

FLETCHER BUILDING TERMS AND CONDITIONS OF PURCHASE OF GOODS OR SERVICES



This document contains the terms and conditions applying to Purchase Orders issued by a business within the Fletcher Building Group located in NZ or Australia, where there is no other written agreement between the supplier and the Fletcher Building Group purchaser. These terms and conditions do not apply to purchases by businesses within the Fletcher Building Group located outside NZ or Australia. These terms and conditions take effect from 1 February 2017 (“Effective Date”).

1. DEFINITIONS

In these terms and conditions

Agreement means an agreement between the Purchaser and Supplier for the supply of Goods and/or Services constituted by an Order, these Conditions and any variation agreed in writing between the Purchaser and the Supplier;

Conditions mean these terms and conditions of purchase;

Contract means the agreement between the Purchaser and the Supplier for the purpose of Goods and/or Services, comprising the documents set out in clause 2.1;

Fletcher Building Group means any wholly or partially owned subsidiary of Fletcher Building Limited, wherever incorporated;

Goods means the goods described in the Order, if any;

GST means:

- (a) in respect of Goods or Services provided to a Purchaser located in New Zealand, goods and services tax payable under the Goods and Services Tax Act 1985;
- (b) in respect of Services provided to a Purchaser located in Australia, the definition given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Loss means any loss (including direct, indirect and consequential loss), liability, costs (including legal costs as the higher of an indemnity or solicitor-client basis) or expense incurred by the Purchaser in relation to or connection with this Agreement;

Order means the Purchaser's order placed or communicated with the Supplier and includes these Conditions;

Purchaser means the business that places the Order, being a member of the Fletcher Building Group, as specified in the Order;

Representative of a party means that party's director, or authorised officer, employee or agent;

Services means the services described in the Order, if any;

Specifications means any technical or other specification relating to the Goods and/or Services referred to in the Order; and

Supplier means the person who sells the Goods or provides the Services to the Purchaser.

In these terms and conditions:

- (a) words in singular shall include the plural and vice versa;
- (b) any reference to “including” means “including without limitation”

2. TERMS OF AGREEMENT

2.1 Agreement: The Contract between the Purchaser and the Supplier for the purchase of the Goods and/or Services by the Purchaser from the Supplier comprises:

- (a) these Conditions;
- (b) any other terms and conditions (including Specifications) set out in or incorporated by reference in the Order;
- (c) any other terms and conditions which are imposed by law and which cannot be excluded; and
- (d) without limiting clause 2.4, any agreed written variation.

2.2 Entire Agreement: These Conditions, together with the documents referred to in clause 2.1 above, shall apply to all orders for the purchase of Goods and/or Services by the Purchaser from the Supplier, and contain the only terms and conditions of purchase to which the Purchaser will be bound in connection with the purchase of Goods and/or Services from the Supplier. The Purchaser will not be bound by any other terms the Supplier may purport to apply (including on an invoice or other document and whether before or after submission of an Order by the Purchaser) or which are endorsed upon any correspondence or documents issued by the Purchaser, except to the extent that the Purchaser and the Supplier enter into a final, signed agreement relating to the provision of Goods and/or Services by the Supplier to the Purchaser in which case that final, signed agreement will take effect to the exclusion of these Conditions.

2.3 Acceptance: Without limiting any other mode of acceptance of this Contract exercised by the Supplier, the Supplier acknowledges that delivery of the Goods or performance of the Services, the Supplier by such conduct agrees to be bound by these Conditions.

2.4 Amendment: The Purchaser may change these Conditions from time to time. These Conditions and any changes to them will be shown on the website www.fletcherbuilding.com, together with the date on which any new terms and conditions become effective. The Supplier must check this website before entering into a new Contract. By entering into a Contract after the date upon which the new terms and conditions become effective, the Supplier accepts and is bound by the changed terms and conditions for that Contract and future Contracts. If the Supplier does not accept the changes to the Conditions, the Supplier may give notice to the Purchaser that it does not wish to supply any further Goods and/or Services.

3. PRICE

3.1 Price of Goods and/or Services supplied: The price of the Goods and/or Services will be as set out in the Order. If no price is specified in the Order, then the Supplier must confirm the price with the Purchaser before the supply of the Goods or before commencing the Services. The Purchaser will not be bound to pay for the Goods and/or Services unless the Purchaser has agreed to the price in writing before the Goods are supplied or the Services are performed. The price set out in the Order or agreed between the Supplier and the Purchaser for a Contract may not be amended without the prior written agreement of the Purchaser. The price includes all costs of testing, inspection, labelling, packing and freight and delivery to and off-loading at the destination as specified in the Order.

