

Cedar West Pty Ltd – Terms and Conditions of Trade

- General**
- These Terms and Conditions ("Conditions") apply to all contracts between Cedar West Pty Ltd ABN 90 159 223 042 ("Cedar West") and the purchaser ("Purchaser") of any goods, products or materials ("Goods") supplied by Cedar West on credit (if sold or supplied on credit) or otherwise ("Contract").
 - These Conditions will prevail over any terms, conditions, representations or understandings between the Purchaser and Cedar West in relation to the Goods, whether or not any inconsistency arises.
 - Cedar West expressly rejects any conditional order made by a Purchaser.
 - A contract is formed when Cedar West receives any purchase order and either sends a written acceptance to the Purchaser or dispatches Goods pursuant to the order.
- Quotations**
- Quotations are valid for sixty (60) days unless otherwise stated by Cedar West and may be withdrawn, revoked or varied at any time.
 - Quotations are not to be construed as an offer or obligation to sell and are provided to the Purchaser for purpose of providing estimates only.
- Orders and Prices**
- Cedar West reserves the right to accept or decline, in whole or in part, any order for Goods placed by the Purchaser.
 - Unless otherwise agreed by the parties, orders received for out of stock Goods will be placed on back order. All backorders will be charged at the price prevailing at the time of the original order. Cedar West will not be liable for any loss or damage that the Purchaser may suffer in connection with Goods being out of stock.
 - Unless otherwise agreed by the parties, all backorders will be delivered in accordance with Cedar West's standard delivery terms in clauses 13 - 16.
 - Unless otherwise stated, all prices for Goods are exclusive of all applicable taxes and charges. Where the Goods sold are subject to GST, the Purchaser is liable to pay any applicable amount of GST at the same time as payment for Goods is made.
 - The prices and product specifications contained in Cedar West's price lists or any information provided by Cedar West to the Purchaser are subject to change at the absolute discretion of Cedar West and without notice to the Purchaser.
 - Unless agreed otherwise, prices quoted include Cedar West's standard packing arrangements.
- Delivery**
- All orders are subject to delivery fees payable by the Purchaser.
 - Cedar West will endeavour to dispatch all standard orders as soon as practicable, however it will not be responsible for any loss or damage associated with Goods being dispatched late.
 - Any time or date named and accepted by Cedar West for completion, delivery and despatch is an estimate only and does not constitute a representation, or term of the contract, nor shall it be part of the description of the Goods and is not of the essence of the contract.
 - Cedar West is deemed to have delivered the Goods when collected by the Purchaser or when they are made available for unloading at the Purchaser's nominated delivery point (whichever occurs first).
- Payment**
- Cedar West may, at its absolute discretion, require the Purchaser to pay a deposit for the Goods.
 - Unless otherwise agreed by Cedar West and the Purchaser in writing, payment for the Goods purchased from Cedar West must be made by the Purchaser as follows:
 - If "Orange" terms apply – at the time of purchase and/or delivery of the Goods.
 - If "Green" terms apply – within 7 days from the date of Cedar West's Invoice;
 - If "Silver" or "Gold" terms apply – within 30 days after the end of the month of Cedar West's invoice (30 Days EOM).
 - Cedar West, at its absolute discretion, may refuse delivery of the Goods and acceptance of any other orders from the Purchaser until the Purchaser pays to Cedar West any amounts owed or contingently owed for any reason whatsoever by the Purchaser to Cedar West whether under this or any contract or otherwise.
 - Cedar West reserves the right to charge interest on any outstanding amount from the date it becomes outstanding for payment to the date payment is received at the rate of 2.5% per month compounded monthly. All payments made by the Purchaser will first be applied to the accrued interest.
 - Payments made by credit card may be subject to a surcharge.
- Risk and Retention of Title**
- Unless otherwise provided in these Conditions, the Goods supplied by Cedar West to the Purchaser shall be at the Purchaser's sole risk immediately upon their delivery to the Purchaser.
