

MONO-WALL CONSTRUCTION SYSTEMS

TERMS AND CONDITIONS OF PRODUCT SUPPLY AND SALE

Definitions

A reference to “the supplier” means MONOWALL CONSTRUCTIONS SYSTEMS Pty Ltd ABN 81 635 915 351 as Trustee of the Monowall Trust. Please read the undermentioned terms carefully. If you do not understand these terms of trade you should seek legal advice.

Account

means the Credit Account for the purchase and delivery of Goods sold and supplied by supplier to or at the direction of the Customer.

Credit Limit

means any the Credit Limited set by supplier in favour of the Customer or such different sum as the supplier may in its absolute discretion set from time to time on this Account.

Products

means Mono-Wall Panels and other Products supplied by supplier under this Agreement

Product Installation Specifications

means those specifications set by Supplier from time to time as to the installation and use of the Products supplied by Supplier.

Tax Invoice

means Tax Invoice issued on delivery of a consignment of goods sold and supplied by Supplier.

Operative Conditions:

Goods are sold and supplied on the following Terms and Conditions:

1. ORDERS

- 1.1 Each Order which the Customer makes with Supplier will be regarded as a separate contract of sale.
- 1.2 Orders may be made by telephone, email or by such other electronic means as the parties may otherwise accept and use
- 1.3 It is the Customer’s responsibility to ensure that any order placed by the Customer is to the dimensions and specifications required. All dimensions and specifications for such Products Ordered must be set out in detail with all Orders made.
- 1.4 Any Order made is subject to acceptance of the Supplier

2. TELEPHONE ORDERS

All telephone orders are to be immediately confirmed in writing by the customer. In the event the confirmation varies from that recorded and processed by the Supplier, then the Supplier’s records shall prevail.

3. RETURN OF, OR CANCELLATION OF GOODS ORDERED

No return of goods will be accepted, without prior approval of the Supplier in writing...NOTE – no return of or cancellation will be accepted once the production of the order has commenced.

4. SPECIAL ORDERS

All orders attract a 50% deposit which will be debited to the Customer's account upon receipt of a written order for panels outside our normal Product Range, or for goods specifically modified to the Customer's requirements.

5. PRICE

All goods are sold at the price current at the time of delivery.

The price of goods is at the Suppliers works unless otherwise agreed by the Supplier in writing

Costs and charges for freight and handling at the point of delivery to the Customer or the Customer's agent are payable by the Customer unless otherwise stated on the quote/order form. NOTE: - Pricing may vary from time to time subject to exchange rate variations and/or material increases outside the control of MONOWALL®.

The Supplier is required by law to pay Goods and Services Tax, (GST) on any works or products supplied. GST will be in addition to the estimate/quote provided, if it is not shown otherwise.

Where settlement discount applies, no settlement discount will be approved unless all account money(ies) is/are paid within the agreed trading terms.

6. CONDITIONS OF SALE OF GOODS

6.1 Subject to any restrictions at law, the Supplier shall not be liable for any amount greater than the sales price of the product originally supplied. Without limiting the meaning of this clause, Supplier shall not be liable for any claims, loss, expense whatsoever, how so ever arising, or in any event in any way whatsoever for any contingent, consequential, direct/indirect, special, or punitive damages arising in relation thereto, and the Customer acknowledges this express limit or liability and agrees to limit any claim accordingly. Further Supplier shall not be responsible directly or indirectly for any consequential loss or maintenance, use or operation of the product by the Customer, or to any third party, or from any failure of the product whether defective or not.

6.2 To the maximum extent permitted at law liability of MONOWALL, if any, for faulty workmanship, unsuitability, unmerchantable quality, failure to meet specifications, or to meet supply times, and all other claims for loss or damage howsoever arising and whether arising in contract, tort or otherwise and how so ever caused shall be limited to:

- i. Replacement of the goods or supply of equivalent goods;
- ii. Refund monies paid;
- iii. Payment of the cost of replacing the goods or of acquiring goods;

whichever obligation MONOWALL may choose. Without derogating from the generality of the foregoing, MONOWALL shall not be liable for any consequential loss or damage.

