

CONTROLTECH BUILDING TECHNOLOGIES PTY LTD

ABN 14 641 737 751

TERMS & CONDITIONS OF TRADE

1. Application of Terms & Conditions of Trade

- 1.1. These terms & conditions of trade replace in their entirety any previous terms & conditions of trade published, issued or used by CONTROLTECH BUILDING TECHNOLOGIES PTY LTD (Controltech).
- 1.2. These terms & conditions of trade apply to, form a part of and govern all Agreements.
- 1.3. The Purchaser acknowledges that its acceptance of these terms & conditions of trade was a condition of Controltech entering into each Agreement with the Purchaser and agreeing to supply Services to the Purchaser.
- 1.4. Any Agreement may be varied only with Controltech's prior written consent and upon the provision of written notice to the Purchaser.
- 1.5. If the Purchaser does not agree to the variations proposed by Controltech, they must notify Controltech within fourteen (14) days from the date of the notice, that the variations are not agreed to. Controltech and/or the Purchaser will then be at liberty to suspend or withdraw credit facilities if no agreement can be reached between the parties regarding the proposed variations. Absent notice from the Purchaser, the varied terms and conditions of trade may be deemed accepted. Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correct without notification.
- 1.6. The Purchaser must check all invoices and advise Controltech of any errors or omissions before the due date of the invoice. Failing advice from the Purchaser that the invoice contains errors or omissions, the invoice shall be deemed accepted by the Purchaser.
- 1.7. Should the Purchaser not pay for the Services supplied by Controltech in accordance with the credit terms as provided herein, or as agreed in writing by Controltech and the Purchaser from time to time, after issuing a written demand to the Purchaser demanding payment within fourteen (14) days, Controltech will be entitled to charge an administration fee of 10 percent of the amount of the invoice payable.
- 1.8. Any order or offer made by any Purchaser:
 - 1.8.1. Shall not be binding on Controltech until confirmed by Controltech in writing or in such other manner as Controltech in its sole discretion determines; and
 - 1.8.2. Is subject to the availability of the subject Services.
- 1.9. A tender or quotation submitted by Controltech may at any time prior to acceptance of an offer by Controltech in respect of the supply of Services be varied or withdrawn by Controltech. Clerical, typing or other errors made in, or in respect of, any tender or quotation shall be subject to correction by Controltech and the corrected tender or quotation shall apply.
- 1.10. Subject to clause 1.9 a quotation or tender submitted by Controltech shall remain valid for 30 days from the date of such quotation or tender.
- 1.11. Terms and conditions submitted by a Purchaser with a purchase order or otherwise do not form part of an Agreement unless expressly agreed in writing by Controltech. The Purchaser acknowledges and agrees that as a result of the benefit of the credit being supplied by Controltech these terms & conditions of trade will prevail over the Purchaser's terms and conditions (if any).
- 1.12. The acceptance by a Purchaser of the supply by CONTROLTECH BUILDING TECHNOLOGIES PTY LTD of Services shall constitute acceptance by the Purchaser of the supply by CONTROLTECH BUILDING TECHNOLOGIES PTY LTD of such Services solely on these terms & conditions of trade.

2. Price

- 2.1. The prices quoted by Controltech for the supply of Services exclude GST and any relevant duties unless expressly stated otherwise by Controltech. All GST, other taxes and/or charges imposed and/or levied by or payable to any government or governmental authority upon or with respect to any Agreement, the Services or other material described in any Agreement or the purchase price payable, shall be for the account of the Purchaser and shall be payable at the same time as the invoice from Controltech to which they relate.

- 2.2. Any additions or increases in the cost of the supply of Services as a result of any additions or increases in charges, duties, taxes (including the rate of GST) or costs associated with the supply of Services by Controltech, between the date of Controltech's acceptance of the Purchaser's order and the date of supply of the relevant Services shall be borne by the Purchaser, even if the Services are sold on terms such as delivered or duty paid terms.
- 2.3. Unless otherwise stipulated, all references to dollars are references to the lawful currency of Australia (Australian dollars)
- 2.4. It is acknowledged by the Purchaser that all communications and correspondence by whatever means, whether orally or in writing, by Controltech quoting prices of Services are indicative only unless such communication or correspondence expressly states:
 - 2.4.1. that it is a firm offer; and
 - 2.4.2. the expiry date of the offer.

