

## TRADE SALE TERMS

March 2022 Edition

Octvitti Pty Ltd atf the Octvitti Unit Trust t/as OcLoc by Octvitti ABN 91 085 228 450 (OPL)

### These terms

1. The Customer acknowledges having had fair opportunity to read, understand and negotiate with OPL regarding these terms.
2. These terms form part of each Supply Contract and negate any terms the Customer may issue, except as OPL may otherwise agree in writing.
3. At any time OPL may change or replace these terms by so notifying the Customer or posting on OPL's website. Any such change or replacement applies to any Supply Contract that forms after the change was so notified.

### Product availability

4. At any time OPL may change its range of Products on offer without notice.
5. Products OPL offers from its inventory are subject to prior sale to other buyers.

### Quotations

6. Unless otherwise stated, an OPL quotation to supply Product expires after 10 working days after sent.
7. A quotation for a stated date for delivery, kind or quantity of Product is not valid for a different date, kind or quantity of Product.
8. OPL may vary / withdraw its quotation before OPL in fact receives the Customer's acceptance of the quotation.

### Supply Contract formation

9. A Supply Contract forms only if and when either:
  - 9.1 the Customer places a firm order for a particular kind and quantity of Product with OPL, and OPL accepts that order by so notifying the Customer or by executing the order; or
  - 9.2 OPL issues a quotation for a particular kind and quantity of Product and the Customer accepts that quotation by so advising OPL before the quotation expires or is withdrawn.
10. If OPL so requires, an oral order is not effective until confirmed in writing by the Customer. OPL may require an order be placed a minimum period before the expected date of delivery. An order, if accepted by OPL, is effective even if the Customer has not specified a delivery date or method. Any order is subject to OPL's acceptance, and OPL may decline an order in full or in part.
11. These terms and the relevant order (as accepted by OPL) together are the whole contract between the parties about OPL's supply of particular Product to the Customer.

### Prices

12. Unless OPL quoted a fixed price OPL would invoice a Supply Contract at list prices current on the day of delivery, which list prices may change without notice.

13. Prices of goods stated in OPL's then current price list:
  - 13.1 include any usual installation / maintenance instructions;
  - 13.2 are for delivery to occur at OPL's premises, and do not include transport of goods from those premises nor assembly or installation of the goods at the Customer's intended workplace;
  - 13.3 are fully earned when the goods are loaded for dispatch from OPL's premises.
14. Prices of services (such as for assembly or installation of goods) stated in OPL's current price list or as quoted are fully earned when the services are complete.
15. Prices of Product in OPL's price list are exclusive of GST. In addition to a price, OPL may recover from the Customer an amount equal to any GST for which OPL becomes liable by its supply of Product to the Customer, which amount is payable by the Customer to OPL at the same time the price of that Product is payable. On or as soon as practicable after each supply of Product, OPL must issue a tax invoice for that supply.
16. The Customer waives right to dispute anything on an invoice not notified in writing (giving reasonable details) to OPL within 10 working days after the Customer receives that invoice.
17. If OPL need order in goods as to fill the Customer's order, OPL may require the Customer pay a 10% deposit (plus GST thereon) in advance.
18. The Customer must pay for Product on the date of delivery (or services are completed, as applicable) unless OPL is then extending credit to the Customer the limit of which is not exceeded by that or any other outstanding price of Product from the Customer, in which latter case the Customer must pay OPL's invoice by the due date shown on the invoice. The Customer may not deduct from any price any set off, counterclaim or rebates asserted by the Customer or other sum (such as taxes, charges). The Customer must pay OPL's invoices by electronic transfer in clear funds to a bank account at the time last nominated by OPL in writing.
19. If the Customer does not pay for any Product within time, OPL may:
  - 19.1 recover from the Customer daily interest at 10% per annum on the unpaid amount of the price that Product calculated on and from the due date until the date payment in full (plus accrued late payment interest) is made to OPL - and interest accrued and not paid for 30 days adds to the debt (is capitalised), and thereafter attracts interest;
  - 19.2 without liability, cancel or suspend supply of any Product not fully paid for and yet to be delivered under any Supply Contract;
  - 19.3 resume possession of goods not fully paid for and then credit the Customer with OPL's estimated re-sale value of that Product less costs;
  - 19.4 exercise any other rights or remedies OPL has in relation to the default.

### **Supply of goods**

20. OPL may deliver less than a quantity of goods ordered if unable to deliver the full quantity. In that case the unit sale price of the goods remains the same, but if applicable any transport costs included in the price relative to quantity would be adjusted in a fair proportion.
21. OPL may deliver an order for goods by instalment, but if OPL fails to deliver a particular instalment by a date specified the Customer may not rescind the Supply Contract.

22. If OPL need order in Product as to fill the Customer's order, any delivery date OPL quotes or proposes is an estimate only.
23. Risk of loss / damage / deterioration in goods passes from OPL to the Customer when the goods are loaded for dispatch from OPL's premises even if OPL is required to transport or install the goods or provide other service in connection with them.
24. If at the Customer's request OPL agrees to procure transport of goods at the direction of the Customer, then:
  - 24.1 OPL does not guarantee a particular arrival date or time;
  - 24.2 OPL need not provide proof of arrival unless the Customer made prior written request of proof of arrival;
  - 24.3 OPL may recover the agreed cost of transport from the Customer or, if that cost was not agreed in advance, a reasonable cost.
25. Ownership of goods sold passes from OPL to the Customer only when those goods are fully paid for. If the Customer's payment for any goods is voided or conceded to be voidable or void, OPL resumes ownership of those goods.
26. A claim that a delivery of Product was not of the kind or quantity of Product contracted for is not valid unless advised in writing (with reasonable details) to OPL's general manager within 2 working days after the delivery was first available for inspection by the Customer or their agent.
27. The Customer may not return any goods (not defective for reasons that are OPL's responsibility) except with OPL's general manager's prior written consent. Consent may be conditional.

