

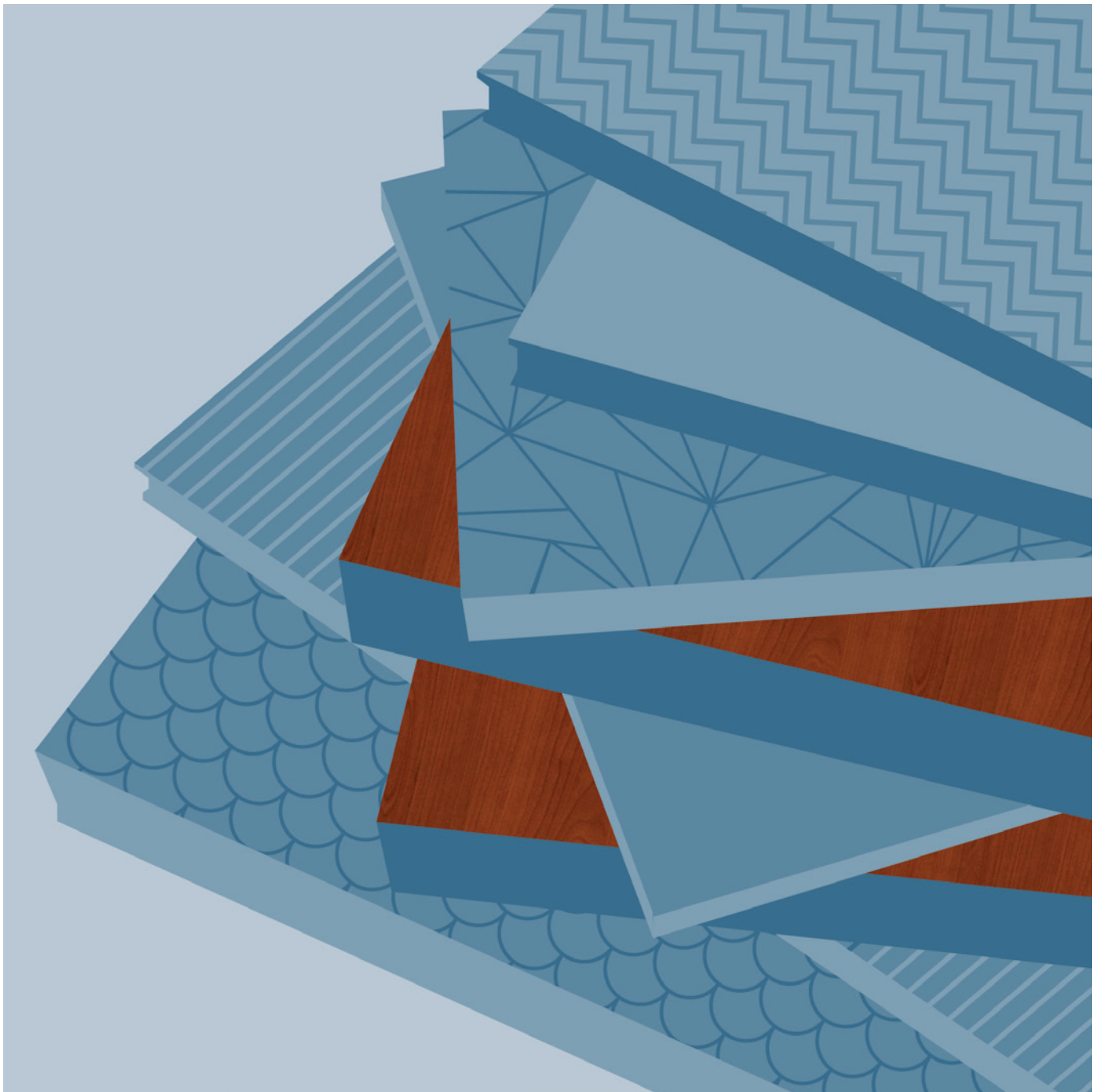


# AYRES COMPOSITE PANELS PTY LTD

TERMS & CONDITIONS OF SALE

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A.C.N. 071 540 568 | ABN 84 071 540 568





# AYRES COMPOSITE PANELS PTY LTD

## TERMS & CONDITIONS OF SALE

### 1 INTERPRETATION

1.1 In these conditions unless the contrary intention appears:

"Buyer" means the person to or for whom Goods are to be supplied by AYRES;

"Delivery Date" means the date determined in accordance with Clause 5.1;

"Goods" means panels and ancillaries manufactured and marketed by AYRES.

