



## Standard Terms & Conditions of Sale

### Definitions:

- A. The term "the Company" refers to M J N McNaughton Limited, its subsidiaries and associates, joint ventures and assigns, and the term "the Customer" refers to the person, firm, partnership, company or corporate entity with whom the Company enters into a contract to sell their Goods and/or services.
- B. The term "Goods" include all items purchased from the Company by the Customer.
- C. The term "Client" refers to the individual accepting the quote on behalf of the customer

### 1. Payment

Unless otherwise agreed, cash terms apply as follows:

**TERMS:** 50% Deposit – On acceptance of quotation  
50% Prior to delivery

**BANK ACCOUNT: 02-0176-0019573-00**

**The [Client] agrees to personally guarantee payment of all accounts incurred by the customer and is responsible for payment therefor.**

- 1.1 Where credit terms have been approved, the Customer agrees to make full payment for the Goods on or before the 20<sup>th</sup> of the month following uplifting, delivery or availability of delivery.
- 1.2 The Customer's failure to pay any account owed to the Company by the due date shall be a breach of the Agreement and the Company may, without prejudice to any other rights or remedies it may have, charge penalty interest at the rate of 2% per month, compounding until payment is received in full. Levying and collection of penalty interest shall not extend the due date of payment.
- 1.3 Trade discounts may be disallowed to accounts not paid by the due date, at the Company's sole discretion.
- 1.4 The Customer shall pay or reimburse the Company for all costs and/or expenses incurred by the Company in instructing a solicitor and/or debt collecting agency to recover any amount overdue for payment, and such costs and expenses shall bear interest from the date upon which they are paid or incurred by the Company up to and including the date upon which the Customer pays or reimburses the Company at the Penalty rate stipulated in clause 1.2 above.
- 1.5 The Customer agrees to conditions and requirements contained in the "Window and Door Care and Warranty" document located on website [www.mcnaughton.co.nz](http://www.mcnaughton.co.nz)

### 2. Transfer of Title and Risk

- 2.1 The Customer and the Company agree as follows:
- (a) Legal and equitable title to the Goods is retained by the Company until payment in cash or cleared funds is made for the Goods and all Goods supplied by the Company to the Customer are to be held by the Customer as bailee to be sold by it as agent for and on behalf of the Company, and the Customer shall store the Goods supplied separately so that they should at all times be identifiable as the Company's Goods.
- (b) The Goods will at all times from the time of delivery be at the Customer's risk and the customer undertakes to secure appropriate insurance for the Goods at its own expense.
- (c) Until payment in full has been made for all Goods, the Customer acknowledges and agrees as follows:
- (i) The Customer shall ensure the Goods are clearly identified by the identification mark agreed to between the Customer and the Company;
- (ii) If Goods are used and become part of a product, or are changed in their character in any way whatsoever, then title will exist in the reconstituted product;
- (iii) The Customer hereby irrevocably gives the Company, its agents and servants, leave and licence without the necessity of giving any notice to enter on and into any premises occupied by the Customer to search for and remove any of the Goods supplied to the Customer, or in which the Company has title, without in any way being liable to the Customer or any person or supplier claiming through the Customer, and if the Goods are wholly or partially attached to or incorporated in any other goods, the Company may, where practical, disconnect or sever in any way whatsoever as may be necessary to remove the Goods.
- (iv) Notwithstanding that title to the Goods is retained by the Company, the Customer is hereby authorised to sell the Goods in the ordinary course of business. The Company reserves the right to revoke the Customer's

authorisation to sell the Goods by written notice at any time the Company deems the credit of the Customer to be unsatisfactory or the Customer is in default of this agreement.

