

TERMS AND CONDITIONS OF SUPPLY

1. Application

These T&Cs, and no terms and conditions of the Customer, will apply to any order for and any supply of Products by the Supplier to the Customer and access to and use of the Website.

2. Order for Products

2.1 Any quotation by the Supplier does not constitute an offer to supply.

2.2 Unless otherwise stated by the Supplier, any quotation by the Supplier will remain valid for 30 days from the date of the quotation provided that the Supplier may withdraw or vary a quotation at any time prior to the Supplier's acceptance of an Order.

2.3 Any Order by the Customer to the Supplier and/or any acceptance of any Products by the Customer will constitute agreement to these T&Cs by the Customer.

2.4 No Order by the Customer will be binding on the Supplier unless the Supplier accepts the Order.

2.5 If the Supplier accepts an Order, the parties will have created a binding Contract and the Supplier will supply the Products to the Customer, and the Customer will pay the Price to the Supplier in accordance with the terms of the Contract (which will include these T&Cs), but the Contract will be subject to:

- (a) the availability of the materials necessary to supply the Products; and
- (b) the Customer completing the Supplier's application for commercial credit and the Supplier agreeing to grant credit to the Customer (if the Customer is seeking credit terms).

2.6 The Customer is not entitled to cancel any Order or Contract and must pay to the Supplier any costs associated with the Customer purporting to cancel any Order or Contract.

2.7 The Customer must provide to the Supplier all information, instructions, reports, drawings, plans, specifications (including Packaging Specifications), properties and facts relevant to the Products and performance of the Supplier's obligations, at the time the Customer requests any quotation from the Supplier and prior to providing any Order to the Supplier.

2.8 If at any time the Supplier considers that any information, instructions, reports, drawings, plans, specifications (including Packaging Specifications), properties or facts provided by the

Customer to the Supplier are not sufficient to enable the Supplier to supply the Products to the Customer in accordance with the Contract, the Customer must, at the Customer's cost, provide such further information, documents or assistance as the Supplier considers reasonably necessary.

2.9 The Supplier will be entitled to rely on the accuracy of any information, instructions, reports, drawings, plans, specifications (including Packaging Specifications), properties and facts provided by the Customer.

2.10 If there are any errors in any information, instructions, reports, drawings, plans, specifications (including Packaging Specifications), properties or facts provided by the Customer to the Supplier, the Supplier will, in addition to the Supplier's

other rights under these T&Cs or at law, be entitled to vary the Price.

2.11 To the extent that the Customer distributes or sells any Product in an area outside of Australia ("Area"), the Customer:

- (a) must ensure that the distribution or sale of Products is in compliance with all applicable laws, rules and regulation of the Area;
- (b) must provide the Supplier with Product Specifications if necessary; and
- (c) acknowledges that the Supplier provides no representations or warranties in respect of the suitability of the Products for distribution or sale in the Area.

The Customer agrees to indemnify the Supplier against all Claims suffered or Liability incurred by the Supplier in respect of any breach by the Customer of this clause 2.11.

2.12 The Customer will be responsible for the quantity of any Products in any Order and the Supplier will not have any liability to the Customer if there is any excess or shortfall of the Products for the intended purpose.

2.13 The Supplier may cancel any Contract at any time prior to delivery of the Products with no liability other than to repay any amount of the Price paid in advance of the cancellation.

3. Price

3.1 Unless otherwise agreed by the Supplier in writing, the Price will be the Supplier's list price on the date of dispatch of the Products and is subject to variation (whether before or after the acceptance of an Order or before or after the formation of a Contract or during the term of a Contract).

3.2 The Supplier will provide the Customer with a tax invoice (**Invoice**) with the acceptance of each Purchase Order.

3.3 Unless otherwise stated by the Supplier in writing, the Price is exclusive of any delivery charges and exclusive of GST.

3.4 The Customer agrees to pay each Invoice in cleared funds in the following manner:

- (a) 50% of each invoice must be paid within 5 days of the date that the Purchase Order is accepted by the Supplier; and

(b) The balance of each invoice must be paid no later than 2 days before the date that the Products are to be delivered by the Supplier or collected by the Customer.

