

CONDITIONS OF CREDIT AND SALE

1. Credit Conditions

- 1.1. In these conditions:
Company means Winston Scaffolding P/L (ACN: 081 340 392; ABN: 12 081 340 392) T/A Winston Steel, UTP Pipes Australia & KHK Scaffolding Australia.
Customer means the person whose name appears as such in the Application.
Application means the credit application properly completed by the Customer;
Person includes an individual, company, body corporate, association whether incorporated or not, government or semi-government authority and a local government body or council.
Conditions means these conditions and any others which the parties agree form part of the Contract.
Contract means the contract between the Customer and the Company in relation to the sale of the Goods by the Company, whether on an order from the Customer or an invoice, quotation, sales order or other document from the Company and always includes the Conditions.
Goods means goods to be sold, and any services to be provided, by the Company under a Contract.
Event of Insolvency, in relation to a party, means the party becomes a bankrupt or a liquidator, receiver, receiver/manager, administrator or any other insolvency administrator is appointed to the party or its property.
- 1.2. Credit is only given to the Customer in accordance with these Conditions, regardless of any conditions in any order or document of the Customer.
- 1.3. The Company is entitled at all times, subject to express written notice to the contrary, to act as if all information provided in the Application is correct in all respects and the Customer warrants that it is. The Customer must indemnify the Company against all losses, costs and expenses arising in connection with any failure by the Customer to provide information in the Application which is correct in all respects (or to provide the express written notice set out in this clause).
- 1.4. The Customer must notify the Company promptly in writing if any variation occurs to any information supplied in the Application or if there is any change in the control, ownership or structure of the Customer. If the Customer is a trustee:
- (a) the Customer agrees to produce a stamped copy of the relevant trust deed (with all amendments) on request by the Company; and
 - (b) the Customer warrants it has full power and authority, for the benefit, purposes and objects of the trust, to make an application on behalf of the trust and acknowledges it shall be bound by this Application both personally and as trustee.
- 1.5. Payment by the Customer shall be made on terms agreed in writing by the Company and the Customer.
- 1.6. The Customer is bound by these Conditions or any conditions which vary, supersede or supplement them. The Company may vary these Conditions at any time by giving at least 30 days notice in writing.
- 1.7. The Company has absolute discretion as to:
- (a) whether or not to provide credit to the Customer;
 - (b) how much credit to give to the Customer at any time and from time to time; and
 - (c) withdrawing credit facilities from the Customer at any time with or without notice and for any reason whatever, including the Application being untrue or incorrect in any respect.
- 1.8. These conditions constitute the complete contract between the Company and the Customer in relation to the grant of credit by the Company, and the sale of Goods by the Company, regardless of any Customer document and any previous statements or understandings. These conditions may only be varied in writing signed by a Director of the Company.
- 1.9. The obligation of the Company to continue to sell and deliver products to the Customer or to provide services to the Customer (or both) is subject always to the Company being satisfied with the ability of the Customer to pay all moneys owing to the Company under any contract and to comply with these conditions. The Company may suspend or terminate deliveries of Goods or supply of services at any time and is not liable for any claim, damage, expense or costs suffered by the Customer as a result.
- 1.10. The Customer confirms that credit provided to the Customer under this Application is provided solely for the purposes of a business operated by the Customer.

2. Customer's Acknowledgements

- 2.1. The Customer acknowledges that they received a copy of these Conditions prior to receiving any goods from the Company. Any person signing the Company Credit Application for the Customer warrants that they have read and fully understand these Conditions and:
- (a) they have authority to sign on behalf of and to bind the Customer;

- (b) information about the Customer and any signatory is true and correct in every detail; and
- (c) they will provide current financial and trading information as required from time to time.

3. Ownership and Risk in Goods Sold

- 3.1. All interest in any Goods sold by the Company to the Customer stays with the Company until the total amount for those Goods has been paid in full by the Customer.
- 3.2. Until all sums owing for any Goods held by the Customer have been paid in full:
 - (a) the Customer holds those Goods as a fiduciary for the Company;
 - (b) the Customer must not alter those Goods in any way and must keep them properly protected, separately stored, clearly identified as Goods owned by the Company and readily distinguishable from other products owned by the Customer or any other person;
 - (c) the Customer must indemnify the Company against any claim or loss suffered by the Company as a result of any possession, use or disposal of those Goods by the Customer or any repossession or attempted repossession of those Goods by the Company; and
- 3.3. If:
 - (a) any amounts owing by Customer to the Company in respect of any Goods are not paid in accordance with this Contract; or
 - (b) the Company receives notice, or reasonably believes, that a third person may attempt to levy execution against any Goods; or
 - (c) an Event of Insolvency event occurs,

