

# SFERCOS ALUMINIUM – TERMS AND CONDITIONS OF WARRANTY

## 1. APPLICATION

- 1.1 These conditions apply to all quotations and tenders, submitted by Sfercos Aluminium all orders accepted by Sfercos Aluminium and all goods and services supplied by Sfercos Aluminium (even though our conditions may be contained in a purchase order from the Customer) unless Sfercos Aluminium agrees in writing to a variation.
- 1.2 These terms and conditions supersede and exclude all discussions, representations (contractual or otherwise) and arrangements relating to the supply of the goods or services or any part thereof including, but without limiting the generality of the foregoing, those relating to the performance of goods.
- 1.3 If there is any inconsistency or variance between these conditions and any other offer or document whether originating from Sfercos Aluminium or the Customer these conditions will prevail. In the event of one or more clauses of these conditions being held by a court of law to be legally invalid or unenforceable the remainder of these conditions shall in no way be affected.

## 2. QUOTATIONS

- 2.1 All quotations provided by Sfercos Aluminium are valid for 60 days only. Failure to accept a quotation within this period may result in an increase in the quoted price.
- 2.2 The price quoted is based upon the specifications, details, sizes and quantities referred to in the customer's information. Should there be any variation in this information Sfercos Aluminium reserves the right to amend the price.
- 2.3 The prices quoted which are not stock of Sfercos Aluminium but supplied by third party are based on the price quoted to Sfercos Aluminium where applicable the rate of exchanges as at the date of quotation and shall be subject to adjustment in respect of any variation in the quoted price of the third party.
- 2.4 Any quotation must be in writing.

## 3. ORDERS

- 3.1 Sfercos Aluminium is not obliged to accept orders from the Customer, nor to extend or to continue to extend credit to the Customer but any orders accepted will be invoiced and the Customer agrees to pay the whole of the invoice as set out in 7 below.
- 3.2 The Customer agrees to provide retainers as requested for expenses incurred in the supply of goods and services.
- 3.3 The Customer shall be responsible for ensuring the accuracy of all specifications, details, sizes and quantities which form the basis of quotations and Sfercos Aluminium does not accept responsibility for any errors in such specifications, details, sizes and quantities. Sfercos Aluminium shall carry out the order in conformity with the information supplied by the Customer.

## 4. DELIVERY

- 4.1 The time quoted for delivery commences when Sfercos Aluminium receives a completed written order and all information required to complete the order. Quoted delivery dates are estimates only. Sfercos Aluminium will use reasonable endeavours to meet such dates but will in no event be liable to the Customer for delay in the or installation however caused. Delay shall not constitute a breach of contract.
- 4.2 Any delay in the delivery of goods by Sfercos Aluminium does not relieve a Customer of any obligation to accept and pay for the goods.
- 4.3 Risk in the goods supplied passes to the Customer when the goods leave Sfercos Aluminium's premises. This clause shall apply notwithstanding that title to the goods may not have passed.
- 4.4 The Customer is responsible for obtaining adequate transit insurance in respect of delivery of the goods.
- 4.5 The Customer shall accept delivery of the goods on the quoted delivery date or other such date as advised by Sfercos Aluminium (the delivery date). The customer shall be liable for any expenses incurred by Sfercos Aluminium by the Customer's non-acceptance of the goods on the delivery date.
- 4.6 It is the responsibility of the Customer to ensure clear access is provided to the site, should the Customer fail to provide clear access delivery shall be made as close to the building as possible. Should delivery be determined to be impossible by the truck driver the goods shall be returned to Sfercos Aluminium and re-delivery shall be scheduled through liaising with the Customer and Sfercos Aluminium. The Customer shall be liable for the additional delivery charges and extra expenses incurred by the reason of their failure to provide clear access to the site to facilitate delivery in the first instance.

## 5. CANCELLATION AND VARIATION

- 5.1 If because of circumstances or events beyond its control Sfercos Aluminium is not able to supply any goods and services, Sfercos Aluminium may, without incurring any penalty, but notice to the Customer cancel any contract in respect of those goods and services.
- 5.2 In the event of the Customer seeking to cancel any contract in respect of goods and services such cancellation shall only be effective upon the Customer's receipt of a written consent for cancellation signed by an authorised representative of Sfercos Aluminium. The Customer shall be liable for any expenses incurred or work performed by Sfercos Aluminium in relation to this order up until the point where the Customer receives written consent for cancellation.
- 5.3 Any cancellation or variation by the Customer shall only be binding if accepted in writing by Sfercos Aluminium and any such variation or cancellation shall only occur on terms which will reimburse Sfercos Aluminium for any costs or loss including but not limited to loss of profit incurred.

