FTI Group
INNOVATIVE BUILDING SOLUTIONS

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FTI GROUP PTY LTD – TERMS & CONDITIONS OF TRADE

The Terms and Conditions set out ("the Terms") FTI Group Pty Ltd shall apply to all products and services supplied by FTI Group Pty Ltd (referred to as FTI Group) to the Customer his employees or agents (referred to as "the Customer").

FTI Group is not bound by any variation to its Terms unless expressly agreed upon in writing and signed by a duly authorised Representative of FTI Group and the Customer. These terms shall apply notwithstanding any provision to the contrary which may appear on any order form or other document issued by the Customer or any other party.

General

1. No quotation given by FTI Group shall constitute an offer. FTI Group reserves the right to decline any order or to enter into any agreement for supply.
2. If a Customer cancels or alters any order for products after FTI Group has received the order then FTI Group reserves the right to charge to the Customer the additional costs incurred in cancelling or altering any order or part order together with the costs of any labour and handling to the date of such cancellation or alteration.

Prices

3. Unless otherwise stated prices quoted are strictly net exclusive of duty payable, sales tax and GST.
4. Unless otherwise stated on a relevant price list, the invoice and/or statement, prices include delivery, FIS to the Customer's nominated delivery destination. Where a Customer's nominated delivery destination is outside the metropolitan area of an Australian Capital City, FTI Group will deliver FOB to the Customer's nominated transport company or agent in the Australian Capital City nearest to the Customer's nominated delivery destination.

Terms of Payment

5. FTI Group may submit an invoice for goods delivered at any time subsequent to delivery of those goods.
6. The Customer shall make payment within fourteen (14) days of the date of invoice, provided in the reasonable opinion of the Customer:
   (a) The goods comply with the manufacturing schedule supplied to FTI Group in respect of the goods; and
   (b) The goods are in accordance with all applicable laws and all relevant authorities.

In the event that the Customer asserts any default in connection with the matters referred to in sub-paragraphs (a) and (b), it must notify the Supplier immediately and, in any event, within fourteen (14) days of delivery.

7. If the Customer fails to make payment in accordance with Clause 5, FTI Group shall be entitled to:

(a) Require payment in advance of delivery for any further products or services;

(b) Charge default interest at the rate of one and a half percentum (1.5%) per month on a cumulative and compounding basis on all overdue amounts (including late payment charges and amounts other than the price) calculated on a day to day basis on any monies due but unpaid, such interest to be computed from the due date for payment AND the parties agree that such default interest is not a penalty, but is a true measure of damages incurred by FTI Group. Payments received from the Customer will be credited first against any default interest and all such charges shall be payable on demand;

(c) Claim from the Customer all costs relating to any action taken by FTI Group to recover monies or goods due from the Customer including any mercantile agents, costs and legal costs and disbursements on a solicitor-client basis; and

(d) Cease any further deliveries until payment of all outstanding amounts has been made.

8. Any date or time quoted for delivery is an estimate only and FTI Group shall endeavour to effect delivery at the time or times requested by the Customer, but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer.
9. The Customer shall not be relieved of any obligation to accept or pay for products by reason of any delay in delivery of any strike, lockout, unavailability of raw materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, floods or tempest, transport delays, acts of God, restriction or interventions imposed by any laws, regulations, governments or agencies thereof and any other cause beyond the control of FTI Group or any other cause whatsoever.
10. FTI Group's obligation to deliver shall be discharged on arrival of the products at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Customer shall unload the products upon delivery. If the Customer is unable or unwilling to accept physical delivery of the products when the products are ready for delivery FTI Group shall be entitled to payment for the goods and to charge a fee for any delay experienced or arrange for the storage of the products at the risk and cost of the Customer including all transportation, storage and other consequential costs.

Inspection

11. The Customer shall examine the products immediately after delivery and FTI Group shall not be liable for any misdelivery, shortage, defect unless FTI Group receives details in writing within fourteen (14) days of the date of delivery of the products and services.

Property & Risk

12. Notwithstanding delivery of the products or their installation, property in any given products shall remain with FTI Group until the Customer has paid and discharged any and all other indebtedness to FTI Group on any account whatsoever (including all applicable sale taxes, GST and other taxes, levies and duties). Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer's indebtedness and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.
13. The risk in the products shall pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer.
14. The Customer acknowledges that until payment has been made in full to FTI Group, the Customer shall be fully responsible for any loss or damage to the products whatsoever and howsoever caused following delivery.
15. FTI Group licenses the Customer to sell products manufactured using products of FTI Group. If the product is affixed to other material, the totality thereof shall be the sole and exclusive property of FTI Group until payment has been made in full to FTI Group, unless the other material or part thereof are or is the property of a party or parties other than the Customer in which case the totality thereof shall be deemed to be owned as tenants in common with such other party other than the Customer in shares corresponding to the respective amounts paid or payable by the Customer in respect of such other party or parties.
16. The Customer shall be at liberty to agree to sell the products (independently or affixed to the materials) subject to the condition that until payment has been made, the Customer shall sell as an agent for FTI Group and the entire proceeds from the sale thereof shall be held in a separate account on trust for FTI Group.
17. The right to on-sell, deal or otherwise dispose of FTI Group's products or manufactured products in the normal course of trade shall automatically cease if a Receiver is appointed over any of the assets or the undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into Voluntary Administration or Liquidation (otherwise than for the purpose of reconstruction or amalgamation) or calls a meeting of or makes any arrangements or composition or commits any act of bankruptcy or where the Customer is in default of any of its obligations to FTI Group.

