

## STANDARD TERMS AND CONDITIONS OF SALE FOR PERMAFORM PACIFIC PTY LTD PRODUCTS

- 1.1 "PA" refers to Permaform Australia Pty Ltd ABN: 55 620 986 156.
- 1.2 "Customer" refers to the person and/or company name that appears on the PA Order Form to whom Permaform has agreed to supply the goods and services.
- 1.3 "Agreement" refers to any agreement between PA and the customer whereby PA supplies goods and services to the customer.
- 1.4 "Quotation" means a written quotation from PA of a supply rate for the customer in respect of a particular project.
- 1.5 "Order" refers to customer's request for the supply of the product by filling in the PA Order Form(s).
- 1.6 "Deposit Payment" refers to payments following the orders to confirm PA's product supply in cleared funds for each order or project or customer.
- 1.7 "COD" refers to payments on delivery or collection of goods in cleared funds.

### 2. THE PRODUCT

- 2.1 Means main AP-250, 200, 150 and 110mm profiles and accessory profiles supplied by PA.
- 2.2 The product is designed to be job specific. Orders should be placed based strictly on dimensions and quantity determined by the customer's building professionals. The Permaform Engineering Manual (The Blue Book) and other build ability detailing shown in the Permaform website is provided for guidance only. The project specific construction detailing associated with the use of PA's products is the responsibility of the customer's building professionals. It is the customer's responsibility to obtain the current Engineering and Installation Manual from PA.
- 2.3 Whilst builders might, for expediency, manage discrepancies between on-site and planned dimensions by cutting, replacing with an alternative PA product or extending the product by use of conventional formwork, PA nor any professional associated with PA will not be liable for any loss or damage for such adaptation or improvisation and such departure shall be entirely at the discretion and risk of the customer.
- 2.4 Suitability for the use of the product on the project for which the product is ordered (the "project"), including construction detailing and erection procedures, must be determined by the customer's own Engineers/Consultants. PA will not be liable for any loss or damage should the product be found to be inappropriate for the project and/or should the product be used for any purpose other than that for which the product was specifically designed and intended.

### 3. GENERAL

- 3.1 Any oral representation, warranty or promise whatsoever (other Than those contained herein) made by any servant or agent of PA to the Customer does not form any part of the Agreement nor the consideration for or basis of any collateral contract.
- 3.2 Subject to any express consent in writing by PA, a waiver by PA of a default in the strict and literal performance of any provision of this agreement shall not be deemed to be a waiver of strict and literal performance of any other provisions of this agreement, nor to be a waiver of strict and literal performance of that provision in the future, nor in any manner to impair the exercise of any such rights accruing to it thereafter.
- 3.3 No Quotation of Rates given by PA shall constitute an offer. PA reserve the right to decline any order or to enter any supply agreement for supply.
- 3.4 If a customer cancels or alters any order for products after PA has received the deposit payment then PA reserves the right to charge to the customer the additional costs incurred in cancelling or altering any order or part order together with the costs of any labour and handling to the date of such cancellation or alteration.

### 4. SALES AND REFUNDS

- 4.1 This agreement is a conditional sale of goods to the customer. The product is sold as is. All sales are final. No title to the goods shall

pass to the customer by reason of the delivery of the goods or the acceptance by PA of the Customer's request to purchase the goods. Goods supplied on extended credit terms will be registered on the Personal Property Security Register.

- 4.2 All agreements between the customer and PA to purchase goods must be in writing. No verbal agreements are accepted by PA.
- 4.3 Refunds - The customer purchases the product with the understanding that PA has full discretion whether to accept any unused product for refund in full or in part.

