

# Permaform Australia Pty Ltd – Terms & Conditions of Trade

Please note that a larger print version of these terms and conditions is available from Permaform on request.

## 1. Definitions

1.1 "Permaform" means Permaform Australia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Permaform International Pty Ltd.

1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.

1.3 "Goods" means all Goods or Services supplied by Permaform to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

1.4 "Price" means the Price payable for the Goods as agreed between Permaform and the Customer in accordance with clause 5 below.

1.5 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

## 2. Acceptance

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.

2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Permaform.

## 3. Electronic Transactions Act 2001

3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

## 4. Change in Control

4.1 The Customer shall give Permaform not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Permaform as a result of the Customer's failure to comply with this clause.

## 5. Price and Payment

5.1 At Permaform's sole discretion the Price shall be either:

- (a) as indicated on any invoice provided by Permaform to the Customer; or
- (b) the Price as at the date of delivery of the Goods according to Permaform's current price list: or

(c) Permaform's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

5.2 Permaform reserves the right to change the Price if a variation to Permaform's quotation is requested.

Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as a result of any increase to Permaform in the cost of materials and labour) will be charged for on the basis of Permaform's quotation and will be shown as variations on the invoice.

5.3 An invoice will be issued by Permaform to the Customer on placement of an order. Any applicable payment schedule will be duly noted on the documentation.

5.4 At Permaform's sole discretion a deposit may be required which:

- (a) shall be assigned to the amount of the invoice if the order proceeds; or
- (b) becomes non-refundable if the order does not proceed or is cancelled as per clause 14.2.

5.5 If any part of an invoice is in dispute then the Customer shall notify Permaform in writing within seven (7) business days once in receipt of the invoice, then the Customer may only withhold payment for that part of the invoice that is in dispute and shall pay the balance of the invoice when due.

5.6 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Permaform, which may be:

- (a) on delivery of the Goods;
- (b) by way of instalments/progress payments in accordance with Permaform's payment schedule;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) business days following the date of any invoice given to the Customer by Permaform.

5.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Customer and Permaform.

5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Permaform an amount equal to any GST Permaform must pay for any supply by Permaform under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other

taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## 6. Delivery of Goods

6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:

- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Permaform's address; or
- (b) Permaform (or Permaform's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

6.2 Where the Goods are delivered by a third party, the Customer is required to sign and return the delivery docket or any other form requiring acknowledgement of receipt of the Goods by the Customer within seven (7) days. If the Customer fails to comply with this clause then Permaform reserves the right to deem the Goods to be in satisfactory working order.

6.3 At Permaform's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

6.4 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Permaform shall be entitled to charge a reasonable fee for redelivery and/or storage.

6.5 Any time or date given by Permaform to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Permaform will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6.6 Frames and brackets which protect the product in transit do not form part of the order or sale and remain the property of Permaform. Permaform will be responsible for collection of the frames and brackets. Any frames or brackets damaged or irretrievable will be individually charged for replacement at the rate of \$95 + GST.

## 7. Risk

7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Permaform is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Permaform is sufficient evidence of Permaform's rights to receive the insurance proceeds

without the need for any person dealing with Permaform to make further enquiries.

7.3 If the Customer requests Permaform to leave Goods outside Permaform's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

## 8. Title

8.1 Permaform and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid Permaform all amounts owing to Permaform; and
- (b) the Customer has met all of its other obligations to Permaform.

8.2 Receipt by Permaform of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

8.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to Permaform on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Permaform and must pay to Permaform the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Permaform and must pay or deliver the proceeds to Permaform on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Permaform and must sell, dispose of or return the resulting product to Permaform as it so directs.
- (e) the Customer irrevocably authorises Permaform to enter any premises where Permaform believes the Goods are kept and recover possession of the Goods.
- (f) Permaform may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Permaform.
- (h) Permaform may commence proceedings to recover the Price