3.5 The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.

3.6 The Supplier may charge, in addition to the Price, any other fees, charges and surcharges that the Supplier notifies to the Customer from time to time.

4. Delivery of Products

4.1 All Products are delivered Ex Works (as that term is defined by Incoterms) unless otherwise agreed by the Supplier.

4.2 If the Supplier agrees to deliver Products other than Ex Works (as that term is defined by Incoterms), the Supplier:

(a) will charge delivery charges, demurrage, waiting time and other charges in the Supplier's price list or otherwise nominated by the Supplier from time to time;

(b) will endeavour to deliver the Products to the Delivery Location on the Delivery Date; and

(c) may charge further delivery charges if the Customer is unable to receive delivery of the Products at the Delivery Location or on the Delivery Date or in accordance with any other delivery arrangements.

4.3 The Supplier will only deliver Products during the Supplier's usual business hours unless the Supplier agrees otherwise in writing.

4.4 The Supplier will not be liable for any delay in the delivery of Products to the Delivery Location.

4.5 The Supplier may deliver Products in separate instalments.

4.6 The Customer will ensure a member of the Customer's Personnel will be at the Delivery Location on the Delivery Date to sign the delivery docket on the Customer's behalf.

4.7 The Supplier may deliver Products to the Delivery Location regardless of whether there is anyone at the Delivery Location at the time of delivery.

4.8 The Customer agrees:

(a) the Supplier's responsibility for delivery of Products will cease at the kerbside or public roadway frontage of the Delivery Location;

(b) the Customer must provide safe access for delivery of Products including but not limited to providing safety measures such as traffic control; and

(c) the Supplier may refuse to deliver Products, and return the Products at the Customer's cost, if the Supplier or a member of the Supplier's Personnel considers it would be unsafe to deliver the Products.

4.9 The signature of a Customer Personnel on the delivery docket will represent the Customer's acknowledgement that the Products comply with the Contract and these T&Cs.

4.10 The Customer must inspect any Products immediately on collection or delivery of the Products.

5. Risk

5.1 If the Supplier agrees to deliver Products, the risk in the Products will pass to the Customer, and the Customer will be deemed to have accepted the Products, immediately when the Products are delivered to the Delivery Location regardless of whether there is anyone at the Delivery Location at the time of delivery.

5.2 If the Customer agrees to collect the Products, the risk in the Products will pass to the Customer, and the Customer will be deemed to have accepted the Products, immediately when the Products are placed on any vehicle or means of conveyance.

5.3 The Supplier takes no responsibility for any consequence relating directly or indirectly to any action or inaction that you take based on the content of the Website.

5.4 By accessing the Website you acknowledge and agree that the

1

Supplier may use your Personal Information in accordance with our Privacy Policy.
<http://www.dezinerpanels.com.au/contact-us/privacy-policy>

5.5 Whilst the Supplier endeavours to keep all information on the Website up to date, it does not guarantee the accuracy of the information given on the Website. The content on the Website is an outline only of information in relation to the Products and is not intended to provide a comprehensive view or instructions.

5.6 The Supplier will not be responsible for any software virus, error, defects or omissions contained on the Website. It is the Customer's responsibility to protect data.

6. Title

The Customer will not receive title to Products until the Customer makes full payment of the Price and any other amounts payable to the Supplier.

7. Credit and Personal Property Securities

7.1 The Customer must make full payment of the Price and any other amounts payable to the Supplier before the Supplier supplies Products to the Customer unless the Supplier has granted credit terms to the Customer in which case the Customer must make full payment of the Price and any other amounts payable to the Supplier within 30 days after the end of the month in which the Supplier supplied the Products to the Customer (or such alternative period agreed by the Supplier in writing).

7.2 If the Supplier grants credit terms to the Customer, then to secure the punctual payment of all amounts owed by the Customer to the Supplier, the Customer grants to the Supplier:

(a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act); and

(b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a security interest under the PPSA.

7.3 The Customer agrees and acknowledges the Supplier may (without limiting the Supplier's other rights under these T&Cs, at law or otherwise) lodge caveats over the Customer's

property and take any other action to secure and enforce the Supplier's security under clause 7.2.