## 6. GOODS AND SERVICES TAX

- 6.1 For the purpose of clause "6" "GST" means GST within the meaning of the GST Act. "GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (as amended). Expressions set out in italics in this clause bear the same meaning as those expressions in the GST Act.
- 6.2 To the extent that a party makes a *taxable supply* in connection with this agreement, except where express provision is made to the contrary, and subject to this clause 6.2, the *consideration* payable by a party under this agreement represents the *value of the taxable supply* for which payment is to be made.
- 6.3 Subject to clause 6.4, if a party makes a *taxable supply* in connection with this agreement for a *consideration* which, under clause 6.2, represents its *value*, then the party liable to pay for the *taxable supply* must also pay, at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.
- 6.4 A party's right to payment under clause 6.3 is subject to a valid *tax invoice* being delivered to the party liable to pay for the *taxable supply*.

## 7. PAYMENT

- 7.1 Unless an invoice for goods supplied by Sfercos Aluminium to the Customer is marked "cash on delivery", payment will be made in the manner set out in the clauses 7.2 and 7.3.
- 7.2 Payment of 25% of the total invoice (inclusive of GST) is payable upon acceptance of an order in accordance with clause 3.
- 7.3 Payment of the balance of the invoice referred to clause 7.1 must be made within 30 days of the date of the invoice forwarded to the Customer.
- 7.4 If a Customer fails to make payment to Sfercos Aluminium when due then:
  - 7.4.1 interest shall be payable on the overdue amount at the rate of 12% per annum"
  - 7.4.2 an account keeping fee of \$5.00 per month shall be charged
  - 7.4.3 the Customer shall be liable to pay all costs of Sfercos Aluminium in seeking to recover overdue amounts on a solicitor/client basis. Punctual payment is the essence of this agreement.

## 8. TITLE TO GOODS

- 8.1 Title to any goods and services will not pass from Sfercos Aluminium to the Customer until payment in full for the goods and services is received by Sfercos Aluminium. In this clause, references to "goods and services" include goods and services in the form supplied by Sfercos Aluminium to the customer and also in the form into which the original goods and services are converted by the Customer.
- 8.2 The risk of loss of goods AND SERVICES WILL PASS TO THE CUSTOMER AT THE TIME WHEN THE GOODS AND SERVICES LEAVE Sfercos Aluminium's premises, or are collected by the Customer or his agent (from which time the Customer agrees to maintain an adequate insurance cover of the goods and services for the benefit of Sfercos Aluminium until property in the goods and services is to pass).
- 8.3 Notwithstanding the above, Sfercos Aluminium is entitled to maintain an action against the Customer for the purchase price.

## 9. WARRANTIES

- 9.1 Without in any way seeking to limit the non-excludable warranties implied by the Trade Practices Act or corresponding State legislation, Sfercos Aluminium warrants in respect of any material physical defect in goods and services notified to Sfercos Aluminium in writing within 24 hours after delivery, and the return of those defective goods and services to Sfercos Aluminium, it may at its option replace those defective goods and services free of charge, or repair those defective goods and services.
- 9.2 Except to the extent of any non-excludable provision of the Trade Practices Act or corresponding State legislation, Sfercos Aluminium will not be liable for any loss or damage of any kind whatsoever (including injury or death to persons, or loss or damage to third party person) whether such loss or damage arises directly or indirectly from goods and services supplied or from advice given by Sfercos Aluminium or on its behalf.
- 9.3 The Customer must inspect the goods immediately upon delivery. Claims for shortages or non-compliance with order or objections to quality must be made to Sfercos Aluminium within 24 hours of delivery. Sfercos Aluminium maintains evidence of all goods delivered.
- 9.4 No work shall be carried out by the Customer or any agent of the Customer for the purposes of rectifying any alleged defect or deficiency in the goods supplied by Sfercos Aluminium unless authorisation has been provided in writing by an authorised representative of Sfercos Aluminium. In the event that rectification is required to the goods supplied, Sfercos Aluminium are not liable for any downtime experienced by the Customer or any builder or subcontractor engaged by the Customer while this rectification work is completed by Sfercos Aluminium.
- 9.5 Should the Customer install Sfercos Aluminium products or engage an agent to install Sfercos Aluminium products, Sfercos Aluminium will not be liable for the costs of installation and Sfercos Aluminium will not provide a warranty for its products which have been installed by anyone not authorised by Sfercos Aluminium.
- 9.6 In particular, but without limiting the foregoing:
  - 9.6.1 Sfercos Aluminium shall not be liable for any neglect act or omission by itself, its servants or agents in the supply of goods or performance of any function preparatory to or during the supply of goods to the customer.
  - 9.6.2 Unless otherwise expressly agreed in writing between the parties it is hereby acknowledged that Sfercos Aluminium has no knowledge of the ultimate destination of the powder coated components not of the environment or climate conditions in which the powder coated components are to be installed. It is expressly agreed and declared that primate chromate conversion carried out on goods produced to the customer will not be effective in highly corrosive environments in particular but not without limiting the foregoing in marine environments or in climates with an average humidity over the past fifty years in excess of the average annual humidity in Melbourne over the past fifty years.

