

fibretrunk ABN 82 608 366 909

Terms and Conditions

1. GENERAL

The only contractual terms which are binding upon the company are those set forth herein, those imposed by law as hereinafter mentioned and those otherwise agreed to in writing by the company and all other conditions and warranties whether express or implied and all representations, statements or obligations which would otherwise be binding upon the company are to the extent permitted by law hereby expressly excluded and negated. Unless otherwise specified in writing by the company, all contracts shall be governed by the law of the place of acceptance.

2. GUARANTEE & INDEMNITY

If the Applicant is a company the Company may, at its discretion, require that the Directors give a guarantee and indemnity in the form required by the Company. The Company reserves the right to require a guarantee and indemnity to be given by any person in any other circumstances;

3. TITLE

Notwithstanding the passing of risk, all goods delivered by the Company to the Purchaser remain the property of the Company until all goods supplied by the Company to the Purchaser have been paid for in full. Until that time the Purchaser may sell the goods in the ordinary course of its business as agent for the Company, and the proceeds shall be held in trust for and as the property of the Company. Prior to any such sale, the Purchaser shall hold possession of the goods for and on behalf and as bailee for the Company and shall return goods to the Company on demand. The Purchaser shall wherever possible separately store goods until title in them has passed. The Company will be entitled to enter the premises of the Purchaser at any time to recover possession of the goods until payment in full has been made. It is agreed between the Company and the Purchaser that where the Company enters the premises of the Purchaser to take possession of the goods and it is not possible to otherwise identify the ownership of the goods in the possession of the Purchaser, the goods will be treated as though they were sold by the Purchase in the same sequence as the Purchaser has taken delivery of the goods. If the quantity of goods exceeds the amount owing, the Company will be entitled to determine which of the goods it claims ownership in.

4. QUOTATIONS

Any quotation made by the company shall not be construed as an offer or obligation to sell and accordingly the company reserves the right to accept or reject at its discretion any orders which may be received by it. All quantities referred to in any quotation are subject to manufacturing length tolerances and quantity delivered and invoiced may be within a +/- tolerance of 5% of the ordered and/or the quoted amount

5. PRICES

All prices are ex the company's premises on which the buyer's order is placed and are subject to adjustment without notice to the buyer in accordance with, amongst other things, the company's prevailing prices at the time of delivery. The prices given in any other quotation shall be based on the quantities referred to therein and therefore should there be any variation in the quantity of goods ordered from that quoted then the company shall have the right to amend the price quoted accordingly. In addition to the prices hereinbefore referred to all costs of delivery and expenses of an incidental to putting the goods in a deliverable state shall

be for the account of the buyer and shall be the company's costs and expenses prevailing at the time of delivery.

6. TERMS

Unless otherwise agreed to in writing by the company, payment for the goods and all other costs and expenses herein mentioned shall be made to the company strictly payment within (30) days from date of Invoice. Should the buyer delay or default in respect of any payment due to the company then the company shall have the right, in addition to all other rights which are herein given or which are conferred by law, to charge interest as such rates as shall be charged from time to time to the company buy its bankers for overdraft accommodation, such interest to be calculated from the date of delivery to the date of full and final payment by the buyer. Any payment by the buyer will be credited first against the interest accrued to the date of payment.

The Company may at any time and without the need to provide a reason to the Applicant refuse to extend any further credit to the Applicant and that its approval of this Application does not require the Company to extend to the Applicant any particular amount of credit. The Company may refuse an initial application for credit, but may proceed if the Company is able to obtain insurance against a default by the Applicant and the Applicant pays to the Company the amount of any premium for that insurance.

7. GOODS & SERVICES TAX (GST)

The company's prices are exclusive of GST and any such charge or similar charges shall be for the account of the buyer. The GST charged by the company is based on the tax believed by the company to be correct at the date of acceptance of the buyers order ("the initial charge"). Should there be any variation required to the initial charge for any reason (including unintentional error) subsequent to the date of acceptance of the buyer's order, then the price of the goods and the amount payable by the buyer shall be adjusted accordingly.

8. EXCHANGE RATES

The prices quoted by the company for imported goods are based on the exchange rate prevailing at the date of acceptance of the buyer's order ("the initial exchange rate"). Should there be any variation for any reason in the initial exchange rate subsequent to the date of acceptance then the price of the goods shall be adjusted in accordance with the increase or decrease as the case may be between the initial exchange rate and the exchange rate existing at the date of payment by the company.

