

Woodrow Kilns Pty Ltd - Terms and Conditions of Trade

1. APPLICATION OF TERMS

Except as may be expressly stated otherwise in a written quotation or proposal submitted by Woodrow Kilns to the Customer or a written contract of sale signed by Woodrow Kilns these terms and conditions (**Terms of Trade**) apply to every sale and supply of goods or services (**Product**) by Woodrow Kilns to any Customer.

2. PRICES

- a. Unless otherwise stated, all prices are stated in Australian dollars and are exclusive of GST.
- b. The Customer should check the price of a Product before placing an order for it. Prices quoted are, unless otherwise stated, valid for delivery of Product within 90 days of the date on which the Customer communicates an offer to purchase Products to Woodrow Kilns.
- c. Prices quoted for delivery of Product are EXW – Ex Works (2010 Incoterms).
- d. Prices do not include the cost of delivery from Woodrow Kilns to the Customer unless otherwise agreed in writing. The Customer will bear all carriage, delivery, and packaging costs.
- e. All prices published and Products offered for supply by Woodrow Kilns are subject to change without notice to the Customer.

3. GST & OTHER LEVIES

- a. If GST is imposed on any supply made by Woodrow Kilns, the Customer must pay to Woodrow Kilns, in addition to any consideration payable or to be provided by Customer for this supply, an additional amount for the supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable or to be provided (without any deduction or set off). Any amount payable by Customer is payable on demand by Woodrow Kilns, whether such demand is made by an invoice raised by Woodrow Kilns or otherwise.
- b. The price of the Products shall be the price specified in the invoice plus the amount which Woodrow Kilns is required to pay on account of any charges which may be levied by any government (domestic or foreign) like GST plus any amount that reflects any increase in exchange rates, costs of labour, materials and overheads if applicable.

4. DELIVERY

- a. The Customer acknowledges that the delivery/transportation of certain Products may be subject to prescribed safety restrictions/limitations.
- b. The Customer must provide Woodrow Kilns with adequate delivery instructions for the Product at the time of placing the Customer's order.
- c. The Customer may nominate, arrange or retain a carrier to effect delivery of the Product from Woodrow Kilns to the Customer. Where the Customer does not nominate or state that it will arrange or retain the carrier in its delivery instructions, Woodrow Kilns may nominate, arrange or retain the carrier.
- d. Any date given to Customer by Woodrow Kilns for delivery of the Product shall be an estimate only, and, although Woodrow Kilns shall use commercially reasonable endeavours to meet such delivery date, Woodrow Kilns shall not be subject to or incur any penalty or liability for any claim, loss, damage or obligation, direct or indirect, consequential or otherwise, arising out of any delay in delivery or non-delivery regardless of the reason. The Customer shall not be relieved of its performance under these Terms of Trade as a result of Woodrow Kilns being unable to meet the estimated delivery date.

- e. If for any reason Woodrow Kilns is unable to deliver Product either within a reasonable time or at all, the applicable purchase order and/or contract of sale shall be cancellable, in full or only as to certain Products, at Woodrow Kilns' option, and neither Woodrow Kilns nor the Customer shall be subject to or incur any penalty or liability for any claim, loss, damage or obligation, direct or indirect, consequential or otherwise, arising out of such cancellation. The Customer must pay to Woodrow Kilns any unpaid amounts in relation to such Product that was delivered.
- f. Disposal of all shipping pallets, containers and packaging becomes the responsibility of the Customer upon delivery.
- g. Such delivery shall be deemed to be acceptance of Product by the Customer, whether or not the Customer is present at the time of delivery to inspect such Product and sign a receipt therefore.

5. INSTALLATION AND USE

- a. If the Customer has contracted Woodrow Kilns to install the Product at the Customer's premises, the Customer shall, at its expense, ensure that the installation site is ready, and has been prepared in accordance with agreed specifications, on the date agreed for installation of the Product; and that adequate and safe power and lighting is available at the installation site which is readily and safely accessible to Woodrow Kilns' technicians.
- b. The Customer will be responsible to provide Woodrow Kilns' technicians with such induction/site training as is appropriate and which the Customer deems reasonably necessary having regard to the nature of the services to be provided by the technicians.
- c. The Customer will indemnify Woodrow Kilns for any additional costs incurred in connection with the installation as a consequence of the site not being available in the condition specified above.
- d. Woodrow Kilns does not warrant the quality or performance of Product used by the Customer:
 - i. after the expiration of the useful or design life prescribed by Woodrow Kilns for that Product; or
 - ii. otherwise than in accordance with Woodrow Kilns, manufacturer or accepted industry specifications or standards for use.
- e. Unless otherwise agreed in writing, the Product will be acquired for the Customer's own use and not for resale. The Customer acknowledges that Product supplied by Woodrow Kilns may be used in a variety of applications. The Customer relies on its own skill and testing to satisfy itself as to the fitness for the purpose or use intended by the Customer for that Product.