6.3 The Supplier shall not be liable nor deemed to be liable to the Customer or other party for failure or delay in meeting any obligation due to strikes and/or lockouts (whether of their own employees or those of others and whether or not the party against whom such action is taken could have avoided the same by acceding to the demands of the employees responsible for such action) equipment failure and/or delay or failure in supply of required materials, acts of God, war, fire, flood, embargo, litigation, acts of government or any agency instrumentality or any political subdivision thereof or any other cause beyond the control of the party which had the duty to perform.

7. LIMITATIONS ON WARRANTIES

Products supplied by the Supplier are for use and construction in accordance with plans and Specifications provided by the Customer. The Customer acknowledges that

- a) Products are manufactures and supplied to form an integral building system
- b) Use of non-Mono-Wall Products and failure to comply with installation Specifications may interfere with or undermine the structural integrity and or amenity of the Building or Structure by using the Monowall Products and System.
- c) That before ordering any Monowall product the Customer has verified the suitability of the products for the use proposed.
- d) That before installing or using any product the customer has carried out all necessary Preparatory and other site works to the specifications required for the installations and use of the products.
- e) That the products are used only for the purposes specified and are used and installed in accordance with the product installation specifications.
- f) The Customer must ensure that the products are installed by an Approved installer
- g) Ensure that the building and construction using products supplied do not exceed the limits set for the use of such products.
- h) Use of the product in conjunction with products or building systems not approved by the Supplier MAY VOID THE WARRANTY GIVEN.

8. DELIVERY

Deliveries shall be made during normal working hours. Deliveries required outside normal working hours will be delivered on request of the customers, and all charges will be the sole responsibility of the customer. In the event the Customer's Agent is not on site to accept the delivery, the driver's signature denoting the time, date and place of delivery, shall be deemed to be acceptance of the said delivery whether by the supplier or the supplier's agent. The date of delivery set forth in the order form is made in good faith, but the performance of the supplier's engagement is subject to industrial disturbances, delay in transit, damage to goods in transit, shortage of goods and any other cause beyond reasonable control of the supplier. The Supplier shall be excused from failure to deliver or complete, which is contributed to by any such cause, and the time specified for completion of delivery shall be extended commensurately. Delay in delivery or completion shall not constitute a breach of contract, or shall it affect any other provisions of the contract to the supplier's disadvantage.

9. ACCESS TO SITE

The customer at all times is responsible to ensure suitable access to the site. The customer further indemnifies and saves harmless the supplier, and or its servants or agents against any loss or damage, in the event the Customer fails to provide suitable access to site for delivery, and or whilst on site working.

10. ENVIRONMENTAL REQUIREMENTS

The Customer confirms and acknowledges it has made all inquiries in relation to all responsibilities conferred upon the customer by any Act, relating to cartage storage of and disposal of any or all products supplied by the Supplier.

11. INSURANCE: NO INSURANCE PROVIDED BY THE SUPPLIER

The Customer acknowledges that insurance of all goods is the responsibility of the Customer at the point of delivery.

12. CONDITIONS OF PAYMENT

50% deposit on order
50% prior to delivery

13. PAYMENT

- a. Payment may be made by Pay Pal, Direct Debit to the Suppliers Designated Account, Cash, Visa, MasterCard. Payment by cheque will only be accepted if approved by the Supplier on taking the order.
- b. Payment by credit card may incur a fee of % on any delivery paid by Credit Card.
- c. Interest shall be charged on all monies unpaid from due date of payment at the rate set on judgements in the Civil Jurisdiction of the Magistrate Courts of Queensland as at the date that the monies first became due and payable.

14. CREDIT CLAIMS

- a. it is the responsibility of the Customer to carefully inspect the goods immediately once they are delivered. Claims will only be recognised if made in the first instance by phone within 24 HOURS of receipt, and also in writing within 7 days of delivery. Claims outside this period will be at the absolute discretion of Supplier, and its decision final and binding on the Customer. All goods returned must be in original condition and packaging and complete in every detail. Goods will only be accepted if the freight on return is prepaid by the Customer.
- b. Failure to pay monies due by their due date for payment the Customer shall pay interest on the amounts due and payable at the rate set on Judgments in the Magistrates Court of Queensland.
- c. Failure to pay amounts due under a Statement in full the Supplier shall be entitled to (amongst other things) require payment of all goods supplied and unpaid for in full (and without the benefit of any discounts otherwise claimable on such supplies).

