

TERMS AND CONDITIONS OF SUPPLY

The following standard terms and conditions (**Terms**) apply where PGF Insulation Pty Ltd ACN 659 498 889 (**Supplier**) supplies Goods and/or Services to Buyer.

1. General

- (a) The Contract:
- (i) supersedes and excludes all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods and Services including, but not limited to, those relating to the provision of the Goods or performance of the Services or the results that ought to be expected from using the Goods or Services; and
 - (ii) overrides the Buyer's terms and conditions of purchase (if any) and any other documents issued by Buyer whether or not such documents expressly provide that they override this Contract or any part of it.
- (b) Unless Supplier otherwise agrees in writing, the Contract comprises the only terms which shall apply to all Goods or Services supplied by Supplier.

2. Quotations and Contracts

- (a) Supplier will issue a Quotation to Buyer on request, setting out the details of all Goods and Services, along with the relevant Price for such Goods and Services, requested by Buyer.
- (b) Quotations will be valid for the period of time specified on the Quotation (and if no period of time is specified then for 30 days from the date of issue of the Quotation) (**Quotation Validity Period**). If Buyer wishes to accept a Quotation it must provide Supplier with a purchase order in the form approved by Supplier (**Purchase Order**).
- (c) A Contract will be formed when Supplier issues a Sales Order Acknowledgement in respect of the relevant Goods and/or Services set out in the Purchase Order.
- (d) Supplier reserves the right to charge Buyer its standard list price for any Goods and/or Services if the relevant Purchase Order is provided after the end of the Quotation Validity Period.
- (e) Supplier has sole discretion to accept or reject any request to cancel a Contract. If a cancellation request is accepted by Supplier, Buyer will be liable for any Loss incurred by Supplier in respect of that Contract (including, without limitation, payment for any Goods ordered by Supplier from its Suppliers relating to that Contract or any costs

incurred by Supplier as at the date of cancellation in respect of the Services) (**Cancellation Fee**). Supplier will use its reasonable endeavours to minimise such Loss and, where possible, will endeavour to sell the relevant Goods to another customer. Buyer acknowledges and agrees that Supplier may retain any deposit payment paid by it under clause 11, as or towards the Cancellation Fee.

- (f) Any variation to a Quotation must be agreed by Supplier in writing (in its discretion).
- (g) Buyer authorises Supplier to subcontract the provision and delivery of the Goods and Services at Supplier's absolute discretion.

3. Limitation of liability

- (a) Subject to clause 3(b) and any other express terms in these Terms:
- (i) all conditions, warranties and implied terms, whether statutory or otherwise, are excluded in relation to the Goods and Services;
 - (ii) Buyer releases Supplier from any liability for legal costs and disbursements and, without limitation, any Consequential Losses suffered by Buyer under or in connection with the Contract; and
 - (iii) Supplier's liability for any Loss suffered or incurred by Buyer, howsoever caused, which arises out of or in connection with the supply of the Goods or Services under these Terms:
 - (A) in the case of Goods, is limited to:
 - (1) the replacement of the Goods or the supply of equivalent Goods;
 - (2) the repair of the Goods;
 - (3) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (4) the payment of the cost of having the Goods repaired; or
 - (5) a credit note in the amount of the price paid for the Goods;
 - (B) in the case of Services, is limited to:
 - (1) the resupply of the Services; or
 - (2) the payment of the cost of resupply of the Services; or
 - (3) a credit note in the amount of the price paid for the Services.
- (b) The Australian Consumer Law provides Consumers with a number of Consumer Guarantees that cannot be excluded or limited.

The limitations of liability set out in these Terms are therefore subject to, and will not apply to the extent that they limit or exclude, such Consumer Guarantees applicable to Consumers. However where the Australian Consumer Law permits Supplier to limit the remedies available to it for a breach of a Consumer Guarantee, Supplier hereby limits its remedies to such Consumers for a breach of a Consumer Guarantee, in the case of Goods, to the repair or replacement of the Goods, the supply of equivalent Goods or the payment of the cost of having the Goods repaired or replaced or having equivalent Goods supplied and, in the case of Services, to supplying the Services again or paying the cost of having the Services supplied again.

