

## BUILDING AND CONSTRUCTION SOUTHWEST STANDARD CONDITIONS OF SALE

### 1 DEFINITIONS AND INTERPRETATION

BUILDING AND CONSTRUCTION SOUTHWEST means SALAMAN Pty Ltd trading as Building and Construction Southwest ABN 49 009 101 928.

- 1.1 **"Contract"** means the contract entered into between BUILDING AND CONSTRUCTION SOUTHWEST and the Client consisting of BUILDING AND CONSTRUCTION SOUTHWEST' quotation, the Client's acceptance of the quotation, whether written or verbal, the diagrams and drawings (if any) provided with the quotations, and these Standard Conditions of Sale ('Conditions'). In the event of any inconsistency between the Client's acceptance and the terms of the Contract, the terms of the Contract shall prevail.
- 1.2 **"Client"** means the party purchasing or offering to purchase Products from BUILDING AND CONSTRUCTION SOUTHWEST pursuant to this Contract (including any successors, nominees and any Insolvency Administrator appointed to take control of the Client's business), and where there is more than one Client, the Client's covenants and obligations are joint & several.
- 1.3 **"Date of Delivery"** means the date of delivery of the Products as stated in the Contract, and if no date is stated in the Contract, is the date on which the Products are delivered to the premises of the Client.
- 1.4 **"Products"** means the Products manufactured, imported, supplied and / or delivered by BUILDING AND CONSTRUCTION SOUTHWEST to the Client or as the Client may direct pursuant to this Contract.
- 1.5 **"Invoice"** means the invoice rendered to the Client by BUILDING AND CONSTRUCTION SOUTHWEST.
- 1.6 **"Price"** means the price of the Products and any other fees or charges payable to BUILDING AND CONSTRUCTION SOUTHWEST by the Client as stated in the Contract.
- 1.7 **Incorporation:** These Standard Conditions of Sale ('Conditions') apply to and are incorporated in the Contract. In the event of any inconsistency between a term of the Contract and a term of these Standard Conditions of Sale, then the other Contract term shall prevail over these Standard Conditions of Sale.

### 2 PAYMENT

- 2.1 Payment of the Price is due at the stages or in the manner specified in the Contract, and if not so specified then on the Date of Delivery of the Products.
- 2.2 Time shall be of the essence in respect of payment of the Price under the Contract.
- 2.3 If payment of the Price is not made on the due date then the Client shall pay BUILDING AND CONSTRUCTION SOUTHWEST interest and administration charges of **2% above** the overdraft rate charged to BUILDING AND CONSTRUCTION SOUTHWEST by its Bankers from time to time on the payment outstanding and the Client shall pay all legal or other costs incurred by BUILDING AND CONSTRUCTION SOUTHWEST in attempting to recover the outstanding payment owed by the Client and BUILDING AND CONSTRUCTION SOUTHWEST may, without prejudice to any other remedy, suspend supply or delivery of any Products to the Client until such payment is made and BUILDING AND CONSTRUCTION SOUTHWEST shall be entitled to increase the Contract price to cover any extra expense incurred as a result of the Client's default
- 2.4 If after the Contract is made the price paid by BUILDING AND CONSTRUCTION SOUTHWEST for any material or component of the Product increases, through no fault of BUILDING AND CONSTRUCTION SOUTHWEST, the Price shall be increased by a reasonable amount having regard to the material or component price increases and including an allowance for BUILDING AND CONSTRUCTION SOUTHWEST's profit margin.
  - a) The Contract Sum will be adjusted by applying the Materials Escalation Adjustment to the Contract Sum in the 'Balance before delivery' payment.
  - b) The formula for the Materials Escalation Adjustment is:

3.1	$\frac{\text{Current Index Value} - \text{Base Index Value}}{\text{Base Index Value}}$ = Materials Escalation Multiplier (%)
3.2	$\text{Original Contract Value} \times (\text{Materials Escalation Multiplier} \times 0.5)$ = Cost Adjustment (\$)
3.3	$\text{Original Contract Sum} + \text{Cost Adjustment}$ = Adjusted Contract Sum (\$)

Where:

- a) Base Index Value is the Index Value on the [Reserve Bank of Australia website](#) for Australian Base Metals for the month in which the Contract is signed.