 - The Purchaser agrees that title to Goods is retained by Cedar West until Cedar West receives from the Purchaser:
 - payment in full for the purchased Goods; and
 - all other monies owing by the Purchaser to Cedar West at any time.
 - Where the Goods comprise a number of items, the property of Cedar West in each item comprising the Goods will not pass to the Purchaser for any individual item until payment in full is received for all items.
 - Prior to title in the Goods passing to the Purchaser, the Purchaser agrees that:
 - it acts as bailee of the Goods until such time as property in them passes to the Purchaser and that this bailment continues for each item of the Goods until the price has been paid in full;
 - it must keep the Goods in good and merchantable condition and fully insure the Goods against loss or damage however caused;
 - it must not sell the Goods except with the prior written consent of Cedar West or in the ordinary course of the Purchaser's business, provided that any such sale is at arms' length and on market terms;
 - any proceeds of re-sale, insofar as they relate to the Goods shall be held on trust for Cedar West in a separate account; and
 - it must not create any encumbrance over the Goods which is inconsistent with Cedar West's title and ownership of the Goods.
- Specifications and Measurements**
- All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in catalogues, price lists or other advertising material of Cedar West or elsewhere are approximations only. They are intended by Cedar West to be a general description for information and identification purposes and do not create a sale by description.
 - Any plans, specifications, measurements and/or any other information provided to Cedar West by the Purchaser is deemed to be accurate. Cedar West will not be responsible for any loss whatsoever resulting from the provision to it of inaccurate plans, specifications, measurements or other information by the Purchaser.
- Returns**
- Cedar West cannot accept returns of custom-made or specially produced Goods.
 - Except as provided otherwise by the ACL, returns of all other Goods are subject to prior approval of Cedar West at its absolute discretion upon a written request by the Purchaser made within 7 calendar days from the date of delivery. Goods must be unused, undamaged and in their original packaging.
 - All credit for Goods that have been approved for return will incur a restocking fee of 20% of the invoiced value of the returned Goods. The Purchaser must bear any costs associated with the return of Goods.
- Inaccuracies**
- The Purchaser must check all Goods received as soon as they are delivered and must notify Cedar West in writing of any inaccuracies or short supply of Goods or any fault, damage or defect in Goods within 7 calendar days of the date of delivery of the Goods.
 - If the Purchaser notifies Cedar West under clause 31, Cedar West may at its sole discretion replace or give a credit for the Goods.
 - If the Purchaser does not notify Cedar West in writing within 7 calendar days of the date of delivery, Cedar West will not be responsible for any loss or damage arising out of or resulting from such inaccuracies or short supply of Goods, or fault, damage or defect in Goods.
 - The Purchaser will be deemed to have accepted the Goods after 7 calendar days from the date of receipt of the Goods, unless within that time the Purchaser has notified Cedar West under clause 31.
- Warranty and Liability**
- Cedar West acknowledges that where the ACL applies with respect to Goods, certain guarantees and rights are provided by the CCA and ACL.
 - Where the ACL applies with respect to any supply of Goods to the Purchaser:
 - any rights provided to the Purchaser by the ACL or CCA that by statute cannot be excluded that are inconsistent with any term of these Conditions are to prevail over any terms of these Conditions to the extent of the inconsistency;
 - nothing in these Conditions purports to derogate from or exclude any rights provided by the ACL or CCA that by statute cannot be excluded or modified.
 - Cedar West makes no express warranties or representations in relation to the Goods supplied by it.
 - Cedar West will not be responsible in any way whatsoever for the consequence of any representation or conduct made or technical advice given in connection with the Goods whether by its employees, agents or sub-contractors or otherwise to the Purchaser or any third parties. The Purchaser agrees that all such representations and/or advice are/are accepted or relied upon by the Purchaser entirely at the Purchaser's risk.
