



Terms and Conditions of Sale

1. APPLICATION

- 1.1. These Terms apply to all Goods sold by the Company.
- 1.2. No amendment, alteration, waiver or cancellation of any of these Terms is binding on the Company unless confirmed by the Company in writing.
- 1.3. The Customer acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relation of the Goods or the sale of the Goods other than as contained in these Terms.

2. ORDERS AND CONTRACT

- 2.1. In order to purchase the Goods, the Customer must place an Order with the Company in writing.
- 2.2. The Order may be accepted or rejected by the Company at its sole discretion.
- 2.3. The Company may, at its option, request further information in order to fulfil the Order.
- 2.4. A Contract will be formed upon the Company accepting an Order from the Customer pursuant to clause 2.2. The Contract will be governed by these Terms.
- 2.5. These Terms will take precedence over any other representations, agreements, arrangement or understandings relating to the Goods and any matters in connection with the Goods.
- 2.6. Any conditions or terms of purchase submitted by the Customer deviating from or inconsistent with these Terms will not bind the Company except, and then only to the extent agreed in writing by the Company and notwithstanding any statement by the Customer in its Order or otherwise that its terms and conditions will prevail over these Terms.

3. TERMS OF PAYMENT

- 3.1. Prices are subject to change on thirty (30) days' notice.
- 3.2. Payments are to be made direct to the Company, strictly net, without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement.
- 3.3. Payments are to be made:
 - 3.3.1. Prior to or on delivery of the Goods if no trading account has been arranged; or
 - 3.3.2. If a trading account has been arranged, within thirty (30) days of the date of the Company's statement or invoice, whichever is the earlier;
- 3.4. Interest is payable on all overdue accounts calculated on a daily basis at the rate of 2% per month as from the due date for payment until payment is received by the Company.
- 3.5. Where any specification for the Goods are to be supplied by the Customer, they must be paid for by cash or cleared funds and supplied at least three (3) working days before the date of delivery to enable the Company to complete delivery on time.

4. PROPERTY IN GOODS

Legal and beneficial ownership of Goods supplied by the Company will not pass to the Customer until such time as the Goods supplied have been paid in full in cash or cleared funds.

5. RE-SALE OF GOODS

- 5.1. If the Customer is a re-seller then, subject to sub-clause 5.2.4, the Customer has the right to sell the Goods in its own name at full market value and in the ordinary course of business.
- 5.2. Until the amount payable to the Company in respect of the Goods has been paid in full in cash or cleared funds:
 - 5.2.1. The Customer will hold the Goods only as Bailee for the Company.
 - 5.2.2. The Goods must be stored in such manner that they are readily distinguishable from other goods owned by the Customer or other persons and so as to clearly show that they are the property of the Company.
 - 5.2.3. The Customer must indemnify the Company from and against any Claim incurred or suffered by the Company arising out of the possession, use or disposal of the Goods by the Customer or repossession or attempted repossession of them by the Company; and
 - 5.2.4. any sale of the Goods under clause 5.1 will only be effected by the Customer as trustee for the Company and the proceeds of such sale and the rights of the Company's Customer against its customer arising from such sale will be held on trust for the Company. The said proceeds must be held in a separate account or otherwise clearly identified in the books and records of the Customer.
- 5.3. If the Customer re-sells any Goods then, unless the Goods are clearly identifiable by serial numbers or other distinguishing marks, the Customer is deemed to have disposed of the Goods in the chronological order of supply by the Company to the Customer (oldest to most recent).

6. DEFAULT

- 6.1. If:
 - 6.1.1. The Goods are not paid for in accordance with these Terms or as otherwise agreed in writing between the Company and the Customer;
 - 6.1.2. The Company receives notice of, or reasonably believes that a third party may attempt to levy execution against or attach the Goods; or
 - 6.1.3. Any other event occurs which in the Company's opinion is likely to adversely affect the Customer's ability to pay for the Goods (including but not limited to the appointment of an Insolvency Representative to the Customer's undertaking).Then the Company may at any time thereafter, without notice to the Customer and without prejudice to any other rights which it may have against the Customer, terminate any Contract relating to the Goods and the bailment referred to in clause 5.2.1.
- 6.2. The Customer will be liable on a full indemnity basis for legal and other costs of recovering or attempting to recover amounts owing the Company in any of the circumstances referred to in clause 6.1.

