

## TERMS AND CONDITIONS OF TRADE

To the fullest extent legally possible, all dealings between any Customer ("Customer") and any member of the Brickworks' Group ("Brickworks") relating to any goods ("goods") or services ("services") are subject to the following Terms and Conditions of Trade ("these Terms") unless otherwise agreed in writing.

1. **Payments**
  - (a) Payments to be within 30 days of end of month of invoice date without deduction or set-off of any kind.
  - (b) Brickworks may apply a payment received from the Customer to any amounts owed by the Customer (including interest, part payment of an invoice, administration, collection and other costs) in any order.
  - (c) Brickworks is entitled to set-off or deduct any amount payable by Brickworks to the Customer.
  - (d) Brickworks' may require the Customer to pay a credit card surcharge (in addition to any payment) of up to 3% plus GST of the payment amount where the Customer pays by credit card.
  - (e) A payment dishonour fee may be charged by Brickworks if a Customer's payment is dishonoured in any way. This fee will be in addition to any fees the Customer's financial institution or credit provider may charge the Customer.
2. **Interest:**  
Interest is payable on overdue accounts at a rate of 2% per calendar month (calculated daily) plus a monthly administration fee of \$25 will apply.
3. **Property:**
  - (a) Property in goods will not pass until payment in full of all monies owed to Brickworks on any basis ("**Full Payment**").
  - (b) Brickworks reserves the right to take possession and dispose of goods as it sees fit at any time until Full Payment and the Customer grants permission to Brickworks to enter any property (whether owned by it or otherwise) where any goods are, in order to do so and with such force as is necessary.
  - (c) Immediately upon delivery the Customer accepts liability for the goods.
  - (d) A document signed by an officer of Brickworks identifying goods and certifying that monies are owing to Brickworks will be conclusive evidence of Brickworks' title thereto.
  - (e) Upon sale or disposition of goods prior to Full Payment the Customer agrees to hold all proceeds Upon Trust for Brickworks in a separate bank account, agrees not to mix proceeds with any other monies and will immediately account to Brickworks therefore even if Brickworks may have granted any credit facility and/or time to pay. Failure by the Customer to comply with this subclause does not render invalid the trust to be established under this subclause.
  - (f) Until Full Payment the Customer agrees:
    - (i) to keep all goods as fiduciary for Brickworks and to store them in a manner which:
      - A. shows Brickworks as owner; and
      - B. will keep them safe and free from deterioration, destruction, loss or harm.
    - (ii) only to sell goods in the usual course of business; and
    - (iii) sale on terms, at cost or less than cost will not be "in the usual course".
  - (g) Clause 3 is not intended to create a charge and must be read down to the extent necessary to avoid being a charge.
  - (h) If the Customer uses or incorporates any goods in any production, process or manufacture or combines them with anything to create a finished or combined new thing for disposition then upon such disposition prior to Full Payment, the Customer agrees to hold such part of the proceeds thereof (and until payment is received by the Customer, that part of any applicable book debt) as equals the costs of the goods used and/or incorporated therein (at the prices invoiced by Brickworks to the Customer) Upon Trust for Brickworks until Full Payment.
4. **Limitation of Liability:**
  - (a) The Customer must limit any claim upon Brickworks relating to goods, to the cost of replacement of goods or the supply of equivalent goods and relating to services, to the cost of having services supplied again.
  - (b) Brickworks will not be liable for any claim arising after 7 days from delivery of goods or performance of services (or at all once goods have been unpacked, modified, on-sold or otherwise used or applied) after which there will be deemed to be unqualified acceptance.
  - (c) Brickworks will not be liable in any way for any contingent, consequential, direct, indirect, special or punitive damage arising whether due to Brickworks' negligence or otherwise and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly.
  - (d) No other term, condition, agreement, warranty, representation or understanding whether express or implied in any way extending to or otherwise relating to or binding upon Brickworks is made or given.
  - (e) Brickworks will not be liable for any claim relating to or arising from any alleged fault or defect, whether caused or contributed to by Brickworks, the Customer or any 3rd party or otherwise.
  - (f) While these Terms will cover all dealings the Customer will have with any member of the Brickworks' Group, any claim the Customer may have against any member of the Brickworks' Group will be limited to that member of the Brickworks' Group that supplied the goods and/or services to the Customer and the Customer agrees to limit any claim accordingly.