6. PAYMENT

The Customer agrees to accept and pay for the Product in accordance with these Terms of Trade. The Customer acknowledges that this clause 6 is an essential term and condition of supply which will not be varied by Woodrow Kilns except by agreement with it in writing and the provisions of this clause will apply despite any arrangement under which Woodrow Kilns may grant the Customer credit. Time of payment in accordance with the Terms of Trade is of the essence.

6.1 INVOICING

Woodrow Kilns will invoice the Customer upon the Customer placing their order with Woodrow Kilns. The invoice can include details of the Product, the delivery address (if required) and the price and method and terms of payment.

6.2 METHOD OF PAYMENT

- a. **CASH CUSTOMER:** If the Customer has not been granted a line of credit with Woodrow Kilns, the Customer must pay to Woodrow Kilns the invoiced amount for the Products, including any associated delivery and administration charges, plus GST, at the time the Customer places the order, selecting one of the payment options available.
- b. **TRADE CUSTOMER:** If the Customer has been granted a line of credit with Woodrow Kilns, the Customer must pay to Woodrow Kilns 25% or a percentage otherwise agreed upon of the invoiced amount for the Products, including any associated delivery and administration charges, plus GST, at time of order and pay the balance within thirty (30) days of the date of the invoice.

- c. OTHER CUSTOMER: Woodrow Kilns, in its' sole discretion may determine the payment terms for a Customer to require a payment of 50% of the invoiced amount for the Products, including any associated delivery and administration charges, plus GST, at the time of the order with the balance to be paid in full prior to the delivery of the Product.

6.3 PAYMENT DELAYS OR DEFAULTS

- a. The Customer indemnifies Woodrow Kilns for any loss suffered by Woodrow Kilns as a consequence of a charge to a credit card or bank or other account not being honoured. The Customer will reimburse Woodrow Kilns, on a full indemnity basis, all costs incurred by Woodrow Kilns as a consequence of a charge to a credit card or bank or other account or a cheque not being honoured, and to its collection agents and/or lawyers in relation to the collection of any moneys owed to Woodrow Kilns that are not paid when due.
- b. The Customer will pay Woodrow Kilns any surcharge levied with respect to payments made using certain credit cards.
- c. Woodrow Kilns reserves the right to suspend, with or without notice, any deliveries of Products if any payment due by the Customer to Woodrow Kilns is overdue.
- d. A late payment fee of 10% per month, calculated daily, (being a genuine pre-estimate of the loss suffered by Woodrow Kilns as a consequence of the Customer's failure to make timely payment) may be charged on overdue amounts.

6.4 INSOLVENCY

If the Customer commits any act of insolvency, all money owing by the Customer to Woodrow Kilns, whether by way of credit or otherwise, will become due and payable immediately.

7. PASSING OF RISK – TRANSFER OF TITLE

- a. Risk in the Product shall pass to the Customer, immediately from the first occurrence of:
 - i. the passing of title in the Product to the Customer;
 - ii. upon such Product being physically delivered to the Customer;
 - iii. upon such Product being passed over to a carrier for transportation to the Customer or a Customer-nominated place or site, where the carrier has been nominated, arranged or retained by the Customer;
 - iv. upon such Product being delivered to the Customer-nominated location (prior to being taken off the carrier) where the carrier which is to effect delivery of the Product from Woodrow Kilns to the Customer has been nominated, arranged or retained by Woodrow Kilns
- b. Insurance and loss beyond the point of delivery shall be the Customer's responsibility. Woodrow Kilns is not liable for any loss, damage or deterioration of the Product after risk in the Product has passed to the Customer. Notwithstanding anything to the contrary, ownership of and title to Product shall not pass to Customer until full payment therefore has been received by Woodrow Kilns or sale or mixing of the Product by the Customer.
- c. If a Product includes or is supplied with software, Customer is granted only a limited license to use such software with such Product, and ownership of and title to such software shall not pass to Customer.
- d. If the Customer does not pay for any Product in accordance with these Terms of Trade, Woodrow Kilns shall be entitled and is hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer if the goods are stored at premises) and use reasonable force to take possession of the goods without liability for the tort of trespass or any resulting damage, negligence or payment of any compensation to the Customer whatsoever. The Customer will be liable for any loss or cost incurred by Woodrow Kilns because of any repossession or sale. Notwithstanding this provision, Woodrow Kilns shall be entitled to maintain an action against the Customer for any amount due to Woodrow Kilns.

