

THE PURCHASER AND REGENCY BUILDING SUPPLIES AGREE TO THE FOLLOWING TERMS AND CONDITIONS OF SALE

Contract Terms and Conditions

1.0 Definitions and Interpretation

1.1 In these Contract Terms:

- (A) **Company** means Gingold Investments Pty Ltd trading as Regency Building Supplies.
- (B) **Goods** means the provision of items or rendering of a service being the subject of this contract, or part thereof.
- (C) **GST** means Goods and Services Tax.
- (D) **Quotation** means the proposed bill of charges for goods to be supplied by the company.
- (E) **Invoice** means the bill of charges provided by the company.
- (F) **Notice** means a Notice in accordance with Clause 22.
- (G) **Order** means the Purchaser's offer to purchase the Goods, or part thereof.
- (H) **Price** has the meaning stated in Clause 5.
- (I) **Purchaser** means the person or business trading named in the Order as the purchaser, and
- (J) **Warranty** has the meaning stated in Clause 7.

1.2 In these contract terms, the headings are for convenience only and do not effect their interpretation.

1.3 Each indemnity provided by the Purchaser under these contract terms is a separate and continuing indemnity that survives the termination of this contract, for any reason, and the delivery of goods.

2.0 Application

2.1 The purchaser's order is accepted by the company on the basis that (subject to Clause 8) these contract terms constitute the contract between the purchaser and the company for the sale and purchase of the goods.

2.2 These contract terms supersede all prior discussions, representations, agreements and arrangements in relation to the sale and purchase of the goods.

3.0 Delivery

3.1 The company agrees to deliver the goods in accordance with these contract terms.

3.2 The company will use its best endeavours to deliver the goods within the time agreed with by the purchaser. Delivery times may be subject to circumstances beyond the company's control and therefore the company accepts no responsibility or liability for late deliveries.

3.3 The company will at all times endeavour to place goods as near as practical to the purchaser's request. However, should the company deem that the site is inaccessible, or unsafe to do so, it will be the purchaser's responsibility to nominate an alternative site where the goods can be delivered. If the purchaser cannot be contacted or does not nominate an alternative delivery site, the delivery driver will either deliver the goods at a position deemed appropriate or return the goods to the company. Any extra costs incurred as a consequence of inaccessibility or unsafe sites will be charged to the purchaser. A notice of special placement of deliveries shall be given to the company by the purchaser at the time of order. The company or its agent shall have full licence authority and unrestricted access to enter upon the premises where the delivery is required. The company may, at the purchaser's request, deliver to an external carrier's depot or third party. Once delivered, the purchaser accepts the goods and all responsibility for such goods. If the purchaser wishes to have the company's delivery driver manually shift goods, a charge of \$65.00 per hour plus GST will be applied.

3.4 The purchaser is responsible for informing the company of a shortage of supply from the original quotation. Any shortage of supply requires notification on the same day of delivery. The driver's log of the company shall be accepted as confirmation of delivery.

3.5 The purchaser will be charged for any additional deliveries required, beyond those in the company's original quotation and beyond those of the company's responsibility.

3.6 The purchaser will be charged for any additional deliveries subject to wide loads and/ or long lengths requiring escorts.

3.7 All goods will be packed according to the company's standards. No packs will come with protection from theft, weathering or otherwise. The purchaser must give notice to the company of any special packing requirements and will be charged accordingly.

3.8 If by reason of any event beyond the reasonable control of the company, the delivery of goods becomes impracticable in the company's opinion, the company may terminate by notice to the purchaser. The purchaser must pay the company such sum as will together with any other sums paid previously bear the same proportion to the price, including any variation thereof, as the goods or services actually delivered bear to the goods or services contracted for.

4.0 Payment

4.1 The purchaser agrees to accept and pay for the goods in accordance with these contract terms.

4.2 Payments on account must be made in full by the end of the month next following the month in which the invoice is sent to the purchaser (in this clause referred to as the **Due Date**).

4.3 For purchasers who do not have an account with the company, full payment is required prior to the delivery of goods.

4.4 For purchasers who do not have an account with the company requiring the specific fabrication of goods, full payment is required prior to manufacture.