- (d) Where the Goods, in respect of which title has not passed to the Customer, or have been sold by the Customer pursuant to the authority granted in clause 2(c)(iv), any book debt created upon the sale of such Goods and the proceeds of sale of such Goods, when received by the Customer, shall be held upon trust by the Customer for the Company and any proceeds of sale of such goods, when received by the Customer, shall be held in trust by the Customer for the Company and any proceeds of sale so received by the Customer shall be placed in a separate bank account and shall first be applied towards the satisfaction of all indebtedness of the Customer to the Company and thereafter shall be retained by the Customer. The Company hereby authorises the Customer to deal with any such proceeds of sale received by the Customer as if such proceeds of sale were the absolute property of the Customer **PROVIDED THAT** such authority may be revoked by written notice from the Company at any time or if the Company deems the credit of the Customer to be unsatisfactory or if the Customer is in default of this agreement. Such authority shall be automatically revoked if the Customer is declared bankrupt or enters into any composition or arrangement with its creditors or a resolution is passed or a petition is filed for the winding up of the Customer or a receiver is appointed in respect of all or any assets of the Customer.

### 3. Delivery

- 3.1 Unless otherwise arranged delivery is "ex Factory"
- 3.2 Delivery will be made to the road entrance of the Customer's site, as indicated to the Company by the Customer. If requested the Company will arrange delivery on to the Customer's site, but in no circumstances will the Company be responsible for any damages that may occur beyond the road entrance. The Customer will be responsible for any and all charges that may occur, including towage, and cranes if delivery is requested past the road entrance onto the site.
- 3.3 Delivery will be deemed to have been made and completed once the Goods are delivered to the address supplied by the Customer, on the date specified by the Customer. The Customer will be responsible for the Goods once delivery has been made.
- 3.4 Delivery will be deemed to be complete when the Company has placed the Goods at the disposal of the Customer or delivered the Goods into the possession of the freight Company transporting the Goods on behalf of the Customer.
- 3.5 The Customer, or any of the Customer's employees or sub-contractors endorsement of the bill of lading, shall constitute acknowledgement that the Goods were delivered in sound and merchantable condition.
- 3.6 Delivery costs beyond Factory premises will be on-charged.

### 4. Returned Goods Policy

- 4.1 Requests for credits will not be recognised unless made in writing within seven (7) days of delivery.
- 4.2 Goods incorrectly supplied will be returned at the Company's expense and will be credited in full provided:
- (a) They are returned in the original condition as supplied;
- (b) The Company is advised within seven (7) days of original delivery.
- 4.3 Goods incorrectly ordered or accepted by the Customer may be returned to the Company within seven days of original supply. However:
- (a) Goods must be returned in the original condition as supplied;
- (b) the company may charge a 10% handling fee;
- (c) the company will charge freight for collection of Goods from the Customer's site.
- (d) The company reserves the right not to credit Goods where the Company is not itself entitled to the same credit or in circumstances where the Company has manufactured goods for the Customer.
- 4.4 Custom made products are non-returnable.

### 5. Claims

- 5.1 Goods are supplied subject to all conditions, warranties and limitations implied by law, **PROVIDED HOWEVER** that the extent of the Company's liabilities shall be limited to replacement of faulty Goods only.
- 5.2 It is expressly agreed that the Company is not to be liable for any damage consequential on or resulting from any Goods being found defective or in any way unsuitable or delays in manufacture or delivery for whatever reason.

5.3 The Company will not be liable for any claims or damages arising from any Goods supplied which are used for any purpose for which it was not designed or is not normally intended.

5.4 The Customer indemnifies the Company if the following arise:

- (a) Variations of colour matching and texture fastness.
- (b) Product movement caused by climatic conditions.

## 6. Disputes

Any dispute between the Customer and the Company may be referred to arbitration by either party. If, within 15 working days of notice of dispute, the Customer and Company cannot agree on a single arbitrator, either party may request the President of the Arbitrators and Mediators Institute of New Zealand to appoint an arbitrator.

