

# James Hardie New Zealand Ltd

## Standard Purchasing Terms

**PURCHASES MADE UNDER A JAMES HARDIE PURCHASE ORDER WILL ONLY BE MADE IN ACCORDANCE WITH THE FOLLOWING CONDITIONS, UNLESS OTHERWISE AGREED IN WRITING:**

**1. INTERPRETATION**

- 1.1 In these Conditions, unless the context otherwise requires:
  - a) "Buyer" means James Hardie New Zealand Ltd;
  - b) "Contract" means the contract formed by the Order, these Conditions and any variations of these agreed to in writing;
  - c) "Goods" means all products covered by the Order;
  - d) "Goods and Services Tax" means the broad based indirect tax payable under the GST legislation;
  - e) "Order" means a purchase order issued by the Buyer which has been faxed, emailed or otherwise delivered in writing to the Seller for the purchase of Goods by the Buyer from the Seller;
  - f) "Price" means the price of the Goods and/or Services (as the case may be) set out in the Order;
  - g) "Seller" means the entity (legal person) to whom the Order is issued and includes its servants, agents and sub-contractors;
  - h) "Services" means all services referred to in and required pursuant to the Order;
  - i) "Tax Invoice" means a document that satisfies the tax invoice requirements of the GST legislation.

**2. ORDERS AND TERMS**

- 2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or Services as set out in the Order at the Price. The Order will be deemed to be accepted by the Seller unless the Seller gives the Buyer written notice of its intention not to accept the Order within 3 business days after it receives the Order.
- 2.2 An Order deemed to be accepted under clause 2.1 and these Conditions shall constitute a contract which shall be the entire agreement between the parties. This Contract may only be varied by agreement in writing by the Buyer and the Seller. The terms and conditions (if any) which accompany any quotation or acceptance of the Seller with respect to the Goods and/or the Services (as the case may be) or any invoice, or consignment note, packing slips or other documents accompanying the Goods shall be of no effect as against the Buyer and shall not form any part of the Contract unless otherwise agreed in writing by the Buyer.
- 2.3 Where the Seller is certified to AS/NZS ISO 9001:1994 Quality Systems - Model for

Quality Assurance as updated or amended from time to time in design, development, production, installation and servicing, the Contract must be fulfilled in accordance with the terms of that certification.

- 2.4 The Buyer will not be responsible for any order unless it issued the Order.
- 2.5 The Buyer may cancel or vary an Order at any time. Where the Buyer varies or cancels an Order after 3 business days after the Seller reviews the Order, the Buyer shall:
  - a) pay the Seller for all Goods or Services already delivered;
  - b) where Goods or Services are not yet delivered, pay to the Seller the amount of the reasonable, direct costs incurred by the Seller up to that date in producing any Goods or Services specifically to fulfil the Order, up to a maximum of the Price; and
  - c) not be liable for any other costs or damages whatsoever.

**3. QUALITY**

- 3.1 The Seller warrants that the Goods:
  - d) conform with the description provided by the Seller and with any applicable specifications agreed by the Buyer and the Seller;
  - e) are of merchantable quality, are new and are fit for the purpose for which they are sold and for the specific purposes of which the Buyer has advised the Seller;
  - f) are free of defects in materials, workmanship and design;
  - g) are free from all liens and encumbrances, and that the Seller has good title to them.
- 3.2 The Seller warrants that:
  - a) the Services will be rendered with due care and skill by competent and trained personnel; and
  - b) any materials supplied in connection with the Services will be of merchantable quality, new and will be fit for the purposes for which they are supplied.
- 3.3 The warranties contained in these Conditions are in addition to any other warranties or guarantees contained in the Order or implied by law or provided by the Seller or any third party.
- 3.4 The Buyer may reject Goods or Services not conforming for any reason whatsoever to the Order or for not complying with the warranties.