7. RIGHT TO ENTER PREMISES

- In any of the circumstances referred to in clause 6, the Customer:
- 7.1. authorises the Company by itself, its agents or representatives at all reasonable times, without notice, to enter onto (with force if reasonably necessary) and at all necessary times, to remain in and on any premises where the Goods are located in order to collect the Goods, without being guilty of any manner of trespass and without being liable for any reasonable loss or damage incurred in enforcing its rights under this clause; and
 - 7.2. Assigns to the Company all the Customer's rights to enter onto and remain in and on such premises until all the Goods have been collected.

8. ADMINISTRATION & RECEIVERSHIP

- In any of the circumstances referred to in clause 6.1.3:
- 8.1. neither the Customer nor its Insolvency Representative or any other person acting for the Customer and/or its creditors is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Goods in any way inconsistent with the Company's ownership of the Goods, without the Company's prior written approval;
 - 8.2. the Customer, its Insolvency Representative and every other person acting for or on behalf of the Customer and/or its creditors is obliged to re-deliver the Goods to the Company immediately or immediately on his appointment, as the case may be, at its expense; and
 - 8.3. if the Goods are returned to or collected by the Company, the Company will, within twenty-eight (28) days, account to the Customer or its Insolvency Representative for all monies received for the Goods from the Customer less the Company's reasonable administration charges, expenses incurred and loss of profits involved.

9. CUSTOMER AS TRUSTEE

- If the Customer carries on business as trustee of a trust then the Customer warrants that:
- 9.1. The Customer enters into the Contract as trustee of a trust;
 - 9.2. The Customer has all requisite powers to enter into a Contract under these Terms;
 - 9.3. The beneficiary of the trust approves the purchase of the Goods on the terms of the Contract; and
 - 9.4. The assets of the trust are available to the Company in satisfaction of any debt incurred by the Customer for the purchase of the Goods.

10. GOODS AND SERVICES TAX

- 10.1. Quoted prices do not include GST.
- 10.2. The Customer must pay the amount of such GST to the Company in addition to the quoted price.
- 10.3. The Customer must give the Customer written notice of the amount of any GST payable under this clause and provide a tax invoice showing the amount of GST payable.

11. CUSTOMS DUTIES, TARIFFS AND LEVIES

All applicable customs duties, tariffs and levies are payable by the Customer unless the order, order confirmation, invoice or other writing indicates otherwise.

12. DELIVERY

- 12.1. Availability dates are estimates only, but the Company will use its best endeavours to maintain these estimates.
- 12.2. The costs of delivery of the Goods will be borne by the Customer unless otherwise agreed by the Company in writing.

13. DELIVERY BY INSTALLMENTS

- 13.1. The Company reserves the right to deliver the Goods in whole or by instalments as well as to deliver prior to the date for delivery and in any such event the Customer must not refuse to take delivery of the Goods.
- 13.2. Where the Goods are delivered by instalments, each instalment is sold under a separate Contract.
- 13.3. Any failure on the part of the Company to deliver instalments within any specified time does not entitle the Customer to repudiate the Contract with regard to the balance of the Goods remaining undelivered.

14. RISK

- 14.1. The Goods are entirely at the risk of the Customer from the moment of delivery to or collection by the Customer.
- 14.2. The Customer must at its own expense, maintain the Goods and insure them for the benefit of the Company for their full replacement value against theft, destruction, fire, water and other risks, as from the moment of delivery to or collection by the Customer until property of and title to the Goods have passed to the Customer.
- 14.3. The Customer must take all reasonable measures to ensure that the Company's title to the Goods is in no way prejudiced. If any of the Goods are lost, destroyed or damaged, any insurance proceeds relating to the Goods in respect of such event that are received by the Customer are held on trust for the Company and must be paid to the Company immediately on receipt but only up to the amount that the Customer owes the Company in respect of those Goods.

