

# **International Panels Australia Pty Ltd - Terms and Conditions of sale of goods and provision of services.**

## **1. Definitions:**

- 1.1. "IPAPL" means International Panels (Australia) Pty Ltd.
- 1.2. The "Customer" means the applicant, including any of its authorised officers, directors or proprietors, placing an order or request for the purchase of goods and/or provision of services from IPAPL.
- 1.3. "Order" or "Request" means an order or request by the Customer to IPAPL for goods and/or provision of services.
- 1.4. "Amendment Demand" means a demand that a registration of a Security Interest be amended in accordance with the PPS Act.
- 1.5. "Collateral" has the same meaning as in section 10 of the PPS Act.
- 1.6. "Commingled goods" has the same meaning as 'commingled' under the PPS Act.
- 1.7. "Security Interest" means a Security Interest within the meaning of section 12 of the PPS Act or a Purchase Money Security Interest as the context requires.
- 1.8. "Proceeds" has the same meaning as in section 31 of the PPS Act.
- 1.9. "Purchase Money Security" Interest has the meaning given to it in section 14 of the PPS Act.
- 1.10. "PPS Act" means the Personal Properties and Securities Act 2009 (Cth).
- 1.11. "PPS Register" has the same meaning as 'register' under the PPS Act.

## **2. Orders:**

- 2.1. All orders are subject to acceptance by IPAPL.
- 2.2. An order will only be accepted if it issues an invoice to the Customer.
- 2.3. IPAPL will not be bound by any terms attaching to an order, and the Customer agrees that those terms are excluded.
- 2.4. IPAPL may require payment of an initial amount (the initial amount) by the Customer upon an order or request being submitted to it by a Customer. In circumstances where payment of an initial amount is required by IPAPL then acceptance of the order or request will not be made by IPAPL until such time as the payment of the initial amount has been made by the Customer to IPAPL.

## **3. Terms of Payment:**

- 3.1. Subject to Cl. 2, or unless otherwise stipulated by IPAPL in writing, payment for all goods and services are to be made by the last day of the month following the invoice date.
- 3.2. Any acquiescence by IPAPL to the failure of the Customer to pay for goods and/or services by the due date will in no circumstances constitute a waiver by IPAPL of its rights to payment on the due date nor will it be construed as an agreement to provide credit otherwise than in accordance with these terms.
- 3.3. If a credit limit is approved, and the Customer orders goods or services to an aggregate above that limit, then the Customer and guarantor/s accept

responsibility for payment should IPAPL supply those goods or services.

- 3.4. The Customer will not be entitled to withhold payment (in whole or part) of the moneys owed to IPAPL or to make any deduction from those monies in respect of any set off or counter claim.
- 3.5. GST is charged on all sales and the provision of services, and is payable by the Customer.

## **4. Delivery:**

- 4.1. If an IPAPL invoice specifies it is the responsibility of IPAPL to deliver the goods to the Customer or it is otherwise agreed that IPAPL will deliver the goods to the Customer the following will apply:
  - 4.1.1. IPAPL will be entitled to deliver the goods by way of instalments;
  - 4.1.2. IPAPL is entitled to a delivery fee from the Customer.
  - 4.1.3. Delivery times advised to the Customer are estimates only and IPAPL will not be liable for any loss, damage or delay suffered or incurred by the Customer or its clients arising from late or non-delivery of the goods; and
  - 4.1.4. If the Customer does not accept delivery of the goods the Customer has no entitlement to be repaid the initial amount and IPAPL will in addition be entitled to pursue the Customer pursuant to its rights under these terms and conditions and at law.

4.2. If an IPAPL invoice specifies it is the responsibility of the Customer to collect the goods from IPAPL or it is otherwise agreed that the Customer will collect the goods from IPAPL the following will apply:

4.2.1. IPAPL will be entitled to require the Customer to collect the goods by way of instalments;

4.2.2. Collection times advised to the Customer are estimates only and IPAPL will not be liable for any loss, damage or delay suffered or incurred by the Customer or its clients arising from late collection or an inability to collect the goods;

4.2.3. If the Customer does not collect the goods within the time specified by IPAPL for the collection of the goods the Customer has no entitlement to be repaid the initial amount and IPAPL in addition will be entitled to pursue the Customer pursuant to its rights under these terms and conditions and at law.

