

Armada National Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "Seller" shall mean Armada National Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Armada National Pty Ltd.
 - 1.2 "Buyer" shall mean the Buyer (or any person acting on behalf of and with the authority of the Buyer) as described on any quotation, work authorisation or other form as provided by the Seller to the Buyer.
 - 1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Buyer on a principal debtor basis.
 - 1.4 "Goods" shall mean all Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Buyer.
 - 1.5 "Services" shall mean all Services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
 - 1.6 "Price" shall mean the Price payable for the Goods as agreed between the Seller and the Buyer in accordance with clause 4 of this contract.
2. **The Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")**
 - 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
 - 2.2 Where the Buyer buys Goods as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
3. **Acceptance**
 - 3.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
 - 3.2 The Buyer acknowledges and agrees that the Price is subject to a final site inspection, engineering drawings (if applicable), and conditions on site at the time of delivery/installation and does not include any induction training or council access permits.
 - 3.3 The Buyer acknowledges and agrees that the Price is quoted on the condition that all signs are ordered, manufactured and delivered/installed at the same time.
 - 3.4 The Buyer acknowledges and agrees that the Price does not include disconnection and connection to the mains power. The Seller recommends that an authorised electrician is used to undertake this work.
 - 3.5 The Buyer acknowledges and agrees that all art work will be supplied in a vectorised format unless otherwise agreed in writing.
 - 3.6 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
 - 3.7 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are binding and can only be amended with the written consent of the Seller.
 - 3.8 The Buyer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer or any change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.
 - 3.9 Goods are supplied by the Seller only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Buyer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
4. **Price and Payment**
 - 4.1 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
 - (b) the Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation in writing within thirty (30) days.
 - 4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. Any variation from the list of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties such as hard rock barriers below the surface or iron reinforcing rods in concrete, or due to difficult site access or conditions, or as a result of increases to the Seller in the cost of materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
 - 4.3 At the Seller's sole discretion a non-refundable deposit shall be required.
 - 4.4 At the Seller's sole discretion urgent orders may incur an additional fee.
 - 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
 - 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
 - 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
5. **Delivery of Goods**
 - 5.1 At the Seller's sole discretion delivery of the Goods shall take place when the Buyer takes possession of the Goods at the Seller's address.
 - 5.2 At the Seller's sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Buyer's account.
 - 5.3 The Buyer acknowledges and agrees that finished orders and order times are subject to art work approvals and lead times.
 - 5.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
 - 5.5 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Seller.
6. **Risk**
 - 6.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.
 - 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
 - 6.3 The Buyer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Seller will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
 - 6.4 The Buyer acknowledges and agrees that the Seller has hereby advised the Buyer that any signs exceeding four and a half metres (4.5m) in height above the ground level should be installed with support stays.
7. **Access**
 - 7.1 The Buyer shall ensure that the Seller has clear and free access to the work site at all times to enable them to undertake the works. The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Seller.
8. **Underground Locations**
 - 8.1 Prior to the Seller commencing any work the Buyer must advise the Seller of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Buyer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
 - 8.2 Whilst the Seller will take all care to avoid damage to any underground services the Buyer agrees to indemnify the Seller in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.
9. **Title**
 - 9.1 The Seller and the Buyer agree that ownership of the Goods shall not pass until:
 - (a) the Buyer has paid the Seller all amounts owing for the particular Goods; and
 - (b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer.
 - 9.2 Receipt by the Seller 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 and until then the Seller's ownership or rights in respect of the Goods shall continue.
 - 9.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Buyer are met; and
10. **Personal Property Securities Act 2009 ("PPSA")**
 - 10.1 In this clause:
 - (a) financing statement has the meaning given to it by the PPSA;
 - (b) financing change statement has the meaning given to it by the PPSA;
 - (c) security agreement means the security agreement under the PPSA created between the Buyer and the Seller by these terms and conditions; and
 - (d) security interest has the meaning given to it by the PPSA.
 - 10.2 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that these terms and conditions:
 - (a) constitute a security agreement for the purposes of the PPSA; and
 - (b) create a security interest in:
 - (i) all Goods previously supplied by the Seller to the Buyer (if any);
 - (ii) all Goods that will be supplied in the future by the Seller to the Buyer.
 - 10.3 The Buyer 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 the Seller 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 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Seller 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 the Seller;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Seller; and
 - (e) immediately advise the Seller 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.
 - 10.4 The Seller and the Buyer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
 - 10.5 The Buyer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
 - 10.6 The Buyer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
 - 10.7 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
 - 10.8 The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 10.3 to 10.5.
11. **Security and Charge**
 - 11.1 Despite anything to the contrary contained herein or any other rights which the Seller may have however:
 - (a) where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.
12. **Defects**
 - 12.1 The Buyer shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods except where the Buyer has acquired Goods as a consumer within the meaning of the Competition and Consumer Act 2010 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
 - 12.2 Goods will not be accepted for return other than in accordance with 12.1 above.
13. **Warranty**
 - 13.1 Subject to the conditions of warranty set out in clause 13.2 the Seller warrants that if any defect becomes apparent and is reported to the Seller within two (2) years of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the Goods/workmanship.
 - 13.2 The conditions applicable to the warranty given by clause 13.1 are:
 - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Buyer to properly maintain any Goods; or
 - (ii) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller;
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God; or
 - (vi) any vandalism to the Goods.
 - (b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
 - (c) in respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or remedying the workmanship or in properly assessing the Buyer's claim.
14. **Intellectual Property**
 - 14.1 Where the Seller has designed, drawn or written Goods for the Buyer, then the copyright in those designs and drawings and documents shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
 - 14.2 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
 - 14.3 The Buyer agrees that the Seller may use any documents, designs, drawings or Goods created by the Seller for the purposes of advertising, marketing, or entry into any competition.
15. **Default and Consequences of Default**
 - 15.1 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 the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 15.2 In the event that the Buyer's payment is dishonoured for any reason the Buyer shall be liable for any dishonour fees incurred by the Seller.
 - 15.3 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
 - 15.4 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.
 - 15.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
 - 15.6 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer 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 Buyer or any asset of the Buyer.
16. **Cancellation**
 - 16.1 The Seller 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 Buyer. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - 16.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation. The Buyer will also be liable for an additional twenty-five percent (25%) restocking fee.
 - 16.3 Cancellation of orders for Goods made to the Buyer's specifications or non-stockist items will definitely not be accepted, once production has commenced.
17. **Privacy Act 1988**
 - 17.1 The Buyer and/or the Guarantor(s) (herein referred to as the Buyer) agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by the Seller.
 - 17.2 The Buyer agrees that the Seller may exchange information about the Buyer with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Buyer; and/or
 - (b) to notify other credit providers of a default by the Buyer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Buyer.