## 7. Default

The Customer shall be in default of this agreement if any of the following events occur:

- (a) If the Customer has lied or has not been completely honest in its words and dealings with the Company, either at the beginning or during the course of the agreement, and especially in the credit application papers;
- (b) If the Customer fails to make payment to the Company on time and in full;
- (c) If the Customer fails to honour any other obligations it owes to the Company on time and completely;
- (d) If the Customer fails to keep all the promises it has made or fails to faithfully perform any of the terms and conditions of this agreement or of any note or other paper it may have signed in connection with this agreement;
- (e) If the Customer fails to properly care for the Goods or use or allow them to be used in any manner that might cause the Company to worry about their continued use or value;
- (f) If the Customer allows the Goods to become attached or levied on in any way;
- (g) If the Customer's financial condition changes to the point that the Company has cause to worry about whether it will be able to pay off its obligations to the Company on time and in full;
- (h) If the Customer allows the insurance on the Goods to expire or to be cancelled;
  - (i) If the Customer becomes insolvent or goes bankrupt;
  - (ii) If the Customer dies or becomes incompetent;
  - (iii) If the Customer enters into any composition or arrangement with its creditors;
  - (iv) If the Customer is a company which has passed a resolution or filed a petition for the winding up of the Customer;
  - (v) If a receiver is appointed in respect of all or any assets of the Customer.

## 8. Remedies

8.1 If the Customer is in default, the remedies provided for in this agreement shall apply, as well as all other remedies at common law or otherwise available to the Company. The Customer shall be liable for any losses, costs, expenses and liabilities incurred by the Company in exercising its remedies and the customer hereby fully indemnifies the Company in respect of any such losses, costs, expenses and liabilities.

8.2 All costs and expenses incurred by the Company in exercising its rights under this Agreement and in particular the recovery of any amount due and owing shall be paid for by the customer, and costs to be paid on a solicitor-client basis.

## 9. Security – Agreement to Mortgage

9.1 Notwithstanding the Company's retention of title to the Goods until payment in full of all accounts is made by the Customer to the Company, the Customer and/or Guarantor agrees as follows:

- (i) If the Customer shall fail to pay any part of any account when the same is due, then without prejudice to any other remedy herein provided or by law allowed, the Customer and/or Guarantor hereby agree to give and grant a registerable mortgage over the Customer and/or Guarantor's property described without prejudice to any other mortgages to secure to the Company the balance of the contract price, together with any interest as provided in clause 1.2 such mortgage being payable on demand and otherwise to be in a form usually employed by the solicitor to the Company and the Customer and/or Guarantor hereby agree to give and execute such mortgage in such event, and to pay all costs and disbursements for taking such security, such costs to be on a solicitor-client basis.
- (ii) The Company shall be entitled to execute such mortgage on behalf of the Customer and/or Guarantor, and for that purpose the Customer hereby appoints the manager for the time being of the Company to be his or her true and lawful attorney.

9.2 **The [Client] agrees to personally guarantee payment of all accounts incurred by the customer and is responsible for payment therefor.**

## 10. Continuing Security

10.1 This security shall be deemed to be a running and continuing security irrespective of any sums which may from time to time be paid to the credit of any account of the Company and notwithstanding that any such account may appear at any time to be in credit. Notwithstanding any settlement of account or any other matter or thing whatsoever this security shall remain in full force and effect and shall not be deemed to have been released or discharged or in any way vacated until a memorandum of satisfaction shall have been executed by the company.

## 11. Indemnity

If the Customer makes default in the payment of monies owed to the company or any part on the day on which they are due and ought to be paid, then the Customer will indemnify and hold harmless the company from and against all losses, claims and expenses arising from the non-payment on due date of such sums. All additional losses, costs, claims and expenses shall be payable upon demand.

## 12. Variation of Conditions

These or any conditions of sale can be varied by in writing by the Company.

## 13. Terms

These terms and any terms set out by the Company shall be included as terms in any contract resulting between the parties and in the case of any conflict arising between these terms or the terms of the Customer's order then these terms and conditions shall prevail.

