our mobile numbers. Our order constitutes an offer to you to buy Goods. All orders are subject to acceptance by you. If the product that we have ordered is no longer available, you may send us substituted product of a similar nature and quality.

Delivery

5.7 Delivery of goods to us will be at our place of business or to our agent as notified to you.

5.8 All expenses of and incidental to the delivery, insurance, transit and storage of goods will be our responsibility.

5.9 We agree that you shall be entitled to stop goods in transit whether or not delivery has been made to us if an event of default occurs.

5.10 You will make all reasonable efforts to deliver any order by the agreed date but you will not be liable for any delay nor will you be liable in any way for any loss or damage including consequential loss or damage arising from the late delivery of any goods ordered by us. We must accept delivery despite any delay and pay the price in accordance with these Terms. If, however, we are not for any reason able to accept delivery of any goods that have been ordered by us, you may in your absolute discretion resell the goods that we have ordered to a third party. In the event that you incur a loss on any such resale or you are unable to resell the goods that we have ordered, we agree to indemnify you against any loss and/or damages that you may suffer. We further agree to pay you immediately on demand a sum equal to any such loss or damages. A certificate signed by an officer of the seller will be conclusive evidence of such loss and damage.

5.11 Unless otherwise stated in writing you may make partial deliveries or deliveries by instalments in any amount that you may determine and each such partial delivery or delivery by instalments shall be deemed to be a separate contract and these Terms shall apply to each partial delivery or delivery by instalments.

5.12 The quality of goods to be delivered under any order will be stated in the order and invoice corresponding to that order. A tolerance of plus or minus 3% in weight will apply if that difference is attributable to events or circumstances beyond your control. The weight determined will be by your equipment prior to delivery. We must notify you within 7 days of the invoice date of the goods supplied to us if we dispute the weight stated.

Returns

5.13 Goods once delivered may not be returned unless defective or damaged in transit. Any claims for defective or damaged goods must be made in writing within 7 days of the invoice date. You will not be liable for any claims notified after this time. Any claim for defective or damaged goods is subject to inspection and approval by you and any return must be made within a reasonable time after approval for their return has been granted, in which case the return will be at no cost to the buyer.

6. Risk

6.1 Risk in the goods shall pass to us on delivery to us or our agent or when the goods become under our control in any other way.

6.2 We agree to insure the goods from the time of delivery.

7. Title

7.1 Ownership of any goods remains with you until we have paid you for all goods in full and in cleared funds.

7.2 Until such time as title to the goods passes to us, we will hold them on trust and as bailee for you.

7.3 We must store your goods separately from other goods in our possession so as to prevent any deterioration and clearly distinguish and identify them as goods belonging to you.

7.4 If we are in default under these Terms, we must return any goods not paid for to you upon request.

7.5 We irrevocably authorise you and any of your lawful agents, at any reasonable time, to enter our premises or any premises occupied by us or our agents and to search for, retrieve and remove those Goods to which the seller has title and which are the subject of a security interest as provided for by these Terms and then to re-sell those goods and retain the proceeds of the sale without prejudice to your rights to claim the balance of all moneys due under the Terms. We indemnify you in respect of any such entry. The provisions of this clause survive the termination of any security agreement that arises in respect of these Terms.

7.6 Without limiting any other rights of the seller under the PPSA as a secured party, we further agree:

(i) upon demand made by the seller, to immediately deliver up the Goods to the seller;

(ii) to do all things necessary to immediately facilitate the seller's access to our premises and to assist the seller to locate and identify the Goods;

(iii) that in the event of any inconsistency with the provisions contained in section 123 of the PPSA and the provisions contained in this paragraph 7, the provisions of this paragraph 7 shall prevail.

8. Security agreement

We agree that that these Terms, including any order and invoice covering any goods ordered by us, constitute a security agreement for the purposes of the PPSA.

9. Security Interest

9.1 We give you a security interest in:

(a) all goods supplied to us that are described in any invoice or delivery and/or shipping documentation provided to us and/or order documentation that we give you, including all present and after-acquired goods held by us as inventory and any accounts relating to them.

(b) all present and future property of ours including real property. We agree that you may lodge a caveat against any real property and agree to give you a mortgage in respect of it in registrable form if required by you. We irrevocably appoint you our attorney by way of security for that purpose. The security interest given by this clause is given as beneficial owner. If we are trustee of any trust, we acknowledge that the security interest given by us covers both the assets of the trust and our personal assets.

9.2 Any security interest that arises under this clause is a continuing security interest and applies to all goods and their proceeds and secures the due and punctual payment of all moneys payable by us under these Terms. It is not extinguished or in any way diminished even if the goods or any part of them is processed or commingled with and becomes part of a product or a mass as part of a manufacturing, assembling or commingling process. Any account arising by virtue of any sale of any goods supplied to us takes effect as a transfer.

9.3 You may register a financing statement including any financing change statement on the PPSR. We will reimburse you for any costs and expenses and other charges incurred by you in registering them. We irrevocably waive any rights to receive a copy of any verification statement.

9.4 We acknowledge that until we have paid for all goods we are not the owner of those goods and, as such, if chapter 4 of the PPSA applies to these Terms, then we contract out of the enforcement provisions of the PPSA specified in in s 115(1).