## **5. Title and Risk:**

5.1. Goods supplied to the Customer by IPAPL shall remain the sole and absolute property of IPAPL until such time as IPAPL has been paid by the Customer all monies due and owing to it by the Customer in relation to any account.

5.2. IPAPL is entitled to take possession and dispose of any goods supplied by IPAPL to the Customer as IPAPL sees fit at any time until IPAPL has received payment in full for all moneys owing to it.

5.3. The Customer grants permission to IPAPL to enter any property where any goods supplied by IPAPL are stored.

5.4. Risk in the goods supplied by IPAPL to the Customer will pass from IPAPL to the Customer;

5.4.1. When the goods are being shipped, once the goods are on board the ship; and

5.4.2. When the goods are not being shipped, immediately upon the goods being dispatched from IPAPL premises. If goods are collected by the Customer or being delivered by IPAPL to the Customer from a location other than IPAPL's premises (the departure point) the risk in the goods will pass to the Customer immediately upon dispatch from the departure point.

5.5. Until IPAPL has been paid all money due and owing to it the Customer agrees;

5.5.1. To keep all goods supplied by IPAPL as fiduciary and trustee for IPAPL and to store the goods in a manner that discloses IPAPL is the owner of the goods; and

5.5.2. To only sell the goods supplied by IPAPL in the normal course of business on the condition that the Customer holds all proceeds on trust for IPAPL.

## **6. Shipped Goods:**

6.1. In the event the Customer orders or requests IPAPL to sell to it:

6.1.1. Goods that are required to be transported to Australia from a foreign country; or

6.1.2. Goods that are in transit to Australia; or

6.1.3. Goods that have been transported to Australia that have not obtained clearance by Australian customs from an Australian wharf; or

6.1.4. Goods that are to be shipped from Australia to a foreign country, the following terms will apply;

6.1.4.1. The Customer order or request must specify the currency (either USD or AUD) that the Customer proposes to pay IPAPL for the goods;

- 6.1.4.2. If the order or request is accepted by IPAPL it will issue an invoice;
- 6.1.4.3. Notwithstanding Cl. 3 of these terms and conditions the Customer must pay IPAPL in cleared funds the amount invoiced within 48 hrs of IPAPL issuing its invoice unless IPAPL notifies the Customer in writing of a later acceptable payment date;
- 6.1.4.4. IPAPL will arrange for all costs, insurance and freight in transporting the goods to the relevant wharf;
- 6.1.4.5. The Customer will be responsible for all costs and expenses in relation to the goods being cleared from the wharf and transported from the wharf to the Customer's premises. These costs will include but not be limited to customs duties, quarantine and inspection fees, fumigation fees, wharf storage fees, demurrage and freight and transportation costs;
- 6.1.4.6. If the Customer fails to arrange for the goods to be removed from the relevant wharf within seven days of the goods arriving at the relevant wharf IPAPL will have the option of transporting the goods to a storage yard or to the Customer's yard at the Customer's risk, cost and expense;
- 6.1.4.7. If IPAPL notifies the Customer of the name of the ship transporting the goods and the ship is lost or delayed, IPAPL may at its option select another ship to transport the goods and the Customer must accept the goods with no claim against IPAPL, providing the goods arrive at the relevant wharf within six weeks of the original due date.