5. **Returns**
  - (a) If Brickworks elects to take back product it must be in as new and saleable condition and upon terms agreed and a re-stocking fee will apply.
  - (b) Custom made or custom processed goods or goods acquired by Brickworks specifically for the Customer will not be returnable.
  - (c) Any goods which are accepted by Brickworks as defective may be returned and will be replaced free of charge or be the subject of a credit for the invoiced value. "Free of charge" does not include labour, transport or material costs.
6. **Specific Orders:** Customer specific orders may be rejected by Brickworks at its election, unless accompanied by a non-refundable deposit of at least 50% of the total order price.
7. **Placement of Orders:**
  - (a) If any dispute arises concerning any order (and including any measurement, quality, quantity, identity, or authority or any telephone, facsimile, e-mail or computer generated order) the internal records of Brickworks will be conclusive evidence of what was ordered.
  - (b) Each order placed will be and be deemed to be a representation made by the Customer at the time that it is solvent and able to pay all of its debts as and when they fall due.
- (c) Failure to pay in accordance with these Terms will be and be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in 7(b) and that the representations were unconscionable, misleading and deceptive.
- (d) When any order is placed, the Customer must inform Brickworks of any material facts which would or might reasonably affect the commercial decision by Brickworks to accept the order and/or grant credit in relation thereto. Any failure to do so will create and be deemed to create an inequality of bargaining position and will constitute and be deemed to constitute the taking of an unfair advantage of Brickworks and to be unconscionable, misleading and deceptive.
8. **Delivery**
  - (a) Brickworks accepts no responsibility for delivery but may elect to arrange delivery at its discretion and without any liability and at the Customer's costs and responsibility in all things.
  - (b) Brickworks reserves the right to charge for any delivery.
  - (c) The Customer will be deemed to have accepted delivery and liability for the goods immediately Brickworks notifies that they are ready for collection or when they are delivered to a carrier or to the Customer's business premises or site whether attended or not.
  - (d) A document (including without limitation a consignment note) purporting to be signed by an officer(s) of Brickworks confirming delivery will be conclusive evidence of delivery as will any signed delivery docket.
  - (e) Brickworks will not be liable for delay, failure or inability to deliver any goods.
  - (f) Once the Customer has been notified that goods are ready for collection, the Customer agrees to pay all costs of holding or handling goods.
  - (g) Frustrated Delivery: If time spent delivering exceeds 30 minutes or requires more than one attempt, the Customer agrees to pay all costs relating thereto plus a loading of 10% to cover administration costs.
9. **Variation:** Variation or cancellation of any order, dealing or arrangement must be agreed in writing.
10. **Exclusions**
  - (a) No dealing with the Customer will be or be deemed to be a sale by sample or description.
  - (b) If Brickworks publishes material about its goods and prices, any part which is incompatible with these Terms is expressly excluded.
  - (c) The Customer will rely on its own knowledge and expertise in choosing any product for any purpose.
  - (d) Any advice or assistance given for or on behalf of Brickworks must be accepted at the Customer's risk and must not be or be deemed given as expert or adviser nor to have been relied upon.
11. **On-Sale:** The Customer agrees that upon on-sale of any goods to inform any third party involved of these Terms and in particular the provisions of Clause 3 and especially Clause 3 (h).
12. **Severability:** Any part of these Terms can be severed without affecting any other part.
13. **Purchase Price:**
  - (a) All sales are made by Brickworks at its ruling price at the time of delivery.
  - (b) All Government imposts and any GST ("Imposts") will be to the Customer's account.
  - (c) Brickworks' price lists exclude Imposts unless expressly noted thereon.
14. **Default:** Default or breach by the Customer of these Terms or in any dealings with Brickworks will entitle Brickworks to retain all monies paid, call-up all monies due or owing (whether currently due and owing or not), cease further deliveries and recover from the Customer all loss of profits without prejudice to any other of its rights under these Terms or at law.
15. **Products and Services:**
  - (a) Brickworks disclaims any responsibility or liability whatsoever relating to suitability for any particular purpose or process.
  - (b) The Customer agrees to check all goods prior to use alteration or any application thereof whether in relation to suitability for any particular purpose, process or otherwise.