3. Trade Credit

- 3.1. In the event that any Agreement or transaction is entered into (subsequent order(s)) which would cause the total amount owing by the Purchaser to Controltech to be in excess of the credit limit and an increase of the credit limit cannot be obtained prior to the credit limit being exceeded, the Purchaser must make payment to Controltech of such earlier invoiced amounts as to ensure that any and all subsequent orders would not cause the total amount owing by the Purchaser to Controltech to be in excess of the credit limit.

4. Orders and Payment

- 4.1. Unless otherwise agreed between the parties once an order made by the Purchaser has been confirmed by Controltech, it cannot be cancelled or modified without Controltech's prior written consent.
- 4.2. In the event of a cancellation in accordance with clause 4.1, the Purchaser shall reimburse Controltech for all costs, loss of profits and expenses incurred by Controltech as a result of the cancellation whether such expenses were incurred before or after the date of cancellation.
- 4.3. The Purchaser shall be invoiced when the Purchaser is notified that the Services have or are to be performed, as Controltech in its discretion otherwise considers acceptable or as agreed between the parties.
- 4.4. All invoices shall be due and payable in accordance with the credit account, or as agreed between the parties at time in which the invoice was issued.
- 4.5. The Purchaser shall not (nor shall it be entitled to) set off or deduct from any amount payable to Controltech under any Agreement any amount(s) disputed by the Purchaser or any amount(s) owing or alleged to be owing by Controltech to the Purchaser on any account whatsoever. Any reasonable requests to set off, deduct or withhold from accounts outstanding will be considered by Controltech, provided that reasonable evidence is provided to Controltech as to why the Purchaser is entitled to the set off, deduction or to withhold from amounts outstanding.
- 4.6. Interest is payable to Controltech by the Purchaser on any amount outstanding from time to time after the due date for payment at the rate of 2 percent per month.
- 4.7. If any part of an amount owing to Controltech is at any one time overdue, then the whole amount owing to Controltech at that time is deemed immediately due and payable.

5. Default and Termination

- 5.1. An event of default will have occurred under these terms & conditions of trade and under any Agreement if:
 - 5.1.1. Any amount is outstanding and due and payable by the Purchaser to Controltech but is unpaid;
 - 5.1.2. The Purchaser fails to take delivery of any Services in accordance with an Agreement;
 - 5.1.3. The Purchaser fails to provide any letter of credit, Bill of Exchange or any other security required by Controltech from time to time;
 - 5.1.4. Controltech obtains unfavourable reports on the financial standing of the Purchaser;
 - 5.1.5. The Purchaser dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business;
 - 5.1.6. The Purchaser fails to perform any of its obligations under these terms & conditions of trade or any Agreement including failure to pay any amount by its due date;

5.1.7. An application is made, or proceedings are initiated, or a meeting (whether of shareholders, creditors or directors) is called with a view to winding the Purchaser up or placing the Purchaser in any kind of insolvency or other external administration;

5.1.8. The Purchaser becomes bankrupt or insolvent, goes into voluntary or compulsory liquidation or a step is taken to have a receiver, receiver and manager, provisional liquidator, liquidator or administrator appointed to the Purchaser or any of its assets; or

5.1.9. Anything happens that reasonably indicates that there is a significant risk that the Purchaser is or will become unable to pay debts as they fall due. This includes execution or distress being levied against any income or assets of the Purchaser; a meeting of the Purchaser's creditors being called or held; a step being taken to make the Purchaser bankrupt; and the Purchaser entering into any type of arrangement with, or assignment for the benefit of, all or any class of its creditors, or being subject to a deed of company arrangement.

5.2. Upon the happening of an event of default, and without notice to the Purchaser:

5.2.1. Controltech may terminate any Agreement with the Purchaser.

5.2.2. Controltech may take steps to recover all outstanding monies, including engaging a mercantile agency or instituting legal proceedings. The Purchaser is liable for any costs of taking steps to recover the amount the costs of a mercantile agency, court costs and legal costs on a full indemnity basis.