4. Samples and Descriptions

- (a) As variations will occur in the colour and texture of materials used in the manufacture of products, no warranty or guarantee is given by Supplier that the Goods will correspond in appearance with any sample, display, or goods previously sold, except as required under the Australian Consumer Law.
- (b) Buyer expressly acknowledges that for all purposes whatsoever Buyer has relied entirely on its own knowledge, skills, and judgment in selecting and ordering the Goods.
- (c) Buyer acknowledges and agrees that Supplier acquires products for on-supply to its customers from manufacturers who may from time to time make updates and upgrades to their products, including to the underlying method of manufacture, materials used in the manufacture and appearance of the products.

5. Services

- (a) Supplier will perform the Services (if any) at the Premises.
- (b) If for any reason Buyer is not ready, willing or able to receive the Services on the date specified in the relevant Quotation (or as otherwise agreed by the parties), Supplier may issue an Invoice to Buyer in respect of such Services.
- (c) Buyer must ensure that the Premises are sufficiently clean, secure and safe to enable Supplier to perform the Services and must ensure at all times that it has appropriate occupational health and safety processes and policies in place at the Premises which comply with all applicable laws. Buyer indemnifies Supplier for any Loss it incurs arising from or in connection with Buyer's failure to comply with its obligations under this clause.

6. Installation

- (a) Buyer is responsible for installation of the Goods unless otherwise stated in the Quotation. Supplier is not responsible in any way for Loss arising from or in connection with the installation of Goods by Buyer.
- (b) Where Supplier is responsible for installation of the Goods, Buyer must ensure that at all times during such installation that Buyer complies with all reasonable directions of Supplier in respect of preparatory steps required before and during installation.
- (c) Supplier is not responsible for delays in installation arising from or in connection with Buyer's failure to comply with clause 6(b).
- (d) Buyer indemnifies Supplier for all Loss incurred by Supplier as a result of Buyer not complying with its obligations under this clause.

7. Delivery

- (a) The time quoted for delivery of the Goods and/or Services in the Quotation is an estimate only. Supplier will use all commercially reasonable efforts to deliver the Goods and supply the Services to the Premises by the delivery date specified in the Quotation, but, subject to clause 3(b), Supplier will not be liable for loss suffered by Buyer resulting from any delay in such delivery.
- (b) Supplier may deliver the Goods and supply the Services by separate instalments. Each separate instalment will be invoiced and paid in accordance with clause 11.
- (c) Delivery of the Goods and supply of the Services to a third party nominated by Buyer is deemed to be delivery or supply to Buyer for the purposes of these Terms.
- (d) Supplier is not liable to Buyer for any damage caused to the Goods arising from or in connection with Buyer failing to keep the Goods dry and fully protected from damage (including direct sunlight, excessive heat, moisture or humidity).
- (e) The failure of Supplier to deliver the Goods or supply the Services does not entitle either party to treat these Terms or the Contract as repudiated.

8. Premises access

- (a) Buyer must at all times provide adequate and timely access to the Premises to enable Supplier to deliver the Goods and/or perform the Services.
- (b) If Supplier or its personnel leave equipment at the Premises during delivery of the Goods or performance of the Services, Buyer must take all

reasonable precautions to secure the Premises and prevent loss or damage to the equipment.

- (c) Buyer must take all reasonable precautions to mitigate any death, illness or injury to Supplier's personnel entering the Premises.
- (d) Buyer indemnifies Supplier for any Loss arising from or in connection with Buyer's failure to comply with its obligations under this clause 8 including any Loss that Supplier may suffer arising from the death, illness or injury of any person caused or contributed to by the entry onto, and the activities undertaken on, the Premises by Supplier or its personnel.

9. Premises hours

Unless the Quotation states otherwise, the supply of Goods or performance of Services is to be conducted during normal business hours. If it is required that any such supply or performance be undertaken on after-hours or on a Saturday, Sunday or public holiday, then additional charges may apply.

10. Risk and title

- (a) Risk in the Goods passes to Buyer when the Goods are delivered to Buyer.
- (b) Title in the Goods passes to Buyer on payment in full.
- (c) Supplier's rights under this clause 10 secure:
 - (i) Supplier's right to receive the Price of all the Goods sold under each Contract; and
 - (ii) all other amounts owing to Supplier under each Contract or any other agreement between Buyer and Supplier.