  - (c) the Customer agrees to check and test all goods for compliance with all relevant applicable standards and regulatory bodies before use, on-sale or application and to use or apply same in accordance with all applicable standards, regulations and guidelines, with all manufacturers and/or Brickworks recommendations and directions as well as with good commercial practice.
  - (d) Brickworks may update, modify, make substitution or alter any of its goods or any component or raw material incorporated in or used in forming any part of any goods as part of its ongoing business. The Customer agrees to accept current goods in substitution for any goods ordered provided they are not materially different.
  - (e) Brickworks disclaims any responsibility or liability relating to any goods:
    - (i) processed or made to designs, drawings, specifications or measurements etc. or with materials which are provided or approved (whether in part or fully) by or on behalf of the Customer; and/or
    - (ii) utilised, stored, handled or used incorrectly or inappropriately.
16. **Other Terms and Conditions and Notice:**
  - (a) Terms and/or conditions sought to be imposed by the Customer upon Brickworks will not apply unless agreed in writing by Brickworks.
  - (b) The Customer will be deemed to have notice of any change to these Terms, immediately Brickworks adopts them.
17. **Recovery Costs:** The Customer will pay (on a full indemnity basis) all costs and expenses of Brickworks, its legal advisers, mercantile agents and others acting on its behalf in respect of anything instituted or being considered as a result of any breach of these Terms or breach of any dealings with Brickworks.
18. **Attornment:** To give effect to its obligations arising under these Terms (and especially Clause 23) the Customer hereby irrevocably appoints any solicitor for Brickworks from time to time, as its attorney.
19. **Customer Restructure:**
  - (a) The Customer will notify Brickworks of any change in its structure or management including any sale or disposition of any part of the business of the Customer, any change in director, shareholder, management, partnership or trusteeship or sale of any material part of its business ("Restructure") within 7 days of any such change.
  - (b) The Customer agrees it will:

- (i) cause any new entity created by virtue of a Restructure ("New Entity") to be bound by these Terms;
- (ii) continue to be bound by these Terms despite a Restructure and will indemnify Brickworks for any loss or damage it suffers as a result of a breach of these Terms by the New Entity.
20. **Jurisdiction:** All contracts made with Brickworks will be deemed to be made in the State or Territory in which the goods and/or services were supplied by Brickworks and the parties submit to the jurisdiction of the appropriate Courts in or nearest the capital city of that State or Territory. In the event of any dispute as to the correct jurisdiction (or if the goods and/or services have been supplied to the Customer in more than one State or Territory), the determination (at any time) by Brickworks of the jurisdiction will be binding on the Customer.
21. **Credit Line:** Brickworks can vary or withdraw any credit facility or limit it at any time at its discretion and without any liability to the Customer or any other party. The Customer acknowledges and agrees that credit granted by a Brickworks Group member does not entitle the Customer to trade on credit with any other Brickworks Group member. Where credit is sought from another Brickworks Group member, Brickworks may require the Customer to complete a separate Credit Application.
22. **Waiver:** If Brickworks elects not to exercise any rights arising as a result of breach of these Terms it will not constitute a waiver of any rights relating to any subsequent or other breach.
23. **Security For Payment:** The Customer:
- (a) if it is a company, agrees that it:
- (i) must on written request charge in favour of Brickworks:
- A. by way of a fixed charge, all its books of account, goodwill, documents of title and current and later acquired intellectual property rights; and
- B. by way of a floating charge the whole of the Customer's other undertaking, property and assets with Full Payment; and
- (ii) hereby charges in favour of Brickworks by way of a fixed charge all of its legal and equitable interest (both present and future) of whatsoever nature held in any current and later acquired real property,
- with Full Payment;
- (b) if he/she is a natural person (or more than one natural person), hereby charges in Brickworks' favour all of his/her legal and equitable interest (both present and future) of whatsoever nature held in any current and later acquired real property with Full Payment;
- (c) grants a lien to Brickworks over any of its property in the possession or control of Brickworks until Full Payment;
- (d) agrees to execute any documents and to do all things requested by Brickworks to register a mortgage (or such other security Brickworks requires) over any current or later acquired real property the Customer has an interest in;
- (e) consents unconditionally to Brickworks lodging a caveat noting its interest in any current or later acquired real property the Customer has an interest in;
- (f) agrees that Brickworks may (without limitation) exercise its rights under clause 18 to effect compliance with this clause 23 where the Customer fails to do so; and
- (g) agrees that if it is in default of any part of these Terms, Brickworks may, in order to make good any default (in whole or in part), garnishee moneys:
- (i) held by third parties on behalf of the Customer; and/or
- (ii) which the Customer is entitled to payment of (whether that entitlement is past, present or future) from a third party.