5.2.3. Controltech may elect to suspend from time to time some or all its obligations under these terms & conditions of trade or any Agreement with the Purchaser, including offering further credit, until full payment is received by Controltech. The non-performance of obligations suspended by Controltech is not a breach of these terms & conditions of trade or any Agreement and the Purchaser remains bound by its obligations to Controltech.

5.2.4. Controltech shall be entitled as a condition of resuming delivery under any Agreement suspended in accordance with this clause to require prepayment of such security as it may in its sole discretion require for any further Agreements or outstanding Agreements, orders or deliveries.

5.2.5. Controltech shall be entitled, without prejudice to any of its rights and remedies, to terminate in whole or in part any Agreement to which the Purchaser is a party.

5.2.6. Controltech may exercise all rights resulting from the failure to pay money at any later time despite the supply of Services by Controltech after it becomes aware of a failure by the Purchaser to pay money.

5.2.7. The right to terminate an Agreement may be exercised concurrently with the suspension of obligations by Controltech.

5.3. If an Agreement is ended because of the Purchaser's default and the Purchaser owes Controltech money, the money becomes immediately payable to Controltech.

5.4. The acceptance by Controltech of any payment from or on behalf of the Purchaser after the specified due date thereof shall not constitute a waiver of the Purchaser's obligations to make further payments.

5.5. In the event of termination of any Agreement by Controltech pursuant to clause 5.2.1, Controltech shall, after taking into account payments made by the Purchaser, be entitled to be paid by the Purchaser for work done and expenditure made under the Agreement up to and including the date of termination and any direct and indirect loss suffered by Controltech including without limitation Controltech's loss of profit on the Agreement and the reasonable legal costs of Controltech (on a full indemnity basis) incurred in relation to the termination and any prior breach and in exercising any rights and remedies as a consequence of the termination and any prior breach.

5.6. Termination of the Agreement pursuant to this clause 5 shall be without prejudice to the rights of Controltech accruing up to the date of termination.

6. Delivery

6.1. Controltech reserves the right to refuse to supply Services under an Agreement if a Purchaser is in default of any of its payment obligations under any one or more Agreements.

6.2. Any delivery or completion dates stated are estimates only and are not essential terms of any Agreement. Controltech shall make all reasonable efforts to meet any date for supply of Services agreed between Controltech and the Purchaser. Where a delay to supply Services occurs, in no event shall Controltech incur any liability or penalty for failure to supply Services by an agreed time.

10. Intellectual Property

- 10.1. The supply of Services to the Purchaser does not constitute a transfer of any intellectual property rights (including but not limited to any patent, utility model, trademark, design or copyright) in the Services or any part thereof and all such rights are to be expressly reserved to the true and lawful owners. The Purchaser shall not do anything inconsistent with or in infringement of such intellectual property rights including but not limited to the decompilation, disassembly and/or re-engineering thereof.
- 10.2. Controltech does not warrant that the supply by it and the use by the Purchaser of the Services does not and will not infringe the intellectual property rights of any third party whether such rights take the form of letters patent, registered designs, copyright, trademark, or any other similar right.
- 10.3. Where Controltech provides the Services to the Purchaser's design and/or specifications the Purchaser agrees to indemnify and keep indemnified Controltech and its related corporations against all Claims that Controltech and/or its related corporations may incur or suffer as a result of any allegation by a third party that the manufacture and sale by Controltech of the Services or any part thereof or the provision of the services infringes any intellectual property right of such third party.
- 10.4. The Purchaser shall indemnify Controltech in respect of any such infringement or alleged infringement of any intellectual property rights and shall be responsible for all losses, damages and expenses suffered or incurred by Controltech as a result of any such infringement relating to the subject of any Agreement between the Purchaser and Controltech. In case of any dispute and/or claim arising in connection with any such infringement, Controltech reserves the right at its discretion to terminate and make null and void any Agreement and the Purchaser shall be responsible for any loss or expense caused to Controltech thereby.

11. Controltech's Obligations

- 11.1. Notwithstanding any other provision of these terms & conditions of trade if the Purchaser breaches a term of any Agreement Controltech shall not be bound to perform its obligations under that Agreement until the breach is remedied by the Purchaser.