The Buyer understands that the information exchanged can include anything about the Buyer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
 - 17.3 The Seller consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
 - 17.4 The Buyer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time):
 - (a) the provision of Goods; and/or
 - (b) the marketing of Goods by the Seller, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer; and/or
 - (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods.
 - 17.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Buyer;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer;
 - 17.6 The information given to the credit reporting agency may include:
 - (a) personal particulars (the Buyer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Buyer's application for credit or commercial credit and the amount requested;
 - (c) advice that the Seller is a current credit provider to the Buyer;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Buyer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of the Seller, the Buyer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Buyer's credit obligations);
 - (g) advice that cheques drawn by the Buyer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Buyer by the Seller has been paid or otherwise discharged.
18. **Unpaid Seller's Rights**
 - 18.1 Where the Buyer has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
 - (a) a lien on the item;
 - (b) a right to retain the item for the Price while the Seller is in possession of the item;
 - (c) a right to sell the item.
 - 18.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
19. **General**
 - 19.1 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.
 - 19.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
 - 19.3 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 of New South Wales.
 - 19.4 The Seller shall be under no liability whatsoever to the Buyer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
 - 19.5 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
 - 19.6 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
 - 19.7 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
 - 19.8 The Buyer agrees that the Seller may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change. Except where the Seller supplies further Goods to the Buyer and the Buyer accepts such Goods, the Buyer shall be under no obligation to accept such changes.
 - 19.9 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.
 - 19.10 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

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