24. **Force Majeure:** Brickworks will not be in default or breach of any dealing with the Customer as a result of Force Majeure (i.e. anything beyond Brickworks' reasonable control).
25. **Sampling:** The Customer must pay for all goods provided to or ordered by the Customer as "sampling" unless otherwise agreed in writing.
26. **Intellectual Property:**
- (a) If Brickworks utilises any design, patent or intellectual property or follows any instruction provided by or on behalf of the Customer, the Customer indemnifies Brickworks against any claim, proceeding, damages or liability for any loss, cost or expense arising as a result whether for any alleged infringement of any intellectual property or otherwise.
- (b) The Customer must not advertise, use or represent any intellectual property of Brickworks or of any goods themselves in any way without the prior written consent of Brickworks.
- (c) If the Customer breaches or permits any breach of this clause, it acknowledges Brickworks may suffer claims by third parties as a result (e.g.: by models who's images are reproduced without authority and/or by parties who are entitled to exploit any intellectual property) and clause 35 will apply;
27. **Discounts:**
- (a) Any discount offered by Brickworks is at its complete discretion and will only be available provided the Customer is not in breach of any part of these Terms nor in default in any of its dealings with Brickworks.
- (b) Unless otherwise agreed in writing, early payment discounts (if any) will be noted on the face of the relevant invoice and are subject to these Terms.
28. **Specifications:**
- (a) Any illustration drawing or specification supplied by Brickworks ("Specs") are drafts and approximates and are for illustration purposes and the Customer should not rely on the accuracy of such Specs in any way.
- (b) Any tangible or intellectual property rights in Specs remain the property of Brickworks and may be recalled at any time.
- (c) Specs are to be treated at all times as confidential and not made use of without the prior written consent of Brickworks.
29. **No Set-Off:** No Set-off or counterclaim will be made or applied by the Customer until payment in full of all bona fide invoices raised by Brickworks (whether current or overdue) and this clause may be pleaded as a bar to any action taken prior to such payment in full.
30. **Trusts:** The Customer agrees that these Terms binds it not only in its own capacity but also as the Trustee of every trust of which it is a trustee.
31. **No Merger:** Termination of these Terms and/or dealings between the Customer and Brickworks ("Cessation") will not end those provisions of these Terms that are capable of surviving Cessation.
32. **Stock Discretion:** Brickworks has a continuing discretion to allocate available stock and gives no warranty as to certainty of supply unless expressly agreed in writing in advance.
33. **Partial Delivery/Forward Orders:** If the Customer places forward orders or request partial or instalment delivery, the Customer agrees:
- (a) to pay for so much of any order as is from time to time delivered by Brickworks; and
- (b) that no delay or failure to fulfil any part of any order will entitle the Customer to cancel or vary any order or delay or reduce any payment.
34. **Acceptable Variation:** The Customer will accept variation in quantities at plus or minus 5% and will pay pro-rata for the actual quantity delivered.
35. **Indemnity:** The Customer indemnifies Brickworks against any claim or loss arising from or related in any way to any contract or dealing between Brickworks and the Customer or anything arising therefrom or arising as a result of or subsequent to any breach of these Terms.
36. **Insolvency:**
- (a) If the Customer commits or is involved in any act of insolvency, it will be deemed in default under these Terms.
- (b) An act of insolvency includes bankruptcy, liquidation, receivership, administration or the like and failure to pay in accordance with these Terms.
37. **Exports:** Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) are expressly excluded unless otherwise stipulated in these Terms or on Brickworks' invoice for the goods.
38. **Quotations:** The Customer agrees:
- (a) quotations must be in writing;
- (b) Brickworks shall not be bound by any quotation if an order is placed outside the period of the quotation's validity noted thereon and in the absence of such period being noted, 14 days from the date of the quotation;
- (c) prior to receipt of any order Brickworks may amend a quote;
- (d) Brickworks shall not be bound by any quote if:
- (i) it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and those circumstances have materially changed; or
- (ii) the Customer is in breach of these Terms;
- (e) to pay any reasonable charges Brickworks claims for holding any goods referred to in any quote pending placement of an order.