8. PPS LAW

- a. The Customer agrees that these Terms of Trade alone or in conjunction with Woodrow Kilns' Credit Application completed by the Customer or a Quotation provided by Woodrow Kilns to the Customer, constitutes a security agreement in writing for the purpose of the PPS Law. This clause applies to the extent PPS Law (or part of it) applies to these Terms of Trade and any security interest arising under it.
- b. The security interest granted to Woodrow Kilns is a 'purchase money security interest' (PMSI) to the extent that it can be under section 14 of the PPS Law.
- c. The Customer agrees that all collateral which is at any time subject to Woodrow Kilns' security interest secures its own purchase price.
- d. The Customer agrees, in addition, to the extent possible under PPS Law, that all collateral which is at any time subject to Woodrow Kilns' security interest secures as a PMSI the purchase price of all collateral supplied to the Customer.
- e. This clause does not limit what other amounts are secured under these Terms of Trade.
- f. The parties agree that payments will be applied in the following order:
 - i. to obligations that are not secured, in the order in which those obligations were incurred;
 - ii. to obligations that are secured, but not by PMSIs, in the order in which those obligations were incurred;
 - iii. to obligations that are secured by PMSIs, in the order in which those obligations were incurred.
- g. Woodrow Kilns may register its security interest as a PMSI. The Customer must do anything (such as obtaining consents and signing documents) which Woodrow Kilns requires for the purposes of:
 - i. ensuring that Woodrow Kilns' security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - ii. enabling Woodrow Kilns to gain first priority (or any other priority agreed to by Woodrow Kilns in writing) for its security interest; and
 - iii. enabling Woodrow Kilns to exercise rights in connection with the security interest,
 - iv. and to assure performance of its obligations, the Customer hereby gives Woodrow Kilns an irrevocable power of attorney to do anything Woodrow Kilns considers the Customer should do under these Terms of Trade.
- h. The rights of Woodrow Kilns under these Terms of Trade are in addition to and not in substitution for Woodrow Kilns' rights under other law (including the PPS Law) and Woodrow Kilns may choose whether to exercise rights under these Terms of Trade, and/or under such other law, as it sees fit.
- i. The following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of these Terms of Trade in respect of goods that are not used predominantly for personal, domestic or household purposes:
 - i. sections 95 (notice of removal of accession to the extent it requires Woodrow Kilns to give a notice to the Customer), 96 (retention of accession), 125 (obligations to dispose of or retain collateral);
 - ii. section 130 (notice of disposal to the extent it requires Woodrow Kilns to give a notice to the Customer);
 - iii. section 132(3)(d) (contents of statement of account after disposal);
 - iv. section 132(4) (statement of account if no disposal);
 - v. section 135 (notice of retention);
 - vi. section 142 (redemption of collateral); and
 - vii. section 143 (re-instatement of security agreement)
- j. The following provisions of the PPS Law:
 - i. section 123 (seizing collateral);
 - ii. section 126 (apparent possession);
 - iii. section 128 (secured party may dispose of collateral);
 - iv. section 129 (disposal by purchase); and
 - v. section 134(1) (retention of collateral)

confer rights on Woodrow Kilns. The Customer agrees that in addition to those rights, Woodrow Kilns shall, if there is default by the Customer, have the right to seize, purchase, and take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that Woodrow Kilns may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

- k. The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- l. Solely for the purpose of allowing to Woodrow Kilns the benefit of section 275(6) of the PPS Law, Woodrow Kilns and the Customer agree that neither of them must disclose information of the kind that can be requested under section 275(1) of the PPS Law.

9. CUSTOMER'S SPECIAL ORDER

- a. Woodrow Kilns reserves the right to demand a deposit for special orders of non-stock items or orders for the manufacture of Product to the Customer's specifications.
- b. If a Product is manufactured to the design or specification of the Customer, the Customer warrants that the design, specification and Product do not infringe any intellectual property right of a third party (such as patent, copyright, trademark or registered design) or other like protection of any other person and complies with any application statute, statutory instrument or regulation. The Customer must indemnify Woodrow Kilns and hold it harmless in respect of any breach of this clause.
- c. Woodrow Kilns shall not be responsible for errors in the Customer's specifications.
- d. The Customer may not cancel special orders without the written consent of Woodrow Kilns.
- e. Woodrow Kilns will not accept returns of Product made to the Customer's specifications unless defective.
- f. Woodrow Kilns reserves the right to retain any deposit for the special order should the order be cancelled for any reason.

