

# WHITE FORMWORK HOLDINGS TERMS AND CONDITIONS

## CONDITIONS OF QUOTATIONS

1. All quotations are subject to the Terms and Conditions of Sale of White Formwork Holdings Pty Limited ("the company") details of which are set out below.
2. The company reserves the light to vary or rescind quotations at any time prior to the customer ordering the goods the subject of such quotations.
3. The customer acknowledges that it has checked all quotations and is satisfied that the quotations include all the goods which the customer requires and on which the customer has requested the company to quote and that the company shall have no liability in respect of any omissions or errors in its quotations in respect of the goods on which the customer has requested it to quote.
4. Prices quoted are exclusive of GST and delivery.

## TERMS AND CONDITIONS OF SALE

1. The placing of an order either verbally or in writing by a customer ("the customer") with White Formwork Holdings Pty Limited ("the company") shall be deemed to constitute an agreement between the customer and the company on the terms and conditions hereinafter appearing, which terms and conditions shall contain the whole of the agreement between the customer and the company and no variation of the terms shall be binding on or enforceable against the company unless in writing and with the written confirmation by a person authorised by the company's management to give such written confirmation and no other employee of the company nor any lorry owner drivers under contract to the company nor any other person shall have any authority to alter any or all of these conditions.
2. It is the duty of the customer to provide the company with all information necessary for the fulfilling of any orders or for the carrying out of these terms and conditions of sale and if any delay takes place on the part of the customer in giving such information then the company may at its option cancel any orders or rescind this agreement or charge the customer an additional price for the delay. In the case of cancellation the customer will be liable to the company for *any* loss incurred in connection with any order or this agreement.
3. In no event will the company be liable for any loss, injury or damage howsoever arising except as herein set forth and shall not on any account be liable:
  - (a) In respect of consequential damage or loss to property arising out of alleged defects or the use to which the goods are put;
  - (b) For loss or damage in excess of the price of the goods;
  - (c) In relation to the demolition or re-construction of any structure or improvement into which the goods are incorporated;
  - (d) In respect of any damage or loss resulting from the stacking or placing of the goods on the kerbside of the job address or any other site to which the company agrees to deliver the goods pursuant to the terms of this agreement.
4. In the event of the company being unable to carry out its obligations under this agreement due to war, strikes, accidents, via major plant and delivery equipment breakdowns, shortages of raw materials or any other cause beyond the company's control the company may at its option suspend performance or cancel the agreement.
5. While the company will make every effort to deliver goods or perform its obligations by the time or date given by the company, it will not be liable for loss arising because of delay in performance or delivery, it being understood that times or dates for delivery or performance are business estimates only and not contractual obligations by the company.
6. Statements as to suitability, quality, fitness for purpose, capacity or otherwise contained in any drawing, catalogue or specification or other documents issued by the company shall not be regarded as forming part of the agreement resulting from acceptance of any orders unless specifically stated in writing by the company.
7. Unless otherwise expressly stated, prices are due and payable in full, in accordance with the terms hereof, on the dispatch of the goods from the company's premises. If the customer fails to make payment in full in accordance with this condition then without prejudice to any other rights of the company:
  - (a) The company shall be entitled to suspend all or any other deliveries to be made under this or any other contract with the customer and in any such event the customer shall not in any respect be released from his obligations to the company under this or any such agreement.
  - (b) Instead of suspension in accordance with paragraph (a) hereof the company shall be entitled to terminate this agreement or any other agreement with the customer in accordance with condition 9 hereof and to claim damages from the customer for breach, and (if the goods are in the possession of the customer) to retake possession of the goods.
8. The company may terminate any agreement forthwith if:
  - (a) The customer, shall commit any breach of the terms (including without limitation terms concerning the time for payment of the purchase price) if this or any other agreement with the company and on its part to be observed or performed provided that if such breach is remediable the company shall have previously given to the customer notice thereof and the same has not been remedied within 7 days thereafter.
  - (b) The customer compounds with or negotiations for any composition with his creditors generally or permits any judgment against him to remain unsatisfied for 7 days;
  - (c) Being an individual the customer shall die or have a sequestration order made against him or commit any act of bankruptcy; or
  - (d) Being a company the customer shall call any meeting of its creditors or have a receiver of all or any of its assets appointed or enter into any liquidations, or have a winding up order made against it.
9. Dispatch from the company's premises shall constitute delivery of the goods to the customer's possession. Upon each dispatch the customer as bailee accepts responsibility for the safety of the goods and takes the risk of any loss or injury thereto, however caused; which may occur before the property in the goods passes to the customer. The customer shall keep the goods fully insured and shall indemnify the company against such loss or injury.
10. In no case will property in any goods supplied pursuant to this agreement pass to the customer until payment has been made to the company of the full contract price for the goods supplied including cost of transit, delivery etc. Any sale of the goods (whether or

not incorporated in any structure of improvement) by the customer to a third party prior to the passing of the property to the customer will be deemed to have been made by the customer as agent for the company, and the same proceeds sufficient to cover the price of the goods and the cost of transit, delivery etc. shall be held in trust for the company as its property. For the purposes of this agreement, where payment is made by cheque, payment shall be deemed to have been made *only* when the cheque is paid by the drawer's bank.