11. Price and payment

- (a) Subject to clause 2(d), the Price of the Goods and Services will be as set out in the Sales Order Acknowledgement.
- (b) Supplier may require that a deposit is paid. Details of any applicable deposit will be set out in the Sales Order Acknowledgement.
- (c) Goods and Services must be paid for in full without deduction or set-off in accordance with the payment terms accompanying the Quotation and Sales Order Acknowledgement.
- (d) Supplier may withhold delivery of the Goods or the supply of the Services until Buyer has paid for them in full.
- (e) Buyer must pay the Price for Goods or Services by credit card (which may incur a surcharge reflecting the additional cost charged to Supplier by its financial institution), direct debit, or in any other way that Supplier directs.

- (f) Payment by cheque or other negotiable instrument is not regarded as received until it is cleared.

12. GST and other taxes and duties

Notwithstanding any other clause in these Terms, to the extent that any supply made under or in connection with any Contract is a taxable supply (as defined by the GST Law), Buyer must pay to Supplier, in addition to the consideration provided for under these Terms for that supply (unless it expressly includes GST) an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. Buyer must pay to Supplier the additional amount at the same time as the consideration to which it is referable. Buyer is responsible for paying any other duties, taxes or charges, including any stamp duty (if applicable), in relation to the Goods.

13. Termination

- (a) Supplier may at its discretion, terminate, suspend, delay or cancel (partially or in full):
 - (i) any order placed by Buyer; or
 - (ii) any Contract in its entirety,
 by written notice to Buyer if Buyer:
 - (iii) breaches these Terms or a Contract in a material respect and, in the reasonable opinion of Supplier, the breach:
 - (A) cannot be remedied; or
 - (B) can be remedied, but is not remedied by Buyer within 14 days after Supplier gives Buyer notice of the breach; or
 - (iv) suffers an Insolvency Event.
- (b) Buyer may at its discretion, terminate or cancel (partially or in full):
 - (i) any order placed by Buyer; or
 - (ii) any Contract in its entirety,
 by written notice to Supplier if Buyer:
 - (iii) breaches these Terms or a Contract in a material respect and, in the reasonable opinion of Buyer, the breach:
 - (A) cannot be remedied; or
 - (B) can be remedied, but is not remedied by Supplier within 14 days after Buyer gives Supplier notice of the breach; or
 - (iv) suffers an Insolvency Event.
- (c) Buyer must, within 7 days after the date of termination:

- (i) pay Supplier all amounts it owes Supplier, whether due at that time or not; and
 - (ii) return all Confidential Information to Supplier.
- (d) No termination, suspension, delay or cancellation as a result of any of the foregoing events shall affect any other right which Supplier may have against Buyer.

14. Force majeure

- (a) Supplier is not liable for any failure to perform any of its obligations under these Terms or any Contract as a result of any event beyond its reasonable control including, without limitation, where Supplier is prevented, delayed or hindered from manufacturing, delivering or supplying the Goods or Services as a result of any act of God, fire, flood, epidemic, pandemic, war, explosion, acts of terrorism, strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, products, equipment, facilities or services from usual Suppliers on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network, unlawful act against public order or authority, or by government order or restriction. In such circumstances, Supplier may suspend performance of any obligations under these Terms or any Contract while the event continues. Supplier shall not incur any liability to Buyer in respect of such suspension.
- (b) If any of the above events occur for more than 30 days, either party may, without liability, terminate any affected Contract immediately by notice in writing to the other party.

15. Privacy

Supplier will collect, use and disclose Personal Information about Buyer in accordance with Supplier's privacy policy, which is available at [PGF privacy policy](#).

16. Confidential information

- (a) In this clause 16, Confidential Information means confidential information, trade secrets, know-how, scientific, technical, product, and in respect of Supplier, market or pricing information relating to the Goods or Services or Supplier's business.
- (b) Neither party may use or disclose the Confidential Information of the other party for any purpose except as necessary for the sole purpose of the Contract including the operation, maintenance or repair of the Goods or use of the Services supplied under these Terms and must not otherwise use or disclose any Confidential

Information of the other party without the prior written consent of that other party.

- (c) Each party must use its best endeavours to ensure that the obligation in relation to the other party's Confidential Information is observed by its employees, agents and contractors who have access to that Confidential Information.

