

Drywall Direct Wholesale (NZ) Limited

Terms of Sale

1. General

- 1.1 In these terms, "Business Day" means a day on which banks are open in Auckland and Christchurch for general business excluding Saturdays, Sundays and statutory holidays in Auckland or Christchurch, the "Company" means Drywall Direct Wholesale (NZ) Limited, the "Customer" means the company or other entity named overleaf as the "Customer", "Designated Site" means a site designated by the Customer other than the Customer's store, the "Goods" means the plasterboard, jointing compounds, adhesives, fixing products, gypsum, plaster and other products supplied by the Company and, in respect of each order of Goods from the Customer and accepted by the Company, means the Goods described in the invoice issued by the Company in respect of the relevant order, "GST" means goods and services tax, "PPSA" means the Personal Property Securities Act 1999 and "terms" means these terms and conditions of sale and, in respect of each order of Goods from the Customer and accepted by the Company, includes the invoice issued by the Company in respect of the relevant order.
- 1.2 Any Goods supplied by the Company to the Customer will be supplied on these terms only (unless otherwise expressly agreed in writing by the Company). These terms take precedence over any terms offered by the Customer.

2. Price

- 2.1 The price of the Goods will be the price contained in the Company's relevant price list current on the date the Goods are delivered unless otherwise expressly agreed in writing by the Company. The price of the Goods excludes any amount payable in respect of GST, which will be paid by the Customer in addition to the price.
- 2.2 The Customer acknowledges that the Company may alter prices without notice and that the price of Goods may be different from the price quoted or the price current when the Goods were ordered.

3. Payment

- 3.1 The price of the Goods, plus GST, is to be paid in full no later than the agreed date of the month following the date of delivery of the Goods. However, the Company reserves the right to require payment for any Goods in cash before the Goods are delivered.
- 3.2 The Customer may not deduct or withhold any amount (whether by way of set-off counterclaim or otherwise) from any money owing to the Company.
- 3.3 If full payment for any Goods is not made to the Company by the due date for payment, the Customer must pay, at the Company's discretion (and without affecting any other right the Company may have), on demand:
- (a) default interest at a rate equal to 5% above the current base lending rate from time to time set by the Company's bankers in Christchurch, from the date when payment is due until the date when payment is actually made; and
 - (b) all expenses and costs (including legal costs as between solicitor and client) incurred by the Company in obtaining or attempting to obtain a remedy for the failure to pay.
- 3.4 The Company may at any time require the Customer to pay for Goods by bank cheque or post-dated cheque or secure payment for Goods by way of an assignment of debt, an instrument by way of security, a mortgage or agreement to a mortgage, or in any other manner whatsoever.

4. Delivery

- 4.1 Where the Company agrees to arrange delivery of the Goods to the Customer's store or a Designated Site:
- (a) delivery will be considered to have been made when the Goods arrive at the Customer's store or the Designated Site;
 - (b) if the Customer fails or refuses to accept delivery at an agreed delivery time, delivery will be considered to have been effected in any event;
 - (c) all claims for Goods damaged in transit must be made to the Company, in the case of Goods delivered to the Customer's store, within five Business Days of delivery and, in the case Goods delivered to a Designated Site, within 24 hours of delivery, in accordance with procedures advised by the Company from time to time;
 - (d) the Customer will ensure, at its own cost, that all agreed delivery sites have the mechanical means to unload the Goods promptly, suitable access and area for unloading the Goods and suitable storage for the Goods;
 - (e) the Company's usual delivery times are between 7.30am and 5pm on Business Days. If the Customer wishes any Goods to be delivered outside of these hours, the Company may arrange delivery at other times but may charge the Customer for any additional costs the Company may incur.
- 4.2 Where the Company agrees to arrange delivery of the Goods to the Customer's store, the Customer will ensure, at its own cost, that all labour necessary to unload the Goods promptly is available at the Customer's store at the time of delivery. Where the Company agrees to arrange delivery of the Goods to a Designated Site, the Company will, if requested by the Customer and at the Customer's cost, provide all labour necessary to unload the Goods promptly and the Customer will pay the Company, on demand, the Company's price for providing the labour (plus GST, if any).
- 4.3 Where the Customer is to arrange for the Goods to be picked up from the Company's premises:
- (a) delivery will be considered to have been made when the Goods are available for collection by the Customer;
 - (b) the Customer or its authorised representative must sign the delivery docket before any Goods are loaded for delivery.
- 4.4 Delivery of Goods may be by instalments.