### 5. ORDERS AND PAYMENT

- 5.1 PLACING ORDER – Customer must duly complete the PA Order Form completing all the details, with the requested delivery date for the nominated order. PA will in turn advise if these dates can be met upon agreement of delivery or collection dates.
- 5.2 TERMS OF PAYMENT
  - 5.2.1 All following payments must be made by clear electronic funds transfer or bank cheque. The party who issues a cheque for the payment of goods upon execution of Clause 5.6.1 shall be liable for all PA recovery costs including dishonoured or cancelled cheques for any reason. Company or Personal cheques will not be accepted unless advance payment and clearance of funds takes place.
  - 5.2.2 Deposit Payment for COD or Credit Account: The customer pays an agreed deposit payment which can be in the form of 20% of the total value of each order OR one lump sum deposit payment for the nominated project/customer for both COD or Credit Account (if approved) payment. Production/supply will not commence without the deposit payment for both COD and Credit Account Terms. The deposit payment is therefore confirmation of the customer's order. Refer Clause 3.4.
  - 5.2.3 Payment in full for the value of the order and storage costs if any must be paid in cleared funds 24 hours prior to the agreed delivery or collection date for COD sales.
  - 5.2.4 Credit Account Payment Balance of Payment: 14 Day and greater Credit Account is subject to additional charges and conditions. Refer PA Quotation of Rates. Minimum 500m<sup>2</sup> order for all credit accounts.
    - (i) The customer will complete a PA Credit Application form prior to any credit being extended and shall be subject to credit checks, PA will notify the customer on the credit application results.
    - (ii) The customer pays an agreed deposit payment of Clause 5.2.2 for custom lengths to initiate the production. A Quote Invoice or Proforma Invoice may be issued to assist with processing any deposit. The deposit will generally be allocated pro-rata across each subsequent invoice as deliveries are requested.
    - (iii) The customer to pay invoices for the balance of payment following delivery within fourteen (14) days of the date of invoice subject to Clauses 4 and 5.6.1. or as per other terms that may have been agreed in writing.
  - 5.2.5 If the customer fails to make payment in accordance with Clause 5.2.4 PA shall be entitled to:
    - (i) Claim from the customer all costs relating to any action taken by PA to recover monies or goods due from the customer including any mercantile agents, costs and legal costs and disbursements on a solicitor-client basis.
    - (ii) Cease any further deliveries until payment of all outstanding amounts has been made.
    - (iii) Require payment prior to delivery for further products or services.
    - (iv) Charge default interest at the rate of one and a half per centum (1.5%) per month on a cumulative and compounding basis on all overdue amounts (including late payment charges and amounts in addition to the sale price) calculated on a day to day basis on any monies due but unpaid, such interest to be computed from the due date for payment AND the parties agree that such default interest is not a penalty, but is a true measure of damages incurred by PA. Payments received from the customer are credited first against any default interest and all such charges shall be payable on demand.
- 5.3 Price Variations: PA quotations or invoices are valid for 30 days from the date of the PA quotation or invoice. The project under construction may consist of a number of orders. The prices between orders may be varied.

These variances are subject to increases that may occur from time to time as a result of an increase in the cost of raw materials as stated by PA suppliers, adverse movement in the value of the Australian Dollar or increases to supply chain costs outside of the control of PA.

- 5.4 Until the goods are paid for in full by the customer the goods shall remain the property of PA.
- 5.5 PRODUCT ACCEPTANCE
- 5.5.1 Product quality checks are undertaken by PA prior to delivery. Upon delivery of the goods by PA or collection by the transportation company organised by the customer, PA requires proof of delivery or collection dockets to be signed by the customer's authorised representative or authorised agent acknowledging that the product received is in good order and in merchantable quality. The customer agrees and acknowledges ensuring that all goods received or collected should be signed by an authorised representative or authorised agent of the customer and may not make a claim against PA for any person that signs as acknowledgement of receipt of the goods. The customer agrees and warrants that their nominated transport company to collect goods from PA acts as agents on behalf of the customer and is authorised to sign and acknowledge that the goods are of merchantable quality upon collection.
- 5.5.2 Any product identified as defective by the customer's representative or agent at the time of delivery or collection and agreed as defective by PA shall be replaced by PA. The word 'defective' refers to products displaying punctures or products that are significantly distorted or profiles that are unable to snap-clip to each other.
- 5.5.3 The customer agrees that upon delivery or collection of the product the customer acknowledges that the product is of merchantable quality and may not make a claim for return, credit or refund. The product and its performance as formwork is the responsibility of the customer/installer as applicable upon the customer's/installer's representative signing the delivery/collection docket. Refer "Permaform Engineering Manual" for Installer's Class 1 Form Product Acceptance Criteria" for detailed explanation.
- 5.5.4 PA applies a "no refund policy", refer Clause 4.3

