

# TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS OF SALE OF BlueScope Cold Form Solutions Pty Ltd ABN 34 099 421 333

## General

Except as hereinafter provided all quotations are made and all orders for goods, products and materials (Goods) are accepted subject to the following general terms and conditions and any special terms and conditions which are agreed to by BlueScope Cold Form Solutions Pty Ltd and any purchaser shall not vary or replace these general terms and conditions or be deemed in any circumstances whatsoever to do so.

If the Purchaser purports in any manner whatsoever to impose additional or alternative terms and conditions to his acceptance, they will not form or be deemed to form part of the contract between BlueScope Cold Form Solutions Pty Ltd and the Purchaser unless agreed to by BlueScope Cold Form Solutions Pty Ltd in writing.

## Price

All prices in BlueScope Cold Form Solutions Pty Ltd price list are:

- subject to alteration by BlueScope Cold Form Solutions Pty Ltd without notice to any Purchaser, and
- recommended prices only, for Goods ordered on or after the date on which BlueScope Cold Form Solutions Pty Ltd states the price shall take effect. There is no obligation to, and BlueScope Cold Form Solutions Pty Ltd is not bound to sell at these prices.

Where the prices of Goods do not include sales tax or any other tax or government impost, such charges will be shown as a separate amount on the invoice if applicable. The Purchaser shall be liable for all excise, sales, goods and services tax or any other taxes or charges which may be established or levied by any government authority (domestic or foreign) upon the Goods or any part thereof, or upon the manufacture, use sale or delivery of same.

If the goods and services tax (GST) or any similar tax has application to any supply made under this contract, BlueScope Cold Form Solutions Pty Ltd will, in addition to any amounts payable in accordance with this contract, recover from the purchaser an additional amount on behalf of GST, such amount to be calculated by multiplying the amount payable by the purchaser for that supply by the prevailing GST rate. GST will be shown on BlueScope Cold Form Solutions Pty Ltd's invoices in a format in line with the requirements of the NTS (Goods & Services Tax) Regulations 1999

## Title

BlueScope Cold Form Solutions Pty Ltd shall remain the legal and equitable owner of Goods supplied until the purchase prices in respect of such Goods has been received in full by BlueScope Cold Form Solutions Pty Ltd. In the case of payment by cheque, payment shall not be deemed to be received by BlueScope Cold Form Solutions Pty Ltd until the same has been cleared by the bank on which it is drawn.

If the Goods are in the possession of the Purchaser at any time prior to title therein passing to the Purchaser, the purchaser shall retain them in good and merchantable condition until either paid for or collected by BlueScope Cold Form Solutions Pty Ltd.

## If:

- the Purchaser fails to make payment of the purchase price in respect of the Goods by the due date, or
- the Purchaser commences to be wound up or is placed under official management of into liquidation or suffers a receiver and/or manager to be appointed in respect of any of its assets or becomes insolvent or commits an act of bankruptcy; or
- in BlueScope Cold Form Solutions Pty Ltd's reasonable opinion the payment of any amount in respect of the Goods supplied by BlueScope Cold Form Solutions Pty Ltd is in jeopardy then the Purchaser by accepting delivery of the Goods shall be deemed to have irrevocably authorised a representative of BlueScope Cold Form Solutions Pty Ltd to enter upon any site where Goods are located to take possession of the Goods without any previous notice and the Purchaser indemnifies BlueScope Cold Form Solutions Pty Ltd against any action, claim or demand arising out of any act lawfully done by BlueScope Cold Form Solutions Pty Ltd in the exercise of its powers hereunder and BlueScope Cold Form Solutions Pty Ltd shall be further entitled to resell any Goods in accordance with this clause it shall be released for all its obligations under the contract of sale in respect of the Goods. Where the Purchaser sells Goods to which it does not have title, the Purchaser shall received the proceeds of sale of those Goods as trustee for BlueScope Cold Form Solutions Pty Ltd and shall keep such proceeds in a separate Application of the PPSA