15. INSPECTION

Unless the Customer has inspected the Goods and given written notice to the Company within seven (7) days after collection or delivery that the Goods do not comply with the relevant specifications or descriptions, the Goods are deemed to have been accepted in good order and condition.

16. RETURN OF GOODS

- 16.1. No returns will be accepted unless the Company has previously agreed in writing.
- 16.2. A written request for returns for credit by the Customer may be accepted by the Company at its discretion. If the Company agrees to the return of Goods, they must be:
 - 16.2.1. Returned within seven (7) days of the date of the invoice;
 - 16.2.2. marked clearly showing the name and address of the Customer;
 - 16.2.3. Unsoiled, undamaged and in a resalable condition (or the Customer must pay for all costs of replacement or repair); and
 - 16.2.4. Delivered at the Customer's expense to the Company's premises unless otherwise agreed by the Company in writing.
- 16.3. Goods returned for credit will incur a 25% restocking charge on full retail.
- 16.4. Cut rolls, Goods imported especially for the Customer and non-standard Goods made to special order cannot under any circumstances be returned and/or credited.

17. CANCELLATION OF ORDER

No order may be cancelled, modified or deferred without the prior written consent of the Company (which is at the Company's sole discretion) and if consent is given then such consent will, at the Company's election, be subject to the Company being reimbursed all losses, including loss of profits, and paid a cancellation and restocking fee (being not less than 10% of the invoice value of the Goods).

18. COMPANY'S LIABILITY LIMITED

- 18.1. The Customer acknowledges and agrees that:
 - 18.1.1. The Customer has determined that the Goods are fit for the purpose for which the Customer requires them;
 - 18.1.2. The Customer has not relied on the Company's skill and judgment in selecting the Goods; and
 - 18.1.3. The Company is not responsible if the Goods do not comply with any applicable safety standard(s) or similar regulation(s), and that the Company is not liable for any Claim resulting from such non-compliance.
- 18.2. The Company is not subject to, and the Customer releases the Company from any liability (including but not limited to Consequential Loss or Damage or removal or re-installation costs) arising from any delay in delivery or defect or fault in the Goods to the full extent permitted by law.
- 18.3. If, despite clause 18.2, the statutory provisions under the *Competition and Consumer Act 2010* (C1), the *Sale of Goods Act 1923* (NSW) or any other act or the general law impose on the Company a liability for a defect or fault in the Goods then, to the extent to which the Company is entitled to do so, the Company's liability under the statutory provisions is limited, at the Company's option, to:
 - 18.3.1. Replacement or repair of the Goods;
 - 18.3.2. Supply of equivalent Goods; or
 - 18.3.3. Payment of the cost of replacing or repairing the Goods or of acquiring equivalent Goods.And in any case:
 - 18.3.4. The Company will not be liable for any Consequential Loss or Damage or any other loss or damage; and
 - 18.3.5. The Company's total liability to the Customer is limited to the invoice value of the Goods.

19. WARRANTIES AND WARRANTY CLAIMS

- 19.1. The Company warrants that the Goods will be of acceptable quality as defined under the *Competition and Consumer Act 2010* (C1).
- 19.2. The Company also warrants to the Customer that the Goods will be supplied in an undamaged condition.
- 19.3. These warranties extend only to the Customer and to no other person.
- 19.4. Except for any guarantees imposed by the *Competition and Consumer Act 2010* (C1) and the warranties stated in clauses 19.1 and 19.2, the provision of any other act or law implying terms, conditions, guarantees and/or warranties which might otherwise apply to or arise out of the Contract are hereby expressly negated and excluded to the full extent permitted by law.
- 19.5. On discovery of any defect in the Goods, the Customer must notify the Company in writing of such defect. All warranty claims must be received by the Company within twelve months' of delivery and within seven (7) days of discovery whichever is the earlier.
- 19.6. The Customer's failure to provide written notice to the Company within the required time of any alleged breach of the above warranty will release and discharge the Company from any obligation or liability for that breach of warranty.
- 19.7. The Customer must not carry out any remedial work to allegedly defective Goods without first obtaining the written consent of the Company to do so otherwise all of the Company's warranties will be voided to the full extent permitted by law.