10. RETURN FOR CREDIT

The Customer must notify Woodrow Kilns, in writing, within thirty (30) days of the date of the invoice of a claim for credit for faulty or damaged Product or for Product incorrectly supplied. Credit will not be given for notifications received by Woodrow Kilns outside this period. The claim for credit should state the date and number of the invoice and the reason for return. All returns are at the discretion of Woodrow Kilns and must receive a Return Authorisation Number (RAN) in advance of shipment. Product returned for credit is to be clearly consigned to Woodrow Kilns and must, if the claim for credit is not based on the Product being faulty or damaged, be in the original packaging and in a saleable and undamaged condition. If the claim for credit and return is due to the Product being faulty or damaged, or some fault of Woodrow Kilns, then Woodrow Kilns will bear the cost of the return freight, otherwise the cost of return freight shall be borne by the Customer.

11. LIMITATION OF LIABILITY

- a. The Customer expressly agrees, and the Customer uses the Product provided by Woodrow Kilns at its own risk.
- b. To the maximum extent permitted by law, the Customer shall be responsible for an indemnify Woodrow Kilns from and in respect of liabilities, claims, damages, actions, costs and expenses which may be incurred by Woodrow Kilns as a result of or arising out of any breach by the Customer of any of the Terms of Trade.
- c. To the maximum extent permitted by law, Woodrow Kilns and its servants and agents are not liable for any loss or damage (including without limitation, loss or damage caused by the negligence of Woodrow Kilns or its servants or agents and incidental and consequential loss or damage) arising from or in connection with the supply of Product to the Customer.

- d. To the extent permitted by law, the liability of Woodrow Kilns or its servants or agents (including liability for negligence), if any, to the Customer, is limited to:
 - i. in the case of goods, the replacement or re-supply of equivalent goods or the cost of such replacement or re-supply (whichever is the lesser); and
 - ii. in the case of services, the re-supply or the cost of the re-supply of such services (whichever is the lesser).
- e. Woodrow Kilns is not liable for any loss or damage the Customer might suffer if Woodrow Kilns cannot do what it has promised because of events beyond its reasonable control.
- f. To the maximum extent permitted by law, the Customer shall indemnify Woodrow Kilns in respect to all claims, suits, and demands for damages caused directly or indirectly to any person or property (including the Customer) by, or in connection with, the use or operation of the Product.

12. INTELLECTUAL PROPERTY RIGHTS

- a. No rights or licence is granted to the Customer under any patent copyright, registered design or other intellectual or industrial property right or interest other than the right to install or operate or the Product.
- b. Copies of documents in relation to Woodrow Kilns or the Product such as drawings, plans and specifications Woodrow Kilns submits to the Customer, and any other Confidential Information, remain the property of Woodrow Kilns. The Customer must treat the information contained in those documents as strictly confidential. The Customer must use the information contained in those documents only to install or operate the Product. The Customer must not use this information in any other way to the advantage of the Customer or the detriment of Woodrow Kilns.
- c. By purchasing the Product, the Customer does not gain any licence or right under any of Woodrow Kilns' intellectual or industrial property such as a patent, registered design, trademark or copyright or Confidential Information, unless otherwise agreed in writing.
- d. The obligations in this clause 12 are continuing obligations, independent of a party's other obligations under these Terms of Trade and continue even after these Terms of Trade expire or is terminated.

13. PRIVACY

- a. These Terms of Trade are subject to Woodrow Kilns' privacy policy which can be located at www.kilns.com.au/privacy-policy
- b. The Customer must not make any press or other public announcements or releases relating to these Terms of Trade or the Product without the prior written consent of Woodrow Kilns.

14. CHANGES TO THE TERMS OF TRADE

Please note that the Terms of Trade may be changed without notice at any time and it is the Customer's responsibility to monitor any amended Terms of Trade. All changes are effective from the date of posting on the Site. Any updated version of the Terms of Trade will immediately supersede any prior version.

15. ENTIRE AGREEMENT

The Customer agrees that Woodrow Kilns will only supply Products pursuant to these Terms of Trade. An agreement between the parties may not be varied without the prior written consent of Woodrow Kilns.

16. WAIVER

Any waiver by Woodrow Kilns must be in writing and signed by Woodrow Kilns. The failure, delay or indulgence on the part of Woodrow Kilns in exercising any power or right conferred by these Terms of Trade does not operate as a waiver of that power or right.

17. GOVERNING LAW

These Terms of Trade shall be construed in accordance with the law in force in New South Wales, Australia and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State.

18. SEVERANCE

These Terms of Trade are qualified by any provision of a law which applies, and which cannot be excluded. If any provision of these Terms of Trade is deemed to be unlawful or unenforceable, such provision shall be read down to the extent permitted or severed from these Terms of Trade and all other provisions hereof shall remain in force.

19. DEFINITIONS

"Customer" means the party identified on a written quotation or proposal submitted by Woodrow Kilns or a written contract of sale signed by Woodrow Kilns.

"PPS Law" means the *Personal Properties Securities Act 2009 (Cth)*.

"Woodrow Kilns" means Woodrow Kilns Pty Ltd ABN 64 086 103 415.

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