## **7. Default by Customer:**

- 7.1. In the event the Customer dishonours any cheque or defaults in the payment of any invoice, all moneys owing by the Customer to IPAPL on any account whatsoever shall, at IPAPL's option, become immediately due and payable in full by the Customer.
- 7.2. IPAPL shall not be obliged to deliver goods or services pursuant to an order until all moneys owing and overdue to IPAPL by the Customer on prior orders or requests or invoices are paid to IPAPL.
- 7.3. Unless otherwise agreed, in the event payment is not made in accordance with IPAPL's terms, IPAPL shall be at liberty to charge the Customer, and be paid interest on the outstanding balance from the date of the invoice until the date of payment at the rate calculated using the indicative "cash" rate of the Reserve Bank of Australia as published in the Australian Financial Review plus a margin of 3% per annum.
- 7.4. In the event the Customer defaults in any payment owing to IPAPL the Customer has no entitlement to the Initial Amount and the Customer shall pay to IPAPL all costs and expenses incurred by IPAPL in respect to the recovery of moneys owing by the Customer and/or the recovery of goods in the possession of the Customer or a third party on a solicitor and client basis.
- 7.5. Payments received by IPAPL may be credited first against any costs and expenses payable by the Customer to IPAPL, then accrued interest, and thereafter the debt.
- 7.6. In the event of the Customers death, bankruptcy, administration, receivership, liquidation or any other external administration, suspension of payments, dissolution or modification of partnership, non-payment or non-acceptance of any shipment(s) IPAPL may cancel the order or request or suspend or discontinue shipments or deliveries, always reserving all rights to recover from the Customer any loss occasioned thereby, in addition to any lien to which IPAPL may by statute or otherwise be entitled.
- 7.7. In the event the Customer is in default of any term or condition of any order or request and the Customer has been in default thereof for a period of 7 days, IPAPL at its election, at any time thereafter shall be at liberty to cancel any or all orders or requests yet to be completed or fulfilled and recover from the Customer any or all losses, damages, costs, interest, charges, including handling charges payable to both IPAPL and its suppliers and expenses incurred or suffered by IPAPL as a result of the Customer's default.
- 7.8. In the event the Customer purports to cancel any order or request, IPAPL is entitled to view this act as a repudiation of the contract between the parties and the Customer shall pay IPAPL all losses, damages, costs, fees, charges, interest including handling charges payable to both IPAPL and its suppliers and expenses incurred or suffered by IPAPL as a result of the repudiation of the contract.
- 7.9. In the event IPAPL elects, as a result of the Customers prior indebtedness to IPAPL to retain possession of the goods, the delivery of or completion date referred to in any order or request shall be replaced by a date being 30 days from the date of satisfaction by the Customer of the Customers prior indebtedness to IPAPL.
- 7.10. IPAPL's obligation to deliver or sell or provide services shall always be conditional upon it being satisfied of the Customer's ability to pay and comply with these terms and conditions. If IPAPL ceases to be so satisfied it may suspend and/or terminate deliveries and shall not be liable in any way for any claim, damage, expense or cost arising therefrom, and all moneys then outstanding by the Customer shall immediately become due and payable.

## **8. Lien:**

8.1. IPAPL shall be entitled to a general lien on all property or goods belonging to the Customer in IPAPL's possession for provision of services (although such goods or some of them have been paid for) for the unpaid price of any other goods or services sold, delivered or provided to the Customer under any order or request.

## 9. PPS Act

9.1. These terms and conditions constitute a security agreement for the purposes of the PPS Act and create a Security Interest (which is a Purchase Money Security Interest) in the goods currently provided by IPAPL to the Customer and all further goods provided by the IPAPL to the Customer.

9.2. The Customer agrees to implement, maintain and comply in all material respects with procedures for the perfection of IPAPL's Security Interests as set out in clause 9.

9.3. The Purchase Money Security Interest will continue for any goods coming into existence or for the Proceeds from the sale of goods coming into existence.

9.4. The Customer must do all things necessary to assist IPAPL to continuously perfect any Security Interest arising under these terms and conditions, including signing any documents or providing any information that IPAPL reasonably requests for the purposes of protecting its interest under the PPS Act.

9.5. Until title passes from IPAPL to the Customer, the Customer will not or will not permit any Security Interest to be created in the goods without the consent of IPAPL.

9.6. If any goods supplied by IPAPL to the Customer are commingled by the Customer with other property, IPAPL will have a Security Interest in those Commingled goods including the goods supplied under these terms and conditions.

9.7. The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any Security Interest under these terms and conditions.

9.8. Everything which the Customer is required to do under this clause 9 is to be done at the expense of the Customer and the Customer agrees to reimburse IPAPL for these costs including any expenses incurred by IPAPL in registering or removing a financing statement or financing change statement on the PPS Register.

9.9. The Customer must not lodge or permit the lodgement of a financing change statement or an Amendment Demand in respect of the goods without the consent of IPAPL.

9.10. The Customer must immediately notify IPAPL in writing of any change in the Customer's name or in the description of the goods.