"AYRES" means Ayres Composite Panels Pty Ltd trading as Ayres Composite Panels;

"AYRES Warranty" means the warranty referred to in Clause 4.2; and

"Person" and words importing persons includes any corporation, partnership, unincorporated association;

"Purchase Price" means the price payable by the buyer for the Goods supplied or to be supplied by AYRES;

"additional charges" include all delivery, handling and storage charges, sales tax, stamp duty, interest, legal and other costs on recovery of unpaid monies and all other Government imposts and all monies other than the Purchase Price of the Goods payable by the buyer to AYRES, for or as a result of the sale of the goods.

### 2 OPERATION

All orders for and supply of the Goods shall subject to the provisions of Clause 14 hereof, be governed solely by these standard terms and conditions of sale.

### 3 ORDERS FOR GOODS

3.1 The Goods which the Buyer wishes to purchase shall be ordered from AYRES upon forms which are approved by AYRES.

3.2 AYRES is not obliged to accept any order for the Goods, AYRES may accept an order in whole or part for the Goods by notifying the Buyer in writing of the acceptance or by delivering the Goods described in the order to the Buyer. No other acknowledgment or receipt of money shall constitute an acceptance of the order by AYRES.

3.3 The Buyer authorises AYRES to complete, to the extent of the acceptance of the order by AYRES, any order form received from the Buyer.

3.4 An order from the Buyer which has been accepted in whole or in part by AYRES cannot be cancelled by the Buyer without obtaining the prior written approval of AYRES.





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### 4 WARRANTIES

- 4.1 Certain laws imply terms, conditions and warranties ("prescribed terms") into contracts for the supply of goods and prohibit the exclusion, restriction or modification of such terms, conditions and warranties. Some prescribed terms permit a supplier to limit its liability for a breach thereof. Subject to the prescribed terms, the liability of AYRES in respect of a breach of a prescribed term relating to the Goods, and in respect of a breach of the AYRES Warranty is:
- (a) limited at the option of AYRES to replacement of the Goods concerned or payment of the cost of replacing the Goods concerned or a refund of the Purchase Price paid by the Buyer for the Goods; and
  - (b) conditional upon the Buyer within 30 days of the Delivery Date making a written claim to AYRES setting out the full particulars of the claim and where possible returning to AYRES a sufficient part of the Goods to enable a proper examination of the Goods by AYRES, and determination by AYRES as to whether a breach as referred to herein has occurred.
- 4.2 Subject to clauses 4.3 and 4.4, AYRES warrants that the Goods will be of merchantable quality. However, subject to prescribed terms, AYRES does not warrant that the Goods will be fit for any purpose regardless of whether the Goods have previously successfully been used for that purpose.
- 4.3 If the Buyer provides or specifies a specific material made by a third party ("the specified material") to AYRES and requires it to be inserted or affixed to the Goods, AYRES will not be liable to the Buyer or any third party for any failure of the Goods or any part of the Goods as a result of:
- (a) the insertion or affixing of the specified material to the Goods; or
  - (b) the failure of the specified material.
- 4.4 AYRES does not guarantee the performance of the Goods where the specified material has been inserted or affixed to the Goods.
- 4.5 Except as provided by prescribed terms and subject to Clause 4.1, and without limiting the operation of clauses 4.3 and 4.4, the Buyer shall not under any circumstances have any cause of action against or right to claim or recover from AYRES for or in respect of any loss or damage of any kind whatsoever caused or contributed to directly or indirectly by the Goods or their use or any defect whatsoever in the Goods or unsuitability of the Goods for any purpose to which they are put or by any default or negligence on the part of AYRES or of any employee or contractor or agent of AYRES in connection with any order or relating to the supply of or otherwise concerning any of the Goods.
- 4.6 Subject to Clauses 2 and 14 hereof, these standard terms and conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements (whether oral or in writing) relating to the supply of the Goods including but without limiting the generality of the foregoing, the performance, composition, method of manufacture, or the results that ought to be expected from using the Goods.