## 6. DELIVERY AND STORAGE

- 6.1 DELIVERY PROGRAM / LEAD TIME – The customer's orders will be manufactured in accordance with the PA Order Form and delivered to the construction site on or about the agreed delivery dates. Subject to the receipt and clearance of the deposit/full payment and transportation availability:
- A minimum of thirty (30) working days after deposit payment (to be confirmed by PA) for custom lengths of 110mm, 150mm, 200mm and 250mm profiles subject to availability and size of customer's order.
  - A minimum of three (3) working days (confirmed by PA) for any stock length profiles subject to availability and size of customer's order.
- 6.2 STORAGE COST – Each produced order must be cleared from PA's factory within two (2) days (maximum) after the agreed delivery date irrespective of all conditions including weather that may be applicable to the delivery address. If the product is not cleared within two (2) days, the non-stock length goods produced for the customer will be delivered to a storage space with all associated transportation and storage costs to be paid by the customer. PA shall not accept any liability for the goods sent for storage. Storage shall be at the rate of \$0.50 per day per lineal meter of the product or at the storage rate per day per lineal meter as is from time to time posted on our web site. Where Permaform continues to store in its' own premises, the same rate may be charged for continuing storage. This is at Permaform's absolute and sole discretion.
- 6.3 PA shall not be liable for any delays or inability to deliver for issues that are reasonably beyond its control.
- 6.4 Deliveries to be charged at the rate agreed to on the invoice provided by PA.
- 6.5 Delivery charges include first half hour waiting period on arrival. Any additional waiting time will be added at the rate of \$150.00 + GST per hour or part thereof or as advised from time to time.
- 6.6 It is the customer's responsibility to provide a flat and clean area with timber sleepers placed at 1000mm (maximum) centres to receive the delivered product. On delivery the customer shall unload the product. Delivery trucks will not leave public roads for drop-off.

- 6.7 STILLAGES – PA will deliver all products within steel stillages supplied by PA. All stillages are the property of PA and it is the responsibility of the customer to return all stillages to PA within 10 days of delivery. Cost for each stillage is \$250.00 plus delivery if recovery of the stillage is performed by PA. Where the number of stillages returned to PA is less than the number attached to the order, PA with invoice the customer for the cost of those stillages.

## 7. FORCE MAJEURE

PA will not be liable for any loss incurred as a result of delay or failure to make any supply of goods or services or to observe any of these Conditions due to an event of Force Majeure, being any cause or circumstance beyond the reasonable control of PA, including but not limited to, any lack of production capacity or raw materials, strikes, lock-outs, labour disputes, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-government authorities or embargoes. During the continuance of an event of force Majeure PA's obligations under these conditions will be suspended.

## 8. INTELLECTUAL PROPERTY & ADVERTISING RIGHTS

- 8.1 PA reserves its rights to copyright and ownership of all intellectual property relating to the product including but not limited to all drawings, manuals, compact discs and any other material supplied to the customer and no material shall, without the written consent of PA, be reproduced, copied or distributed.
- 8.2 All intellectual property rights of any description (including without limitation patent, design, trade mark or copyright rights) attaching to or arising out of the design or manufacture of the goods by PA are the sole property of PA. Except as agreed to in writing by PA, the Purchaser must not use those rights.
- 8.3 Customers who wish to use PA's name and logo for their own purposes must obtain consent in writing from PA. The customer hereby consents to the display of PA's banner or signage, at the front of the construction site, in a position visible to the public, until completion of construction. Consent to such display shall not be unreasonably withheld.

## 7. PERMITTED USE

The purchaser acknowledges that PA has agreed to sell the product to the purchaser on strict understanding that the product will be used in Australia only; that the purchaser will not on-sell or gift the product outside of Australia. Sale and export rights of the product are the sole and exclusive rights of PA. The purchaser agrees to these terms of sale and further agrees that PA will be entitled to damages for any breach of the same.

## 10. GOVERNING LAW

These Terms and Conditions of Sale are governed by and must be construed in accordance with the laws of each state and territory of Australia.

## 11. AGREEMENT

The customer agrees that he/she has read and understands the conditions of sale contained herein and that by placing his first order for PA's product he agrees to be bound by each and every one of the said conditions for such first and all subsequent orders whether the same relates to the project or any subsequent job or project.

## 12. THE STANDARD TERMS AND CONDITIONS OF SALE AND PP'S STANDARD TERMS & CONDITIONS OF TRADE

The Purchaser agrees they have previously received read and agreed to PP's Standard Terms & Conditions of Trade. Where any clause in the Standard Terms and Conditions of Sale is in conflict with any term or any clause in the Standard Terms & Conditions of Trade then the latter is dominant over the former meaning that the Standard Terms & Conditions of Trades' clause shall prevail.