12. Force Majeure

- 12.1. Should Controltech be delayed, hindered, or otherwise prevented from complying with the terms of these terms & conditions of trade or any Agreement by reason of events or circumstances beyond the reasonable control of Controltech including but not limited to Acts of God, wars, riots, strikes, pandemics, lockouts, trade disputes or labour disturbances, breakdown of plant or machinery, accident, storm, fire, flood, difficulties or shortages in obtaining material, fuel, transport or labour, the late receipt of the Purchaser's specifications, requirements or other necessary information or any other circumstances affecting the supply of Services or services, then Controltech shall not be liable to the Purchaser for any loss or damage which may be suffered by the Purchaser whether as a direct or indirect result of any such occurrences.
- 12.2. In the event of any delay resulting from the happening of any event, occurrence or circumstance referred to in clause 12.1 hereof, the Purchaser shall accept a delayed delivery of the Services and shall not be entitled to cancel or modify the Agreement.

13. Delay

- 13.1. Notwithstanding clause 12 hereof, should any delay exceed 3 months from the proposed original, or any subsequently agreed, delivery date, either party shall have the right to cancel the subject Agreement by written notice to the other party unless the parties have otherwise agreed in writing to acknowledge and agree to the delay.

14. Limitation of Liability

- 14.1. Except as otherwise expressly provided in these terms and conditions of trade and to the extent permitted by law, any Purchaser of Services from Controltech agrees to assume all risks and release, hold harmless and indemnify Controltech from and against all liabilities, claims, damages, losses, costs and expenses of whatsoever nature and howsoever occurring (including indirect or consequential loss or damage) which may be suffered by the Purchaser or by any third party arising out of or in any way connected with:
 - 14.1.1. the supply of the Services or the performance of the services by Controltech
 - 14.1.2. the sale, installation, possession, maintenance, storage or use of Services, whether singly or in combination with any other thing or process;

14.1.3. any breach of any warranty or condition of an Agreement be it express, implied or otherwise; by reason of breach of these terms & conditions of trade or of statutory duty or by reason of tort (including but not limited to negligence).

14.2. Except as otherwise expressly provided in these terms & conditions of trade and to the extent permitted by law, all statements, warranties, representations, conditions, promises, undertakings, covenants and provisions, express or implied (and whether implied by law or otherwise) relating to Services or their supply, being provisions which might otherwise form part of these terms & conditions of trade or any Agreement are hereby excluded in their entirety and are of no effect whatsoever.

14.3. The Purchaser warrants to Controltech that –

14.3.1. it has not relied on any representation or statement made by or on behalf of Controltech other than as expressly set out in an Agreement;

14.3.2. the Purchaser acknowledges that it relies on its own skill and judgement, and where appropriate on the skill and judgement of qualified and experienced advisors, in relation to Services supplied to it by Controltech; and the proposed use/s for which the Services supplied, or to be supplied, to it by Controltech and their installation; and

14.3.3. the Purchaser is responsible for determining the suitability of the Services for the purpose for which they are intended to be used and the method of their installation.

14.4. If any liability on the part of Controltech arises to or in favour of the Purchaser (whether in contract, tort or otherwise) for any loss, damage, harm or injury arising out of or in any way connected with the supply of or failure in the provision of or the purported supply of Services by Controltech, Controltech's liability for all such loss, damage, harm and injury in all and any circumstances shall be limited in aggregate to the payment by Controltech of the sum not exceeding 5 percent of the monies payable to Controltech pursuant to the relevant Agreement.

15. Test & Performance

15.1. Controltech does not guarantee the performance limits stated in any quotation, tender or Agreement unless such limits are expressly guaranteed by Controltech in writing.

16. Measures, Drawings, Documentation, and Information

16.1. Any drawings or other documents submitted and any information supplied by Controltech to the Purchaser remains the property of Controltech and constitutes confidential information of Controltech (to the extent that it is not in the public domain) and the Purchaser shall keep all such confidential information confidential and shall not use such drawings, documents and information for any purpose other than that stipulated by Controltech nor provide the same to third parties.