39. **Credit Information and Privacy Act 1988 (Cth):**
- (a) The Customer and the Agent irrevocably authorise Brickworks, its servants and agents to make such enquiries as they deem necessary to investigate the credit worthiness of the Customer (and its directors if a company) and the Agent from time to time, including the making of enquiries with (without limitation) persons nominated as trade references, other entity's which in Brickworks' opinion the Customer may have had dealings with, the bankers of the Customer (and its directors if a company), any credit provider or Credit Reporting Agency and including personal credit and consumer credit information and LandData/property inquiries and name searches (hereinafter called "the Sources"). The Customer (and its directors if a company) and the Agent hereby authorise the Sources to disclose to Brickworks such information concerning the Customer (and its directors if a company) and the Agent which is within their possession. The Customer (and its directors if a company) and the Agent agree that the information provided on this Credit Application concerning the Customer (and its directors if a company) and the Agent and any relevant trading information arising from any dealings between the Customer and Brickworks may be disclosed to a Credit Reporting Agency or any other interested person, subject to Brickworks' Privacy Policy and can be obtained by writing to the Credit Manager, Brickworks Ltd, PO Box 6550 Wetherill Park, New South Wales 1851.
- (b) The Customer warrants to Brickworks that it has (where it is a company) obtained the consent of its directors to Brickworks carrying out the searches specified in subclause (a) above.
40. **Silica Warning:** Always "wet" cut, saw, drill, chase etc. goods as dust from goods may contain silica and/or other material which is harmful to health. Avoid inhaling any dust to avoid the risk of respiratory impairment etc. Brickworks will provide further information on request.
41. **Products and Services:**
- (a) Delamination, Failure etc: The Customer acknowledges and accepts all risks associated with any delamination or failure relating to any laminated, veneered, plywood and decorated goods sold which are not manufactured/produced by Brickworks.
- (b) Timber: The Customer acknowledges that Brickworks' timber goods have (inter alia) the following characteristics:
- (i) it is a natural product and variations in colour, texture and inherent quality occur;
- (ii) it is susceptible to exposure to the elements;
- (iii) it is susceptible to bending, warping, crushing, swelling, delamination and fungal growth etc., if not stored or used properly;
- (iv) it is susceptible to damage and size variations which may be caused (inter alia) by relative humidity and/or moisture content;
- (v) it may contain or be treated with poisons and/or potentially toxic chemicals (formaldehyde, preservatives, adhesives etc.) and should be stored and worked upon in well ventilated areas with proper exhaust systems and not burned; and
- (vi) product related dust and saw dust are inherently dangerous if inhaled and may be associated with Nasal Cancer.
42. **All Divisions:** The Customer agrees that these Terms will apply to all dealings between the Customer and Brickworks and any part or member of the Brickworks' Group.
43. **Recalls:** In the event of a product recall ("Recall"), the Customer must give Brickworks such assistance as Brickworks reasonably requires in relation to that Recall.
44. **Pallets:** The Customer will return all pallets and any re-useable packaging provided with goods and indemnifies Brickworks for the full replacement cost thereof, if not returned to Brickworks promptly and in good order.
45. **Adverse Environments:** The Customer acknowledges and agrees that goods can be adversely affected by severe environments, temperature extremes, frost, wind borne salt or abrasives which cause flaking, eat-away glaze or finish and reduce expected operating life especially in seaside locations.
46. **Industry Levies etc:** The Customer must pay any industry or legally imposed levy which applies to any goods from time to time in addition to the purchase price.
47. **Exclusion of warranty:** Brickworks is not bound by any warranty (and the Customer agrees not to make any claim against Brickworks in relation to any warranty) in respect of goods or services unless all goods and services have paid for in full without set-off or deduction of any kind.
48. **Definitions:** In these Terms and Credit Application:
- (a) "**Brickworks' Group**" means jointly and severally the entities listed on page 2 of the Credit Application and any new member admitted to the Brickworks' Group from time to time by Brickworks (whether with notice or not to the Customer) and each of their subsidiaries, divisions, affiliates, associated and related entities and their successors and assigns; and
- (b) "**Credit Application**" means Brickworks Credit Application as used by Brickworks from time to time.