3.2 GST: The price at which the Goods and/or Services are provided by the Supplier to the Purchaser includes (unless otherwise stated or agreed in writing) GST, if applicable.

4. INVOICES AND PAYMENT

4.1 Invoices: In addition to any other information specified in the Order or elsewhere in these Conditions, invoices must contain the following information: Order number, item number (if applicable), description of Goods and/or Services, sizes, quantities, weight, unit prices, GST and extended totals. The Purchaser will accept no liability whatsoever for invoices which do not bear such information and shall not be required to pay any invoices that do not contain all the required information. The Purchaser may also, from time to time, request in writing that certain additional information be included in invoices, which the Supplier must comply with to the extent it is reasonably able to do so. All invoices must be addressed to the business that places the Order.

4.2 Payment Terms: The Purchaser will pay invoices for Goods and/or Services supplied by the Supplier to the Purchaser 50 days from the end of the month in which the Purchaser received a correctly tendered invoice, provided that the Goods and/or Services have been received by the Purchaser at the date of the invoice. If the Purchaser disputes any amount of an invoice, the Purchaser will pay the non-disputed amount of the invoice on the due date for the invoice.

4.3 Set Off: The Purchaser may set off any sums due to the Supplier against any costs, expenses or other losses (whether direct or indirect) incurred by the Purchaser as a result of any breach of the Contract or any other Contract between the Supplier and the Purchaser or any other member of the Fletcher Building Group by the Supplier and any losses sustained as a result.

5. DELIVERY

5.1 Packing: The Supplier must ensure that all Goods are properly and securely packed and where not specified in the Order packaging shall be in a manner appropriate to the Goods and the distance to be travelled.

5.2 Documents: The Supplier must quote the Order number and the item number (if applicable) on all documents and packages sent by it to the Purchaser in respect of the Order. On delivery of each consignment of the Goods, the Supplier must deliver to the Purchaser such documents as are required by the Order, including, without limitation, customs export documents (if applicable), advice notes, certificates of conformity, and if the Supplier is not the original manufacturer of the Goods, copies of the original manufacturer's certificate of conformity together with test figures, etc, where applicable.

5.3 Delivery: The Goods must be received on the dates and at the destination specified in the Order. Time is of the essence.

5.4 Performance of Services: The Services must be performed on the dates and at the location specified in the Order. Time is of the essence.

5.5 Failure to comply: If the Supplier fails to comply with the provisions of this clause 5, the Purchaser may, in accordance with clause 12, and without limiting its other rights and remedies, cancel all or any part of the Order or this Contract.

6. TITLE AND RISK

6.1 Title: Title in the Goods passes to the Purchaser on delivery or as stipulated in the Order.

6.2 Risk: The Supplier bears all risk of loss and damage to the Goods until the Goods have been accepted in accordance with clause 6.3.

6.3 Acceptance: Where acceptance tests are required for Goods and are set out in an Order, acceptance of the Goods delivered shall be subject to completion of the acceptance tests by the Purchaser. Where no acceptance tests are required, the Purchaser shall have the right to inspect the Goods after delivery and acceptance shall take place if the Goods are satisfactory to the Purchaser on inspection, or, if no inspection is made, the Goods will be accepted on the earlier of (a) when they have been taken into final and beneficial use by the Purchaser or (b) twenty eight (28) days after delivery.

If the Purchaser is not satisfied that the Goods are delivered in accordance with the Order, the Purchaser may in its absolute discretion (without limiting any other rights or remedies available to the Purchaser):

(a) reject them in whole or in part with no further liability to pay for the Goods. Any sums paid shall be returned to the Purchaser on demand within ten (10) days of rejection; and/or

(b) give notice to the Supplier to repair or replace the Goods without delay at the Supplier's expense and risk.

Title and risk in the rejected Goods immediately re-vests in the Supplier. The Supplier is liable for all Loss incurred by the Purchaser due to the rejection of the Goods. The Supplier must, at its cost, remove from the rejected Goods any of the Purchaser's intellectual property (including names, logos, etc) or any other distinguishing features such as name or symbols.

6.4 No Waiver: The Purchaser's acceptance does not limit or waive the Purchaser's rights to claim from the Supplier for any defect in the Goods and/or Services or failure of the Goods and/or Services to comply with the warranties, requirements or Conditions of the Order.

