

**INNOWOOD Australia Pty Ltd (“INNOWOOD”)**  
**ABN: 44 143 723 933**  
**STANDARD TERM & CONDITIONS OF TRADE**

These are the entire Standard Terms and Conditions of Sale for the goods supplied by Innowood on or after 15<sup>th</sup> July, 2011 to customers within Australia or export customers outside Australia (the “**Customer**”).

## **1 Definitions**

Under these terms, unless the context otherwise requires:

“Customer” means the Customer as specified in the account application and any Quotations provided to prospective Customers;

“Default Event” means any of the following:

- a. the customer does not make a payment due to Innowood;
- b. the customer is unable to pay its debts as and when they fall due (insolvent);
- c. the customer ceases or suspends to conduct its business, or threatens to do the same;
- d. a resolution is passed or proposed or an order made or a summon is presented to wind up the customer;
- e. a receiver and / or manager or other form of insolvency administrator is appointed over all or part of the customer’s assets;
- f. the customer makes or proposes to make any arrangement with its creditors;
- g. the customer commits an act of bankruptcy;
- h. execution is levied on any of the customers assets.

“Goods” means the goods sold and purchased or agreed to be sold and purchased, pursuant to the Quotation;

“Innowood” means Innowood Australia Pty Ltd and its employees, officers and agents;

“Material Warranty” is the warranty provided by Innowood with the Goods sold and is available on the Innowood website;

“Order” means the Customer’s instructions to Innowood to supply the Goods, pursuant to the Quotation;

“Quotation” means the quote provided to prospective customers for the supply of the Goods;

“Sales Order” means an Innowood Sales Order for the supply of the Goods to the Customer;

“Sales Order Confirmation” means a confirmation by Innowood of a Sales Order for the supply of the Goods to the Customer;

“Terms” means the Standard Terms and Conditions of Trade outlined in this document.

## **2 Application and acknowledges**

2.1 All orders placed with Innowood shall only be accepted subject to these Terms. Innowood may at any time, and from time to time, alter these Terms and such altered Terms shall apply after notification by Innowood to the Customer.

2.2 The Customer acknowledges that:

- a. it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Innowood in relation to the Goods or their use or application except as to Innowood’s recommendation that Goods be supplied pre-coated by an authorised Innowood coating applicator prior to installation;
- b. it has the sole responsibility of satisfying itself that the Goods are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by Innowood;
- c. it has the sole responsibility of ensuring that, prior to installation, the builder/installer checks that the

- Goods are supplied pre-coated by Innowood, and any after-sale coating applied to the surface of the Goods other than by an authorised Innowood coating applicator is at the Customer's own cost and risk;
- d. it has the sole responsibility of ensuring that any Goods supplied uncoated at the Customer's request for use indoors are installed in a location which is not fully or partly exposed to sunlight or other elements (as otherwise changes to aesthetic appearance, including colour, may occur); and
  - e. any description of the Goods provided on Innowood's website, in any brochure or catalogue or other marketing brochure, or in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.
- 2.3 Nothing in these Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation, including the Australian Consumer Law, applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

### **3 Payment, Passing of Property, Credit and Prices**

- 3.1 The Customer shall pay for the Goods in Australian currency, unless Sales Order Confirmation states otherwise, and for the price specified in the Sales Order Confirmation.
- 3.2 Unless otherwise stated, the prices for the Goods sold by Innowood pursuant to a Sales Order are expressed on a GST exclusive basis.
- 3.3 Where GST is applicable on any supply of goods by Innowood to the Customer, the Customer must pay the GST exclusive price plus GST.
- 3.4 The Customer must pay for the Goods without deduction or set-off, whether legal or equitable, by the date stated on the Sales Order Confirmation issued by Innowood;
- 3.5 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 3.6 A 50% non-refundable deposit is required at the making of an order by the Customer. A 30% payment is required when the goods arrive at Innowood's warehouse. The remaining 20% payment must be made before the delivery date specified on the Sales Order Confirmation.
- 3.7 Any Goods supplied and/or installed on a construction project which have been fabricated to custom specifications will require payment in full even if the order is cancelled within the 7 day period stated in Clause 4.12.
- 3.8 If the Customer defaults in payment by the due date of any amount payable to Innowood, then all money due but payable at a later date by the Customer to Innowood, becomes immediately due and payable without the requirement of any notice to the Customer, and Innowood may, without prejudice to any other remedy available to it:
  - a. charge the Customer interest on any sum due at the rate of 1.5% per month on the outstanding balance for the period from the due date until the date of payment in full;
  - b. charge the Customer for, and the Customer must indemnify Innowood against, all costs and expenses (including without limitation all legal costs, collection agency costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with these Terms or to recover any goods;
  - c. Innowood may withhold further deliveries of Goods and/or withdraw any credit facilities; and
  - d. cease or suspend for such period as Innowood thinks fit, supply of any further goods to the Customer; and
  - e. by notice in writing to the Customer, terminate any agreement with the Customer so far as unperformed by Innowood, without effect on the accrued rights of Innowood under any agreement.
- 3.9 Clauses 3.8(c) and (d) and clause 3.8 (e) may also be relied upon, at the option of Innowood:
  - a. where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her