- b) Current Index Value is the Index Value on the Reserve Bank of Australia website for Australian Base Metals the month prior to the progress claim invoice.
- c) Effective Value is the value of each progress claim due each month, multiplied by the Steel Component percentage.
- i) By way of example:
  - a) Value of Original Contract is \$100,000.
  - b) Base Index Value is 100.
  - c) Current Index Value as at end of month prior to progress claim is 105
  - d) Materials Escalation Multiplier therefore equals 5%
  - e) Materials Escalation Multiplier  $\times 0.5$  therefore equals 2.5%
  - f) Cost Adjustment assigned to this project is therefore \$2,500.
  - g) Adjusted Contract Sum is therefore \$102,500.

### 3 APPROVALS

- 3.1 The Client acknowledges that it is responsible for all necessary approvals, DFES approval, licences, building licences and permits from all relevant authorities for the construction and assembly of the Products as a structure, unless the Contract specifies that BUILDING AND CONSTRUCTION SOUTHWEST is to obtain such approvals and licences.
- 3.2 If the Client is to obtain any approvals and licences and fails to obtain any such approvals and licences, the client acknowledges that it is liable for any breach of any relevant laws, any delays in delivery or construction and will indemnify BUILDING AND CONSTRUCTION SOUTHWEST for any liability, fines or penalties imposed on BUILDING AND CONSTRUCTION SOUTHWEST as a result of such failure.
- 3.3 BUILDING AND CONSTRUCTION SOUTHWEST does not make any warranties or representations that the Products will comply with any such approvals and BUILDING AND CONSTRUCTION SOUTHWEST will not be liable for any costs, delay, damage or other loss arising out of or in connection with the approval or licences, unless the Contract specifies that BUILDING AND CONSTRUCTION SOUTHWEST is to obtain such approvals and licences.

### 4 GOODS & SERVICES TAX

- 4.1 Unless otherwise stated in the Contract, all prices and amounts expressed or described by BUILDING AND CONSTRUCTION SOUTHWEST in the Contract, verbally or in writing are GST exclusive prices.
- 4.2 The price for the supply of the Products and any other things by BUILDING AND CONSTRUCTION SOUTHWEST to the Client is increased by the amount of the GST liability that BUILDING AND CONSTRUCTION SOUTHWEST incurs in making the supply and that amount is payable at the same time as the consideration that is payable in respect of that supply before that increase.
- 4.3 BUILDING AND CONSTRUCTION SOUTHWEST will provide the Client with a tax invoice at the time the Products are delivered under the Contract, or on request
- 4.4 Definitions
  - a) “GST” means GST under the GST Act;
  - b) “GST Act” means A New Tax System (Products and Services Tax) Act 1999 (as amended); and
  - c) “Supply” & “Tax Invoice” have the meanings specified in the GST Act.

### 5 SUPPLY AND DELIVERY OF PRODUCTS

- 5.1 In consideration of the payment of the Price as provided in the Contract, BUILDING AND CONSTRUCTION SOUTHWEST shall manufacture and supply the Products to the Client in accordance with the Contract.
- 5.2 BUILDING AND CONSTRUCTION SOUTHWEST shall use its best endeavours to deliver the Products on the date specified in the Contract, but shall not be responsible for any loss or damage including without limitation loss of revenue, profits, goodwill, or opportunities or loss of anticipated savings howsoever arising as a result of any delay or failure to deliver the Products. Where the Contract does not specify a Date of Delivery, BUILDING AND CONSTRUCTION SOUTHWEST shall deliver the Products within a reasonable time and shall give the Client reasonable notice of the Date of Delivery. Where delivery is to be made during a certain period, BUILDING AND CONSTRUCTION SOUTHWEST may at its option deliver the Products in instalments during that period.
- 5.3 Unless otherwise agreed, all standards including but not limited to tolerances of dimension, strength and weight, shall be of such standard as BUILDING AND CONSTRUCTION SOUTHWEST generally applies to such type of Products. BUILDING AND CONSTRUCTION SOUTHWEST shall not be liable for any variation in the quantity of bulk Products delivered provided that such delivery is within 10% of the ordered

quantity.

