

Terms & Conditions of Sale from Oldfields Advance Scaffold Pty Ltd

1. DEFINITIONS

- (a) "ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended;
- (b) "Agreement" means the agreement between Oldfields and the Customer for the sale of Goods, which incorporates these Terms;
- (c) "Consumer" is as defined in the ACL and in determining if the Customer is a Consumer, the determination is made if the Customer is a Consumer under the Agreement;
- (d) "Customer" means the person, jointly and severally if more than one, acquiring the Goods from Oldfields;
- (e) "COD" means cash on delivery;
- (f) "Goods" means the goods supplied by Oldfields to the Customer pursuant to the terms of the Agreement;
- (g) "GST" means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;
- (h) "PPSA" means the *Personal Property Securities Act 2009* and associated regulations as amended;
- (i) "Oldfields" means Oldfields Advance Scaffold Pty Ltd (CAN 088 478 399); and
- (j) "Terms" means these Terms & Conditions of Sale.

2. BASIS OF AGREEMENT

- (a) Unless otherwise agreed by Oldfields in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).
- (b) Any quotation provided by Oldfields to the Customer for the proposed supply of Goods is:
 - (i) valid for 30 days;
 - (ii) an invitation to treat only; and
 - (iii) only valid if in writing.

- (c) An Agreement is accepted by Oldfields when Oldfields accepts, in writing or electronic means, an offer from the Customer or provides the Customer with the Goods.
- (d) Oldfields has absolute discretion to refuse to accept any offer.
- (e) The Customer must provide Oldfields with its specific requirements, if any, in relation to the Goods.
- (f) Subject to clause 4(d), Oldfields may vary or amend the Terms by 7 days' written notice ("Variation Notice Period") to the Customer at any time. If the Customer does not advise Oldfields by the expiry of the Variation Notice Period that it does not agree to the variations or amendments, any variations or amendments will apply to orders placed after the expiry of the Variation Notice Period.

3. PRICING

- (a) Prices quoted for the supply of Goods exclude GST and any other taxes or duties imposed or in relation to the Goods.
- (b) If the Customer requests any variation to the Agreement, Oldfields may increase the price to account for the variation.
- (c) Where there is any change in the costs incurred by Oldfields in relation to the supply of the Goods, Oldfields may vary its price to account for any such change, by notifying the Customer.
- (d) Prices are in Australian Dollars and payment will only be accepted in Australian Dollars.

4. PAYMENT

- (a) Unless otherwise agreed in writing:
 - (i) Subject to clause 4.(a)(ii), full payment for the Goods must be made within 30 days of Oldfields' invoice date; and
 - (ii) Oldfields reserves the right to require payment in full on delivery of the goods on COD.
- (b) Payment is to be made via electronic funds transfer, bank transfer or cheque.

- (c) Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- (d) Payment terms may be revoked or amended at Oldfields sole discretion immediately upon giving the Customer written notice.

5. PAYMENT DEFAULT

- (a) If the Customer defaults in payment by the due date of any amount payable to Oldfields, then all money which would become payable by the Customer to Oldfields at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Oldfields may, without prejudice to any of its other accrued or contingent rights:
 - (i) charge the Customer 10% interest on any sum due for the period from the due date until the date of payment in full;
 - (ii) charge the Customer for, and the Customer must indemnify Oldfields from, all costs and expenses (including without limitation all legal costs and expenses) incurred by Oldfields resulting from the default or in taking action to enforce compliance with the Agreement or to recover any Goods;
 - (iii) cease or suspend supply of any further Goods to the Customer; and
 - (iv) by written notice to the Customer, terminate any uncompleted contract with the Customer.
- (b) Clauses 5.(a)(iii) and (iv) may also be relied upon, at Oldfields option:
 - (i) Where the Customer is a natural person and becomes bankrupt or enters into any scheme or arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (ii) Where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of

its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. PASSING OF PROPERTY

- (a) Until Oldfields receives full payment in cleared funds for all Goods supplied by it to the Customer, as well as all other amounts owing to Oldfields by the Customer;
 - (i) title and property in all Goods remain vested in Oldfields and do not pass to the Customer;
 - (ii) the Customer must hold the Goods as bailee and agent for Oldfields; and
 - (iii) the Customer must keep the Goods separate from its own goods and maintain Oldfields labelling and packaging;
- (b) The Customer must hold the proceeds of sale of the Goods on trust for Oldfields in a separate account with a bank to whom the Customer has not given security, however failure to do so will not affect the Customer's obligation as trustee;
- (c) In addition to its rights under the PPSA, Oldfields may without notice, enter any premises where it suspects the Goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Oldfields, and for this purpose the Customer irrevocably licences Oldfields to enter such premises and also indemnifies Oldfields from and against all costs, claims, demands or actions by any party arising from such action.

7. PERSONAL PROPERTY SECURITIES ACT

- (a) Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- (b) For the purposes of the PPSA;
 - (i) capitalised terms used in this clause 7 that are defined in the PPSA have the same meaning as in the PPSA;

- (ii) these Terms are a Security Agreement and Oldfields has a Purchase Money Security Interest in all present and future Goods supplied by Oldfields to the Customer and the proceeds of the Goods;
 - (iii) the Security Interest arising under clause 7(b)(ii) is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
 - (iv) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by Oldfields on the Personal Property Securities Register.
- (c) The security interest arising under this clause 7 attaches to the Goods when the Goods are collected or dispatched from Oldfields premises and not at any later time.
- (d) Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- (e) Oldfields and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- (f) To the extent permitted by the PPSA, the Customer agrees that:
- (i) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Oldfields will apply only to the extent that they are mandatory or Oldfields agrees to their application in writing; and
 - (ii) where Oldfields has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- (g) Oldfields may allocate amounts received from the Customer in any Oldfields determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by Oldfields.
- (h) For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of the Goods and details of the Goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the Goods, except as otherwise required by law or that is already in the public domain.