4.5 Payments in respect of orders outside of South Australia must be made against documents by cash or confirmed and irrevocable letter of credit.

- 4.6 Payment in full on or before the due date is a condition precedent to all future deliveries under this or any other contract with the purchaser.
- 4.7 Without prejudice to any other right or remedy the company may have, it may charge the purchaser on any overdue amounts an interest rate of 5% per annum above the then maximum rate specified by the Reserve Bank of Australia for overdrafts on current accounts.
- 4.8 Time of payment is of the essence of the contract.

5.0 Price Basis

- 5.1 The price is that ruling at the date of dispatch of the goods.
- 5.2 Any price quoted on any document or correspondence issued by the company;
- (A) Includes GST at the rate of 10%, and the company may vary the price if the GST rate changes;
- (B) Is based on all kinds in relation to the goods ruling at the date of the quotation and is subject to fair adjustment by the company to take into account any alteration in such costs prior to delivery of the goods or (in the case of delivery by instalments) prior to final delivery.
- (C) Is valid for a maximum of 30 days from the date printed on the quotation, after which may be revised, varied or changed at the discretion of the company.

6.0 Risk and Property

- 6.1 Risk in the goods passes to the purchaser at the time when goods have been placed on the vehicle which is to effect delivery from the company's premises and the goods remain at the purchaser's risk unless and until the company retakes possession of the goods pursuant to these contract terms.
- 6.2 Deliveries to unattended sites are at the purchaser's risk, notwithstanding that cart notes are unsigned. The company assumes no responsibility for the theft, weathering, on site incorrect cutting or application of the goods.
- 6.3 In addition to any other rights the company may have against the goods, the company may repossess the goods if any sum due in respect of them is outstanding or if the company reasonably believes that any such sum will not be paid in full when it falls due for payment. The purchaser grants the company an irrevocable licence to enter upon any premises of the purchaser for the purposes of taking possession.
- 6.4 Property in the goods passes to the purchaser on payment in full of the price.

7.0 Warranty

- 7.1 The company gives the warranty attached hereto.
- 7.2 Subject to clause 8, the warranty is given in addition to all statutory rights conferred on the purchaser.
- 7.3 The company will use its best endeavours to transfer or make over to the purchaser the benefit of any guarantee or warranty given by the manufacturer to the company of any goods not manufactured by the company.
- 7.4 Subject to clause 8, the company does not make any promise other than that contained in the warranty that any parts or repairs in respect of the goods or services will be available or available at any time or at any specified location.

8.0 Limitation of Liability

- 8.1 Subject to clauses 7.1 and 8.2, the company is not liable for any loss or damage, however caused (including, but not limited to, by the negligence of the company), suffered by the purchaser in connection with the contract, any supply under the contract, any misrepresentation by the company or any statement by a third party accepted in good faith by the company and repeated by it.
- 8.2 If the Trade Practices Act 1974 (TPA 1974) or any other legislation implies a condition or warranty into this contract in respect of goods or any services supplied by the company, and the company's liability for breach of that condition or warranty may not be excluded but may be limited, the exclusion clause in clause 8.1 does not apply and instead the Supplier's liability for any breach of that condition or warranty is limited to;
- (A) In relation to the goods, the company doing any 1 or more of the following, at its election;
- (I) Replacing the goods or supplying the equivalent goods.
- (II) Repairing the goods.
- (III) Paying the cost of replacing the goods or of acquiring equivalent goods.
- (IV) Paying the cost of having the goods repaired.
- (B) In relation to any supply of services, the company doing either or both of the following (at its election);
- (I) Supplying the services again.
- (II) Paying the cost of having the services supplied again.
- (C) Nothing in these contract terms is intended to exclude, restrict or modify any rights which the purchaser may have under the TPA 1974 or any other legislation which may not be excluded, restricted or modified by agreement.