20. PERSONAL PROPERTY SECURITY

The Customer acknowledges that if the Company has a security interest in the Goods and/or their proceeds for the purposes of the PPSA then the Company may register its security interest in the Goods and their proceeds on the PPSR and their proceeds on the PPSR and the Customer in accordance with section 157 (3) (b) of the PPSA waives the right to receive notice of such registration. The Customer also undertakes, at its own expense, to promptly do anything (such as supplying information) which the Company requests and reasonably requires the Customer to do for the purposes of ensuring that the security interest is enforceable, perfected or otherwise effective.

21. CATALOGUES

Particulars in leaflets, catalogues, drawings, brochures and other printed or electronic material are illustrations only, form no part of the Contract between the Company and the Customer, and are not binding on the Company.

22. SAMPLES

Any sample inspected by the Customer is solely for the Customer's convenience and does not constitute a sale by sample. All samples remain the property of the Company.

24. SUBSTITUTIONS

The Customer acknowledges and agrees that Goods supplied by the Company may be substituted from time to time on the basis of the Company's continual product improvement, improvements in product design and national or international requirements.

25. GOVERNING LAW

- 25.1. The Contract under these Terms is deemed to have been made at the Company's place of business in Queensland and any cause of action is deemed to have arisen there.
- 25.2. The Customer irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from those courts about any proceedings in connection with these Terms and waives any right to object to proceedings being brought in those courts for any reason.

26. FORCE MAJEURE

The Company will not be liable for any breach of contract due to any matter or thing beyond the Company's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention of public authority, explosion or accident).

27. WAIVER OF BREACH

No failure by the Company to insist on strict performances of any of these Terms is a waiver of any right or remedy which the Company may have, and is not a waiver of any subsequent breach or default by the Customer.

28. NO ASSIGNMENT

Neither the Contract nor any rights arising under the Contract may be assigned by the Customer without the prior written consent of the Company which is at the Company's absolute discretion.

29. SEVERABILITY

If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.

30. INTERPRETATION

- In these Terms:
- 30.1. "Claim" means a claim, action, suit, demand, proceeding, damage, loss, cost, expense or liability incurred or suffered by a party.
 - 30.2. "Company" means Industrial Concrete Coatings (Australia) Pty Limited ABN 79 649 999 762 and its successors and assigns.
 - 30.3. "Consequential Loss or Damage" means any loss or damage of any indirect nature including but not limited to loss of profit, loss of revenue, loss of use, loss of opportunity, loss of goodwill, loss of access to markets, loss of business reputation including future reputation, loss arising from adverse publicity or any remote, incidental, exemplary or punitive damages.
 - 30.4. "Contract" means the contract for the sale of the Goods by the Company to the Customer.
 - 30.5. "Customer" means the party to whom the Company proposes to or has agreed to sell the Goods.
 - 30.6. "Goods" means the goods proposed or agreed to be sold by the Company to the Customer.
 - 30.7. "GST" means the Goods and Services Tax imposed by a *New Tax System (Goods and Services Tax Act 1999* (C1)) and any related act and/or regulations.
 - 30.8. "Insolvency Representative" includes but is not limited to a receiver, receiver and manager, administrator, controller, liquidator, provisional liquidator, trustee or similar person.
 - 30.9. "Order" means the written order or written confirmation of order made by the Customer to the Company for the supply of Goods.
 - 30.10. "PPSA" means the Personal Property Securities Act 2009 (C1).
 - 30.11. "PPSR" means the personal property security register created under the PPSA.
 - 30.12. "Terms" means these Terms and conditions of sale as amended from time to time.