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4.7 Subject to any prescribed terms and the AYRES Warranty, the Buyer shall indemnify and hold AYRES harmless against all losses, liabilities and expenses whatsoever which are or may be incurred by AYRES resulting from any demands by any third party brought at any time out of or otherwise in connection with the Goods and/or the supply or use of the Goods.

## 5 DELIVERY

5.1 Delivery shall be deemed to take place at the time of physical taking of the Goods by the Buyer or by a carrier whether engaged by AYRES or by the Buyer (the "Delivery Date"). AYRES shall take all reasonable steps to ensure that the Goods are delivered to the Buyer on the date agreed by the parties (the Agreed Date). The Buyer acknowledges that AYRES shall be under no liability whatsoever should delivery not be made on the Agreed Date. For the purposes of this sub-clause 5.1, "physical taking of the Goods by the Buyer or by a carrier whether engaged by AYRES or by the Buyer", shall be deemed to have occurred at the moment that the Goods are loaded into or onto a vehicle or other means for transportation to, for or on behalf of the Buyer (irrespective of any delay between such loading and actual transportation).

5.2 If AYRES, for any reason whatsoever, is able to make only a partial delivery of the Goods, the Buyer shall nevertheless accept such partial delivery and pay in the manner herein agreed, the Purchase Price and other monies payable for those Goods such as are delivered to it.

5.3 AYRES liability with respect to proven short delivery is limited to replacement of the missing Goods.

5.4 Unless agreed in writing otherwise, all delivery charges (including, without limiting the generality thereof, all carrier charges and transit insurance charges) shall be paid by the Buyer direct to those to whom such payment is payable or shall be paid to AYRES, if so requested by AYRES, where the carrier has been engaged by AYRES and all such delivery charges shall be paid by the Buyer on or before the due dates for payment thereof.

## 6 PRICE AND PAYMENT

6.1 The Purchase Prices charged for the Goods will be those effective at the Delivery Date of the Goods and will be exclusive of additional charges, unless otherwise agreed in writing.

6.2 The Buyer shall pay in addition to the Purchase Price for the Goods all additional charges relevant to the supply of the Goods as invoiced by AYRES and agreed with the Buyer from time to time.

6.3 Subject to the provisions of these standard terms and conditions (and in particular clause 6.4 hereof) and unless otherwise agreed in writing payment of the Purchase Price for the Goods and the additional charges is/are due and payable within 30 days of the invoice date given by AYRES to the Buyer in respect of the sale of the Goods.

6.4 The full Purchase Price for the Goods and the additional charges shall become immediately due and payable if the Buyer takes or has taken or instituted against it any action or proceeding whether voluntary or compulsory which has as an object or may result in the winding up of the Buyer





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(other than a voluntary winding up for the purposes of amalgamation or reconstruction) and/or the appointment of a Provisional Liquidator of the Buyer and/or the entering into of any arrangements, composition, compromise, agreement or understanding with the Buyer's creditors pursuant to the Corporations Law and/or is placed under official management or a receiver and manager is appointed over the whole or any part of its undertaking.

- 6.5 All payments of Purchase Price and additional charges must be made on or before the due date for payment thereof as a condition precedent to future deliveries or supplies under any contract.
- 6.6 The time for payment of the Purchase Price and additional charges shall be of the essence of the contract for the sale of the Goods.
- 6.7 Any remittance or tender in any medium other than cash shall effect payment only to the extent of cash finally collected and received by AYRES in respect of that remittance or tender.

## 7 OWNERSHIP AND RETENTION OF TITLE

- 7.1 Title to the Goods after the Delivery Date shall remain in AYRES until the full Purchase Price and all other sums payable by the Buyer to AYRES in respect of the Goods are paid.
- 7.2 While title to the Goods remains in AYRES, the Buyer shall have no ownership, property or rights in the Goods and shall, while possessed of the same, hold same only as a mere bailee for AYRES.