11. (a) The company's delivery records shall be prima facie proof of delivery of the goods of the Quality and description stated herein in good order to the customer and his receipt thereof notwithstanding the absence of any representative of the customer at the delivery site upon delivery, it is the responsibility of the customer to provide adequate signs and direction to enable the company to effect delivery. Failure to do so will render the customer liable for any additional cartage charges incurred.
  - (b) The company's responsibility for delivery of the goods shall cease at the kerbside or the job address stated. However, the company may in its absolute discretion agree to deliver to a site other than the kerbside of the job address provided always that it is hereby acknowledged and agreed that any increases in cost to the company of making such delivery shall be met by the customer and, if it is necessary for a vehicle to cross the footpath or to enter upon private property in the course of effecting delivery, the customer shall provide safe and adequate access and notwithstanding will indemnify the company against all damage to any public or private property or to any person which may arise as a result of the company making such delivery.
12. Any prices quoted are for delivery during normal working hours (i.e. 7 a.m. - 4 p.m.) Monday-Friday (excluding public holidays). Deliveries required by the customer to be made outside of these hours will be subject to a surcharge at the company's ruling rate at the time.
13. Where an order is made orally based on a quotation and goods are delivered then each load delivered shall form a separate and distinct contract which shall be subject to the terms and conditions herein set out.

Where an order is made in orally based on a quotation and involves a series of deliveries, then a contract shall not come into existence until there is an acceptance in writing by the company provided however that, if in the interim, the company makes deliveries of goods or a series of deliveries prior to acceptance in writing by it of the written order, then each delivery shall constitute a separate and distinct contract which shall be subject to the terms and conditions herein set out.

Each and every contract between the company and the customer shall be subject only to the terms and conditions herein set out and variation of these conditions shall not be binding on the company unless such variations are in accordance with the terms of clause 1 hereof.
14. Where a dispute arises between the customer and the company as to the performance by either the customer or the company or the company of any term warranty or condition of any contract, the company shall have the right to stop supply pending settlement of the dispute. The company shall determine if there is a dispute and at which time the dispute is settled.
15. All goods supplied will be to the applicable Australian standards.

16. (a) The company shall accept returns of goods which shall be shown to the satisfaction of the company to be defective or which are wrongly supplied by the company or which are not to the grade stipulated on the company's invoice or in the quotation or which are wrongly ordered by the customer subject to the following:
  - i) That written advice of such defect, wrongly supplied goods by the company, defect in grade of goods supplied or wrongly ordered goods by the customer is given to the company within three (3) days of the delivery of the goods to the customer.
  - ii) That the returned goods have not been damaged in *any* way or have not been incorporated in any structure or improvement (any such incorporation being deemed to be acceptance of goods);
  - iii) The defects to the goods have not been caused by carelessness or improper treatment or neglect of the customer of any omission of the customer to comply with any instruction given by the company;
  - iv) That, where goods have been supplied to a wholesaler, returns will only be accepted if they are defective, wrongly supplied by the company or are of a lesser grade than the grade of the goods ordered;
17. Payment for the goods will be cash on or before delivery of the goods to the customer in accordance with the terms hereof unless the customer is an "approved account" with the company. A customer shall only be deemed to be an approved account if the company notifies the customer in writing to that effect in which case payment of the goods shall be strictly net within thirty (30) days from the date of the invoice. The company reserves the right at any time to determine that a customer ceases to be an approved account by notifying the customer to that effect either verbally or in writing and immediately upon such notification the customer shall cease to be an approved account.
18. (a) Interest shall be charged on overdue accounts at the rate of two per centum (2%) per month.
  - (b) The customer will pay to the company any legal or other costs incurred by the company of and incidental to the collection or recovery or attempted collection or recovery of money payable by the customer to the company under this agreement in the event of default, including but not limited to commencing any legal proceeding in a Court or otherwise, or enforcing any judgment or order obtained.
  - (c) Legal costs payable by the customer to the company pursuant to Clause 20(b) will be paid by the customer to the company or a solicitor and own client basis.
  - (d) The customer shall pay to the company the sum of \$50.00 within seven days of the date of presentation for any cheque delivered or (forwarded by the customer to the company which is dishonored upon presentation).
19. Any dispute between the customer and the company may at the option of the company be referred to a single arbitrator to the mutually agreed between the customer and the company or failing agreement to be nominated by the President for the time being of the Law Society of NSW and the Arbitration Act for the time being in force shall apply to such arbitration.
20. This agreement is governed in all respects by the law of NSW and the customer submits to the jurisdiction of the Courts of NSW.