7. SUPPLIER'S WARRANTIES

7.1 Goods Warranties: Where the Supplier supplies Goods, the Supplier warrants and undertakes that the Goods:

(a) are new and unused, unless the Purchaser agrees in writing to the contrary;

(b) are safe;

(c) are free from encumbrances;

- (d) are of merchantable quality and fit for the purpose for which they were intended and any purpose held out by the Supplier or made known to the Supplier in writing at the time the Order is placed, or where no purpose is made known, the Goods are fit for the purpose for which such Goods are ordinarily used;
- (e) will meet the requirements of the Order, including all Specifications contained in the Order;
- (f) will be free from defects in design, material and workmanship;
- (g) will comply with all laws and regulations in the place where the Purchaser is located;
- (h) include appropriate and correct warning and instructions; and
- (i) comply with any representations, descriptions, samples or other specifications provided by the Supplier in connection with the Goods, including as to quality, function, performance or design.

7.2 Services Warranties: Where the Supplier supplies Services, the Supplier warrants and undertakes that:

- (a) the Supplier will, and will ensure that its employees and all representatives will, perform the Services in an efficient, proper, and professional manner, in accordance with all applicable law in the place where the Purchaser is located;
- (b) any representations, whether oral or in writing, that the Supplier has made to the Purchaser as to the Supplier's qualifications, experience, capacity to provide the Services and any other relevant matter are true and complete;
- (c) the Supplier will supply all materials, equipment and machinery (as applicable) necessary for the provision of the Services, and will ensure that all such materials, equipment and machinery are fit for their intended purpose and comply with all applicable law in the place where the Purchaser is located;
- (d) the Supplier and each of its employees and representatives will not use any of the Purchaser's equipment unless the Purchaser specifically approves such use (which will be solely at the Purchaser's discretion);
- (e) the Supplier will maintain all licences, consents and permits required for the performance of the Services; and
- (f) the Supplier, at the Supplier's own cost, shall make good any errors, defects or omissions in the Services provided to the Purchaser.

The Supplier will perform the Services at the location set out in the Order or as notified to the Supplier by the Purchaser from time to time, as applicable.

7.3 Consumer Guarantees: Where the Purchaser onells the Goods to a consumer, the Supplier will be liable for all claims, costs, losses or damages that the Purchaser may be responsible for to the consumer under applicable consumer guarantees law in respect of those Goods.

7.4 No limitation: The warranties provided in clauses 7.1 and 7.2 are in addition to any obligations that the Supplier owes to the Purchaser that are implied by law, trade, usage or otherwise. The provisions of this clause 7 shall survive termination of the Order, howsoever arising.

8. SUPPLIER'S RESPONSIBILITIES

8.1 Compliance with the Order: The Supplier will provide the Goods and/or the Services to the Purchaser in accordance with the Order.

8.2 Health, Safety and Environment: The Supplier will:

- (a) at all times comply with all directions and applicable laws in the place where the Purchaser is located, including but not limited to those directions, laws and regulations relating to health, safety and environment which are relevant to any of the Goods and/or Services;
- (b) not provide any Goods and/or Services which are intrinsically hazardous to life or harmful to the environment without appropriate arrangements being agreed with the Purchaser in advance in writing;
- (c) ensure that waste and surplus materials arising from the provision of the Goods and/or Services are disposed of appropriately;
- (d) notify the Purchaser as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Goods and/or Services in which the Purchaser will have an

interest, and must provide the Purchaser on demand with copies of any reports, documents or other material in relation to those safety hazards or issues.

8.3 Employees and contractors: The Supplier will at all times be responsible for its employees, agents and sub-contractors and will ensure that they, when on the Purchaser's site (or the Purchaser's customer's site), are made aware of and comply with rules, regulations and requirements of that site, copies of which will be provided by the relevant site manager. The Purchaser will have the right to refuse access to its site to any of the Supplier's employees, agents and sub-contractors who, in the reasonable opinion of the Purchaser, is not a fit and proper person to have access to the site, or who refuses to comply with the site rules.

8.4 Ethics: The Supplier undertakes it will not:

(a) induce any employee, agent or sub-contractor of the Purchaser to make any concession to or confer any benefit on the Supplier, or to refrain or withhold from doing anything in connection with the Order in return for any gift, money, benefit or other inducement;

(b) encourage or facilitate an employee, agent or sub-contractor of the Purchaser to commit any act of dishonesty against the Purchaser which may benefit the employee, agent or subcontractor of the Purchaser or be a detriment to the Purchaser, or both.