9.11. To the maximum extent permitted by the PPS Act:

9.11.1. IPAPL does not have to give a notice to the Customer of any action IPAPL takes in accordance with sections 95 or 121(4) of the PPS Act;

9.11.2. IPAPL does not have to give a notice under section 130 of the PPS Act;

9.11.3. IPAPL does not have to give the details required under section 132(3)(d) of the PPS Act;

9.11.4. IPAPL does not have to give a written statement of account under section 132(4) of the PPS Act;

9.11.5. IPAPL does not have to give a notice required under section 135 of the PPS Act;

9.11.6. no person can redeem the Security Interest in the goods under section 142 of the PPS Act without IPAPL's consent; and

9.11.7. no person may reinstate the security agreement under section 143 of the PPS Act without IPAPL's consent.

9.12. For the purposes of section 275(6) of the PPS Act, the Customer must keep confidential any information relating to these terms and conditions which is in the nature of information which an interested person could access under section 275(1) of the PPS Act.

## **10. Notice:**

10.1. Notice shall be deemed to have been properly given by IPAPL to the Customer if such notice is either posted by prepaid postage to the last known business address of the Customer by IPAPL (whereupon receipt of the notice shall be deemed to have been received by the Customer two business days after posting by IPAPL), or by transmitting such notice by facsimile to the last known facsimile number to IPAPL, or by personal delivery to the last known business address of the Customer to IPAPL (in which case the receipt of the notice shall be deemed to be the date of such transmission or delivery).

10.2. Notice shall be deemed to have been properly given by the Customer to IPAPL if such notice is posted by security post or its equivalent to the Managing Director at 17 Babdoyle Street Loganholme QLD 4129 and shall be deemed to have been received by IPAPL upon delivery of that notice by Australia Post to IPAPL.

10.3. The Customer shall give notice to IPAPL of change to the Customer's business address, registered office, telephone or facsimile number within 48 hours of the change.

## **11. Acknowledgement and Waiver:**

11.1. The Customer acknowledges that IPAPL plywood product has (inter alia) the following characteristics:

11.1.1. It is susceptible to exposure to the elements;

11.1.2. It is a natural product and variations in colour, texture and inherent quality occur;

11.1.3. It is susceptible to bending, warping, crushing, swelling, delamination, and fungal growth if not stored or used properly; and

11.1.4. It is susceptible to damage and size variations which can be caused by humidity and or moisture.

11.2. To the extent permitted by law the Customer shall waive any claim it has against IPAPL in contract, tort or otherwise for, or in respect of, any loss, costs, injury, harm or damage (whether direct, indirect, consequential or of any other kind, whether loss of profit or any other economic loss) suffered or incurred by the Customer or any other person arising out of or in connection with the supply of goods and/or provisions of services by IPAPL.

## **12. Services:**

12.1. Where goods are deposited by a Customer with IPAPL for any reason, such as sawing, cut to size or router work and the like, these goods are not insured for the event of loss, damage, fire, theft or for any other "insurable" incident.

12.2. IPAPL is not responsible for the failure by the Customer to carry out marking instructions.

12.3. Risk in the goods supplied to IPAPL by the Customer for services will at all times remain with the Customer.

## **13. Warranties:**

13.1. Subject to any express written warranty given by IPAPL, all warranties, conditions and representations, statements and terms express or implied that are not contained in these terms and conditions, are excluded to the maximum extent permitted by law.

13.2. Nothing in these terms and conditions excludes, restricts or modifies any term, condition, warranty, right or remedy implied or imposed by any statute or regulation which cannot lawfully be excluded, restricted or modified, which may include the Competition and Consumer Act 2010 (Cth) and corresponding Australian state or territory legislation, which contain provisions including implied conditions and warranties which operate to protect the purchasers of goods and services in various circumstances (Implied Terms).

13.3. Where a warranty or condition is implied by law, IPAPL's liability, to the extent that same can be so limited, is limited to one of the following at the election of IPAPL in the case of goods:

13.3.1. Replacement of the goods or supply of equivalent goods,

13.3.2. Repair of goods,

13.3.3. Payment of the cost of replacing the goods or acquiring equivalent goods,

13.3.4. Payment of the cost of having the goods repaired.

13.4. Subject to IPAPL's obligations with respect to Implied Terms, to the maximum extent permitted by law, IPAPL's maximum aggregate liability for all claims under or relating to these terms and conditions, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on breach or on any other basis, is limited to the amount paid to IPAPL for the provision of the goods.