- 4.5 The Company will endeavour to meet agreed delivery dates but will not be liable, nor may the Customer cancel any order, for late delivery.
- 4.6 All claims for short or defective delivery must be made to the Company, in the case of Goods delivered to the Customer's store or collected by the Customer, within five Business Days of delivery and in the case of Goods delivered to a Designated Site, within 24 hours of delivery, in accordance with procedures advised by the Company from time to time. The Customer may not cancel any order for short or defective delivery.
- 4.7 If the Customer fails or refuses to take delivery of any Goods at an agreed delivery time, or if an agreed delivery site does not have the mechanical means, access, area or storage referred to in clause 4.1(d) or the Customer does not provide the labour necessary to unload the Goods under clause 4.2, the Company may charge the Customer (without limiting any other right the Company may have) for any expenses or additional costs incurred by the Company as a result.
5. **Risk**
- The Customer bears the risk of any loss or damage to the Goods due to any cause whatsoever after delivery of the Goods.
6. **Ownership**
- 6.1 Ownership of the Goods does not pass to the Customer until:
- (a) all amounts owing by the Customer to the Company in respect of the Goods have been paid;
 - (b) all other obligations of the Customer to the Company in respect of the Goods have been met.
- 6.2 Until ownership of the Goods passes, the Customer:
- (a) must keep full and complete records of the Goods;
 - (b) must return the Goods if requested to do so by the Company following non-payment of any amount owing by the Customer to the Company or non-fulfilment of any other obligation of the Customer to the Company, without limiting any other right the Company may have;
 - (c) gives the Company the right to inspect the Goods or any part of them at all reasonable times;
 - (d) must not change its name, address or contact details without providing the Company with at least 20 Business Days prior written notice;
 - (e) waives its right:
 - (i) to receive a copy of any verification statement;
 - (ii) to receive a copy of any financing charge statement;
 - (iii) to receive any notice that the Company intends to sell the Goods or to retain the Goods on enforcement of the security interest (as defined in PPSA) granted to the Company under these terms;
 - (iv) to object to a Company proposal to retain the Goods in satisfaction of any obligation owed by the Customer to the Company;
 - (v) to receive a statement of account on sale of the Goods;
 - (vi) to redeem the Goods; and
 - (vii) where any Good becomes an accession, as defined in the PPSA, to not have any goods damaged when the Company removes the accession, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of the accession,under the PPSA;
 - (f) must not give to the Company a written demand or allow any other person to give the Company a written demand requiring the Company to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under PPSA.
- 6.3 The Customer acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in PPSA) granted to the Company under these terms.
7. **Warranties and Liability**
- 7.1 Subject to clause 7.5, all warranties, descriptions, representations or conditions whether implied by law or otherwise are, and all other liability of the Company, whether in tort (including negligence), contract or otherwise is, expressly excluded.
- 7.2 Insofar as the Company may be liable notwithstanding clause 7.1, the total liability of the Company whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of any Goods or any other breach of the Company's obligations is, subject to clause 7.5, limited to the lesser of:
- (a) the price of the Goods complained of;
 - (b) the cost of repairing or replacing the defective Goods; or
 - (c) the actual loss or damage suffered by the Customer.
- 7.3 Except where statute expressly requires otherwise (and subject to clause 7.5), the Company is not liable in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.
- 7.4 Subject to clause 7.5, while the Company will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by the Company in relation to the Goods or their use or application, the Company does not accept any liability or responsibility in respect of that advice, recommendation, information, assistance or service.
- 7.5 If the Customer is a "consumer" under the Consumer Guarantees Act 1993 ("Act"):

- (a) the Act will not apply where the Customer acquires or holds itself out as acquiring the Goods for the purposes of a business;
- (b) subject to clause 7.5(a), nothing in these terms affects any rights a consumer may have under the Act;
- (c) the Company does not undertake that facilities for repair of, and parts for, the Goods will be available.

7.6 Where the Customer is acquiring the Goods for the purpose of re-supplying them in trade, the Customer will:

- (a) include a provision in its terms of sale to the effect that the Act will not apply where a purchaser acquires or holds itself out as acquiring the Goods for the purposes of a business;
- (b) notify its purchasers of the effect of clause 7.6(a);
- (c) take reasonable action to notify its purchasers at or before the time the Goods are supplied to the purchasers that the Company does not undertake that facilities for repair of, and parts for, the Goods will be available; and
- (d) indemnify the Company for and against any liabilities, losses, damages, claims, costs or expenses of whatever kind and nature incurred by the Company as a result of the Customer failing to take the action required under this clause 7.6.

8. Other Rights of the Company

If:

- (a) any amount payable by the Customer to the Company is overdue, or the Customer fails to meet any other obligation to the Company (whether in relation to the sale of Goods or otherwise), or in the Company's opinion the Customer is likely to be unable to meet its payment or other obligations to the Company; or
 - (b) the Customer becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management; or
 - (c) the ownership or effective control of the Customer is transferred or, in the Company's opinion, the nature of the Customer's business is materially altered;
- then
- (i) the Company may cancel any outstanding order with the Customer or all or any part of any contract or contracts with the Customer which remains unperformed, in addition to and without prejudice to its other remedies; and
 - (ii) all amounts outstanding under these terms or any other contract with the Company shall, whether or not due for payment, immediately become due and payable; and
 - (iii) the Company may remove any Goods in the Customer's possession or control (including any Goods that have become an accession under the PPSA) and dispose of them or retain them for its own benefit and for that purpose the Company may, without notice, enter directly or by its agents on any premises where it believes Goods may be stored, without in any way being liable to any person.

9. Miscellaneous

- 9.1 The Customer is responsible for disposing, at its own cost, of all materials used in the packaging or delivery of Goods supplied by the Company.
- 9.2 If at any time the Company does not enforce any of these terms or grants the Customer time or other indulgence, the Company shall not be construed as having waived that term or its rights to later enforce that or any other term.
- 9.3 The Customer is to execute documents and do such further acts as may be required by the Company to register the security interest granted to the Company under these terms under the PPSA or for any other purpose whatsoever.