- 5.4** Any measures requested by the Client to protect the Products in storage or transit shall be at the Client's expense.
- 5.5** Unless otherwise specified in the Contract, the place of delivery of the Products is BUILDING AND CONSTRUCTION SOUTHWEST yard at the address specified in the quotation. Where the Contract requires BUILDING AND CONSTRUCTION SOUTHWEST to deliver the Products to the Client's site, the Client shall unload the Products and shall be liable for all costs of unloading, as well as any costs to BUILDING AND CONSTRUCTION SOUTHWEST caused by any delay in unloading. If the Client fails or refuses to take delivery of the Products on the Date of Delivery then the Client shall pay BUILDING AND CONSTRUCTION SOUTHWEST storage costs for the Products at the rate of \$400 per week until the Products are delivered.

## **6 PROPERTY IN THE PRODUCTS**

- 6.1** Title to the Products delivered by BUILDING AND CONSTRUCTION SOUTHWEST to the Client will not pass to the Client until such time as BUILDING AND CONSTRUCTION SOUTHWEST has received payment in full of the Price.
- 6.2** Risk in the Products shall pass to the Client at the Date of Delivery.
- 6.3** If the Client is in breach of clause 2 hereof, the Client gives BUILDING AND CONSTRUCTION SOUTHWEST permission to enter upon any land or premises where the Products are stored or located to retake possession of the Products and for this purpose authorises BUILDING AND CONSTRUCTION SOUTHWEST to dismantle, disassemble or deconstruct any building or structure made from the Products. The Client charges any land on which the Goods are constructed or assembled into a structure with payment of the Price.

## **7 CANCELLATIONS AND RETURNS**

- 7.1** Any claim by the Client of any defect or shortfall in relation to the Products must be notified in writing to BUILDING AND CONSTRUCTION SOUTHWEST within 7 days of Date of Delivery.
- 7.2** Orders cancelled by the Client will only be accepted with the prior written approval of BUILDING AND CONSTRUCTION SOUTHWEST and, if BUILDING AND CONSTRUCTION SOUTHWEST does so approve, the Client shall pay for any costs incurred by BUILDING AND CONSTRUCTION SOUTHWEST in relation to the order and its cancellation, including the cost of any materials, labour or transport.

## **8 WARRANTIES AND LIMITATION**

- 8.1** BUILDING AND CONSTRUCTION SOUTHWEST warrants that the Products will be free from defects in materials and workmanship and will not suffer any structural failure for thirty years from the Date of Delivery. This warranty applies to all components of the Products which are manufactured by BUILDING AND CONSTRUCTION SOUTHWEST but does not apply to components manufactured by other suppliers (to which that suppliers' warranty applies) nor to cladding, purlins, or doors. If this warranty applies then the Client shall notify BUILDING AND CONSTRUCTION SOUTHWEST in writing within three days of the appearance of the defect or failure (otherwise the Client shall not be entitled to make any claim under this Warranty) and BUILDING AND CONSTRUCTION SOUTHWEST shall repair or replace the component or the structure, at BUILDING AND CONSTRUCTION SOUTHWEST's discretion, at no cost to the Client. This warranty does not apply if in BUILDING AND CONSTRUCTION SOUTHWEST's opinion there has been any adjustment, taking away, or additions to the structure in whole or in part by any party other than BUILDING AND CONSTRUCTION SOUTHWEST or the structure or any of its parts have been used in anyway that are contrary to the Products' specified use as detailed on BUILDING AND CONSTRUCTION SOUTHWEST's engineered drawings. BUILDING AND CONSTRUCTION SOUTHWEST's liability for breach of this warranty is limited to the repair or replacement of the component or structure as set out herein and BUILDING AND CONSTRUCTION SOUTHWEST is not liable for any other loss or damage arising out of or in connection with a breach of this warranty howsoever arising including without limitation loss of revenue, profits, goodwill, property damage, opportunities or loss of anticipated savings
- 8.2** Except as set out in 8.1 or elsewhere in the Contract, BUILDING AND CONSTRUCTION SOUTHWEST does not make any warranties or representations regarding the Products. All warranties, conditions, rights and guarantees implied by any statute or other law are expressly excluded. Where BUILDING AND CONSTRUCTION SOUTHWEST's liability cannot be excluded by operation of any statute including the Competition and Consumer Act 1974 (as amended) and the Australian Consumer Law, BUILDING AND CONSTRUCTION SOUTHWEST's liability shall be limited to the cost of replacing defective Products, the

cost of obtaining equivalent Products, or the cost of repairing the Products, at BUILDING AND CONSTRUCTION SOUTHWEST's discretion provided that in all such cases freight costs and costs of dismantling and reassembly shall be borne by the Client.