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### 4. LIABILITY

- 4.1 The Seller shall, without limitation, indemnify and keep indemnified the Buyer against any loss, damage, expense, claim or liability suffered or incurred by the Buyer, whether consequential or otherwise, as a result of a breach of any of the warranties contained in clause 3 or any claim by a third party alleging infringement of any intellectual property.
- 4.2 Regardless of clause 4.1, the Seller shall repair or replace, at the option of the Buyer, all Goods which are or become defective or otherwise fail to comply with all warranties contained in or referred to in clause 3, within thirty days of notification of such defect or failure being sent by the Buyer. Such repairs or replacements shall be subject to the warranties contained in clause 3 and the liabilities contained in this clause.
- 4.3 Regardless of clause 4.1, where any Services are performed in such manner that they fail to comply with any of the warranties contained in or referred to in clause 3, the Seller shall at its expense ensure that those Services are performed again in compliance with all the warranties contained in or referred to in clause 3, within thirty days of notification of any defects or failures or breaches of warranty being sent by the Buyer or, alternatively, the Seller shall pay the cost of having the Services rendered again. Any further Services shall also be subject to the warranties contained in clause 3 and the liabilities contained in this clause.
- 4.4 The Buyer may reject Goods after their delivery if they do not comply with clause 3, in which case, the Seller shall reimburse the Buyer for any Price paid by the Buyer with respect to rejected Goods and any costs reasonably incurred by the Buyer in connection with the rejection of such Goods.

### 5. DELIVERY, TITLE AND RISK

- 5.1 The date and place of delivery of the Goods or Services shall be that specified in the Order unless otherwise agreed between the Buyer and the Seller.
- 5.2 Time is of the essence so far as it applies to the obligations of the Seller. If any Goods or Services are not delivered within the time specified in the Order, the Buyer may either:
- a) refuse to accept such Goods or Services and terminate the Contract; or
  - b) require the Seller to deliver the Goods or Services by the most expeditious means, and any additional delivery charges in excess of those which would apply for the usual means of delivery shall be borne by the Seller.

5.4 The Seller shall make good free of charge to the Buyer any loss or damage to or defect in the Goods arising during transit.

5.5 Title to and risk of loss in the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with this clause 5, but without prejudice to any right of rejection or other rights which may apply to the Buyer under these Conditions.

### 6. PRICE AND PAYMENT

- 6.1 The Price of the Goods or the Services bought by the Buyer shall be that specified in the Order and shall be fixed and not able to be varied without the prior written agreement of the Buyer.
- 6.2 The Price specified in the Order shall be on a free in store basis, where the risk and obligation to deliver Goods to the Buyer remains with the Seller, unless otherwise agreed.
- 6.3 Where Goods and Services Tax is charged by the Seller, the Seller's invoice shall be in the form of a Tax Invoice. Goods and Services Tax must be charged at the legislated rate prevailing at the time of invoicing.
- 6.4 The terms of payment by the Buyer, unless otherwise stated or agreed in writing, are forty-five days from the completion of the month of invoice. Payment shall be made in New Zealand dollars. The Buyer reserves the right to set-off any amount owing under the Contract against any amount due from the Seller to the Buyer for any reason whatsoever. Payment by the Buyer does not prejudice its rights under clauses 3 and 4 of these Conditions.

### 7. PACKAGING, STORAGE AND HAZARDOUS GOODS

- 7.1 The Goods shall be properly packed to avoid being damaged during delivery or loading and unloading. All packages shall be clearly marked with the Order number and location of delivery.
- 7.2 The Seller shall comply with all applicable laws, regulations and other relevant requirements relating to the transport, packaging, storage, handling and use of the Goods.
- 7.3 All Goods which are hazardous must be marked by the Seller with international danger symbols and display the name of the material and be accompanied by appropriate instructions (including Material Safety Data Sheets). Delivery and other documentation must include disclosure of the hazards and the name of the material.
- 7.4 All information held by or reasonably available to the Seller regarding any potential hazards known or believed to exist in the transport,