9.0 Warranty, Covenant and Indemnity by the Purchaser

- 9.1 The purchaser warrants the accuracy of any specification or information provided by the purchaser, and the design, manufacture and installation by others of any equipment associated with the goods or services of this contract.
- 9.2 The purchaser covenants not to make any claim or take any proceedings against any employee or agent of the company in connection with this contract including in respect of any misrepresentation or negligence of the company or any employee or agent of the company.
- 9.3 The purchaser must indemnify the company in respect of any breach of clause 9.1 or clause 9.2.
- 9.4 If the purchaser fails to accept the goods in accordance with these contract terms, the purchaser must (without prejudice to any other rights of the company) indemnify the company in respect of any loss, damage or claim, including any licence or other fee, the cost of labour and other incurred costs and redundancy payments attributable to the purchaser's order or its failure to accept the goods.

10.0 Estimation, Carriage and Packing Shortages

- 10.1 Any goods quoted from an estimate quantity survey is not guaranteed. Neither the company nor its agents accept any responsibility or liability for any errors or omissions for quantities as a consequence of an inaccurate quantity survey. Further, the purchaser will be charged for any additional goods required not otherwise stated on the quantity survey. The estimated quantity survey remains the property of the company unless the purchaser wishes to buy the survey from the company at a nominal fee of \$300.00.
- 10.2 Inaccurate quantity lists supplied by the purchaser requiring further goods will be charged accordingly.
- 10.3 The purchaser shall be responsible for checking the estimated quantity survey before ordering and ensure that it is in accordance with the purchaser's requirements and the requirements of any said federal, state and local government.
- 10.4 Roof and floor truss computations are available to the purchaser for council approval. The fee for truss computations will be credited to the purchaser contingent on the purchaser electing to order the manufacture of the trusses from the company.
- 10.5 If the quotation does not include delivery charges or if the purchaser requests more deliveries than what is quoted for, the purchaser must bear all such costs, the cost of packing and the cost of any excess for special or express delivery requested by the purchaser.
- 10.6 The company may charge for storage and administration costs incurred against goods held for more than a reasonable period (fourteen (14) days) awaiting delivery instructions.
- 10.7 No refund of any charge made for packing or delivery will be made except in the cost of non-expendable pallets or containers which are charged for and for which credit will be given if returned carriage in good condition.

11.0 Shortages and Non-Delivery

- 11.1 Subject to clause 8, it is a condition precedent to any claim for damage to the goods, short delivery or delivery to the wrong address that notice be given to the company and/ or its agent within two (2) days of the said delivery.
- 11.2 Subject to clause 8, it is a condition precedent to any claim of non-delivery that notice be given to the company and/ or its agent within two (2) days of the said delivery.

12.0 Return of Goods

- 12.1 Subject to clause 8, the purchaser must not return goods for any reason except upon the consent of the company's director.
- 12.2 Any consent given under clause 12.1 may specify the terms and conditions and charges upon which any such return may be made.
- 12.3 Credit claims will not be considered unless made with seven (7) days of receipt of the goods or of delivery and must be accompanied with an invoice/ cart note number and delivery date before any claims will be considered. Goods specifically detailed or manufactured to the purchaser's specifications will not be accepted for return or credit. A credit will be issued only for goods received by the company and are in resaleable condition.
- 12.4 The purchaser will be charged a handling and administration fee of 20% of the value of goods returned in the form of a credit note.
- 12.5 Subject to clause 8, if any goods returned by the purchaser to the company for warranty related issues and are determined by the company not to be covered by the warranty, the purchaser must reimburse the company for all related costs incurred by the company, and pay to the company an amount equal to the company's standard employee time charges in effect at the time.

13.0 Extended Deliveries

- 13.1 If the contract provides for the goods to be specified by the purchaser by schedule from time to time, any schedule relating to the contract and delivered by the purchaser is subject to acceptance of the company.
- 13.2 Where a schedule is accepted under clause 13.1, any requirements stated in the schedule to be "firm" are deemed to form part of the contract and may only be cancelled with the prior written approval of the company.

