

TERMS AND CONDITIONS 2022

1. Interpretation

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday)

Buyer: the person or business who purchases the Goods from the Seller

Conditions: the terms and conditions set out in this document as amended from time to time.

Contract: the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

Goods: the Goods (or any part of them) set out in the Order.

Order: the Buyer's order for the Goods, as set out in the Seller's order confirmation form.

Specification: any specification for the Goods, including within an order or any related plans drawings, brochures that is agreed by the Buyer and the Seller.

Seller: INSULATE NATURALLY PTY LTD. Registered Office: Floor 3, 169 King Street, Newcastle, NSW2300 – ACN 654993576

1.2 Interpretation:

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(c) a reference to **writing** or **written** includes emails.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

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2.2 The Goods are supplied to the Buyer for either domestic and private use; or for businesses in connection to its trade, business, craft or profession.

2.3 The Buyer cannot use the Goods for commercial re-sale purposes

2.4 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them whether written or oral relating to its subject matter; and

2.5 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

2.6 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.7 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.8 Any samples, drawings, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.9 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for the period of 30 days unless otherwise indicated on a quote.

2.10 The Contract is subject to Cooling Off Period as per Clause 9.1

3. Goods

3.1 The Goods are described in the Specification.

3.2 The Seller reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory body

3.3 The Buyer, in placing an Order with the Seller has,

- (a) verified that the Goods are fit-for-purpose
- (b) factored for any building design, engineering, regulatory or administrative requirements for the use of the goods

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- (c) obtained and has read the Installation guides offered by the Seller or by the Manufacturer of the Goods

4. Supply and Delivery of the Goods

4.1 Any dates quoted for supply and delivery of the Goods on the Order, are approximate only. The Seller shall not be liable for any delay in supply or delivery of the Goods that is caused by:

(a) Force Majeure Event or by

(b) the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods

4.2 If the Seller is to deliver the Goods, the Seller shall deliver the Goods to the location set out in the Order or such other location (**Delivery Location**) as the parties may agree in writing at any time after the Seller notifies the Buyer that the Goods are ready.

4.2 (a) Whereas the Seller has agreed to deliver the Goods to the Buyer's choice of location; the buyer is:

(i) responsible for assuring that lane and road access for the delivery & unloading the Goods is possible in a safe and legal manner.

(ii) responsible for assuring that they have the sufficient space, equipment and personnel to unload the Goods.

(iii) responsible for unloading the Goods within the timeframe allocated in the Order.

4.2(b) The Buyer accepts that the Seller may request a delivery deposit at the time of the Order, or prior to delivering the Goods should the Seller believe that the Buyer will not be able to meet any of the conditions subject to Clause 4.2(a)

4.2(c) Subject to clause 4.2(b) The Buyer accepts to refund the Seller for any additional delivery charges that were not covered by the delivery deposit.

4.3 If the Buyer is to collect the Goods, the Buyer shall collect the Goods within normal business hours from the Seller's Address or such other location as may be advised in writing by the Seller prior to delivery (**Delivery Location**) and within three Business Days of the Seller notifying the Buyer that the Goods are ready.

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4.4 Delivery is completed on the completion of unloading/loading of the Goods at the delivery / pick-up Location.

4.5. The Seller shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable).

4.6 If the Buyer fails to take/accept delivery of the Goods within three Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and

(b) the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).

4.7 If ten Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken/accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

4.8 In the case of a Force Majeure Event, the Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

4.9 The Seller cannot be held responsible for defaults in supply and delivery caused by import restrictions and delays imposed by the state, such as foreign exchange controls, Customs, Border control, etc.

4.10 Should deliveries by the Seller be delayed or rendered impossible due to unavoidable circumstances beyond the Seller's reasonable control, the Seller is exonerated hereunder from delivery for the duration of the hindrance and subsequent consequences. Indemnities for damages against the Seller are excluded hereunder. Both parties are entitled hereunder to withdraw from the contract when such a delay or impossibility of performance last longer than 4 weeks.

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5. Quality

5.1 Subject to clause 5.2, the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality and
- (d) be fit for any purpose

5.2 Where the Goods have a shelf life of less than 12 months, the warranty period shall be the for the duration of the specified shelf life.

5.3 Subject to clause 5.4, if:

- (a) the Buyer gives notice in writing to the Seller during the warranty period within 24 hours of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1 & 5.2;
- (b) the Seller is given a reasonable opportunity of examining such Goods; and
- (c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost, the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.4 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 5.3;
- (b) the defect arises because the Buyer failed to follow the Seller's or the Manufacturer of the Goods, written or oral instructions, as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

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(c) the defect arises as a result of Seller following any drawing, design or Specification supplied by the Buyer;

(d) the Buyer alters or repairs such Goods without the written consent of the Seller;

(e) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions; or

f) the Goods differ from their description or Specifications as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.7 These Conditions shall apply to any repaired or replacement of Goods supplied by the Seller or the Manufacturer of the Goods.

6. Title and risk

6.1 The risk in the Goods shall pass to the Buyer on completion of delivery.

6.2 Title to the Goods shall not pass to the Buyer until the earlier of:

(a) the Seller receives payment in full (in cash or cleared funds) for the Goods and any other Goods that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums

6.3 Until title to the Goods has passed to the Buyer, the Buyer shall in the case that it is in possession of the Goods;

(a) store the Goods separately from all other Goods held by the Buyer so that they remain readily identifiable as the Seller's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Seller immediately if it becomes subject to any of the events listed in clause 9; and

(e) give the Seller such information relating to the Goods as the Seller may require from time to time.