17. Severance

If any provision of the Contract or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of the Contract shall not in any way be affected or impaired.

18. Variation and assignment

These Terms may be varied by agreement between the parties in writing only. Buyer may not assign its rights under any Contract without Supplier's prior written consent, which consent will not be unreasonably withheld.

19. Governing law

These Terms are governed by the law of the State of Victoria. Supplier and Buyer submit to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia.

20. Waiver

Waiver by Supplier of a breach of any Contract or of any right or power arising on a breach of any Contract must be in writing and signed by Supplier. A right or power created or arising on a breach of any Contract is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

21. Intellectual property

- (a) Each party remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by that party prior to any Contract.
- (b) Where any designs or specifications have been supplied to Supplier by Buyer then Buyer warrants that the use of those designs or specifications for the manufacturing, processing, assembly or supply of the Goods and/or performance of the Services does not infringe the rights of any third party.
- (c) The parties agree that any Intellectual Property Rights created or developed by Supplier under or

in connection with a Contract, or in the course of supplying the Goods and/or performing Services, are owned by Supplier.

- (d) Buyer must not do anything inconsistent with or in infringement of Supplier's Intellectual Property Rights including but not limited to the de-compilation, disassembly and re-engineering thereof.
- (e) The purchase of Goods or Services under any Contract does not confer on Buyer any licence or assignment of any copyright, patent, design or trademark, or any other intellectual property right (whether registered, registrable or not) that subsists in the Goods and/or Services.
- (f) The rights and obligations of each party pursuant to this clause survive the expiry or termination of any Contract.

22. Indemnity

Each indemnity in these Terms is a continuing obligation separate and independent from Buyer's other obligations and survives termination or expiry of a Contract.

23. Definitions

In these Terms:

"Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any other equivalent legislation (such as the Fair Trading Acts (or equivalent legislation) in each State and Territory);

"Buyer" means the person or entity who is buying the Goods and/or Services from Supplier, the details of which are set out in the Quotation;

"Confidential Information" has the meaning given to it in clause 16;

"Consequential Loss" means any loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity or any other loss or damage suffered by a party or any other person which is indirect or consequential;

"Consumer" has the meaning given to it in section 3 of the Australian Consumer Law;

"Consumer Guarantee" means the guarantees contained in sections 51 to 62 inclusive of the Australian Consumer Law;

"Contract" means a contract formed between Buyer and Supplier, which consists of these

Terms and any the Sales Order Acknowledgement;

"Goods" means all products supplied by Supplier to Buyer as set out in the Quotation;

"GST" means any goods and services tax and any replacement or similar tax;

"GST Law" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"Insolvency Event" means the happening of any of these events:

- (a) a party suspends payment of its debts generally, is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth);
- (b) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (c) receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar official is appointed over any of the assets or undertakings of a party, an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party's prior consent;
- (d) a party goes bankrupt;
- (e) judgement is given against Buyer and remains unsatisfied for a period of 10 days; or
- (f) a party ceases, or threatens to cease, to carry on a business;

"Intellectual Property Rights" means

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) Confidential Information and trade secrets;

- (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
- (e) proprietary rights under the *Circuit Layouts Act 1989* (Cth);

"Invoice" means an invoice issued by Supplier to Buyer setting out the amount to be paid by Buyer;

"Loss" means all actions, claims, costs (including legal costs on an indemnity basis), damages, expenses, interest, liabilities and losses (including Consequential Losses);

"Personal Information" means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not,
- (c) or as otherwise defined by the Privacy Act 1988 (Cth);

"Premises" means the premises specified in the Quotation where the Goods are to be delivered and/or the Services are to be performed;

"Price" means the price for the supply of the Goods or Services as provided for in clause 11;

"Purchase Order" has the meaning given to it in clause 2(b).

"Quotation" means a quotation document provided by Supplier to Buyer as updated by the parties in writing from time to time;

"Sales Order Acknowledgement" means a sales order acknowledgement document provided by Supplier and Buyer confirming the details of the Quotation and confirming the details of the Contract; and

"Services" means any training, commissioning, installation or other services performed by Supplier in respect of the Goods and any other services that Supplier agrees to perform on behalf of Buyer, including those set out in the Quotation but excluding delivery of the Goods.