- In this clause, PPSA means the Personal Property Securities Act 2009. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- The Purchaser grants to BlueScope Cold Form Solutions Pty Ltd a security interest under the PPSA in any goods supplied under these terms and conditions.
- The Purchaser acknowledges and agrees that BlueScope Cold Form Solutions Pty Ltd may apply to register a security interest in the goods at any time before or after delivery of the goods. The Purchaser waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- BlueScope Cold Form Solutions Pty Ltd can apply amounts it receives from the Purchaser towards amounts owing to it in such order as BlueScope Cold Form Solutions Pty Ltd chooses.
- If the Purchaser defaults in the performance of any obligation owed to BlueScope Cold Form Solutions Pty Ltd under these terms and conditions or any other agreement for BlueScope Cold Form Solutions Pty Ltd to supply goods to the Purchaser, BlueScope Cold Form Solutions Pty Ltd may enforce its security interest in any goods by exercising all or any of its rights under these terms and conditions or the PPSA. To the maximum extent permitted by law, the Purchaser and BlueScope Cold Form Solutions Pty Ltd agree that the following provisions of the PPSA do not apply to the enforcement by BlueScope Cold Form Solutions Pty Ltd of its security interest in the goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- The Purchaser and BlueScope Cold Form Solutions Pty Ltd agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.

- The Purchaser must promptly do anything required by BlueScope Cold Form Solutions Pty Ltd to ensure that BlueScope Cold Form Solutions Pty Ltd's security interest is a perfected security interest and has priority over all other security interests in the goods.

- Nothing in this clause is limited by any other provision of these terms and conditions or Payment
- Subject to clause 4.2 payment for Goods purchased from BlueScope Cold Form Solutions Pty Ltd must be on a cash basis with placement of order unless otherwise agreed to by BlueScope Cold Form Solutions Pty Ltd.

Where the Purchaser has established an approved credit account with BlueScope Cold Form Solutions Pty Ltd the Purchaser shall ensure that payment for the Goods is made to BlueScope Cold Form Solutions Pty Ltd in accordance with the payment and settlement discount terms agreed between BlueScope Cold Form Solutions Pty Ltd and the Purchaser. All payments are required to be made by the Purchaser at least one hour before the time at which trading banks close for business to enable banking on or before the due date.

The Purchaser will not rank for settlement discounts where the Purchaser does not make payment as required by clause 4.2 Where the Purchaser has made a payment by cheque and has been granted a settlement discount and shall pay BlueScope Cold Form Solutions Pty Ltd the full invoice price for the Goods.

BlueScope Cold Form Solutions Pty Ltd reserves the right to charge interest on any amount overdue from the date it became due to the date payment is received at the rate of 1.5% above the prevailing rate charged by Westpac Banking Corporation to prime borrowers on overdraft accounts in excess of \$100,000.

## Consumer Rights

- Under the Australian Consumer Law ("ACL"), consumers have certain rights which cannot be excluded, including guarantees as to the acceptable quality and fitness for purpose of goods and services.
- Nothing in these terms and conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the ACL) and which by law cannot be excluded, restricted or modified.

## Warranties and Liabilities

To the extent permitted by law, if BlueScope Cold Form Solutions Pty Ltd fails to comply with a statutory guarantee, which cannot be excluded, such as a guarantee relating to the quality, condition, description or fitness for purpose of goods, then to the extent the law permits BlueScope Cold Form Solutions Pty Ltd to limit its liability in respect of such failure, BlueScope Cold Form Solutions Pty Ltd liability is limited to:

- in the case of goods:
  - replacement or the cost of replacing goods or the supply of equivalent goods; or
  - repair of the goods or the cost of repairing the goods; and

- in the case of services, supplying the services again or payment of the cost of having the services supplied again.

Any written warranty provided by BlueScope Cold Form Solutions Pty Ltd is in addition to and does not limit your rights under the ACL. Subject to the foregoing provisions, to the extent permitted by law and without limiting the Purchaser's rights under the ACL, BlueScope Cold Form Solutions Pty Ltd shall not be liable in any way whatsoever to the Purchaser for any loss or damage, whether direct, indirect, special or consequential, including without limitation, loss or damage arising out of personal injury, howsoever caused which the Purchaser or any other person may suffer or incur and which may, without limiting the generality of the foregoing, arise directly or indirectly as a result of the Goods or any defect therein, the failure or omission on the part of BlueScope Cold Form Solutions Pty Ltd (or any officer, agent or employee of BlueScope Cold Form Solutions Pty Ltd) to comply with any obligation imposed hereunder or at law, negligence or any act, matter or things done or permitted or omitted to be done by BlueScope Cold Form Solutions Pty Ltd in connection with the supply of Goods; BlueScope Cold Form Solutions Pty Ltd's liability being strictly limited to replacement or repair as herein before provided.

## Goods ordered for Collection

Goods ordered for collection will be held for a maximum period of ten (10) working days after the specific collection date. If the Goods are not collected within such time they may be delivered to a store selected by BlueScope Cold Form Solutions Pty Ltd and all costs incurred by BlueScope Cold Form Solutions Pty Ltd in relation thereto shall be charged to and be paid by the Purchaser.