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6.4 Subject to clause 6.5, the Buyer may not resell the Goods in the ordinary course of its business before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:

(a) it does so as principal and not as the Seller's agent;

6.5 If before title to the Goods passes to the Buyer; the Buyer becomes subject to any of the events listed in Clause 9, then, without limiting any other right or remedy the Seller may have:

(a) the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

(b) the Seller may at any time:

(i) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

(ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

7. Price and Payments

7.1 The price of the Goods shall be the price set out in the Order.

7.2 The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

7.3 The price of the Goods:

(a) Unless otherwise indicated on the Order, the price include Goods and Services Tax (**GST**), which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid GST invoice; and

(b) Unless otherwise indicated on the Order, excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer.

7.4 The Seller may invoice the Buyer for the Goods before any time after the completion of delivery.

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7.5 All orders, unless otherwise indicated in written form, require a minimum 50% deposit before the Seller can process the Order. The balance owing for the Order must be paid and received into the Sellers' bank account before any Goods are delivered to the Buyer. If the Buyer has arranged for the pick-up of the Goods at the Sellers location; the Seller requires full payment of any outstanding monies prior to releasing the Goods to the Buyer.

7.6 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

8. Refunds , Returns and Damages

8.1 (a) Refunds of deposits

Refunds are subject to Clause 8.1(b) and are issued by the Seller to the Buyer once the Goods have been processed back into the Sellers inventory system.

Any Orders that require a deposit of any amount, cannot be refunded once the Seller has processed that Order with the manufacturer of the Goods; except in the event,

- (i) where an Order is cancelled by either the Seller or the Buyer in writing within the Cooling Off period, subject to Clause 9.1
- (ii) where any amounts used as delivery deposit were not required to cover additional delivery charges as subject to clauses 42(b) and 42(c)
- (iii) where the Seller fails to supply to supply the Goods to the Buyer subject to the provisions of these Terms and Conditions

8.1(b) Returns

Goods, may be returned within 30 days, at the Buyers expense, to the Seller's location, under the following conditions;

- (i) The Buyer must obtain prior written permission from the Seller to return the Goods
- (ii) The Goods must be undamaged, good condition, unopened, unused and in undamaged packaging.

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(iii) Goods authorized by the Seller to be returned, are subject to a minimum restocking fee: 25%

(iv) Special Orders cannot be returned unless the Goods are defective, faulty, or are not the Goods listed within the Specifications of the Order

8.2 Damaged or Faulty Products

The Buyer shall examine the Goods supplied by the Seller straight after the delivery. This shall essentially be undertaken during unloading of the Goods. The Goods are packed in such a manner that damages in transit will immediately be visible.

Should an examination reveal any defects, the Buyer shall report these to the Seller with immediate effect. Defects which are not immediately noticeable shall be reported upon detection. Each notice of defect shall be given in writing. Once the notice is effective, the Seller can have the Goods inspected by an authorised person.

In the event that you, the Buyer, is not satisfied with your Goods because they are: Damaged before you receive them, Faulty due to a manufacturing issue, Different to those on the Order Confirmation;

(a) The Seller will replace or refund them, subject to our terms and conditions. The Buyer must notify the Seller in writing within 24 hours of the delivery.

(b) If the Goods are damaged, you must note this on the delivery ticket and take pictures. We cannot accept claims for damages if it is not clearly signed for as "damaged" on the delivery paperwork.

(c) In case of detectably defective Goods, it is at the Seller`s discretion to either supply replacements or to undertake improvements. Should neither a replacement nor improvement be possible or deemed reasonable, the Buyer may assert further statutory warranty claims. The same shall apply when two improvement attempts should fail.

9. Cooling Off Period and Termination

9.1 Cooling Off Period

Within a period of 5 Business days, The Seller or the Buyer may terminate this Contract without justification and with immediate effect; providing the party terminating the Contract,

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9.1(a) notifies the other party in writing of its intention to cancel the Contract

9.1(b) that the written request to cancel the Contract is sent to the other party prior to 5:00pm Australian Standard Time on the 5th business day.

9.2 Termination

Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:

(a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;

(b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 9.2(a) to clause 9.2(d), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

9.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.

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9.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

10. Limitation of liability

10.1 If the Seller fails to supply or delivery of the Goods, as a result of events beyond its reasonable control (Force Majeure Event), the Seller is only responsible for refunding any deposits made by the Buyer to the Seller for the Order of the Goods.

10.2. The Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract.

10.3 The Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

10.4 The Goods are supplied to the Buyer for domestic and private use, or for businesses in connection to its trade, business, craft or profession. If the Buyer uses the Goods for any commercial, business or re-sale purpose the Seller's liability to the Buyer will be immediately terminated.

10.5 The Seller shall not be liable for any losses arising from products of any third party Sellers other than to the extent of any warranty given to the Seller by such third party.

11. Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 14 business days, either party affected may terminate this Contract by giving 14 days written notice.

12. General

12.1 Assignment and other dealings.

(a) The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

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(b) The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

12.2 Confidentiality.

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Buyers, clients or Sellers of the other party, except as permitted by clause 12.2(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12.3 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.4 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

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12.6 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.6(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.7 Third party rights. No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

12.8 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of Australia and New South Wales.

12.9 Jurisdiction. Each party irrevocably agrees that the courts of Australia and New South Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.