 - Cedar West's liability to the Purchaser or any third parties (whether arising under statute, contract, tort (including negligence), equity or otherwise) for any defect in the Goods, or the supply of the Goods, will in all cases be limited to the cost of repair or replacement of such Goods.
 - Subject to clause 36, to the extent permitted by statute, all warranties, conditions and guarantees (whether express, implied or applied, and whether given by Cedar West, the manufacturer or a third party) pertaining to or in connection with the Goods and any obligation of Cedar West to repair or replace any Goods are excluded.
- Timber**
- Timber is a natural product and may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst the Cedar West will make every effort to match sales samples to the finished Goods, it will not be liable if such samples do not match the finished Goods supplied.
 - Timber is a hygroscopic material subject to expansion and contraction, therefore, Cedar West will accept no responsibility for, *inter alia*, any gaps that may appear in the joinery during prolonged dry periods.
- The Purchaser acknowledges that the Goods supplied may:
 - fade or change colour over time;
 - expand, contract or distort as a result of exposure to heat, cold, weather;
 - mark or stain if exposed to certain substances;
 - sustain damage or become disfigured as a result of any impact or scratching
 - The Purchaser further acknowledges that Cedar West will not be liable for any loss whatsoever caused as a result of the events described in clause 43 above.
- Indemnity**
- The Purchaser agrees to indemnify and hold Cedar West harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by Cedar West, and from and against all actions, proceedings, claims or demands made against Cedar West, arising:
 - as a result of the Purchaser's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods;
 - as a result of any other negligence or other breach of duty by the Purchaser's in connection with the Goods; and/or
 - as a result any breach of these Conditions by the Purchaser.
- Waiver**
- Any failure or delay by Cedar West to enforce any of its rights under these Conditions does not operate as a waiver of those rights.
- Repossession of Goods**
- In the event of default by the Purchaser, Cedar West may retake possession of the Goods. All costs of such repossession will be paid by the Purchaser. Such right shall be without prejudice to Cedar West's any other rights.
 - The Purchaser authorises Cedar West and its agents and servants to enter into the Purchaser's premises without notice at any time for the purposes of examination and recovery of goods.
- Cost Recovery**
- Any expenses, costs or disbursements incurred by Cedar West in recovering any outstanding monies owing by the Purchaser, including debt collection fees and solicitor-client legal costs, must be paid by the Purchaser on a full indemnity basis.
- PPSA**
- The Purchaser acknowledges and agrees that Cedar West may register a security interest in the Goods at any time before or after delivery of the Goods. The Purchaser waives its right under s157 of the PPSA to receive notice of any verification of the registration.
 - If the Purchaser defaults in the performance of any obligation owed to Cedar West under these Conditions, Cedar West may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions or the PPSA.
 - To the extent permitted by law, the Purchaser and Cedar West agree that the following provisions of the PPSA do not apply to the enforcement by Cedar West of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 137, 142 and 143.
 - The Purchaser must promptly do anything reasonably required by Cedar West to ensure that Cedar West's security interest is a perfected security interest and has priority over all other security interests in the Goods.
 - Nothing in clauses 50 - 53 is limited by any other provision of these Conditions or any other agreement between the parties.
 - If a term used in clauses 50 - 53 has a particular meaning in the PPSA, it has the same meaning in those clauses.
- Entire agreement**
- Every contract for the supply of Goods pursuant to an order incorporates these Conditions and constitutes the entire agreement between Cedar West and the Purchaser. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of that contract.
 - The Purchaser acknowledges, represents and warrants to Cedar West that in any decision or matter concerning or in connection with any Goods it has relied solely on the terms expressed in these Conditions and in writing in an order for the supply of Goods and has not relied on any prior negotiations, proposals, understandings, representations, or conduct of Cedar West or Cedar West's employees or agents.
 - These Conditions may be varied unilaterally by Cedar West at any time and in its sole discretion.