8. RISK AND INSURANCES

- (a) The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the Goods being delivered to the Customer or taken from Oldfields premises.
- (b) The Goods are sold to the Customer on the condition that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods.
- (c) The Customer assumes all risk and liability for loss, damage, or injury to persons or to property of the Customer, or third parties arising out of the use, installation, or possession of any of the Goods, unless recoverable from Oldfields on the failure of any statutory guarantee under the ACL.

9. PERFORMANCE AGREEMENT

- (a) Any period or date for delivery of the Goods stated by Oldfields is an estimate only and not a contractual commitment.
- (b) Oldfields will use its reasonable endeavours to meet any estimated dates for delivery of the Goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

10. DELIVERY

- (a) Subject to clause 10(f), Oldfields will arrange for the delivery of the Goods to the Customer.
- (b) The Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods to the Customer for the Goods provided.

- (c) Oldfields may make part delivery of the Goods and Oldfields may invoice the Customer for the Goods provided.
 - (d) The Customer indemnifies Oldfields against any loss or damage suffered by Oldfields, its sub-contractors, or employees as a result of delivery, except where the Customer is a Consumer and Oldfields has not used due care and skill.
 - (e) If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the Goods. The Customer is liable for storage charges payable monthly on demand.
 - (f) If agreed that the Customer will collect the Goods;
 - (i) the Customer must collect the Goods within 7 days of being advised they are ready; and
 - (ii) if the Customer does not collect the Goods within this time, the Customer is deemed to have taken delivery of the Goods and is liable for storage charges payable monthly on demand.
- howsoever arising under or in connection with the sale, use of, storage or any other dealings with the Goods by the Customer or any third party; and
- (ii) if the Goods are not of a kind ordinarily acquired for personal, domestic, or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of Oldfields' liability to the Customer. How so ever arising under or in connection with the sale, use of, storage or any other dealings with the goods by the Customer or any third party.

11. LIABILITY

- (a) Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods, the Agreement does not include by implication any other term, condition, or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or any contractual remedy for their failure.
 - (b) If the Customer is a Consumer nothing in these Terms restricts, limits, or modifies the Customer's rights or remedies against Oldfields for failure of a statutory guarantee under the ACL.
 - (c) If the Customer on-supplies the Goods to a Consumer:
 - (i) if the Goods are not of a kind ordinarily acquired for personal, domestic, or household use or consumption, then the amount specified in section 276(1) of the ACL is the absolute limit of Oldfields' liability to the Customer
- (d) If clauses 11(a) or 11(c) do not apply, then other than as stated in the Terms or any written warranty statement Oldfields is not liable to the Customer in any way arising under or in connection with the sale, use of, storage or any other dealings with the goods by the Customer or any third party.
- (e) For Goods not manufactured by Oldfields, the warranty shall be the current warranty provided by the manufacturer of the Goods. Oldfields shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.
 - (f) Oldfields is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
 - (g) The Customer acknowledges that:
 - (i) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information, or assistance provided by Oldfields in relation to the Goods or their use or application; and
 - (ii) it has not made known, either expressly or by implication, to Oldfields any purpose for which it requires the Goods, and it has the sole responsibility of satisfying itself that

the Goods are suitable for the use of the Customer.

- (h) Nothing in the Terms is to be interpreted as excluding, restricting, or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

12. CANCELLATION

- (a) If Oldfields is unable to deliver or provide the Goods, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.
- (b) Subject to clause 2(f), no purported cancellation or suspension of an order or any part of it by the Customer is binding on Oldfields once the order has been accepted.

13. FORCE MAJEURE

- (a) Oldfields is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, Oldfields may suspend or terminate the Agreement by written notice to the Customer.

14. MONEY BACK GUARANTEE.

- (a) If upon receipt of the Goods the Customer is not completely satisfied with the quality of the Goods the Customer is required to notify Oldfields in writing and return the Goods to the Oldfields depot within seven (7) business days of delivery.
- (b) The Customer may request a refund to be paid by electronic funds transfer or bank transfer (Customer's preference) within seven (7) business days of Oldfields receiving the Goods at the Oldfields depot.

- (c) This guarantee excludes transport timings, delays, or incidents. Oldfields will use its reasonable endeavours to ensure a prompt and efficient delivery service.

- (d) If any Goods are damaged in transit to the Customer, they will be replaced at no charge.

- (e) This guarantee applies to invoiced items only.

- (f) This clause 14 does not apply to any change of requirements by the Customer after an order is accepted by Oldfields.

15. MISCELLANEOUS

- (a) Failure by Oldfields to enforce any of these Terms shall not be construed as a waiver of any of Oldfields rights.

- (b) If a clause is unenforceable, it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.

- (c) A notice must be in writing and handed personally or sent by email or express post to the last known address of the addressee. Notices sent by express post are deemed to be received at the time specified by the tracking identification. Notices sent by email are deemed received at the time of transmission provided no failure notice in respect of the transmission is received by the device from which the transmission is sent.