10. Enforcement

10.1 If an Event of Default occurs or is continuing, you may immediately enforce these Terms. Without limitation this includes:

- (a) retaking possession of any goods not paid for by us;
- (b) suspending delivery of any goods on order and/or refusing to process any unfulfilled order.
- (c) enforcing any security interest.

- (d) requiring cash on delivery.
- (e) requiring payment of any proceeds held by us in a separate account or otherwise.
- (f) appointing a receiver and manager of any of our real or personal property. We agree that any such receiver and manager has the powers conferred by the *Corporations Act*.

10.2 If we are in default we agree that you may exercise any of the powers conferred by these Terms, including at law or in equity. We appoint you our attorney by way of security for the purpose of exercising any powers we give you under these Terms.

10.3 In the event of a default by us in performing of any of our obligations in connection with a supply of Goods under the Terms we agree that (as between the parties to the Terms) the seller is not obliged to give notice to any other secured party with interests in the same collateral or to any other third party of any enforcement or recovery action that it takes or which it may take with respect to its security interest in any of the Goods.

10.4 If we have not been paid for the sale of your goods by any customer of ours, at your option, you may in addition to the powers in s 120 of the PPSA, collect that account on giving our customer notice in writing to that effect. You will be entitled to issue proceedings in our name against our customer for recovery of that account for your benefit. We indemnify you in respect of any such action and proceedings. This indemnity includes any legal fees and expenses the seller incurs in order to enforce its rights, on an indemnity basis. For the purposes of this clause, we must keep proper records and accounts in respect of such unpaid sales, including the dates of sale, price, amount and identity of such customer and your goods.

10.5 You may in your discretion despite s 14(6) of the PPSA apply any moneys received in respect of any pmsi obligations of ours on a pro rata basis.

11. Negative pledge

11.1 We agree not to grant any security interest over any of our personal property except in the ordinary course of business.

11.2 We agree not to grant a security interest in any account as original collateral under s 64 of the PPSA.

12. Force Majeure

You are not liable for any delay, default, loss or damage or the failure to perform any obligation in our favour arising as a result of a force majeure event.

13. Confidentiality

Any security agreement that arises under these Terms is confidential. Despite this, we agree that you may disclose any information concerning us to any interested person under s 275(6) of the PPSA.

14. Health and Safety Compliance

We agree that it is our responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps are taken in relation to the storage, handling and use of the Goods and, where information is supplied to us on potential hazards relating to the Goods, to bring such information to the attention of our employees, agents, sub-contractors, visitors and customers. Without prejudice to the forgoing, it is also our responsibility to provide safe facilities for the reception and storage of the Goods and to comply with all applicable health and safety regulations immediately on delivery of the Goods to our premises and/or to our storage facilities.

15. General

15.1 We will tell you if we change our name, our registered office, if any of our any directors change, we become a trustee of any trust or the constitution of any partnership of which we are a member changes within 7 business days of any such change.

15.2 Any certificate signed by you, any director or any person authorised by you as to the amount due and payable by us is sufficient evidence of our liability to you under these Terms as at the date of any such certificate unless proven wrong.

15.3 You may act on any privacy authorisation signed us in respect of these Terms.

15.4 We undertake to comply with any request by you to provide further information for the purpose of assessing our credit worthiness, including an updated credit application.

15.5 If any provision of these Terms is unenforceable for any reason, it will not invalidate any other provisions, which will remain in full force and effect despite that invalidity.

15.6 These Terms as varied from time to time contain the entire agreement in respect of the supply of goods to us.

15.7 We acknowledge that you have the right to revise and amend these Terms from time to time to reflect changes in market conditions affecting business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in your systems capabilities. Any notice to vary these Terms shall be given to us by you in accordance with the notice provisions set out in clause 17.

15.8 You may at any time set off any amount you owe us against any amount payable by us to you whether or not the amount we owe you is due and payable (whether actually or contingently).

16. Governing law

These Terms are governed by the laws of Victoria. We submit to the non-exclusive jurisdiction of any Victorian court and waive any rights to claim that courts there are an inconvenient forum.

17. Notices

17.1 Any notice required under these Terms may be given by any party, including any director or authorised person of that party.

17.2 It is the responsibility of the buyer to notify the seller of the names of any person who has authority to act as the authorised representative of the buyer for any purposes including, without limitation, for the purposes of placing online orders on our behalf from time to time.

17.3 Any notice by one party to the other shall be sufficiently served if served:

- (i) personally;
- (ii) by e-mail to the address specified in any application made to the seller by the buyer for a credit facility or in any application to be registered as an online user of the seller or as otherwise notified to the other party, if the e-mail is acknowledged by the recipient; or
- (iii) by pre-paid post to the party to be served at the registered office of the party or to the address specified in any application made to the seller.

18. Time

For the purposes of any payment obligation under these Terms, time is of the essence.

19. Survival of indemnities

19.1 Each indemnity and payment obligation of the buyer under these Terms is a continuing obligation, separate and independent from all other obligations, and survives termination of these Terms.

19.2 It is not necessary for you to incur expense or make a payment before enforcing a right of indemnity.

20.Termination

Unless any event of default occurs or is continuing, either party may terminate the application of these Terms on 30 days prior written notice to the other.

(Carpenter Products *Pty Limited Trading Terms & Conditions - last modified 11 July 2011*)