## 14. Orders

13.1 The placement of an order shall for all purposes be deemed to be acceptance of these conditions.

13.2 The Company reserves the right to:

13.1.1 change or modify the design or composition of any of the Goods or the Services without notice.

13.1.2 All customary building industry tolerances will apply to the dimensions and measurements of the goods unless the Company and the Customer agree otherwise in writing. All timber sizes quoted are nominal. Dressed or gauged finished sizes will vary from the nominal call size

13.1.3 subcontract any order.

13.3 Where the Company carries out any work or the Services upon the Customer's goods on Company premises it is the Customer's obligation to insure such goods during that period and the Company bears no liability for loss or damage to such goods.

13.4 Variations to original orders must be in writing and require signed "Quote Acceptance" and will incur additional charges.

## 15. Governing Law

The laws of New Zealand govern this agreement.

## 16. Non-Existent Entities

If it is indicated in a credit application form that the Customer is a legal entity and that legal entity does not exist, any person signing the credit application form shall be personally liable and, if more than one, jointly and severally liable to the Company for all amounts payable from time to time to the Company in relation to any supply contract.

## 17. Force Majeure

17.1 The Company shall not be liable for:

- (1) Delay or non-delivery of any Goods occasioned by matters beyond its control including the default of any supplier or any act of Government, force majeure, stoppage of labour, strikes, riots, civil commotions from any cause or loss or damages caused by perils usually covered by insurance. If by any of these causes delivery of Goods in accordance with a supply contract is not possible, the Company may terminate the supply contract and the Customer shall not have any claim against the Company for damages or loss or otherwise.
- (2) Colour matching or colour fastness of any Goods.
- (3) Product movement caused by climatic conditions.

## 18. Stop Credit

The Company shall retain the right to withdraw at any time any credit facility or any supply of Goods or promises to supply Goods to the Customer.

## 19. Personal Property Securities Act 1999 ("PPSA")

The Customer and/or Guarantor consents to the Company registering a financing statement under the PPSA in respect of the goods supplied (for which express purpose credit has been extended) in accordance with clause 2 of these terms and conditions to create a purchase money security interest ("PMSI") (as that term is defined in the PPSA). The Customer and/or Guarantor agree to the debiting of its accounts with the Company, the costs of registration of the PMSI and all other costs associated with perfection and enforcement of the PMSI or any other document in respect of the goods. So far as permitted by s107 of a PPSA, the Customer and/or Guarantor will have no rights under s114, s120 and s133 of the PPSA including the right to receive any notices. The Customer and/or Guarantor waives the right to receive a verification statement in respect of any financing Company's repossession and retention of the

goods. The Customer and/or Guarantor acknowledges that the Company may allocate any monies it receives from the Customer statement or financing change statement registered by the Company. The Customer and/or Guarantor agree to the Company exercising its rights under s109 and s120 concurrently and to the Company retaining any repossessed goods immediately so that the Company's rights under s123 of the PPSA shall become effective immediately upon repossession. The Customer and/or Guarantor agree that repossession and retention of the goods under s120 – s123 will only satisfy so much of the Customer and/or Guarantors debt to the Company as is equivalent to the Company's estimation of the market value of the goods as they are to be used by the Company at the date of repossession and the repossession and retention will immediately extinguish any rights and/or interest the Customer and/or Guarantor has in the goods. The Customer and/or Guarantor will indemnify the Company for any claims brought by a third party against the Company as a result of the and/or Guarantor towards debts, charges and expenses in any priority it determines to maintain the PMSI in the goods.

#### **20. Credit Reporting**

The customer/Guarantor as signatory authorises the Company to pass on information about the Customer/Guarantor/signatory for the purposes of providing credit information to and obtaining credit information from Credit Agencies. Furthermore authorisation is extended to Credit Agencies to store and have such information available to the Company and other subscribers using credit reporting services provided by Credit Agencies via their respective databases.