15. JURISDICTION

The Customer acknowledges that the Laws of the State of the Queensland shall govern this contract, and the Customer hereby agrees to submit to the non-exclusive jurisdiction of the Courts of Queensland.

16. CHANGES TO TERMS OF TRADE

16.1 These Trading Terms and Conditions apply to all transactions from which the Customer is supplied goods whether on COD or not. If any future contract between MONOWALL & the Customer is inconsistent with these Trading Terms and Conditions, then these Trading Terms and Conditions will apply unless the subsequent contract refers to and specifically alters these Trading Terms and Conditions in writing.

16.2 The Supplier reserves the right to amend these trading terms provided such amendments are conveyed to the Customer in writing. The Customer further acknowledges that such writing will be by ordinary mail to the address set out in the Commercial Credit Application, unless the Customer advises in writing to Suppliers a new address, and this new address is acknowledged by return in writing by Suppliers.

16.3 Customer further agrees to indemnify the Supplier for any legal costs incurred by the Supplier (including but not limited to charges & commission charged by mercantile agents) in respect of this application, agreements, personal guarantees, securities given or other documentation required whilst credit is being offered in consequence of this application, and the Customer further agrees to indemnify the Supplier for any dishonoured cheque fees incurred and in the event that the Customer's account is in default of the agreed trading terms to indemnify the Supplier against its collection fees and legal costs.

17. SECURITY FOR PAYMENT

17.1 Retention of Title until **ALL INVOICES** are paid in full, and ALL MONIES receipted and cleared, ownership of the goods remain with the Supplier, but the risk passes to the Customer on delivery. Delivery shall occur if the Supplier or its Agent delivers on delivery, and/or if the Customer or its Agent(s) takes delivery, at that point of delivery. Until the Supplier is paid in full, the relationship of the Customer to the Supplier shall be fiduciary in respect of the goods and the customer and shall hold the goods as Bailee only for the Supplier. The customer shall store the goods separately from its own until ownership has manifested in the customer. Should the goods be on-sold to a third party before payment, or in the Appointment of an Administrator, Controller, Managing Controller, Receiver Manager, or entry into an informal/Formal Deed of Arrangement under Bankruptcy Act of 1966 by the Customer, then the Customer hereby assigns to the Supplier its right of recovery of payment from the third party. The money (ies) resulting from the sale of goods are to be specifically earmarked and placed in a separate account on trust for the supplier, until payment in full is made to the supplier for the cost of the goods only, to guarantee clear passage of ownership to the third-party innocent purchaser. In the event the

customer is in default of the agreed trading terms, then the Customer without reservations grants right of entry to any or all properties under the customer's control, where the goods are reasonably expected to be stored. The customers indemnify and save harmless the suppliers, its servants or agents in relation to loss or damage as a result of the retaking of possession of the said goods, the Customer grants power of sale to the supplier to resell the said goods and the customer acknowledges that any shortfall owing after the said goods are resold will be the responsibility of the Customer.

The Customer acknowledges and authorises the supplier at the customers' expense to register the within Agreement and Charge as a Security under the Personal Property Securities Act 2009.

17.2 Covetable interest Clause: in the event of Default of the agreed trading terms by the Customer, then the customer by its Director(s) /Proprietors(s) Partners/Individual(s), nominated in this application hereby charge all their Right, Title of Interest (if any) to any or all property (ies) both real and personal owned/partly owned, acquired in the future, solely or jointly by the said Customer/Director(s)/Proprietor(s) Partners/Individual of this application in favour of the Supplier, to better secure all monies owed to the Supplier as of the date of the default, with the due and punctual observance and performance of all of the obligations of the customer.

17.3 Such Customer acknowledges that the Supplier may at its discretion, register a caveat on such property in respect of the interest conferred on it under this clause, against the Customer, then the Customer grants the Supplier the right to appoint a Receiver and sell the property.