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- of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
9. **Personal Property Securities Act 2009 (“PPSA”)**
- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Permaform for Services – that have previously been supplied and that will be supplied in the future by Permaform to the Customer.
- 9.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Permaform may reasonably require to;
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Permaform for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Permaform;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Permaform;
- (e) immediately advise Permaform of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 Permaform and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Customer waives their rights to receive notices under sections 95,
- 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by Permaform, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Customer must unconditionally ratify any actions taken by Permaform under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary (including those contained in clause 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
10. **Security and Charge**
- 10.1 In consideration of Permaform agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Customer indemnifies Permaform from and against all Permaform’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Permaform’s rights under this clause.
- 10.3 The Customer irrevocably appoints Permaform and each director of Permaform as the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer’s behalf.
11. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 11.1 The Customer must inspect the Goods immediately on delivery and must within seven (7) days of delivery and prior to installation, notify Permaform in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Permaform to inspect the Goods.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.3 Permaform acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Permaform makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Permaform’s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Customer is a consumer within the meaning of the CCA, Permaform’s liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If Permaform is required to replace the Goods under this clause or the CCA, but is unable to do so, Permaform may refund any money the Customer has paid for the Goods.
- 11.7 If the Customer is not a consumer within the meaning of the CCA, Permaform’s liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Permaform at Permaform’s sole discretion;
- (b) limited to any warranty to which Permaform is entitled, if Permaform did not manufacture the Goods;
- (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 11.1; and
- (b) Permaform has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Customer’s cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Permaform shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by Permaform;
- (e) fair wear and tear, any accident, or act of God.
- 11.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Permaform as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Permaform has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 11.10.
12. **Intellectual Property**
- 12.1 Where Permaform has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Permaform.
- 12.2 The Customer warrants that all designs, specifications or instructions given to Permaform will not cause Permaform to infringe any patent, registered design or trademark in the execution of the Customer’s order and the Customer agrees to indemnify Permaform against any action taken by a third party against Permaform in respect of any such infringement.
- 12.3 The Customer agrees that Permaform may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Permaform has created for the Customer.
13. **Default and Consequences of Default**
- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Permaform’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Customer owes Permaform any money the Customer shall indemnify Permaform from and against all costs and disbursements incurred by Permaform in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Permaform’s contract default fee, and bank dishonour fees).
- 13.3 Further to any other rights or remedies Permaform may have under this contract, if a Customer has made payment to Permaform, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Permaform under this clause 13 where it can be

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- proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 13.4 Without prejudice to any other remedies Permaform may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Permaform may suspend or terminate the supply of Goods to the Customer. Permaform will not be liable to the Customer for any loss or damage the Customer suffers because Permaform has exercised its rights under this clause.
- 13.5 Without prejudice to Permaform's other remedies at law Permaform shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Permaform shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Permaform becomes overdue, or in Permaform's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
14. **Cancellation**
- 14.1 Permaform may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Permaform shall repay to the Customer any money paid by the Customer for the Goods. Permaform shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Permaform as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
15. **Privacy Act 1988**
- 15.1 The Customer agrees for Permaform to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications. credit history) about the Customer in relation to credit provided by Permaform.
- 15.2 The Customer agrees that Permaform may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 15.3 The Customer consents to Permaform being given a consumer credit report to collect overdue payment on commercial credit.
- 15.4 The Customer agrees that personal credit information provided may be used and retained by Permaform for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 15.5 Permaform may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 15.6 The information given to the CRB may include:
- (a) personal information as outlined in 15.1 above;
  - (b) name of the credit provider and that Permaform is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Permaform has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of Permaform, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.7 The Customer shall have the right to request (by e-mail) from Permaform:
- (a) a copy of the information about the Customer retained by Permaform and the right to request that Permaform correct any incorrect information; and
  - (b) that Permaform does not disclose any personal information about the Customer for the purpose of direct marketing.
- 15.8 Permaform will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 15.9 The Customer can make a privacy complaint by contacting Permaform via e-mail. Permaform will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
16. **Building and Construction Industry (Security of Payment) Act 2009**
- 16.1 At Permaform's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry (Security of Payment) Act 2009 may apply.
- 16.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry (Security of Payment) Act 2009 of the Australian Capital Territory, except to the extent permitted by the Act where applicable.
17. **General**
- 17.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts in New South Wales.
- 17.3 Subject to clause 11, Permaform shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Permaform of these terms and conditions (alternatively Permaform's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 17.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Permaform nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.
- 17.6 The Customer agrees that Permaform may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Permaform to provide Goods to the Customer.
- 17.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.