- 8.3** BUILDING AND CONSTRUCTION SOUTHWEST's liability for any loss or damage arising out of or in connection with the supply, resupply, use or reuse of the Products, howsoever arising and whether for BUILDING AND CONSTRUCTION SOUTHWEST's, breach of contract, negligence or otherwise, including without limitation loss of revenue, profits, goodwill, property damage, opportunities or loss of anticipated savings or other loss or damage or otherwise is limited to the Price. BUILDING AND CONSTRUCTION SOUTHWEST is not liable for any representation, warranty, condition or term whether express or implied or written or verbal unless it is specified in the Contract or the Conditions.

## **9 ADVICE AND REPRESENTATION**

Any advice, recommendation, representations, information, assistance or service provided by BUILDING AND CONSTRUCTION SOUTHWEST in relation to Products supplied or manufactured by it in respect of their use or application is given in good faith and shall be accepted without liability on the part of the Client and BUILDING AND CONSTRUCTION SOUTHWEST is not liable for any loss claim damage or expense arising therefrom. It shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Products. The Client acknowledges that for all purposes whatsoever the Client has relied entirely on its own knowledge, skill and judgement in selecting and ordering the Products.

## **10 DELAY - COVID AND FORCE MAJEURE**

Where any delay or failure to deliver the Products is due to disease or emergency declaration, or the Client failing to obtain any necessary approvals, DFES approval, licences, building licences and permits, or other prerequisites to delivery, or material shortages, or arises as a result of any occurrence reasonably beyond BUILDING AND CONSTRUCTION SOUTHWEST's control, BUILDING AND CONSTRUCTION SOUTHWEST shall within 30 days of becoming aware of any such occurrence notify the Client in writing of BUILDING AND CONSTRUCTION SOUTHWEST's inability to deliver and BUILDING AND CONSTRUCTION SOUTHWEST may at its absolute discretion extend the due Date of Delivery until the occurrence ceases or if the delay extends more than 3 months then terminate the Contract. Without limiting the above, BUILDING AND CONSTRUCTION SOUTHWEST is not liable to the Client for default or delay in performing its obligations under the Contract caused by any event which could not be avoided by the taking of reasonable precautions including, without limitation, fire, strike, industrial disturbance, riot, war, act of God and governmental order or regulation (whether known to the party at the time of contract or not), PROVIDED THAT BUILDING AND CONSTRUCTION SOUTHWEST gives written notice thereof to the Client within 30 days of BUILDING AND CONSTRUCTION SOUTHWEST becoming aware of the commencement of that occurrence. The obligations of BUILDING AND CONSTRUCTION SOUTHWEST are suspended for the period that the Force Majeure event prevents the performance of its obligations under the Contract. If the Force Majeure event continues for more than three (3) months then the Contract comes to an end, then unless otherwise agreed prior to the expiry of the three-month period, both parties are relieved from further performance and the Client is only obliged to pay for those Products which have been delivered.

## **11 PERSONAL PROPERTY SECURITIES ACT**

- 11.1** The Personal Property Securities Act (Cth) ('PPSA') applies to the Contract except where excluded thereby or by a term of the Contract and the Client acknowledges that BUILDING AND CONSTRUCTION SOUTHWEST may register a purchase money security interest in respect of the Products and exercise its rights under the PPSA. BUILDING AND CONSTRUCTION SOUTHWEST's rights under these Conditions are in addition to and not limitation of BUILDING AND CONSTRUCTION SOUTHWEST's rights under the PPSA.
- 11.2** The Client shall sign further documents and do further things necessary to perfect and protect BUILDING AND CONSTRUCTION SOUTHWEST's rights under the PPSA.
- 11.3** The parties agree to exclude the operation of ss. 95, 121(4), 129, 130, 132(3)(d), 132(4), 135, 137, 142 and 143 of the PPSA. The Client waives its right under s.157 of the PPSA to receive notice of any verification of any registration.
- 11.4** Words and phrases defined in the PPSA have the same meaning in these Conditions.

