

# Terms and Conditions of Sale

**These terms and conditions apply to all sales of fibre cement building products and related accessories, within New Zealand, by James Hardie New Zealand Limited. A customer who submits an order to James Hardie agrees to transact on these terms.**

## 1. Trading Terms

- 1.1 These terms operate to the exclusion of all and any other terms and conditions (including any purchasing terms issued by the customer). No other terms will apply unless they are agreed in writing signed by both parties.
- 1.2 James Hardie may at any time change these terms and conditions by publishing new terms and conditions. The new terms will apply to all orders submitted after the date of publication.
- 1.3 Where a customer has a credit account with James Hardie, James Hardie's credit conditions will also apply in addition to these terms. In the case of orders for non-standard products, additional conditions will also apply as notified to the customer at the time of placing the order.
- 1.4 Where any credit conditions, non-standard order conditions or other conditions agreed to in writing are inconsistent with these conditions, then those specific conditions will prevail to the extent of any inconsistency.

## 2. Orders

- 2.1 James Hardie may accept or refuse any order for products in its absolute discretion and may make its acceptance of an order conditional upon payment on delivery or a satisfactory credit assessment of the customer.
- 2.2 Goods will be sold in standard sizes, weights and selling units as published by James Hardie from time to time. Where the customer requires a non-standard order:
  - (a) the customer must make a specific arrangement with its James Hardie sales representative; and
  - (b) the customer must comply with any additional conditions advised (including payment of any deposit advised).

## 3. Price

- 3.1 Orders are accepted by James Hardie subject to the condition that the customer agrees to pay the prices set out in James Hardie's published price list applicable at the time the relevant products are delivered together with any other applicable costs or surcharges. If James Hardie publishes a new price list or otherwise alters its prices ("Updated Price List"), the Updated Price List applies to all products delivered on or after the date that the Updated Price List becomes effective.
- 3.2 James Hardie will notify customers of the effective date of any Updated Price List ("Price Change Notice"). If a customer has placed an order for products prior to the date of the Price Change Notice and those products are forecast to be delivered after the effective date of the Updated Price List, the customer may cancel the order within [60] business days of the date of the Price Change Notice. If the customer does not cancel the order within the specified timeframe, the order remains in place and the Updated Price List applies to any products delivered after the effective date of the Updated Price List. Orders delivered prior to the effective date of the Updated Price List will be charged/invoiced at the price list applicable prior to the date upon which the Updated Price List has effect.

## 4. Supply

- 4.1 Every effort will be made to fulfil accepted orders placed with James Hardie, but if James Hardie's ability to do so is affected (directly or indirectly and whether by circumstance already existing or otherwise) by strikes, lockouts, rise in freight, duties or other charges, acts of God, or by any cause whatsoever beyond the reasonable commercial control of James Hardie, it shall have the right:
- (a) to elect to extend the time for fulfilment of the order or compliance with any delivery or completion date;
  - (b) to alter the specifications for the products so as to allow the substitution of equivalent products; or
  - (c) to terminate the order without liability for breach of contract or for any antecedent breach.
- 4.2 In any event James Hardie will be entitled to full payment for all products which have been delivered. James Hardie will not be liable for any loss, including consequential loss and loss of profits, arising from any delay in its performance of the contract or the early termination of any order.

## 5. Delivery And Insurance

- 5.1 Products in transit are not insured by James Hardie unless a specific agreement to do so is made in writing. Charges for agreed insurance will be payable by the customer.
- 5.2 Where the customer's carrier is to collect products from James Hardie's premises, if the products are not collected within 7 days after James Hardie notifies the customer of their availability, James Hardie may cancel the order and charge the customer a 10% handling charge.
- 5.3 Where products are consigned by rail or ship or taken by transport organised by the customer from James Hardie's premises, risk of damage to, or loss or deterioration of any such products passes to the customer on delivery to the rail, ship or customer's carrier and James Hardie's delivery obligations are complete at that stage. Any claim for loss or damage in transit should be made direct to the railway or shipping authority or the carrier concerned.
- 5.4 Where products are delivered by a carrier organised by James Hardie, delivery is deemed to occur when the products are delivered to a destination agreed to by James Hardie and the customer, and risk of damage to, or loss or deterioration of, any such products passes to the customer at that time.
- 5.5 All claims for credit for damaged or missing products, incorrect products and overcharges must be made in writing, and the goods returned, within 14 days of date of delivery and must quote the date and invoice number on which the products to be credited were purchased.
- 5.6 Where prices in James Hardie's price list include delivery this shall mean delivery to a destination within the boundaries nominated by James Hardie and does not include any charges incurred at rail-head or wharf.
- 5.7 James Hardie will charge the customer for all returnable pallets at James Hardie's standard rates. These charges will be credited to, or refunded to, the customer in full upon return of the pallets in good condition to James Hardie's Auckland distribution centre. The customer should notify James Hardie when the pallets are ready for collection and should mark the consignment note for the pallets "Empty pallets, freight forward, James Hardie". Freight costs for pallet return will be met by James Hardie where James Hardie arranges the collection.
- 5.8 If requested, products will be crated and the costs incurred in crating, will be payable by the customer. No allowance will be made for return of crates or materials from which crates are manufactured.