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- packaging, storage, handling or use of the Goods shall be immediately communicated to the Buyer.
- 7.5 The Goods shall be packed in accordance with any packaging requirement or specifications contained in the Order or otherwise communicated by the Buyer to the Seller. Any proposed alteration to the Buyer's packaging requirements or specifications shall be subject to the Buyer's prior approval.
- 7.6 The Seller must use all reasonable endeavours to minimise waste when packaging the Goods. Where the Buyer is of the opinion that the Seller has exceeded the acceptable level of waste, the Buyer may serve a notice to that effect on the Seller. On receipt of such notice, the Seller will at its own cost take such steps as the Buyer reasonably requests, but at all times consistent with the need to protect the Goods from damage up to the time of delivery. The Seller agrees not to use any disposable pallets for any of the Goods.
- 8. INSURANCE AND RECALLS**
- 8.1 The Seller shall maintain at its expense adequate insurance including, without limitation, public liability, product liability, workers' compensation (including common law liability), automotive and other means of transport or freight liability insurance and product damage insurance on such terms and for such amounts as are reasonable in the circumstances of the Order.
- 8.2 If in the Buyer's reasonable assessment it becomes necessary to recall any Goods because of a real danger of loss or injury being caused or contributed to by those Goods, the Seller will indemnify the Buyer and keep it indemnified for all costs, losses or damages of any kind incurred or suffered by the Buyer as a result of the recall.
- 9. BUYER'S RIGHTS IN SPECIFICATIONS**
- 9.1 Any specifications, plans, drawings, process information, patterns or designs supplied by the Buyer to the Seller in connection with the Contract shall remain the property of the Buyer and any information derived from these or otherwise communicated to the Seller in connection with the Contract shall be kept confidential and shall not, without the written consent of the Buyer, be published or disclosed to any third party or made use of by the Seller except for the purpose of implementing the Contract. Any invention or improvement made by the Seller and attributable in whole or in part to such specifications, plans, drawings, process information, patterns or designs shall be the property of the Buyer.

## 10. TERMINATION

- 10.1 If the Seller fails to carry out these Conditions or repudiates the Contract or any other contract with the Buyer, or if the Seller becomes insolvent, commits an act of bankruptcy, stops payments of debts, calls a meeting of or enters into composition with or for the benefit of its creditors, or has a receiver, manager, administrator, controller or liquidator (or any like person) appointed to its undertaking or assets or any part thereof, or a winding up petition is presented against the Seller, or the Seller goes into liquidation (except for the purpose of reconstruction or amalgamation), the Buyer may at its discretion and regardless of any default or failure, and without prejudice to its other rights under the Contract or otherwise, forthwith cancel or suspend the Contract or any unfulfilled part of the Contract. In the event of cancellation or suspension as aforesaid, the Buyer shall not be liable for any loss, damages, costs or expenses howsoever arising from such cancellation or suspension. The only liability of the Buyer to the Seller in the circumstances set out in this clause shall be for payment of Goods delivered to the Buyer or Services performed for the Buyer which remain unpaid.

## 11. GENERAL

- 11.1 No failure, delay or relaxation on the part of either party in exercising any power or right conferred upon that party pursuant to the Contract shall operate as a waiver of the power or right.
- 11.2 If any provision of these Conditions or the Contract is invalid, all other provisions which are self-sustaining and capable of separate enforcement shall continue to be valid and enforceable in accordance with their terms.
- 11.3 Neither the Seller nor the Buyer shall be liable to the other for default or delay in performing its obligations under the Contract caused by any occurrence beyond its reasonable control including, without limitation, fires, strikes, industrial disturbances, riots, wars, acts of God, Government order or regulation, storm, tempest or epidemics. A party experiencing such delay must, as soon as is reasonably practicable, notify the other party of the delay and its expected duration. The Buyer may cancel an Order, without liability, where the Seller is unable to perform within the expected or agreed time because of such delay.
- 11.4 The Contract shall be subject to the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of that country.