9. DUTY AND PRIMAGE

The prices quoted by the company for imported goods are based on the rate of duty and primage for the appropriate tariff classification of the goods prevailing at the date of acceptance of the buyer's order (the initial duty and primage rates"). Should there be any variation for any reason in the classification of the goods or the method of assessment or rate of the duty or primage subsequent to the date of acceptance then the price for the goods shall be adjusted in accordance with the increase or decrease as the case may be between the initial duty and primage rates and the applicable rates existing at the date of payment by the company.

10. FREIGHT AND INSURANCE

The prices quoted by the company for imported goods are based on the company's freight and insurance rates prevailing at the date of acceptance of the buyer's order (the initial freight and insurance rates"). Should there be any variation for any reason in the said rates subsequent to the date of acceptance then the price for the goods shall be adjusted in accordance with the increase or decrease as the case may be between the initial freight and insurance rates and the applicable rates existing at the date of payment by the company.

11. SAMPLE

Notwithstanding that a sample of the goods may be exhibited to and inspected by the buyer such sample will only be exhibited and inspected solely to enable the buyer to judge for itself the quality of the bulk and not so as to constitute a sale by sample.

12. INFORMATION AND DRAWINGS

All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by the company or otherwise contained in catalogues, price lists or other advertising matter of the company are appropriate only and are intended to be by way of a general description of the goods and shall not form part of the contractual description thereof unless agreed to in writing by the company in which case such descriptive specifications etc shall be subject to recognised tolerances.

13. DELIVERY

Unless otherwise agreed to in writing by the company, the buyer shall take possession of the goods at the company's warehouse on which the order is placed and this shall be in the place of delivery. If it is agreed that delivery shall take place beyond this point then notwithstanding any other provision hereof risk in the goods shall pass to the buyer immediately the goods begin to be loaded for the purpose of carriage to the agreed place of delivery and all costs and expenses (if any) of and incidental to the carriage and insurance of the goods shall be for the account of the buyer. Should for any reason the company act as a carrier of the goods to the agreed place of delivery then, in the event of loss or damage to the goods in transit caused by or resulting from any act neglect or default attributable to the company, the company's liability to the buyer shall be limited to and completely discharged by either the replacement or the repair of any goods so lost or damaged. Any claims against the company for such loss or damage to the goods must be made within 48 hours of the date of delivery.

14. ACCEPTANCE

The buyer shall inspect the goods forthwith upon their delivery and shall within seven (7) days from such inspection given written notice to the company of any matter or thing by reason whereof the buyer may allege that the goods are not in accordance with the contract if the buyer shall fail to give such notice then to the extent permitted by statute the goods shall be deemed to have been accepted by the buyer and the buyer shall pay for the same in accordance with the provisions hereof.

15. RISK

The goods supplied by the company shall be at the buyer's risk immediately on delivery to the buyer or into the custody of anyone acting on the buyer's behalf including carriers whichever is the sooner. If for any reason the buyer fails to take possession of the goods within seven (7) days from the date in which the buyer is notified that the goods or part thereof are ready for delivery, then risk in the goods shall forthwith pass to the buyer and the company shall be entitled to payment for the goods in accordance with the provisions hereof, in the event that the buyer fails to take possession of the goods with the said period of seven (7) days the company shall arrange storage of the goods at its warehouse or some other suitable place and all costs of and incidental to such storage shall be for the account of the buyer.

16. TERMINATION

Any contract may at the company's option be terminated in the event of the insolvency of the buyer or execution being levied against any of the goods of the buyer or of the buyer being placed in liquidation whether voluntary or otherwise and upon such termination the company shall be entitled to repossess and take back at the cost of the buyer all goods which remain the property of the company without prejudice to any other right conferred upon the company by law.