## Delivery

Unless otherwise agreed to by BlueScope Cold Form Solutions Pty Ltd, Goods will be delivered during BlueScope Cold Form Solutions Pty Ltd's standard delivery times as published from time to time. Long Lengths (as defined by Local State Transport Authorities) may be subject to an additional charge. Maximum lengths for products vary by State and delivery of such will be determined by BlueScope Cold Form Solutions Pty Ltd.

The Goods are at the Purchaser's risk from the time at which they are delivered to the Purchaser as provided in clause 8.3 Unless otherwise agreed by BlueScope Cold Form Solutions Pty Ltd delivery of Goods shall be affected DAS (Delivery At Site or Store) and shall be deemed to occur when the Goods have arrived and are ready for unloading at the nominated site or store.

Where Goods are delivered DAS the following shall apply:

- The Purchaser shall be responsible for unloading the Goods and shall ensure that the Goods are unloaded without delay on arrival at the nominated site or store.
- BlueScope Cold Form Solutions Pty Ltd reserves the right to charge the Purchaser any costs which it incurs as a result of any delay by the Purchaser in unloading the Goods
- Where the Purchaser or his agent is not in attendance at the nominate site or store when the Goods arrive, BlueScope Cold Form Solutions Pty Ltd reserves the right to unload the Goods and the Purchaser shall be liable to pay BlueScope Cold Form Solutions Pty Ltd for the cost of this unloading. In the event of the site or store being unattended the delivery docke/manifest signed by the cartage contractor shall be prima facie evidence of due delivery of the Goods, BlueScope Cold Form Solutions Pty Ltd shall not be responsible for any Goods which are stolen, pilfered or damaged after being unloaded at an unattended site or store.
- Where unloading of Goods cannot be effected, the Purchaser shall be liable to pay BlueScope Cold Form Solutions Pty Ltd all costs incurred by BlueScope Cold Form Solutions Pty Ltd including, if applicable, a return delivery fee at the prevailing freight rates.

Dates and times quoted for delivery are estimates only and any delay in delivery will not entitle the Purchaser to damages or to any other remedy whatsoever. BlueScope Cold Form Solutions Pty Ltd shall not be obliged to complete any order in one delivery and expressly reserves the right to deliver by instalments. Where BlueScope Cold Form Solutions Pty Ltd delivers by instalments each instalment shall be deemed to be sold to the Purchaser under a separate contract. Failure to deliver any instalment shall not entitle the Purchaser to repudiate the contract.

Deliveries to Purchasers nominated carriers' depots are subject to availability of suitable materials handling equipment at that depot. Goods delivered to and accepted at such depots become the Purchaser's responsibility from that time of acceptance from the time of acceptance by that nominated carrier.

No defect of claim in respect of Goods delivered shall entitle the Purchaser to reject delivery of any other part of the order.

## Force Majeure

If BlueScope Cold Form Solutions Pty Ltd is prevented either directly or indirectly from performing any of its obligations hereunder, including without limitation, making a delivery of the Goods or any part thereof by reason of Force Majeure it shall be entitled, at its option, by notice to the Purchaser, either to extend the time for delivery of the Goods for a reasonable period or to terminate this contract, and the Purchaser shall not in consequence have any claim against BlueScope Cold Form Solutions Pty Ltd for damages or any other remedy for breach of contract.

For the purposes of this clause "Force Majeure" shall mean an act of God, war, fire, strike, lockout, trade or industrial disputes, government interference, transport delays, accidents, breakdown of plant or machinery, non delivery or shortage of supplies or any other cause beyond BlueScope Cold Form Solutions Pty Ltd's control.

## Quality

Where BlueScope Cold Form Solutions Pty Ltd is required to order special material or qualities for which the supplier requests a minimum order quantities, the Purchaser may be requested to accept an increase in quantity of up to 10% over the quantity ordered initially and if so requested the Purchaser shall be obliged to accept and pay for such increase. The price for the additional product shall be determined according to the unit price for the products included in the order.

## Equipment

All roll toolage, shears, lifting and associated equipment which BlueScope Cold Form Solutions Pty Ltd makes or obtains to produce the Goods, shall, unless otherwise expressly agreed by BlueScope Cold Form Solutions Pty Ltd, be and remain the property of BlueScope Cold Form Solutions Pty Ltd and any payment made with respect to them shall be deemed to be a charge in respect of their use. These and any other special tools, jigs, fixtures and patterns acquired or supplied by BlueScope Cold Form Solutions Pty Ltd are not to be used without its authority.