9. INDEMNITY

The Supplier will indemnify and hold the Purchaser harmless against any and all Loss incurred by the Purchaser as a result of or in connection with any breach by the Supplier of this Contract (including the warranties in clause 7) or an Order or any breach by the Supplier of any applicable law.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Purchaser's intellectual property: The Supplier may sell Goods containing the Purchaser's intellectual property only to the Purchaser or as permitted by the Purchaser.

10.2 No infringement: The Supplier warrants to the Purchaser that the Goods and/or Services provided to the Purchaser do not infringe any intellectual property rights of any person, and will indemnify the Purchaser in full against all Losses incurred by the Purchaser as a result of or in connection with any claim that the Goods and/or Services provided by the Supplier infringe any intellectual property of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Purchaser.

11. CONFIDENTIALITY AND INFORMATION

11.1 Confidentiality: The Supplier agrees to keep confidential all of the Purchaser's information concerning or arising from the performance of the Order or otherwise provided by the Purchaser to the Supplier. This clause does not apply to information which is lawfully obtained from a third party who does not owe an obligation of confidentiality to the Purchaser, is public knowledge, is already known or is otherwise independently developed by the Supplier.

11.2 No advertisement: The Supplier shall not advertise itself as supplying goods and/or services to the Purchaser without the Purchaser's prior written consent. The obligations of this clause 11 shall remain in force notwithstanding completion, cancellation or termination of the Order.

11.3 Ownership of information: All drawings, Specifications, artwork, data, material, supplies, equipment, tooling, dies, moulds, fixtures and patterns furnished or paid for by the Purchaser, shall be the Purchaser's exclusive property, and shall be used by the Supplier only in performance of the Order. Such property, while in the Supplier's custody and control, shall be held at the Supplier's sole risk and, upon the Purchaser's request, shall be returned to the Purchaser in good condition, normal wear and tear accepted.

11.4 Damages not adequate remedy: The Supplier acknowledges that damages may not be an adequate remedy for any breach of this clause 11 and that the Purchaser may be entitled to equitable relief for any actual or threatened breach of this clause 11.

12. TERMINATION

The Purchaser may, at any time, terminate an Order, or this Contract, in whole or in part, without cause, upon written notice to the Supplier. Following upon any such termination on the Supplier must, to the extent specified by the Purchaser, stop all work on the Order, and cause its suppliers and subcontractors to stop work. Any costs for any such termination of the Order or Contract will be limited to actual non-recoverable costs incurred by the Supplier which the Supplier can demonstrate were properly incurred prior to the date of termination. In no event

shall such reimbursement include anticipated profits for undelivered Goods or unperformed Services. Without limiting the foregoing, the Purchaser may terminate the Contract or an Order, in whole or in part, if the Supplier:

- (a) fails to make delivery of the Goods or perform the Services within the time specified in the Order;
- (b) fails to replace defective Goods and/or Services in accordance with these Conditions;
- (c) fails to comply with any other terms specified in the Contract; or
- (d) becomes insolvent, files or has filed against petition in bankruptcy, or makes an assignment for the benefit of creditors

13. GENERAL

13.1 No assignment, subcontracting or advertising: The Supplier must not assign or subcontract its rights or obligations under this Agreement without the Purchaser's prior written consent.

13.2 Supplier must maintain insurance: The Supplier must, at its own expense, maintain insurances of a type and an amount that would be prudent for a reasonable Supplier of such Goods and/or Services.

13.3 Relationship: The Supplier is an independent contractor of the Purchaser. Nothing in these Conditions constitute any other type of relationship between the parties.

13.4 Waiver: No waiver of any breach of, or failure to enforce any provision of, the Agreement by any party shall in any way limit the right of such party thereafter to enforce and compel strict compliance with the provisions of the Agreement.

13.5 Illegality: If any term of the Agreement is, or becomes, unenforceable, for any reason, the relevant term is to be considered to be modified to the extent necessary to remedy the unenforceability. If this is not possible, the provision is to be severed from the Agreement, without affecting the enforceability of any other term of the Agreement.

13.6 Privity: Where any provision of this Agreement is expressed to be for the benefit of any person other than either party, such provision is intended to confer a benefit on such person, enforceable at the suit of that person, in terms of the Contracts (Privity) Act 1982.

13.7 Governing law: This Agreement shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.