## 10. DEFECTS

Liability for breach of a condition or warranty implied by the Trade Practices Act 1974 or applicable State legislation, other than a condition implied by section 69 of the Trade Practices Act or corresponding State legislation is limited to:

- 10.1 in the case of the goods and services, any one of the following as determined by Sfercos Aluminium:
  - 10.0.1 replacement of the goods and services or the supply of equivalent goods and services; or
  - 10.1.2 repair of these goods and services; or
  - 10.1.3 the cost of replacing the goods and services or of acquiring equivalent goods and services; or
  - 10.1.4 the cost of having the goods and services repaired;
- 10.2 in the case of services, any one of the following as determined by Sfercos Aluminium, namely supplying the services again, or payment of the cost of having the services supplied again.

## 11. APPLICABLE LAW

- 11.1 This agreement is deemed to be made in Victorian and will be governed by the law of Victoria.

## 12. JOINT AND SEVERAL LIABILITY

If more than one person is the Customer those persons contract jointly and severally for themselves and each other.

## 13. INDEMNITY

The Customer agrees regardless of any negligence on the part of Sfercos Aluminium in the design or manufacture of the goods to release, hold harmless and indemnify Sfercos Aluminium from and against all liabilities, claims, damages, losses, costs and expenses of whatever nature and howsoever occurring which may accrue against or be suffered by the Customer arising out of or in any way connected with the supply or the performance of the goods and services by Sfercos Aluminium unless caused by willful misconduct on the part of Sfercos Aluminium or any of its servants or agents acting within the scope of their employment and without detracting from the generality of the foregoing. Sfercos Aluminium shall not be liable to the Customer in contract or in \_\_\_\_\_ arising from or in any way connected with the supply of the performance of the goods and services, or any breach of these conditions or any other matter or thing relating to the goods and services on error (whether negligent or a breach of contract or not), in information supplied to the Customer whether before or after the date of the Customer's use of the goods and services.

## 14. INTELLECTUAL PROPERTY

14.1 The Customer warrants that any design or instructions furnished or given by the Customer to Sfercos Aluminium shall not be such as to cause Sfercos Aluminium to infringe any intellectual property rights (including but not limited to patents, designs, trademarks, or copyright).

14.2 All intellectual property rights held by Sfercos Aluminium and relating to the goods or services shall remain the absolute property of Sfercos Aluminium and any intellectual property of Sfercos Aluminium shall not be reproduced or disclosed by the Customer without Sfercos Aluminium's written consent.

**Note!** Sfercos Aluminium do not warrant against any ground movement during the life of its Products, Sfercos Aluminium will charge accordingly for any call

## 15. CARE AND MAINTENANCE

Removing dirt and grime from your fence on a regular basis will keep it looking great for years to come. Weekly hosing (using a garden hose and nozzle) will remove build up of dirt and grime. Three times a year use a soft brush and mild detergent in warm water to remove dust, salt or other deposits. This should be increased to every 3 months if your fence is located near the beach or industrial areas, where pollutants are more prevalent. Pay particular attention to washing areas that would not normally be exposed to rain water. Always rinse with clean water after cleaning to remove any remaining detergent. **Warning:** do not use household cleaners containing strong solvent as they could be harmful to the powder coated surface. **Note:** the ToughGuard20 Warranty applies providing the above maintenance procedures are complied with.