the Company may, at any time, without notice to the Customer and, without prejudice to any other rights, immediately terminate any Contract and enter any premises owned or occupied by the Customer where the Company reasonably believes Goods may be stored, repossess the Goods and subsequently dispose of the Goods at the Company's discretion.
- 3.4. Where Goods are sold by the Company following repossession, if proceeds from the sale are less than the cost of Goods, the Customer remains indebted to the Company for the outstanding balance.
- 3.5. Termination of any contract with the Customer does not affect any rights the Company may have.
- 3.6. If the Customer incorporates or mixes the Goods with any other goods (**Mixtures**) and, as a result, the Goods are not readily identifiable, and are not removable parts, of the Mixtures, then, until the debts have been paid in full in respect of those Mixtures:
 - (a) Customer must, to the extent practical, store Mixtures separately so they are readily identifiable;
 - (b) the Company has all interest in the Mixtures; and
 - (c) the whole of this clause applies to Mixtures as if references to "Goods" were references to Mixtures.
- 3.7. Risk in the Goods passes to the Customer:
 - (a) if transport is arranged by the Company, at the time and location nominated by the Company; and
 - (b) if transport is arranged by the Customer, when the Goods are loaded onto the transport arranged by the Customer.
- 3.8. The Customer acknowledges and agrees that:
 - (a) rights created in favour of the Company under this clause and in respect of the Goods constitute a purchase money security interest (PMSI) as defined in the *Personal Property Securities Act 2009(Cth)* (PPSA);
 - (b) it expressly consents to the Company registering a PMSI in respect of the Company's interest in the Goods under this clause pursuant to the PPSA;
 - (c) the Company may exercise all its rights in respect of any Goods as a security holder under a PMSI as set out in the PPSA; and
 - (d) it must comply in all relevant respects with the PPSA.
- 3.9. The Customer expressly charges all its interest in personal property, of whatever type and wherever located, both present and after-acquired, with payment of any amounts duly payable by it under the Contract.

- 3.10. For the purposes of, and in connection with, this Contract, a security interest is taken by the Company in all of the Customer's present and after-acquired property.

4. GST

Subject to any express statement in this Contract, payments exclude GST. Accordingly, if any supply made in connection with this Contract by the Company to the Customer is subject to GST, the payment for that supply will be increased by an amount equal to the GST payable.

5. Cancellation default and remedies

- 5.1. If the Customer repudiates this Contract or refuses to accept all or any of the Goods other than as permitted by the Contract or is in breach of this Contract or if the Company terminates the Contract, the Customer is liable for all loss suffered by the Company as a result, including storage, handling and demurrage costs, consequential loss, all legal costs on a full solicitor/client basis and all costs of debt collection. The Company may also charge interest at the rate of 2% per month on all late payments by the Customer.
- 5.2. Except as expressly provided in this Contract and to the maximum extent permitted by law, the Company shall be under no liability to the Customer at law or in equity or pursuant to any legislation or otherwise for any claims or losses arising out of or in connection with performance or non-performance of the Goods or the Contract (or both), including any act or omission of the Company, its employees, agents or contractors. Under no circumstances shall the Company be liable for punitive damages or consequential loss.
- 5.3. Customer indemnifies the Company and its agents from and against all claims, and losses by any third party arising out of or in connection with the performance or non-performance of the Goods or the Contract (or both), including any act or omission of the Company or its agents.
- 5.4. If any condition warranty or obligation is implied in the Contract by legislation, then, to the extent to which the liability of the Company in respect of any condition, warranty or obligation cannot be amended by the Contract, liability of the Company in respect of any breach shall to the maximum extent permitted by law be limited to an amount equal to the price referred to in the Contract and to:
- (a) in the case of supply of Goods, to any one or more of the following as the Company may decide:
 - (i) replacement of the Goods or the supply of equivalent products;
 - (ii) repair of the Goods;
 - (iii) payment of the cost of replacing the Goods or acquiring equivalent products;
 - (iv) payment of the cost of having the Goods repaired; or
 - (b) in the case of the supply of services, to either of the following, as the Company may decide:
 - (i) supplying the services again, or
 - (ii) payment of the cost of having the services supplied again.

6. Force Majeure

The Company shall not be liable to the Customer for any default or delay in performing its obligations under this Contract which arises from any circumstances beyond its reasonable control including labour disturbances involving third parties, shipping and/or transport delays, acts of God or the public enemy, war, civil commotions, acts or omissions of government agencies, earthquakes, storm, fire, floods, lightning and epidemics.

7. Applicable Law

This Contract shall be governed by the laws of New South Wales and both parties submit to the non-exclusive jurisdiction of the courts of that State.