Security Interest

18. The Customer grants a purchase money security interest ("PMSI") by the Customer in favour of FTI Group in respect of all goods supplied to the Customer by the Supplier. This security interest is registrable on the Personal Property Securities Register.
19. The Customer must immediately, if requested by FTI Group, sign any documents (including any new contracts), provide all necessary information and do anything else required by FTI Group to ensure that FTI Group's PMSI is a perfected security interest.
20. The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the goods or the proceeds from the sale of the goods until FTI Group has perfected its PMSI.
21. If the goods supplied are not goods that are used predominately for personal, domestic or household purposes, the parties agree that the following provisions of the PPSA do not apply in relation to the goods:
   (a) Section 95 (notice of removal of accession), to the extent that it requires FTI Group to give a notice to the Customer,
   (b) Section 118 (enforcing security interests in accordance with land law decisions), to the extent that it requires FTI Group to give a notice to the Customer,
   (c) Sub-section 121 (4) (enforcement of liquid assets - notice to grantor), to the extent that it requires FTI Group to give a notice to the Customer,
   (d) Section 130 (notice of disposal), to the extent that it requires FTI Group to give a notice to the Customer,
   (e) Sub-section 132(4) (statement of account if no disposal), to the extent that it requires FTI Group to give a statement of account to the Customer,
   (f) Section 135 (notice of retention), to the extent that it requires FTI Group to give a notice to the Customer,
   (g) Section 142 (redemption of collateral), to the extent that the Customer has the right under that section to redeem collateral,
   (h) Section 143 (reinstatement of security agreement), to the extent that the Customer has the right to reinstate a security agreement.
   (i) The Customer hereby waives any rights it may have to:
      i. receive any notices the Customer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135,
      ii. apply to a Court for an order concerning the removal of an accession under section 97,
      iii. object to a proposal of the Customer to purchase or retain any collateral under ss 130 and 135, receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest FTI Group may have in goods supplied to the Customer from time to time.
22. For the purposes of this clause:
   (a) "PPSA" means the Personal Property Securities Act 2009,
   (b) The expressions "accession", "collateral"," financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA,
   (c) References to sections are to sections of the PPSA.

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Limitation of Liability

23. Sale to Non-Consumers:
    (a) In the case of products supplied by FTI Group to a Customer who is not a "consumer" (as defined in the Trade Practices Act, 1974 as amended from time ("the Act"), if the products do not correspond with the description of them on the invoices or are defective, then, provided that the products are preserved intact and made available for inspection by a representative of FTI Group and are returned to FTI Group in the same order and condition as that in which they were delivered, FTI Group shall at its option replace those products or reimburse the Customer for the amount of the purchase price paid for them, but any claim in this respect must be made in writing within fourteen (14) days of the date of delivery of those products; and
    (b) Should the Customer seek indemnity from FTI Group in respect of any claim by a consumer on the warranty implied by the Act in a contract for the supply of products by the Customer to that consumer, sub-paragraph (i) will not apply and in respect of products that are of a kind ordinarily acquired for personal, domestic or household use or consumption ("consumer goods"), FTI Group liability is limited to indemnifying the Customer in accordance with the Act, limited to a liability to pay to the Customer an amount equal to the cost of replacing the products or the cost of obtaining equivalent products or the cost of having the products repaired, whichever is the lesser amount.
24. Sale to Customers:
    (a) In the case of products supplied by FTI Group to a Customer who is a consumer, to the extent that the products are not consumer products or goods, the liability of FTI Group to the Customer for breach of any warranty or condition (other than a warranty or condition implied by section 69 of the Act) or for breach of any duty of care shall in all cases be limited to:
        i. Replacement of the products or the supply of equivalent products;
        ii. The repair of the products;
        iii. The payment of the cost of replacing the products or acquiring equivalent products; or
        iv. The payment of the cost of having the product repaired, at the option of FTI Group.
    (b) Except for those conditions and warranties implied by the Act or other sale of products or consumer protection legislation which may not be excluded, the Customer agrees that:
        i. It has not relied on any inducement, representation or statement made by or on behalf of FTI Group in purchasing the products and there are no implied conditions or warranties herein and no collateral contracts in connection herewith (except such as may be in writing and signed by a duly authorised representative of FTI Group); and
        ii. This clause sets out the entire liability of FTI Group in respect of its liability under the Act or otherwise in respect of liabilities to the consumer for a breach of a condition or warranty with respect to the sale of products or goods In no circumstances will FTI Group incur any liability or be liable in respect of or arising out of or in connection with any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the Customer.
25. The Supplier shall not be liable for any cost, damage, loss or expense in connection with any delay which the Customer may incur in connection with late delivery or non-performance of the product supplied in circumstances where:
    (a) Such delay or non-performance is caused by the Customer; and
    (b) The delay or non-performance is attributable to causes beyond the control of FTI Group, including (without limitation), industrial action, unavailability of raw materials, accidents to machinery, breakdowns, shortages of supplies or labour, fires, floods or tempest, transport delays, acts of God, restrictions or interventions imposed by any laws, regulations, governments or agencies thereof.
26. The Applicant, or Customer as the case may be, releases and discharges FTI Group from any claim arising out of or in connection with the installation and/or finishing of the FTI Group product and/or any other product supplied by FTI Group and indemnifies and holds harmless FTI Group in respect of any such claim.
27. Any claim in connection with any act, default or omission (including any breach of contract or breach of duty including, but not limited to, negligence) on the part of FTI Group shall be notified by the applicant or the Customer, as the case may be, to FTI Group within twenty-eight (28) days of the date upon which the Customer reasonably should have first become aware of the event giving rise to the claim. Should the Customer or Applicant, as the case may be, fail to give notice in accordance with this clause then:
    (a) FTI Group shall not be liable on the claim; and
    (b) The Customer or applicant, as the case may be, hereby releases and indemnifies FTI Group in respect of any such claim.
28. The liability of FTI Group in respect of any claim notified under the preceding clause shall be limited to the cost of the product supplied by FTI Group.
29. FTI Group shall not be liable on any claim made or notified after the expiry of twelve (12) months from the date of delivery of the FTI Group product and/or any other product supplied by FTI Group.
30. These terms do not exclude, restrict or modify the application of any provision of any Commonwealth, State or Territorial law which, by law, cannot be excluded, restricted or modified.