14.0 Lawful Use of the Goods

- 14.1 The purchaser shall;
- (A) Acquaint itself with the requirements of all relevant federal, state and local government and statutory or other authority relating to the goods and to applications to which the goods are put.
 - (B) Comply with such requirements at all times while the goods are in its possession or under its control.
 - (C) Procure that any purchaser of the goods from the purchaser acquaints itself with and complies with such requirements.
- 14.2 The purchaser must comply with instructions by the company relating to the goods.
- 14.3 The purchaser must indemnify the company in respect of any breach of clause 14.1 or clause 14.2.

15.0 Patents

- 15.1 No right or licence is granted to the purchaser under any patent copyright, registered design or other intellectual or industrial property right or interest other than the right to resell the goods.
- 15.2 The purchaser shall not modify any goods manufactured by the company and will forego all warranty and indemnify the company should this occur.

16.0 Goods Made to the Purchaser's Specification

- 16.1 If the goods are manufactured to the design or specification of the purchaser, the purchaser warrants that design, specification and goods do not infringe any patent, copyright, registered design or other like protection from any other person and comply with any applicable statute, statutory instrument or regulation for the time being in force.
- 16.2 If the goods are manufactured to the design or specification of the purchaser, the purchaser warrants that design, specification and goods are correct.

16.3 The purchaser must indemnify the company in respect of any breach of clauses 16.1 and 16.2.

17.0 Variation within Specification

17.1 Variation within specification of any goods sold by the company that occur within the allowable tolerances for such goods will not be accepted by the company as being deemed faulty.

17.2 Variation by the company within specification for the goods does not constitute a breach of contract or impose the company any liability whatsoever.

18.0 Assignment

18.1 The company may assign, sub-contract or sub-let this contract or any part thereof without seeking the consent of the purchaser.

19.0 Waiver

19.1 Any waiver by the company must be signed in writing by the company.

19.2 Failure by the company to enforce any right or remedy is not a waiver of any of the right, remedy, or a waiver of a continuing breach.

19.3 No person acting without the express written authority of a director of the company or an elected representative of the company is authorised to give or make on behalf of the company any undertaking, assertion, statement of admission in respect of the goods or their supply at variance with the contract terms.

20.0 Governing Law

20.1 This contract is governed by the laws of South Australia and any dispute between the parties, the parties in connection with this contract is to be resolved in accordance with the laws of South Australia.

20.2 The parties irrevocably submit generally and unconditionally to the jurisdiction of the courts of South Australia in respect of claims, proceedings and matter arising out of or in connection with this contract.

21.0 Variation

21.1 Any variation to these contract terms must be in writing signed by a director of the company or an elected representative of the company and refer expressly to the provisions being amended.

22.0 Notice

22.1 Any notice must be in writing and delivered by hand or sent via post, email or facsimile as follows:

- (A) If to the company by hand,
The Director
Gingold Investments Pty Ltd
trading as Regency Building Supplies
76 Days Road
CROYDON PARK SA 5008.
- (B) If to the company by post,
The Director
Gingold Investments Pty Ltd
trading as Regency Building Supplies
PO Box 159
WELLAND SA 5007.
- (C) If to the company by email,
acolangelo@rbs.net.au
- (D) If to the company by facsimile,
08 8340 2700.
- (E) If to the purchaser
As per the purchase order.

22.2 A notice is regarded as given by the sender and received by the addressee:

- (A) If the notice is delivered by hand, when delivered to the addressee.
- (B) If the notice is sent via post, on the second business day following the date of postage/ when delivered to the addressee.
- (C) If sent by facsimile, when the transmission is successfully completed (as reported by transmission is illegible or incomplete by telephone or notice within 2 hours of the transmission being received).
- (D) If sent by electronic mail, when the addressee opens the message (as reported by the sender's machine), unless the addressee informs the sender that the transmission is illegible, incomplete or corrupted by telephone or notice within 2 hours of the transmission being received.

22.3 A notice delivered or received;

- (A) On a day, which is not a business day, or after 4.00 pm (recipient's time) is regarded as received at 9.00 am on the following business day.
- (B) Before 9.00 am (recipient's time) on a business day, it is regarded as received at 9.00 am that day.

23.0 Privacy Act

Information relating to transactions with the company may be disclosed to third parties for reasons including, but not limited to, credit reference checking and financing arrangements. The purchaser has, at all times, a right to access this information.