13.5. Subject to IPAPL's obligations with respect to Implied Terms, and to the maximum extent permitted by law, IPAPL is not liable for (under any circumstances):

13.5.1. special, indirect, consequential, incidental or punitive damages; or

13.5.2. damages for loss of profits, revenue, goodwill, bargain, anticipated savings or loss, personal injury, death, the costs arising from the loss of use of the goods and the costs of any substitute and the costs of any substitute goods which the Customer obtains.

13.6. In no event will IPAPL be liable for:

13.6.1. any loss or damage which the Customer suffers arising from, or caused or contributed to by, IPAPL's negligence or the negligence of IPAPL's agents or servants; or

13.6.2. special, indirect or consequential loss or damage as a result of a breach by IPAPL of these terms and conditions including, without limitation, loss of profits or revenue, personal injury, death, the costs arising from the loss of use of the goods and the costs of any substitute equipment which the Customer obtains.

13.7. The Customer warrants that goods left for services are free from contamination and within an acceptable moisture level content.

13.8. The Customer acknowledges that:

13.8.1. it has not relied on any statement, representation, warranty, conduct or undertaking made or given by IPAPL or any person on its behalf; and

13.8.2. it has relied on its own skill and judgement in deciding to acquire the goods and in accepting these terms and conditions.

13.9. Any description of any goods supplied under these terms and conditions is given solely for identifying the goods that are the subject of sale and does not constitute sale by description.

#### **14. Assignment:**

14.1. IPAPL is entitled at any time to assign its rights pursuant to these terms and conditions to any third party. The Customer is not entitled to assign its rights pursuant to these terms and conditions unless with the written consent of IPAPL.

#### **15. Return of Goods Procedure:**

15.1. Goods shall not be returned to IPAPL for credit unless agreed to in writing by IPAPL.

15.2. If IPAPL agrees in writing to accept the return of any goods the Customer must pay to IPAPL a return fee equivalent to 15% of the invoice price of the returned goods.

#### **16. Force Majeure:**

16.1. Deliveries may be totally or partially suspended by IPAPL during any period in which IPAPL is prevented or hindered from making delivery through any circumstances outside its reasonable control, including but not limited to strikes, shortages in any necessary materials, equipment breakdowns, accidents, war, riot, government restriction, civil commotion or act of god. During these times, IPAPL will not be under any liability whatsoever to the buyer for loss or damage suffered by the buyer (including consequential loss or damage) and will not be under any obligation to deliver at any future date any goods not delivered during the period of suspension.

#### **17. Jurisdiction:**

17.1. The Customer and IPAPL agree that the appropriate jurisdiction for any disputes relating to the sale of goods or the provision of services by IPAPL to the Customer shall be the state of Queensland and that the laws of the state of Queensland are the governing laws of this agreement.

#### **18. Entire Agreement:**

18.1. These term and conditions represent the entire terms and conditions between IPAPL and the Customer.

4 | Page

#### **19. Variation:**

19.1. Subject to Cl 18.1, any variations to these terms and conditions must be in writing and signed by IPAPL and the Customer.

19.2. The Customer acknowledges that IPAPL shall have the right to vary all or any of these terms and conditions by providing one month's notice of the changes to the Customer. The Customer acknowledges that any changes made by IPAPL to these terms and conditions in accordance with this clause will apply to all orders made by the Customer for the supply of goods and services by IPAPL following the expiry of the notice period.

#### **20. Severability:**

20.1. If any part of these terms and conditions and/or any related document is or becomes void or unenforceable that part is severed so that all parts which are not void or unenforceable remain in full force and effect and are unaffected by the severance.

**21. Miscellaneous:**

21.1. Headings and underlines are for convenience only and do not affect the interpretation of these terms.

21.2. Words importing the singular include the plural and vice versa.

21.3. References to statutes include all statutes amending or consolidating the statutes referred to and the regulations made thereunder.

Initial here: -----

Date here:-----