Force Majeure

31. FTI Group shall not be liable for any failure or delay to supply or deliver the products where such failure or delay is wholly or partly due to causes or circumstances outside the reasonable control of FTI Group including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

Termination

32. If the Customer fails to comply with any of these Terms or being a natural person or persons commits any act of bankruptcy, or being a corporation passes a resolution for Voluntary Administration or winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or enters into any composition or arrangement with creditors or if a receiver or manager is appointed FTI Group may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately recover possession of any products not paid for in accordance with these Terms.

Returns

33. Other than in respect of FTI Group's obligations pursuant to clause 23 hereof, FTI Group shall not be liable to accept any returned products but may in its absolute discretion accept the return of products provided that such products shall only be accepted for credit and with the prior written approval of a duly authorised representative of FTI Group. Products returned for credit pursuant to this clause must be returned with packing slip and invoice and will be subject to a handling and administration charge equivalent to fifteen percent (15%) of the invoiced value of the returned products. Return freight and other expenses will be paid for by the Customer and no returns of non-standard products will be accepted.

Advertising

34. The Customer shall not advertise in any media the sale or disposal of products and services purchased from FTI Group, without the written consent of a duly authorised representative of FTI Group. The Customer shall indemnify and hold indemnified FTI Group against any liability in respect of or in connection with any special, consequential, direct or indirect loss, damage, harm or injury suffered as a result of false, misleading or deceptive advertising and untrue representation or statements made to any person by the Customer in the course of advertising. The Customer further warrants and acknowledges that it will not use any existing logo or brand name or that similar to, or attempt to register a trade mark or trade name or that similar to, or attempt to register a trade mark or trade name or that similar to, of FTI Group without the written consent of a duly authorised representative of FTI Group.

Confidential Information

35. The Customer warrants that it will not disclose to any person confidential information of FTI Group that the Customer may be shown or comes into contact with in the course of purchasing products and services or from any other source including but not limited to FTI Group materials, procedures, tests, reports and equipment, without the written consent of a duly authorised representative of FTI Group.

Pallets

36. Unless otherwise stated, pallets and containers used to deliver products to the Customer will remain the exclusive property of FTI Group and shall be returned to FTI Group at the Customer's expense within thirty (30) days of the date of delivery. FTI Group reserves the right to invoice the Customer for any pallet or container not returned by the due date.

Samples

37. Any sample produced at the request of the Customer will be at the Customer's expense. Such sample produced is to be indicative of the general nature of the product and FTI Group will not warrant or guarantee that the sample product will correspond with any colour, texture or blend with the sample provided by the Customer or with any previous sample provided.

Governing Law

38. The Customer agrees that these Terms shall be construed according to the laws of the Australian State or Territory as FTI Group may in its sole discretion determine. Proceedings may be instituted in such Australian State or Territory as FTI Group may in its sole discretion determine. Failing such determination the Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the State of New South Wales.

Service of Documents

39. The Customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Customer to FTI Group at that time.