7.4 The Customer must reimburse the Supplier for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses incurred by the Supplier associated with any action by the Supplier to recover money from the Customer.

7.5 The Customer:

- (a) agrees with the Supplier that neither the Customer, nor the Supplier, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);
- (b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;
- (c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;
- (d) acknowledges that the Supplier may, at the Customer's cost, register one or more financing statements in relation to any security;
- (e) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and
- (f) will not, without prior written notice to the Supplier, change the Customer's name or initiate any change to any documentation registered under the PPSA.

8. Force Majeure

The Supplier will not be liable to the Customer for any failure to perform, or delay in performing, the Supplier's obligations under these T&Cs if the failure or delay is due to any cause beyond the Supplier's reasonable control and if any such failure or delay continues for a period of 14 days the Supplier may terminate any affected Contract.

9. Confidential Information and Intellectual Property

- 9.1 The Customer will not use, or disclose, any Confidential Information disclosed to the Customer.
- 9.2 All Intellectual Property Rights in all designs, drawings, technical information and documents created by the Supplier in relation to the Products will remain with the Supplier and will not be assigned to the Customer and no supply of Products to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Products or such designs, drawings, technical information or documents.
- 9.3 If the Supplier supplies any designs, drawings, technical information or documents to the Customer as part of the Products, the Supplier grants the Customer a non-exclusive, non-transferrable, right to use the designs, drawings, technical information and documents strictly and only for the purposes of the Customer's use of the Products.
- 9.4 The Customer warrants that the Supplier's use of any designs, instructions or documents provided by the Customer to the Supplier will not infringe the Intellectual Property Rights of any other party.

10. Approvals

The Customer must, at the Customer's expense, obtain all Approvals necessary for and incidental to the supply of the Products.

11. Security

The Supplier will not be required to provide a bank guarantee or any other form of security and the Customer will not be entitled to retain any retention money from the Price for any reason.

12. Representations and warranties

- 12.1 The Supplier does not warrant the Products are fit for any purpose whether or not made known to the Supplier or any member of the Supplier's Personnel.
- 12.2 The Products are intended for their usual purpose as ordinarily and properly used by a reasonable person and installation is to be undertaken by a tradesperson with the appropriate skills.
- 12.3 The Supplier excludes all express and implied conditions and warranties in relation to the Products except those conditions or warranties that cannot be excluded by law and the Supplier's liability under any such conditions or warranties is limited to, at the Supplier's option, arranging to replace or repair the Products and/or the outcome of the resupplying the Products.
- 12.4 Nothing in these T&Cs are intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or any Fair Trading Act except to the extent permitted by such Acts.
- 12.5 The Customer must strictly follow all instructions provided with Products, including but not limited to safety advice, installation instructions and warnings.
- 12.6 If the Customer is concerned that a Product is defective, it is the Customer's responsibility to immediately notify the Supplier and follow the Supplier's instructions.
- 12.7 In the event of inconsistency between these T&C's and the contents of individual Orders, these Terms and Conditions will prevail.
- 12.8 The Supplier reserves the right to change these T&C's without notice, at its discretion.

13. Liability

- 13.1 To the fullest extent permitted by law, the Supplier will not be liable for any loss including indirect, incidental or consequential loss, damage, death or injury occasioned by the Customer or any other person arising from the Products. This exclusion of liability applies whether the liability in question arises from the supply of Products or conduct of the Supplier or its Personnel.
- 13.2 To the extent that the Supplier is liable for any Liability or Claim in relation to these T&Cs, any Contract, and any supply of Products (whether under statute, contract, tort, negligence or otherwise) as determined by a court of law or as determined in its own discretion to accept liability, will be limited to the amount of the Price paid by the Customer to the Supplier.
- 13.3 The Supplier will not be liable to the Customer for any Liability or Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.