- creditors generally; or
- b. where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with, or for the benefit of, its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.
- 3.10 Where the cost of the Goods exceeds the Customer's approved credit limit, all amounts owing to Innowood must be paid prior to delivery.
- 3.11 If the Customer orders any non-stock item and the total quantity supplied to the Customer is greater or less than the original order by a value of 5% or less, , the Customer will be invoiced and must pay for the total amount supplied as a whole quantity.
- 3.12 Interest is charged on amounts outstanding after their due dates at the statutory interest rate payable for judgement debts of the District Court of New South Wales;
- 3.13 All prices shall be those referred to in Innowood's price lists and/or arrangements current at the date of invoice and prices shall be subject to change without notice.

#### **4 Delivery and Return**

- 4.1 If the Customer purchases the Goods at an Innowood store, and unless otherwise agreed, Innowood will deliver the Goods to the Customer's premises or delivery address as specified by the Customer in the Sales Order.
- 4.2 Innowood will deliver the goods:
- a. within 5 working days after the full payment for stock items;
- b. within 8-12 weeks after payment of the 50% deposit for non-stock items; and
- 4.3 The Customer shall pay the cost of delivery unless stated otherwise in the Sales Order Confirmation.
- 4.4 If the Goods are not sold at an Innowood store, the Customer must, at its own cost and risk, collect the Goods within reasonable time.
- 4.5 Delivery is complete when the Goods are unloaded from the delivery vehicle. Unloading of the Goods will be at the Customer's cost and risk.
- 4.6 Where the Customer or its agent is unavailable to sign or does not sign the delivery docket provided by Innowood, the Innowood driver's delivery record will be conclusive evidence of the delivery at the time and location specified in that record.
- 4.7 Any period or date for delivery of goods stated by Innowood is intended as an estimate only and is not a contractual commitment. Innowood will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will, in no circumstances whatsoever, be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- 4.8 The Customer may not terminate or refuse delivery of the balance of the Goods if Innowood fails to deliver a portion of the Goods by the estimated date or to deliver at all.
- 4.9 Any extra carrier charges due to difficult access, wrong instructions provided by the Customer, frustrated delivery, or the requirement for extra personnel, will be charged to Customer at cost plus a 20% service fee plus GST charged by Innowood.
- 4.10 If Innowood does not receive forwarding instructions sufficient to enable it to dispatch the Goods within 14 days of notification that the Goods are ready, the Customer shall be deemed to have taken delivery of the Goods from such date. The Customer shall be liable for storage charges calculated daily and payable monthly on demand.
- 4.11 Where it is necessary for Innowood to deliver the Goods in other than a fully assembled condition (which facts will be stated in the Sales Order Confirmation), the cost and responsibility of assembly and installation will fall to the Customer, unless otherwise specified in Innowood's Sales Order confirmation.

- 4.12 The Customer must notify Innowood, in writing within 7 days after receipt the Goods, if;
- a. the wrong Goods have been received;
  - b. the quantity of the Goods is incorrect; or
  - c. the Goods do not meet specifications, including as to colour, finish, size or coating of the Goods.
- 4.13 Notwithstanding, Innowood may, upon reasonable notice, enter any premises where the goods are located, for the purposes of inspecting, testing and/or taking samples of the goods for testing.

