

Where in these Terms and Conditions the expression “Company” is used, it shall be taken to mean Garde Timber Pty Ltd ABN 47 144 560 234 trading as Garde Timber.

application

The Customer acknowledges that these general terms and conditions apply in relation to all sales of goods or services by the Company to the Customer and to all orders placed with the Company. No person acting or purporting to act on the Company’s behalf has the authority to make any promise, representation or undertaking or to add to or change in any way these general terms and conditions of sales except expressly in writing.

These terms and conditions are in addition to and in no way are intended to limit, vary or exclude any rights conferred by the conditions and warranties implied by the Trade Practices Act 1974 or by any similar legislation of a State or Territory of Australia which prohibits any such limitation or exclusion.

The Company reserves the right to vary these terms and conditions of sale. The Customer’s rights under these Terms and Conditions of Sale are not assignable or transferable.

gst

Trade prices do not include GST. The Company will charge GST at the rate set by the Government in respect of any supply made to the Customer.

quotations

Any quotations provided by the Company remain open for acceptance for a period of thirty days from the date of quotation. After this time, this quotation is voidable at the option of the Company which may, in its absolute discretion determine this quotation and subsequently revise the price or any other of the conditions so quoted.

cancellations

No order may be cancelled by the Customer without the written consent of the Company irrespective of whether or not the Company has advised the Customer of its acceptance of that order.

collection of goods

All goods must be collected within a maximum period of 10 working days after the specified date. The Customer will then be invoiced for the price of the goods and the goods will then, at the discretion of the Company, either be delivered to the Customer's premises or to a depot selected by the Company from which the goods can be dispatched to the Customer or collected by the Customer at a later date, at the Customer's expense. Any additional cost (including cost of damage or storage) incurred by the Company as a result of holding material for longer than 20 days after the specified date will be charged to the Customer's account and shall be payable by the Customer as part of the goods in question.

delivery

Any times quoted for delivery are estimates only and the Company shall not be liable for failure to deliver or for any delay in delivery arising from any cause whatsoever beyond the Company's control. The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery or dispatch. The Company reserves the right to deliver by portion and each portion shall not entitle the Customer to repudiate the contract. Delivery will be deemed to have occurred when on-loaded at the Company's premises and all goods shall be the risk of the Customer after on-loading.

payment

Payment for all goods purchased from the Company is due and payable at the time of purchase unless a 30 day credit account has been approved and the Consumer Credit Code does not apply, in which event payment must be made on or before the last working day of the month following that in which deliveries are invoiced and in that case:

- a) payment must be prompt and notwithstanding any previous indulgences, the Company may in its absolute discretion require immediate payment of any amount owing and/or refuse credit or supply of goods without giving any notice whatsoever;
- b) a settlement discount is available to account Customers on most items where payment in full is received within the 30 days terms defined above but this settlement discount does not apply where the payment is made by credit card;
- c) if payment in full is not received within the 30 day terms defined above, the Customer shall in addition be liable to pay:

(i) interest at the rate of 1% per month (calculated daily) on any overdue amount; or

(ii) all expenses (including any amount charged to the Company by a debt collection agency) incurred in recovering or attempting to recover an overdue amount.

fitness for purpose

The Customer agrees that the Company shall not be liable for any:

a) representation, promise or undertaking regarding the fitness or otherwise of the goods or services supplied by the Company unless it is made in writing or implied by law; or
b) failure by the Customer to fix, install, erect or maintain the goods in accordance with any advice, recommendation, specification, information, assistance or service provided by the Company in relation to goods sold or manufactured by it.

sub-contracting

The Company reserves the right to sub-contract the manufacture and/or supply of any part of the goods quoted or of any materials to be supplied.

claims

No claim by the Customer for failure to supply products conforming to the Customer's orders shall be recognised by the Company unless made in writing to the Company within fourteen days after delivery of the goods to the Customer. No claim involving labour charges or product replacement will be recognised by the Company unless the Company's agreement to the value of such claim is obtained immediately such a problem becomes evident and the Customer has demonstrated that he has taken all possible action to minimise the effect of such a claim and the Company has been given sufficient time to investigate and take such action it feels necessary to resolve the problem. No claims will be recognised by the Company relating to materials which have been fixed unless in the Company's view the problem could not have been detected during the fixing process. Claims for 'lost time' or 'waiting time' will not be approved by the Company. No claim will be recognised by the Company for any loss, damage or injury of any kind whatsoever arising directly or indirectly from the Customer's failure to obtain independent professional and/or tradesman's advice in relation to the suitability of the goods for any specific purpose. The company shall not be liable to the Customer for any loss of profits or consequential, indirect or special loss, damage or injury of any kind whatsoever arising directly or indirectly from any defect in the goods (regardless of any express or implied terms, or by reason of the Company's negligent act or omission or otherwise at common law.)