 - Any variations to these Conditions will apply to every order for Goods made by the Purchaser and accepted by Cedar West after the expiry of 14 calendar days' notice of the variation to the Purchaser. Notwithstanding any other provision of these Conditions, notice may be effected for the purpose of this clause by provision of the new Conditions as varied or by publication on Cedar West's website.
 - No variation to these Conditions will apply with respect to any order for Goods already made by the Purchaser and accepted by Cedar West before notice is given under clause 59.
- Default and Termination**
- Cedar West may issue a notice of default in the event of a breach of this Contract by the Purchaser by giving 5 working days for the default to be remedied. If after the expiration of that period the default is not remedied the Contract may be terminated immediately at the election of Cedar West in which case the Purchaser shall be liable for all loss and damage suffered by Cedar West arising from the termination.
 - If either party commits an act of insolvency, the other party may terminate immediately by notice in writing.
- Notice**
- Where, pursuant to these Conditions, a party is required to give notice to the other party, such notice must be:
 - in writing; and
 - signed by a person authorised by the sender.
 - A notice is deemed to have been given and served on a party:
 - if delivered personally, on the same day on which it was delivered;
 - if sent by post, it is taken to have been given on the day it would have been delivered in the ordinary course of post;
 - if sent by fax, at the time recorded on the transmitting machine;
 - if sent electronically, at the "time of dispatch" within the meaning of section 13 of the *Electronic Transactions Act 2001* (WA).
- Force Majeure**
- Cedar West will not be responsible for any delay in or failure of performance of supply or delivery caused by circumstances beyond its control including but not limited to, strikes, lock-outs, labour disturbances, Act of Government, riot, civil war, commotion, fire, flood, failure of power supply or similar event and shall not be liable for any consequential loss, damage, expense or claim suffered by the Purchaser or any other party as a result of any such event.
- Vienna Convention Excluded**
- The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980, known as Vienna Sales Convention 1980) is expressly excluded from this Contract.
- Severance**
- If a court of competent jurisdiction decides that any part of these Conditions is invalid or unenforceable, then that part of the Conditions will be modified (if possible) so as to make it enforceable. If it is cannot be modified, then it will be severed and the rest of the Conditions will continue to operate.
- Privacy Act and Credit Reporting**
- Cedar West may collect information in relation to the Purchaser, for the purpose of providing the Goods, in accordance with the laws relating to the collection and disclosure of personal information under the Privacy Act 1998 (Cth) as amended from time to time. Any legal action in relation to each contract against any party or its property may be brought in any court of competent jurisdiction in the state of Western Australia, and the parties submit to the exclusive jurisdiction of that state.
 - Where the Goods are supplied on credit, the Purchaser irrevocably authorises Cedar West, its employees and/or agents to make such inquiries as are deemed necessary to investigate the Purchaser's credit worthiness, including (without limitation) the making of inquiries from persons nominated as trade referees, bankers, or any other credit providers (Information Sources) and/or credit reporting agencies, and the Purchaser hereby authorises the Information Sources to disclose such information to Cedar West.
- Applicable Law**
- This contract is governed by the law of Western Australia. Any legal action in relation to each contract against any party or its property may be brought in any court of competent jurisdiction in the state of Western Australia, and the parties submit to the exclusive jurisdiction of that state.
 - To the extent permitted by law, the Sale of Goods Act 1985 (WA) does not apply to any contract between Cedar West and the Purchaser.
- Interpretation**
- In these Conditions:
 - ACL means the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth).
 - CCA means the Competition and Consumer Act 2010 (Cth).
 - Purchaser means a person who acquires Goods from Cedar West;
 - PPSA means the Personal Property Securities Act 2009 (Cth).
 - GST means the tax payable on certain goods within the meaning of the GST Act;
 - GST Act means the A New Tax System (Goods and Services Tax) Act 1999 and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
 - Goods means any item of whatsoever nature which is sold or to be sold by Cedar West to the Purchaser.