## **5 Progress Payments for Construction Work**

- 5.1 All construction work undertaken by Innowood on behalf of the Customer shall be governed by the *Building and Construction Industry Security of Payment Act 1999* (NSW) and any associated legislation.
- 5.2 In accordance with the *Building and Construction Industry Security of Payment Act 1999* (NSW), Innowood is entitled to receive and recover progress payments in relation to the Goods supplied and/or work carried out on the premises of the Customer, or their agent.
- 5.3 The amount recoverable will correspond to the proportion of Goods supplied and/or work undertaken to the total contract price of the entire project.

## **6 Installation and Maintenance of the Product**

- 6.1 The Goods must be installed and maintained strictly in accordance with the relevant Innowood guidelines current at the time of installation, including as to Innowood Coating guidelines. To obtain a copy of the guidelines go to [www.innowood.com.au](http://www.innowood.com.au) or contact Innowood on 1300 787 717.
- 6.2 If the Goods are for outdoor use, it must be coated by Innowood at time of purchase and maintained strictly in accordance with the relevant Innowood guidelines current at the time of coating. To obtain a copy of the guidelines, go to [www.innowood.com.au](http://www.innowood.com.au) or contact Innowood on 1300 787 717. Subject to any rights the Customer has under the Australian Consumer Law or the Material Warranty, Goods supplied uncoated on Customer request are used at Customer's own risk.

## **7 Retention of Title**

- 7.1 Until full payment is received by Innowood for the Goods supplied by it to the Customer, as well as all other amounts owing to Innowood by the Customer:
- a. title in the Goods remain vested in Innowood and does not pass to the Customer;
  - b. the Customer must hold the Goods as fiduciary bailee and agent for Innowood;
  - c. the Customer must store the Goods in a safe and secure manner that identifies them as Innowood's Goods, and distinguishable from other goods in the Customer's possession; and
  - d. the Customer is required to hold the proceeds of any sale of the Goods on trust for Innowood in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee.
- 7.2 When title in the Goods passes to the Customer:
- a. Innowood may, on reasonable notice, enter premises where the Goods are stored to inspect;
  - b. the Customer may sell the Goods in the ordinary course at full market value, until a Default Event occurs
- 7.3 If a Default Event occurs:
- a. the Customer's right to sell the Goods immediately terminates; and
  - b. Innowood may, without notice to the Customer and without prejudice to any of its other rights, enter

any premises it suspects the Goods may be and recover and/or resell the Goods not yet paid for notwithstanding that the Goods may have been attached to other goods not the property of Innowood. For this purpose, the Customer irrevocably licences Innowood to enter such premises. The Customer shall also indemnify Innowood against all its claims, actions, suits, demands, and other costs or damages to or arising from such action.

## 8 Tolerances

- 8.1 Each Innowood invoice shall be prima facie evidence of the classification, quantity and measurements of the Goods delivered.
- 8.2 The Goods will be supplied with the tolerances as to quality, dimensions, weight, gauge, chemical composition, physical properties, finish, shearing and degree of flatness specified in the Innowood invoice. If such tolerances are not specified in the Innowood invoice, the tolerances will be Innowood's standard manufacturing tolerances.

## 9 Stocking

- 9.1 If the delivery cannot be made on the original delivery date, the Customer can either:
  - a. request that Innowood hold the Goods for an additional 14 days by paying the balance of all amounts payable; or
  - b. reconfirm another delivery appointment (in 6-8 weeks depending on the quantity and special requirements).
- 9.2 If the Customer does not collect or accept delivery of the Goods within 14 days of the Goods becoming available for delivery, Innowood may:
  - a. deliver the Goods to the Customer, in which case the delivery will be taken as a delivery pursuant to these Terms;
  - b. treat the Customer as having cancelled the Order; or
  - c. charge the customer a fee for the period Innowood stores the Goods after the 14 day period.
- 9.3 The Customer is aware of moisture trapped between the articles when stored may lead to staining or soiling which is not easily removed. Innowood will not be liable for any loss or damage the customer sustains arising out of anything referred to in this paragraph 9.3 and will not be required to remove any stains or soiling.
- 9.4 If the Customer requests a deferment of delivery of Goods and Innowood agrees to defer delivery, the Customer must pay the storage fee Innowood specifies.