## 8 REMEDIES

In addition and without prejudice to any other right or remedy available to AYRES, if the Buyer fails to pay to AYRES the Purchase Price or any other sums due in respect of the Goods supplied pursuant to these standard terms and conditions by their due date, and / or if sub-clause 6.4 hereof applies:

- (a) AYRES may sue the Buyer for the Purchase Price and other such sums; and/or
- (b) where the Goods are in the possession or control of the Buyer, AYRES or its servants, agents or representatives may recover possession of the Goods wherever the Goods may be and the Buyer shall assist and indemnify AYRES in relation to such recovery and if AYRES thinks fit:
- (i) AYRES may resell the Goods and retain the sale proceeds thereof together with any deposit previously paid by the Buyer and recover from the Buyer any deficiency of monies then still outstanding; or
- (ii) retain the Goods and recover from the Buyer the loss of profit to AYRES on the transaction (after allowing for any deposit paid to AYRES which may then be retained by AYRES); and/or
- (c) recover from the Buyer interest on the unpaid and overdue Purchase Price and/or additional charges as aforesaid at the base overdraft rate charged by the WESTPAC Bank at the time





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each overdue amount becomes due, plus a further 3% per month on each overdue amount from the date or dates each overdue amount became due, until full payment hereof has been made to AYRES; and/or

- (d) recover from the Buyer all costs, charges, fees or disbursements incurred or paid by AYRES to a debt collector, solicitor or otherwise arising from or in relation to the recovery or attempted recovery made or undertaken by or on behalf of AYRES of the unpaid and overdue Purchase Price and/or additional charges as aforesaid from the Buyer; and/or
- (e) suspend further deliveries of Goods; and/or
- (f) require payment in advance for any further deliveries of Goods; and/or
- (g) terminate any contract with the Buyer for the sale or supply of Goods.

## 9 GOVERNING LAW AND JURISDICTION

These standard terms and conditions and the transactions contemplated by the standard terms and conditions shall be governed by or construed in accordance with the laws of the State of Western Australia and the parties submit to the jurisdiction of the Courts of that State.

## 10 NO WAIVERS

A provision of or a right created under these standard terms and conditions may not be varied or waived except in writing signed by the party granting the waiver.

## 11 ASSIGNMENT

The Buyer may not assign its rights under these standard terms and conditions without the prior consent of AYRES.

## 12 SEVERANCE

If the whole or any part of these standard terms and conditions is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of these standard terms and conditions have full force and effect and the validity or enforceability of that part in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of these standard terms and conditions or is contrary to public policy.

## 13 FORCE MAJEURE

- 13.1 If AYRES is unable wholly or in part by reason of force majeure to carry out any of its obligations under these standard terms and conditions, at the option of AYRES;





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- (a) that obligation will be suspended for so long as it is affected by force majeure during the continuance of the force majeure; or
- (b) the contract for the supply or sale of the Goods pursuant to these standard terms and conditions will be terminated.

13.2 If AYRES elects to terminate the contract for the supply or sale of goods pursuant to these standard terms and conditions AYRES shall notify the Buyer of the termination.

13.3 The Buyer acknowledges that AYRES shall not be liable for any breach of these standard terms and conditions or any failure to supply the Goods or for any delay in the supply of the Goods or for the termination of a contract for the supply of the Goods pursuant to these standard terms and conditions, caused by force majeure. The Buyer acknowledges that if AYRES elects to terminate the contract for the supply of the Goods AYRES shall be under no obligation at any future date to deliver the Goods the subject of the terminated contract.

13.4 In this clause "force majeure" means an act of God, strike, labour dispute or other interference with work, war, blockade, disturbance, flood, explosion, governmental requirement, intervention or embargo, unavailability or delay in availability of raw materials, equipment or transport and any other cause whatsoever (whether or not similar to those specifically enumerated above) which is not reasonably within the control of AYRES.

## 14 RISK

The risk of and in respect of the Goods shall pass to the Buyer upon the Delivery Date.

## 15 INTELLECTUAL PROPERTY

The company owns and will retain the ownership of all intellectual property, patent, copyright and design rights in and to the products the services and any associated documentation, and owns and will retain the ownership of any associated documentation produced in connection with the products and services.





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AYRES | *Lighten Up!*

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