## Purchaser's Materials

If BlueScope Cold Form Solutions Pty Ltd is required to process the Purchaser's goods or materials then BlueScope Cold Form Solutions Pty Ltd does not give any warranty or assurance that materials supplied by the Purchaser are suitable for such processing and BlueScope Cold Form Solutions Pty Ltd accepts no responsibility and shall not, in any way be liable to the Purchaser for any damage done or caused to such materials or goods.

## Characteristics of Goods

The Purchaser expressly agrees that if the Goods, which are the subject of an order, are for a particular purpose or are required to possess certain characteristics, the Purchaser will specify that purpose or those characteristics in writing in the order.

If the Purchaser does not specify the particular purpose of the special uniform characteristics in accordance with clause 13.1 and BlueScope Cold Form Solutions Pty Ltd does not expressly confirm in writing that the Goods are reasonable for the specified purpose or that the Goods possess the specified characteristics, then the Purchaser agrees that it did not rely on the skill or judgement of BlueScope Cold Form Solutions Pty Ltd in relation to the suitability of the Goods for a particular purpose of the special or uniform characteristics possessed by the Goods.

## Damage, Inaccuracies and Defects

The Purchaser shall check all Goods received immediately upon unloading and shall notify BlueScope Cold Form Solutions Pty Ltd of any inaccuracies or short supply of Goods or any damaged Goods within 14 days or the date of delivery of the Goods. BlueScope Cold Form Solutions Pty Ltd will endeavour to rectify any inaccuracies or short supply or damaged Goods as soon as is reasonably practicable, but will not be responsible for any loss or damage whatsoever and howsoever caused arising out of or resulting from such inaccuracies or short supply or damage.

Any queries regarding the items shown on invoices issued by BlueScope Cold Form Solutions Pty Ltd shall be lodged by the Purchaser with BlueScope Cold Form Solutions Pty Ltd within 25 days of the issue date of the relevant invoice.

The Purchaser shall promptly notify BlueScope Cold Form Solutions Pty Ltd of any alleged defects in the Goods upon becoming aware of the defect and shall provide BlueScope Cold Form Solutions Pty Ltd with all relevant details to enable BlueScope Cold Form Solutions Pty Ltd for any Goods which are defective is set out in clause 6.

## Identification of Goods

Any description of Goods in BlueScope Cold Form Solutions Pty Ltd's price list or elsewhere shall be by way of identification only and the use of such description shall not create a sale by description. BlueScope Cold Form Solutions Pty Ltd reserves the right at any time to alter material specifications shown in its promotional literature to reflect changes made after the date of such publications.

## Installation of Goods

Goods supplied by BlueScope Cold Form Solutions Pty Ltd shall be installed in accordance with BlueScope Cold Form Solutions Pty Ltd's recommended fixing procedures as published from time to time. BlueScope Cold Form Solutions Pty Ltd shall not be liable in respect of any damage occasioned to the Goods by reason of the Purchaser, or any other person, failing to install the Goods in accordance with BlueScope Cold Form Solutions Pty Ltd's

recommended fixing procedures as published from time to time.

## Changes

BlueScope Cold Form Solutions Pty Ltd shall not be bound to accept any change in product dimensions, material or finish, a reduction in the quantity ordered or other particulars of an order for Goods after BlueScope Cold Form Solutions Pty Ltd has ordered special materials or commenced tooling for manufacture.

## Non BlueScope Cold Form Solutions Pty Ltd Components

In the case of goods or components thereof not of BlueScope Cold Form Solutions Pty Ltd's manufacture, BlueScope Cold Form Solutions Pty Ltd shall give the Purchaser and use its best endeavours to enforce at the cost and for the benefit of the Purchaser, such warranties and guarantees as BlueScope Cold Form Solutions Pty Ltd has obtained from its suppliers.

## Technical Advice

Subject to clause 16 BlueScope Cold Form Solutions Pty Ltd shall not be responsible for the consequence of any technical advice given by its employees in connection with design, installation and use of the Goods sold hereunder. The Purchaser agrees that any representations or advice made or give are made or give on the basis that:

- BlueScope Cold Form Solutions Pty Ltd assumes no obligation of liability whatsoever for these representations or advice or for any results obtained; and
- all such advice is accepted by the Purchaser entirely at the Purchaser's risk.