17. CHANGE OF OWNERSHIP

The Applicant agrees to notify the Company of any change in ownership or address. Notwithstanding any change in the Applicant's ownership/trading structure or any advice by it to the Company of such change, the Applicant will remain personally liable for any goods and services requested by it or on its behalf until it has received written confirmation from the Company that its account has been closed and full payment received and a new account has been opened in the name of the new entity;

18. CANCELLATION AND RETURN OF GOODS FOR CREDIT

(1) Orders accepted by the company cannot be cancelled by the buyer prior to delivery except with the company's consent and in accordance with such terms as to the company seem fit to indemnify it against all loss which it may suffer arising out of such cancellation. In respect of goods delivered to a buyer at its request, the company at its opinion will only allow the buyer credit for returned goods in accordance with the following conditions:-

(a) in every case the original number and date of invoice must be quoted by the buyer

(b) all goods must be returned to the company's warehouse in which the order is placed within 30 days from the date of delivery of delivery to the buyer

(c) where goods are supplied by the company in a special manufacturer's packaging then the goods must be returned in that packaging in their original and unmarked condition, complete with all instructions and other documents originally supplied therewith. Where the manufacturer's packaging seal has been broken then the amount allowed for credit otherwise hereby allowed less 15% of the invoice value;

(d) all charges for outward and inward freight, packing and delivery are for the account of the buyer and should be prepaid. If such charges are not so paid by the buyer then they will be deducted from the credit otherwise hereby allowed;

(e) (i) if goods are returned within 7 days from the date of delivery then subject to the provisions of sub-clauses (c) and (d) hereof the credit allowed to the buyer will be the invoice value of the goods;

(ii) If the goods are returned after 7 days but before 30 days from the date of delivery then subject to the provision of sub-clauses (c) and (d) hereof the credit allowed to the buyer will be the invoice value less 15% thereof.

(2) The following goods which have been supplied by the company at the buyer's request cannot be returned for credit under any circumstances;

(a) any goods marked on the company's invoices as 'NOT RETURNABLE'

(b) any goods that have been altered, damaged or used in any manner whatsoever by the buyer or any person other than the company;

(c) any goods which have been made or purchased to the special order of the buyer or any other person.

19. WARRANTIES

(1) The following warranty is exclusive and in lieu of all other warranties, whether express or implied, or statutory, including, but not by way of limitation, any warranty of merchantability or fitness for any particular purpose.

Company warrants that the products are, at the time of delivery to Buyer, free of material and workmanship defects, provided that no warranty is made with respect to:

1. any product which has been repaired or altered in such a way, in Company's judgement, as to affect the Product adversely;

2. any product which has, in company's judgement, been subject to negligence, accident or improper storage;

3. any Product which has not been installed operated and maintained in accordance with normal practice and in conformity with recommendations and published specifications of company.

(2) At its option, Company shall repair, replace or refund the purchase price of any non-conforming products for a period of one (1) year from date of shipment of the products to the buyer and such obligation shall be the full extent of Company's liability. Company's liability with respect to any material not of Company's manufacture shall be limited to the liability assumed by the vendor(s) of such material. Repairs to, alteration, or work done on products warranted by Company but without Company's prior written authorisation shall void Company's warranty on the Products.

Upon discovery of a defect, Buyer shall notify Company in writing within 30 days of discovery of the defect of any claim whatsoever that the Buyer may have with respect to any Products delivered hereunder, and failure to give such notice within the specified time shall constitute an unqualified acceptance and waiver of all claims with respect to the Products. Upon receipt of notice from the Buyer of non-conforming Products, Company may inspect such Products at Buyers location or require that they be returned to Company F.O.B. Company's designated location.

(3) The remedies provided for in the preceding paragraph shall constitute the sole recourse of Buyer against Company for breach of any of Company's obligations under the Agreement with Buyer, whether the claim is made in tort or in contract, including claims based on warranty, negligence, strict liability, fraud, misrepresentation, or otherwise.

In no event shall Company be liable for special, indirect incidental or consequential damages (regardless of the form of action, whether in contract or in tort, including negligence), nor for lost profits, nor shall Company's liability for any claims or damage arising out of or connected with this Agreement or the manufacture, sale, delivery or use of the products exceed the purchase price of the Products.

20. PRICE LISTS

In the event of resale, the prices set out or referred to in the company's price list or any other document are recommended only and there is no obligation to comply with the recommendation.

21. DAMAGES & RETENTIONS

The Company and or its Employees will not accept any form of damages or retentions for any reason under any circumstances.

22. COMPLIANCE

Failure by the Company to insist upon compliance with any provisions of these terms does not constitute a waiver of that provision and the Company shall be entitled to insist upon compliance with all provisions of these terms at any time.