

GEOFABRICS AUSTRALASIA PTY LIMITED (ABN 23 005 479 961)

TERMS AND CONDITIONS OF SALE

1. Definitions

In these terms:

- a. **Agreement** means an agreement to sell Goods arising out of an Order and these Terms.
 - b. **Approved Buyer** means a Buyer approved by Geofabrics for payment within the Specified Period.
 - c. **Buyer** means the buyer specified in a Credit Application or an Order.
 - d. **Credit Application** means a written application submitted by the Buyer to Geofabrics to be an Approved Buyer.
 - e. **Force Majeure** means any acts of God, any regulation, law or restriction of any government agency, war, riot, strike, fire, flood, explosion, drought or earthquake, a shortage or unavailability of raw materials, production capacity or transportation and any other circumstance beyond the reasonable control of Geofabrics.
 - f. **Geofabrics** means Geofabrics Australasia Pty Limited, its successors and assigns.
 - g. **Goods** means goods supplied by Geofabrics to a Buyer.
 - h. **Loss** means all claims, actions costs (including legal costs), damages, interest, expenses, liabilities and losses (including any loss of profit, loss of goodwill, loss of business opportunity and any special, indirect or consequential loss).
 - i. **Order** means an order submitted by a Buyer, setting out amongst other things the Goods ordered, the Price (as previously quoted by Geofabrics), the means of delivery and any delivery costs payable (as quoted by Geofabrics), the nominated delivery address and an estimated (non-binding) delivery date. Orders received by Geofabrics are subject to these Terms and Conditions of Sale and to acceptance in writing by Geofabrics or by performance.
 - j. **PPSA** means the *Personal Properties Securities Act 2009* (Cth)
 - k. **Price** means the amount payable for the Goods as quoted by Geofabrics and as specified in the Order.
 - l. **Specified Period** means a period of 30 days from the date of Geofabrics' monthly statement or invoice
 - m. **Terms** means these Terms and Condition of Sale.
- ## 2. Application of Terms
- a. These Terms apply to all Goods supplied by Geofabrics to a Buyer and combined with an Order are the entire agreement between the parties. Unless expressly agreed in writing by Geofabrics, these Terms override any orders, quotes, invoices or any other documentation exchanged between the parties whether or not they state that they override these Terms.
 - b. When a Buyer places an Order it is agreed that they accept these Terms.
- ## 3. Orders and Quotations
- a. A quote will be valid for 30 days from the date it is delivered to the Buyer or for such longer period as agreed by Geofabrics. Geofabrics may refuse an Order, or part of an Order placed by a Buyer at its discretion.
 - b. An Order is deemed to have been accepted by Geofabrics when Geofabrics gives written notice to the Buyer, if Geofabrics delivers the Goods to the Buyer or the Buyer collects the Goods, whichever is the earlier. If Geofabrics accepts an Order it will deliver and the Buyer will purchase the Goods specified in the Order subject to these Terms
- ## 4. Supply Subject to Availability
- a. Until Geofabrics accepts an Order it shall have no obligation to supply the Goods. Even if Geofabrics accepts an Order by notice, Geofabrics' obligation to supply the Goods is subject to Geofabrics' availability. If Geofabrics is unable to supply the Goods specified in an Order, Geofabrics shall refund any monies paid by the Buyer and this shall be the sole and exclusive remedy of the Buyer.
 - b. The quantity of Goods as included in this quote is in no way a representation or recommendation by Geofabrics of the required quantity of Goods as required by the Buyer. It is the obligation of the Buyer, not Geofabrics, to ensure that the quantity of Goods ordered by the Buyer and included in this Quote are sufficient to meet the specific purpose or purposes for which the Buyer intends to use these Goods.
- ## 5. Delivery