## 6. Title to Products

- 6.1 Risk of damage to, or loss or deterioration of any products supplied will pass to the customer in accordance with clause 5, but property in and title to the products will not pass to the customer until all products supplied have been paid for in full. Until then:
- (a) the customer will hold the products supplied as bailee of James Hardie;
  - (b) the customer may sell the products supplied in the ordinary course of its business as agent for James Hardie and will account to James Hardie for any sale proceeds; and
  - (c) James Hardie may require the customer to return the products supplied on demand and may go onto the premises of the customer and repossess the products.

6.2 Notwithstanding clause 6.1, the customer:

- (a) acknowledges that these terms of sale create an interest in favour of James Hardie in goods supplied to the customer by James Hardie which may be registerable under the Personal Properties Securities Act ("PPSA");
- (b) undertakes to take all necessary steps reasonably required by James Hardie to enable James Hardie to perfect its interest in such goods as a first priority interest under the PPSA; and
- (c) waives any rights it may have to receive a copy of any verification statement or other confirmation in relation to these interests created by these terms of sale.

## 7. Payment

- 7.1 Payments are to be net and no settlement discount will be allowed. Where a customer has a credit account with James Hardie, payment is required by not later than the 20th day of the month following the date of invoice (or such other time agreed to in writing by James Hardie). Where the customer does not have a credit account, payment must be made in cash (or cleared funds) prior to despatch of the products.
- 7.2 If the customer fails to make payment in respect of an invoice when due, James Hardie will be entitled (without prejudice to any other right or remedy it may have) to:
  - (a) cancel or suspend any existing orders or delivery, or refuse to accept any new orders; and
  - (b) charge the customer interest on the overdue amount at a rate of 12%pa, calculated daily.
- 7.3 All payments by the customer must refer to the specific statement or liability for which the payment is being made, otherwise James Hardie may allocate the payment towards discharging the customer's debts that have been outstanding for the longest period.

## 8. Goods and Services Tax

- 8.1 The customer must pay James Hardie a total price which includes the goods and services tax paid or payable by James Hardie in respect of products and services supplied by James Hardie to the customer. The amount payable by the customer will be stated in an invoice to the customer.

## 9. Returns

- 9.1 The customer may only return products if James Hardie has agreed to a return. All such returns must be within 3 months from the date of the relevant invoice and will be subject to a handling charge equal to 10% of the cost of the goods, with freight costs and risk remaining the responsibility of the customer.
- 9.2 Any agreement by James Hardie to accept the return of products is subject to the products being in resaleable condition as determined by James Hardie following inspection of the returned products at James Hardie's premises.

## 10. Warranty

- 10.1 The relevant warranty provided by James Hardie for its products and the conditions that apply to that warranty, are either set out in James Hardie's current technical literature for each product or on James Hardie's website ([www.jameshardie.co.nz](http://www.jameshardie.co.nz)). The warranties and their conditions are deemed to form part of these terms.

## 11. Consumer Guarantees Act

- 11.1 Where the customer acquires goods for business purposes, the Consumer Guarantees Act will not apply. If a sale under these terms and conditions is also governed by the Consumer Guarantees Act, then, to the extent of any inconsistency, the provisions of the Act shall apply.
- 11.2 Where the customer on-sells the goods:
  - (a) the customer will not give any express guarantees on James Hardie's behalf, except with James Hardie's express written approval;
  - (b) the customer will correctly advise its customers of the purposes for which the goods are suited;
  - (c) the customer will not sell goods for use in any purpose for which they are not suited; and
  - (d) the customer will ensure that any literature which they may supply in relation to the goods complies with the Consumer Guarantees Act.