#### **Supply of services**

28. Where OPL is to install any goods upon a workplace, OPL reserves right to vary the price of the service by a reasonable extent if either:
  - 28.1 OPL is denied timely, full and proper access to the workplace on the scheduled date/s and time/s (includes by reason of the effects of inclement weather); or
  - 28.2 there are found to be abnormal or unsafe conditions upon the workplace of which OPL was not aware when accepting the Customer's order; or
  - 28.3 where anything in the work is to be affixed to a structure or to connect to other work, that structure or work is not fit for purpose; or
  - 28.4 if OPL properly seeks a direction from the Customer as to any choice to be made, the Customer fails to make that choice within a reasonable time of the request; or
  - 28.5 any act, default or omission of the Customer or their other invitees upon the workplace impedes the efficient carrying out of the work.

#### **Vendor liability**

29. In a Supply Contract OPL extends to the Customer the consumer guarantees the *Australian Consumer Law* requires. Otherwise OPL does not give any other warranty, condition or guarantee in connection with its supply of Product.

30. If goods OPL delivers are not of the kind or quantity contracted for then OPL's total liability is limited to prompt delivery of the kind of goods contracted for or prompt delivery of the shortfall quantity, as applicable, and at OPL's cost.
31. If goods OPL delivers do not conform to the Supply Contract or (for reasons that are OPL's responsibility) are defective, then OPL's total liability is limited to (at OPL's choice and at OPL's cost):
- 31.1 prompt delivery of replacement goods or equivalent goods; or
  - 31.2 prompt repair of the goods; or
  - 31.3 payment of the cost of the Customer acquiring equivalent goods or having the goods repaired.
32. If a service OPL provides does not conform to the Supply Contract, then OPL's total liability is limited to (at OPL's choice and at OPL's cost):
- 32.1 supplying of the services again; or
  - 32.2 payment of the cost of having the services supplied again.
33. The Customer agrees that Galfan's corrosion coating performance on goods may be affected adversely by poor handling prior to or in installation of the goods, physical damage to the coating from fire / heavy hail / farm machinery, excessively acidic or alkaline soils / sprays.
34. Any promotional materials or catalogue (other than official manufacturer's technical specifications or drawings) OPL publishes only give a general idea of Products on offer and cannot be relied on for any purpose. OPL is not liable for any misleading or deceptive statement made in promotional material or a catalogue published by a manufacturer or other supplier of goods to OPL.
35. Subject to the *Australian Consumer Law*:
- 35.1 a claim that Product is defective for reasons that are OPL's responsibility is not valid unless advised in writing (with reasonable details) to OPL within 5 working days after the defect was first known to the Customer or their agent;
  - 35.2 no later than 14 days after making a claim the Customer must advise OPL what action (if any) the Customer requires to resolve the claim;
  - 35.3 if a claim for defective Product is found or admitted to be without merit, OPL may recover from the Customer as a debt all reasonable costs OPL incurs investigating the claim.
36. If OPL is to replace goods that are or likely to be defective for reasons that are OPL's responsibility:
- 36.1 OPL retains or resumes ownership of the original goods;
  - 36.2 OPL may collect the original goods from the Customer or require the original goods be transported, dumped or otherwise dealt with at OPL's reasonable cost.

**Other provisions**

37. A party is not liable for a failure to perform a Supply Contract to the extent its performance is prevented by a circumstance not within that party's reasonable control and without its negligence.

38. Nothing in these terms or a Supply Contract prejudices the right of a party to make an application to the Small Business Commissioner for an alternative dispute resolution procedure under the *Building and Construction Industry Dispute Resolution Code 2017* in effect under the *Fair Trading (Building and Construction Industry Dispute Resolution Code) Regulations 2017*.
39. A party (**Party 1**) may recover from the other party (**Party 2**) all reasonable costs or expenses Party 1 incurs in recovering or attempting recovery of moneys owing by Party 2 under a Sale Contract or in otherwise enforcing Party 1's rights or remedies under a Supply Contract. Such costs may include legal costs on a solicitor / client basis.
40. If in a Supply Contract the Customer is more than 1 person, that Supply Contract binds each such person jointly and severally, and each of them is taken to have authority to bind the other/s in connection with the Supply Contract, including that a notice to / from any such person is notice to / from all of them.
41. The laws in South Australia govern a Supply Contract, and OPL has exclusive right to nominate the court in which any legal action is to be commenced and conducted. The parties irrevocably submit to the jurisdiction of those courts, and any courts that have jurisdiction to hear appeals from those courts.
42. In these terms: **Customer** means the party or parties to a Supply Contract other than OPL; **GST** and **tax invoice** have their meaning in *A New Tax System (Goods and Services Tax Act) 1999*; **Product** means any goods or services OPL may offer to the market at the time; **Supply Contract** means any contract for OPL to sell and supply Product to the Customer; **writing** or **written** include an upload of information to OPL's website, an email received at the recipient's designated email address, a text message received on the recipient's designated mobile telephone.