- a. The Buyer may take delivery from Geofabrics' warehouse or, if so specified in the Order Geofabrics will deliver the Goods to the Buyer's nominated delivery address. If no person is at the address upon delivery, Geofabrics may (at its sole discretion) instruct the carrier to wait for a person to arrive, leave the Goods at the address (which shall be deemed to constitute delivery) or return them to Geofabrics' warehouse for future delivery. The Buyer must pay Geofabrics' reasonable costs in taking any of these actions, including waiting charges, costs of returning the goods to its warehouse, storage and future delivery.
 - b. The Buyer warrants that Geofabrics or its carrier is entitled to deliver and deposit the Goods at kerbside or at the nominated address and that the Buyer has obtained all permissions from any local council or other authority necessary for the Buyer to validly authorise the delivery of the Goods without breach of any laws or regulations. The Buyer will take all responsibility for delivery being effected in accordance with this clause 5 and will indemnify Geofabrics against any liability to the Buyer or any third party in connection with delivery of the Goods.
 - c. Delivery occurs when the Buyer, its carrier or agent takes possession of the Goods at Geofabrics' warehouse, or alternatively when the Goods have been left at or near the nominated delivery address, as the case may be. The Buyer must pay Geofabrics the delivery costs specified in the Order or quotation.
 - d. Offloading on site is the Buyer's responsibility. The Buyer should ensure that it has facilities to unload the Goods and facilitate delivery.
 - e. The Buyer or the Buyers' representative accepts the Goods by signing Geofabrics' delivery note. Where the Buyer or the Buyers' representative is not available at the delivery address to sign and accept delivery of the Goods, then Geofabrics' carrier's confirmation of delivery shall be sufficient evidence of delivery and acceptance of the correct quantity of Goods delivered to the Buyer. All delivery dates quoted to the Buyer by Geofabrics for the supply of Goods (including but not limited to any delivery date(s) specified in the Order) are estimates given in good faith only and are not binding on Geofabrics. Geofabrics will not be liable for any Loss due to delay or non-delivery.
 - f. The Buyer acknowledges that Geofabrics subcontracts freight of Goods to freight carriers and consents to this subcontracting.
- ## 6. Risk and Title
- a. Risk in the Goods passes to the Buyer on delivery in accordance with these Terms. The Buyer is responsible for insuring all Goods for their full value from the date of delivery.
 - b. Title in the Goods passes to the Buyer on payment in full for the price of the Goods.
 - c. Until full payment in cleared funds is received by Geofabrics for all Goods Geofabrics has supplied to the Buyer:
 - i. legal title and property in all Goods supplied under an Agreement remain vested in Geofabrics and does not pass to the Buyer;
 - ii. the Buyer holds the Goods as bailee for Geofabrics and where possible must keep the Goods separate from other products and keep the packaging of Geofabrics so they are identifiable as Geofabrics' property;
 - iii. the Buyer must not sell the Goods except in the ordinary course of the Buyer's business;
 - iv. the Buyer will hold the proceeds of any sale of the Goods on trust for Geofabrics; and
 - v. Geofabrics may without notice, enter any premises where it suspects the Goods are located and remove them without committing a trespass, even if they are attached to other product or land which is not Geofabrics property, and the Buyer irrevocably indemnifies Geofabrics from and against all Loss suffered or incurred by Geofabrics.
- ## 7. Limited Warranty
- a. Geofabrics warrants that when the Goods leave Geofabrics' premises they comply with the ISO 9001:2008 quality assurance system and with the specifications detailed in Geofabrics current published product information documents, or alternative Specification agreed in advance of