## **12 CONSTRUCTION AND ASSEMBLY**

- 12.1** The Client acknowledges that BUILDING AND CONSTRUCTION SOUTHWEST supplies the Products as a structure in kit form in accordance with the Contract.
- 12.2** Where the Contract specifies an Installation estimate or other cost for the construction and assembly of the Products as a structure then the following provisions of this clause apply.
- 12.3** BUILDING AND CONSTRUCTION SOUTHWEST shall procure a suitably competent, qualified and proficient sub-contractor to construct and assemble the Products as a structure. Unless otherwise required by the terms of a building license or site requirements, the Client shall contract directly with the sub-contractor and shall pay the sub-contractor directly. BUILDING AND CONSTRUCTION SOUTHWEST shall liaise with the sub-contractor in relation to the Products but BUILDING AND CONSTRUCTION SOUTHWEST is not liable for the supervision or performance of the sub-contractor.
- 12.4** The Client shall identify the location and position of all easements, sewers, drainage pipes, conduits, cables and other services at the site prior to the delivery of the Products. BUILDING AND CONSTRUCTION SOUTHWEST shall not be liable for any damage thereto during delivery of the Products, or construction and assembly of the Products as a structure.
- 12.5** The Client warrants that the site is level within 100mm across the entire site; and cleared of all vegetation and other obstacles; that the soil at the site is well drained, free of rocks, roots and other obstacles and capable of supporting the products as a structure and able to drive a concrete truck and elevated work platform.
- 12.6** The Client warrants that the site is accessible for delivery vehicles and pre-mix concrete trucks and that the entire perimeter of the proposed structure is level and cleared within 3m and accessible to allow the safe use of scissor lifts, cranes, concrete trucks, long vehicles and other equipment.
- 12.7** The Client warrants that 240V electrical power is available from a properly installed electrical power outlet within 50m of the site; and that clean fresh water is available within 100m of the site, and that rubbish disposal bins are provided at the site.
- 12.8** If the Client is in breach of any of these warranties, then the Client is liable for the costs arising therefrom (for example earth works, power generation, water cartage, rubbish disposal and site clearing). Without limiting those costs, the Client shall pay BUILDING AND CONSTRUCTION SOUTHWEST's costs of \$1,000 for demobilisation and remobilisation to the site.
- 12.9** The Client is liable for the costs of all site-specific safety training or induction, tool or machinery inspections and associated costs including labour at the rate of \$70 per hour per man plus gst.

## **13 GENERAL**

- 13.1** If the Product is not a standard BUILDING AND CONSTRUCTION SOUTHWEST product then the Client is liable for the cost of preparation of plans and computations, as specified in the Contract.
- 13.2** The Client warrants that in entering into and performing this Contract it complies with all applicable laws of Australia and without limiting this clause the Client indemnifies BUILDING AND CONSTRUCTION SOUTHWEST against all costs, claims, expenses or other liability arising out of or in connection with a breach of this clause.

## **14 CHANGES AND VARIATIONS**

If after the completion of plans the Client directs BUILDING AND CONSTRUCTION SOUTHWEST to make any change, alteration or variation to the Products then BUILDING AND CONSTRUCTION SOUTHWEST shall provide the Client with a quote for the cost of such variation. If the Client does not accept the quote then BUILDING AND CONSTRUCTION SOUTHWEST shall not be required to perform the variation. If the Client accepts the quote then BUILDING AND CONSTRUCTION SOUTHWEST shall perform the variation and the Client shall pay for the variation in the manner set out in the quote.

## **15 COPYRIGHT**

BUILDING AND CONSTRUCTION SOUTHWEST holds the copyright in all plans, diagrams and drawings relating to the Products and in all other documents provided with the Quotation or under the Contract. Nothing in the Contract operates as an assignment of copyright. Provided that the Client accepts the Quotation and enters into the Contract with BUILDING AND CONSTRUCTION SOUTHWEST, BUILDING AND CONSTRUCTION SOUTHWEST grants the Client an exclusive royalty free licence to use the copyright for the purposes only of the Contract and for no other purpose. If the Client breaches this term, the Client shall pay BUILDING AND CONSTRUCTION SOUTHWEST an amount of 20% of the Price by way of liquidated damages which the parties acknowledge is a reasonable estimate of BUILDING AND CONSTRUCTION SOUTHWEST's loss arising from the breach of this clause.

## **16 APPLICABLE LAW**

This Contract is governed by the law of the State of Western Australia and the Commonwealth of Australia. The parties agree to submit to the exclusive jurisdiction of the courts of Western Australia and the Commonwealth of Australia.

Effective March 2021