14. Release and Indemnity

The Customer indemnifies the Supplier and each member of the Supplier's Personnel from and against any Liability or Claim arising directly or indirectly in relation to:

- (a) any breach of clauses 2.11 or 2.12;
- (b) the accuracy of all information provided by the Customer to the Supplier in relation to the Products, Delivery Location or any other matters;
- (c) the Customer's breach of these T&Cs or any Contract;
- (d) the negligence or wilful misconduct of the Customer or any member of the Customer's Personnel;
- (e) the Supplier or any member of the Supplier's Personnel delivering the Products in accordance with the Customer's instructions;
- (f) the Supplier or any member of the Supplier's Personnel entering the Delivery Location;
- (g) damage to the property of the Customer or any third party during any delivery of Products;
- (h) any spillage, breakage or contamination of Products during any transport or delivery;
- (i) the Products not being fit for any particular purpose;
- (j) any tests in relation to Products;
- (k) the Customer or any member of the Customer's Personnel directly or indirectly causing any delay in the supply of any Products;
- (l) the Supplier having to resupply the Products, or undertake any rework, as a result of the actions or omissions of the Customer or any third party;
- (m) the Customer or any member of the Customer's Personnel refusing to accept any delivery;
- (n) the Customer or any member of the Customer's Personnel purporting to cancel any Order or Contract; and
- (o) any proceedings, claims and demands in relation to any secured property.

15. Termination

The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to the Supplier if:

- (a) the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days of receiving a notice from the Supplier requiring the Customer to do so;
- (b) the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy; (c) there is any change in the Control of the Customer; or
- (d) an Insolvency Event arises in relation to the Customer.

16. Definitions

In these T&Cs:

"Approvals" means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Authority to permit the full and proper performance of a party's obligations under these T&Cs;

"Authority" means any government or governmental, semigovernmental, administrative or judicial body, tribunal,

department, commission, authority, agency, minister, statutory corporation, instrumentality or entity;

"Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

"Confidential Information" means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;

"Contract" means a contract formed as a result of the acceptance of an Order by the Supplier;

"Control" has the meaning set out in the Corporations Act;

"Corporations Act" means the *Corporations Act 2001* (Cth);

"Customer" means the customer who placed the Order;

"Delivery Date" means the date for the delivery of the Products in a Contract;

"Delivery Location" means the location for the delivery of the Products in a Contract;

"Insolvency Event" means any of the following, or any analogous, events:

- (a) the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;
- (b) the Customer ceases, or threatens to cease, carrying on business;
- (c) the Customer is unable to pay the Customer's debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Customer's assets, operations or business;
- (e) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors; or
- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Customer's assets, operations or business;

"Intellectual Property Rights" means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trademarks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;

"Liability" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

"Order" means a written purchase order submitted by the Customer to the Supplier for Products in a form provided by the Supplier;

"Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party; **"PPSA"** means *Personal Property Securities Act 2009* (Cth);

"Price" means the price of the Products as nominated by the Supplier from time to time;

“**Products**” means the products specified in the Order;

“**Supplier**” means Deziner Panels Australia Pty Limited (ACN 155 325 394); and

“**T&Cs**” means these Terms and Conditions of Supply; and

“**Website**” means the Supplier’s website, www.dezinerpanels.com.au.

17. Miscellaneous

17.1 The parties agree:

- (a) no Contract will create any partnership, joint venture, agency or relationship of employment between the parties;
- (b) these T&Cs or any Contract may only be amended with the Supplier’s express written agreement;
- (c) any waiver by the Supplier must be express and in writing;
- (d) the Supplier’s rights under these T&Cs or any Contract do not exclude any other rights of the Supplier;
- (e) no Contract will be a sale by sample;
- (f) in the event of any dispute, the Supplier’s records will be conclusive evidence;
- (g) the actions of any person claiming to have the Customer’s authority will bind the Customer to the extent permitted by law;
- (h) if any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply;
- (i) the Customer must immediately provide written notice to the Supplier if there is any change in the Control of the Customer;
- (j) the Supplier may assign any rights or benefits under any Contract or these T&Cs or any Contract to any third party;
- (k) the Customer may only assign any rights or benefits under any Contract or these T&Cs or any Contract with the Supplier’s prior written consent; and
- (l) these T&Cs and any Contract will be governed by the laws of Victoria and the parties submit to the jurisdiction of the courts of the state of Victoria.

17.2 In these T&Cs:

- (a) the headings will not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in these T&Cs has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced;
- (e) a reference to a party includes the party’s executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
- (h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
- (i) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;

- (j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these T&Cs; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.