- the Order of the Goods in writing by Geofabrics.
- b. Except for the limited warranty in Clause 7(a) and the rights of the Buyer under the Competition and Consumer Act 2010 (Cth) and other laws which cannot be lawfully excluded or restricted, all other warranties in relation to the Goods are excluded, including any implied warranty of fitness for any specific purpose.
 - c. The Buyer acknowledges and agrees that information, design or installation suggestions provided by Geofabrics or its resellers (other than Geofabrics' product specifications) to the Buyer, the Buyer's representatives or its contractors, is general in nature and is given without detailed knowledge of the site at which the Goods are to be used or installed and without detailed knowledge of the proposed use of the Goods. If Geofabrics provides any such information it is given in good faith but on the basis that the Buyer must not rely on it and must rely on its own, independent judgement or advice from experts engaged by the Buyer independently of Geofabrics.
- 8. Exclusion/Limitation of Liability**
- a. Other than terms implied by statute which may not be excluded or modified, all terms other than those expressly contained in this document are excluded. An Agreement does not purport to exclude or modify liability where such statutes do not permit.
 - b. Subject to Clause 8(c), Geofabrics' maximum liability to the Buyer in respect of any claim for loss or damage arising in relation to the supply of Goods including as a result of third party claims) in any form of action, including contract, tort, strict liability or otherwise is limited to, at Geofabrics' option the repair or replacement of the Goods, or payment of the cost of replacing the Goods or of obtaining similar Goods, resupplying them or paying the cost of resupplying them.
 - c. In no circumstances will Geofabrics be liable for any special, consequential or indirect loss or damage, however arising, including any loss of profit, lost cost savings or lost business opportunity.
 - d. The Buyer agrees that Geofabrics does not promise that repair facilities or spare supplies matching the Goods supplied will be available to the Buyer.
 - e. This Clause 8 survives termination of the Agreement between the parties.
- 9. Notification of Defective Product**
- a. The Buyer must inspect the Goods on delivery. If there is any suspected defect, the Buyer must notify Geofabrics in writing within 7 working days of the details of the suspected defect. The Buyer should detail in writing the amount of the Goods affected by the suspected defect and the type of suspected defect.
- 10. Restocking Fee**
- a. Geofabrics, at its sole discretion, may accept the return of standard Goods, after Geofabrics has inspected the Goods for merchantable condition. On such acceptance Geofabrics reserves the right to charge a restocking fee of 20% of the price on Goods returned (or such fee as otherwise agreed by Geofabrics), provided that the Goods returned are in merchantable condition according to Geofabrics' standards.
- 11. Price and Payment**
- a. The Buyer agrees to pay the Price specified in the Order based on the quotation provided by Geofabrics or otherwise as agreed by Geofabrics in writing.
 - b. The Buyer must pay the Price and all other monies payable to Geofabrics in respect of an Order in cash or by approved credit card or eftpos transaction immediately on delivery of the Goods. Alternatively, if the Buyer is an Approved Buyer, the Buyer must pay the Price and all monies payable within the Specified Period.
 - c. Geofabrics may vary its prices from time to time as it deems fit. For example, Geofabrics may review its prices as a result of movements in foreign exchange rates or the cost of raw materials. Geofabrics will provide the Buyer with written notification of any price changes. All Agreements over 6 months in duration are subject to price reviews.
- 12. Payment Default**
- a. Without prejudice to any other rights or remedies of Geofabrics, if the Buyer fails to make any payment by the due date, Geofabrics may exercise any or all of the following rights:
 - i. charge the Buyer interest on the unpaid amount at the rate which is 2% above the rate quoted by Geofabrics' bank on commercial overdrafts of \$100,000.00;
 - ii. suspend the supply of any Goods (including other Orders accepted by Geofabrics) until full payment is made by the Buyer; and/or
 - iii. require that the Buyer pay for Goods supplied to the Buyer by cash on delivery and reduce, cancel or suspend any "credit limit" enjoyed by the Buyer.
- 13. Security**
- a. Unless the context indicates otherwise the terms used in this Clause 13 are as defined in the PPSA.
 - b. The Buyer hereby grants to Geofabrics a Purchase Money Security Interest in the Goods until the Buyer has made full payment of all monies owing to geofabrics for those Goods and that this document constitutes a Security Agreement for the purposes of the PPSA.
- c. The security interest held by Geofabrics includes an interest in Goods that become an accession to other goods.
 - d. The Buyer must do all things necessary to assist Geofabrics to perfect and enforce its security interest to the fullest extent available at law, including enabling Geofabrics to gain first priority for its security interest. Accordingly, the Buyer must not grant a security interest in the Goods to any other party.
 - e. The Buyer irrevocably and unconditionally waives its rights to receive any notice from Geofabrics under the PPSA.
 - f. Notwithstanding any part of the PPSA the parties agree to keep the contents of an Agreement and related material confidential.
- 14. Trusts**
- a. If the Buyer is a trustee it enters into an Agreement in its own capacity and in its capacity as trustee of the relevant trust. The Buyer warrants that it has disclosed to Geofabrics the existence of all trusts of which it is a trustee and that it is entitled to enter into any Agreement under the relevant trust.
- 15. GST and Taxes**
- a. The Buyer must pay any and all taxes imposed on this Agreement and the sale and purchase of Goods. All sums specified by Geofabrics as consideration for a supply of Goods under an Agreement are specified exclusive of GST unless the contrary is clear and the amount of that consideration will be increased by an additional amount equal to the GST on that taxable supply. If an amount is payable as compensation or reimbursement for an expense, the consideration must be calculated after excluding any amount for which Geofabrics is entitled to an input tax credit as recipient of the item to which the expense loss or liability relates.
- 16. Dispute Resolution**
- a. In the event of a dispute arising out of or relating to an Agreement the parties agree to attempt to settle that dispute. One party will give the other notice in writing of the dispute and the parties will attempt in good faith to resolve the dispute within 30 days of the notice.
 - b. If the dispute is not resolved within 30 days of the notice then it will be referred to mediation. The mediator(s) appointed to mediate the dispute will be an independent third party, approved by both parties.
- 17. General**
- a. Geofabrics maintains workers compensation insurance in accordance with its statutory obligations and public liability insurance. Geofabrics can provide certificates of currency for these insurance policies upon request from the Buyer.
 - b. In the event that Force Majeure delays or prevents Geofabrics performing an obligation under an Agreement, that obligation is suspended for as long as the Force Majeure endures.
 - c. These Terms can only be varied with the written agreement of Geofabrics. Geofabrics may vary these Terms at any time by notice to the Buyer, so that any varied terms and conditions will apply to future Orders accepted by Geofabrics, but not to Orders already accepted.
 - d. A waiver of any right arising under an Agreement between the parties must be in writing and signed by the party granting the waiver.
 - e. These Terms are governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the Victorian courts.