18. Waiver

18.1. The fact that Controltech fails to do, or delays in doing, something that it is entitled to do under these terms & conditions of trade or any Agreement, does not amount to a waiver of its right to do it. Any waiver must be agreed or communicated in writing by Controltech.

18.2. Any waiver of these terms & conditions of trade (or a part thereof) by Controltech, shall not prejudice or affect Controltech's rights and remedies in respect of any subsequent breach, non-performance or non-observance by the Purchaser of these terms & conditions of trade or any Agreement.

19. Charge

19.1. The Purchaser charges in favour of Controltech all of its estate and interest in any real property that the Purchaser owns at present and in the future with the amount of its indebtedness hereunder until discharged.

19.2. The Purchaser charges in favour of Controltech all of its estate and interest in any personal property that the Purchaser owns at present and in the future with the amount of its indebtedness hereunder until discharged.

19.3. The Purchaser appoints as its duly constituted attorney Controltech's company secretary from time to time to execute in the Purchaser's name and as the Purchaser's act and deed any real property mortgage, bill of sale or consent to any caveat Controltech may choose to lodge against real property that the Purchaser may own in any Land Titles Office in any state or territory of Australia, even though the Purchaser may not have defaulted in carrying out its obligations hereunder, upon written notice and demand to the Purchaser (in the event that there is no default by the Purchaser in carrying out its obligations hereunder).

19.4. Where the Purchaser has previously entered into an agreement with Controltech by which the Purchaser has granted a charge, mortgage or other security interest (including a security interest as defined in

the PPSA) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement. Controltech may, at its discretion and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

20. General

20.1. These terms & conditions of trade and any Agreement to which they apply are governed by and must be interpreted in accordance with the laws of VICTORIA.

20.2. If a clause or a part of a clause can be read in a way that makes it illegal, unenforceable, void, voidable or invalid, but can also be read in a way that makes it legal, enforceable, not void, not voidable and valid, it must be read in the latter way.

20.3. If any clause or part of a clause is illegal, unenforceable, void, voidable or invalid, that clause or part is to be treated as removed from these terms & conditions of trade, but the rest of this document is not affected.

20.4. The Purchaser unconditionally and irrevocably submits to the exclusive jurisdiction of the Courts of VICTORIA

20.5. In these terms & conditions of trade, unless contrary to or inconsistent with the context:

“Agreement(s)” means all tenders, proposals and quotations submitted by, all applications for commercial credit account submitted to, all orders placed with and/or confirmed by, all invoices issued by, and all contracts entered into by Controltech whereby Services are supplied, provided and/or delivered by Controltech to the Purchaser.

“Claims” means all actual or threatened complaints, claims, demands, suits, proceedings, summonses, actions, costs, charges, expenses, liabilities, compensation, losses and damages (including consequential loss and damage) and interest whatsoever.

“Services” means all Services supplied or agreed to be supplied by Controltech to the Purchaser pursuant to any Agreement. “GST” means tax payable on taxable supplies under A New Tax System (Services & Services Tax) Act 1999 (Cth).

“Controltech” means CONTROLTECH BUILDING TECHNOLOGIES PTY LTD ABN 14 641 737 751

“Order” means an order placed by the Purchaser to Controltech for Services to be delivered by Controltech to the Purchaser.

“Purchaser” means the person or entity with whom Controltech enters into an Agreement for the provision of Services or credit and includes its successors or assigns.

20.6. In these terms & conditions of trade, unless contrary to or inconsistent with the context:

20.6.1. headings are for guidance only and do not affect interpretation;

20.6.2. the singular includes the plural and vice versa;

20.6.3. a reference to these terms & conditions of trade, an Agreement or any other document or to any legislation, rule or regulation includes a variation, novation or replacement of or supplement to any of them from time to time.

21. Privacy

21.1.1. The Purchaser acknowledges that Controltech may collect, use and disclose personal and credit information in connection with Controltech’s dealings with the Purchaser in accordance with Controltech’s Privacy Statement, Privacy Policy, the Privacy Act 1988 (Cth), the Privacy (Enhancing Privacy Protections) Act 2012, and the Australian Privacy Principles, and the Purchaser consents to that information being so collected, used and disclosed. A copy of Controltech’s Privacy Statement and Privacy Policy, can be found at www.controltech.net.au