returned goods

Stock items only may be returned for credit within 7 days from date of delivery if they are in prime condition, and will be subject to a handling fee of 15% plus transport costs. In addition, the invoice number and delivery date must be quoted upon return. Goods will not be accepted for credit after 7 days from date of delivery. If specially manufactured to a Customer's requirements, goods may not be returned for credit.

title to goods

All goods supplied by the Company shall be at the Customer's risk from the time of delivery. The legal and equitable title to and property in the goods will not pass to the Customer until the

Customer has paid all moneys owed to the Company on any account whatsoever. Payment shall not be deemed to occur until all cheques in payment of moneys owing to the Company have been presented and cleared in full. The Company reserves its right to enter upon any premises for the purpose of repossessing goods. The right to repossess is without prejudice to any other rights of recovery otherwise available. Until all goods are paid for in full the relationship of the Customer to the Company shall be as a fiduciary in respect of the goods and accordingly, the Customer, if required by the Company, shall store the goods in such a way that they can be recognised as the property of the Company and, if the goods are sold by the Customer, the Company shall have the right to trace the proceeds thereof. It is not intended by these terms and conditions to create a charge or trust over any goods or over proceeds of their sale and any such term or condition (or any part thereof) creating such a charge or trust shall be severed without affecting the validity of the other terms and conditions.

personal properties securities act (“ppsa”)

In this clause:

- a) “PPSA” means the Personal Property Securities Act 2009 (Cth); Austim Pty Ltd From 27 Rev 1 30-July-2012
- b) “PPSR” means the Personal Property Securities Register;
- c) “Security Agreement”, “Financing Statement”, “Financing Change Statement”, “Verification Statement” and “Registration” have the meanings prescribed to them in section 10 of the PPSA;
- d) “Security Interest” has the meaning prescribed to it in section 12 of the PPSA;

Defined terms in this clause have the same meaning as given to them in the PPSA.

The Customer and Company agree that the Company’s terms of trade and Contract constitute a Security Agreement and may give rise to a Purchase Money Security Interest (“PMSI”) in favour of the Company over the goods supplied or to be supplied to the Customer, as grantor, pursuant to the terms of trade.

The Customer acknowledges and agrees that by assenting to these terms of trade the Customer grants a Security Interest (by virtue of the above clause (Title to Goods)) to the Company over all goods supplied by the Company to the Customer (if any) and all after acquired goods supplied by the Company to the Customer (or for the Customer’s account) and this grant of Security Interest will be effective notwithstanding anything express or implied to the contrary contained in the Customer’s purchase order.

The Customer acknowledges and agrees that the Company may apply to register a Security Interest in the goods at any time before or after delivery of the goods.

The Customer agrees to do anything required by the Company for the purposes of:

- a) ensuring that the Security Interest is enforceable, perfected and otherwise effective; and/or
- b) enabling the Company to apply for any Registration, complete any Financing Statement or Financing Change Statement or give any notification, in connection with the Security Interest; and/or
- c) enabling the Company to exercise rights in connection with the Security Interest; and/or
- d) ensuring that the Company has priority over all other Security Interests in the goods.

The Customer waives its right under section 157 of the PPSA to receive the Verification Statement confirming Registration, Financing Statement or Financing Change Statement relating to a security interest granted by the Customer, as grantor, to the Company.

The Customer must not register a Financing Change Statement as defined in Section 10 of the PPSA or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the goods without the prior written consent of the Company.

To the maximum extent permissible at law, the Company and Customer agree that sections 95, 121(4), 123(2), 125(1), 130, 132(3)(d), 132(4), 135, 142, and 143 of the PPSA shall be excluded and shall not apply to the enforcement by the Company of its Security Interest in the goods.

The Company and the Customer agree not to disclose information of the kind mentioned in section 275(1) of the PPSA and the Customer will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

The Customer must not create any Security Interest in the goods to any person other than the Company.

For the purposes of section 125 of the PPSA the Customer agrees that a 'reasonable period' shall not mean less than 12 months regardless of the circumstances.

The Customer agrees to pay the Company, on demand all of the Company's reasonable legal fees, disbursements, costs and expenses associated with:

- a) registration, amendment, or discharge of any Financing Statement registered by or on behalf of the Company; and
- b) enforcement of any Security Interest granted to the Company by the Customer.

Nothing in this clause is limited by any other provision of these trading terms or any other agreement between the parties.

default of customers

If the Customer defaults in any payment, commits any act of bankruptcy, has liens placed on a project or assets frozen or restrained, or becomes subject to any form of external administration or an application for any form of external administration is made, the Company may at its option withhold further deliveries or cancel the contract without prejudice to its rights there under. Where such default occurs this shall not in any way prejudice the right of the Company to recover any amounts due for materials previously supplied, or manufactured to a Customer's requirements.

jurisdiction

The Company shall have the exclusive right to nominate the Court in which any legal action is to be commenced and conducted, and the Customer shall consent to a permanent stay of any proceedings which may have been commenced by the Customer in a Court not nominated by the Company.