## 10 Cancellation and Variations

- 10.1 Innowood will not accept alterations to Sales Orders that are in production or completed
- 10.2 If the Customer cancels all or part of a Sales Order:
  - a. before Innowood has started production of the Goods and/or tooling, the Customer must pay Innowood an amount equal to 25% of the price of the Goods and / or tooling; or
  - b. after Innowood has started producing the Goods and / or tooling, the Customer must pay Innowood the full price of the Goods and / or tooling cancelled, less the current scrap value of the Goods as determined by Innowood.

## 11 Equipment

- 11.1 Any equipment (for example dyes, tools and other equipment) including all intellectual property in or relating to the Goods which Innowood makes or obtains in order to produce the Goods for the Customer,

unless otherwise agreed:

- a. shall be and remain the sole property of Innowood. Innowood is not required to deliver such equipment to the Customer or part with possession of it. This applies even where the Customer has contributed to the cost of development and manufacture of the equipment;
- b. Where Innowood has agreed that particular items of equipment will be used only for the manufacture of Goods for the Customer, Innowood will not use that equipment to manufacture goods for third parties or sell to third parties products manufactured from the equipment unless:
  - i. the Customer has authorized such use or sales; or
  - ii. the Customer has not, for a period of 24 consecutive months, purchased from Innowood any goods manufactured by use of the equipment; or
  - iii. the Customer is in default of payment.

11.2 If the Customer does not purchase Goods manufactured by use of the dyes, tools or other equipment exclusive to that customer for a period of twenty four (24) months, Innowood may scrap such dyes, tools or other equipment. If the Customer places a Sales Order requiring the use of such dyes, tools or other equipment after they have been scrapped by Innowood pursuant to this clause, then such Sales Order shall be deemed to be a new Sales Order, and any dyes, tools or other equipment made to supply that Sales Order shall be paid for by the Customer at Innowood's then current charges.

## 12 Limitation of Liability

12.1 Except as specified in this document, the Material Warranty and the Australian Consumer Law and to the fullest extent permitted by law:

- a. Innowood shall not be liable for any claim, loss or expense howsoever arising which is made after seven days from the date of delivery (or at any time after the products have been unpacked, fixed or otherwise used or applied) at which time there shall be deemed to have been unqualified acceptance;
- b. Innowood shall not be liable for any claim, loss or expense howsoever arising which is made in respect of any variation of colour or defects in workmanship in respect of Goods supplied uncoated on Customer request, or any after-sale coating applied by Customer or its builder/installer other than as approved by Innowood; and
- c. Innowood shall not be liable in any way for any claim, loss or expense (including any contingent, consequential, special, direct, indirect and/or punitive damage) whether by reason of any negligence of Innowood, error or omission by Innowood or otherwise.

12.2 The Customer acknowledges these express limitations of liability and agrees to limit any claim accordingly.

## 13 Indemnity

13.1 The Customer indemnifies Innowood against all damages, losses and expenses arising out of claims made against Innowood in relation to products sold subject to these Terms, including but not limited to claims that the Goods, their method of manufacture or their design infringe any industrial or intellectual property rights.

13.2 The Customer shall not obtain any rights in any patent or design used by Innowood in manufacturing the goods by reason only of these terms.

## 14 Force Majeure

14.1 Innowood shall not be liable for any delay or failure to perform or comply with any of these terms if that failure arises from any event or circumstance:

- a. beyond the control of Innowood;
- b. which Innowood could not reasonably have provided against before entering into the Supply Order;

- c. which, having arisen, Innowood could not have reasonably avoided or overcome; and
- d. which is not substantially attributable to Innowood.

14.2 Force Majeure may include, but is not limited to:

- a. lockouts, strikes and other labour disturbances;
- b. war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- c. rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war; and
- d. Acts of God such as earthquake, storm, fire and lightning.

## **15 Special Conditions**

- 15.1 The waiver by Innowood of any provision or breach of any provision of these terms shall not be construed as a waiver of any other provision or subsequent breach of the same or any provision of these terms.
- 15.2 Unless Innowood agrees in writing to the contrary, these Terms prevail over the terms of the Sales Order.
- 15.3 These Terms must be construed according to the laws of New South Wales. The Customer accepts the non-exclusive jurisdiction of the courts of New South Wales, Australia.

THE PROSPECTIVE CUSTOMER MUST READ AND UNDERSTAND THESE TERMS AND CONDITIONS.