

## CONDITIONS OF SALE FOR DINCEL CONSTRUCTION SYSTEM PTY LTD (DCS) PRODUCTS

### 1. DEFINITIONS

- 1.1 "DCS" refers to Dincel Construction System Pty Limited ABN: 78 083 839 614.
- 1.2 "Customer" refers to the person whom DCS has agreed to supply the goods and services.
- 1.3 "Agreement" refers to any agreement between DCS and the customer whereby DCS supplies goods and services to the customer.
- 1.4 "COD" refers to payments on delivery or collection of goods in cleared funds.

### 2. THE PRODUCT

- 2.1 Means P-1 profile and accessory profiles manufactured by DCS.
- 2.2 The product is designed to be **job specific**. Orders should be placed based strictly on dimensions determined by the customer's Architect/Shop Detailer and **used strictly in accordance with the DCS Construction Manual for Designers and Builders**.
- 2.3 Whilst builders might, for expediency, manage **discrepancies** between on-site and planned dimensions by cutting or extending the product by use of conventional formwork, neither DCS nor any professional associated with DCS will be not be liable for any loss or damage for such adaptation or improvisation and such departure shall be entirely at the discretion and risk of the customer.
- 2.4 Suitability for use of the product in the project for which the product is ordered (the "project") must be determined by the customer's own Engineers/Consultants and DCS will not be liable for any loss or damage should the product be found to be inappropriate for the project and/or should the product be used for any purpose other than that for which the product was specifically designed and intended.
- 2.5 DCS reserves its rights to copyright and ownership of all intellectual property relating to the product including but not limited to all drawings, manuals, compact discs and any other information supplied to the customer and no such material shall, without the written consent of DCS, be reproduced, copied or distributed.

### 3. GENERAL

- 3.1 Any oral representation, warranty or promise whatsoever (other than those contained herein) made by any servant or agent of DCS to the Customer does not form any part of the Agreement nor the consideration for or basis of any collateral contract.
- 3.2 Subject to any express consent in writing of DCS, a waiver by DCS of a default in the strict and literal performance of any provision of this agreement shall not be deemed to be a waiver of strict and literal performance of any other provisions of this agreement, nor to be a waiver of strict and literal performance of that provision in the future, nor in any manner to impair the exercise of any such rights accruing to it thereafter.

### 4. SALE

- 4.1 This agreement is not an unconditional sale of goods to the customer. No title to the goods shall pass to the customer by reason of the delivery of the goods or the acceptance by DCS of the Customers request to purchase the goods.
- 4.2 All agreements between the customer and DCS to purchase goods must be in writing. No verbal agreements will be accepted by DCS. Upon request, the customer will be provided with a letter of "Quotation of Rates" for DCS products.
- 4.3 DCS does not require the customer's commitment to use DCS for the entirety of the project. Any quantity of DCS products can be purchased at any time to suit the customer's needs, subject to availability.

### 5. ORDERS AND PAYMENT

- 5.1 **PLACING ORDER** – Customer must duly complete the **DINCEL**<sup>®</sup> Order Form with the required delivery date for the nominated order. DCS will in turn advise if these dates can be met upon agreement of delivery or collection dates, DCS will provide an invoice for payment.

#### 5.2 **METHOD OF PAYMENT**

Unless otherwise agreed in writing with DCS, upon receipt of DCS invoice, the customer pays the initial deposit payment of 33% of the total value of the order. **No manufacturing will commence without the initial deposit payment.** The remaining balance payable to DCS shall be on a C.O.D. basis only. No refunds or credits will be available if orders are cancelled after the initial deposit payment. All payments must be made by bank cheque, credit cards (VISA AND MASTERCARD ONLY), EFTPOS, company cheque or electronic funds transfer. Personal cheques will not be accepted.

Credit card payments will incur additional charges. Please refer to Quotation of Rates.

**5.3 Price Variation**

The project under construction may consist of a number of orders. The prices specified at the time of each order are valid only for 30 days after the placement of each order.

The prices specified between orders for the same project may be varied. These variances are subject to increases that may occur from time to time between the customer's order and the date of supply as a result of an increase in the cost of raw materials, energy costs as determined by DCS suppliers.

- 5.4 Payment in full for the value of the order and storage costs if any must be paid in cleared funds 24 hours prior to the agreed delivery or collection date.
- 5.5 Until the goods are paid for in full by the customer the goods shall remain the property of DCS.
- 5.6 Product quality checks are undertaken by DCS. Upon delivery of the goods by DCS or collection by the transportation company organised by the customer, DCS requires proof of delivery or collection dockets to be signed by the customer's authorised representative or authorised agent acknowledging that the product received is in good order and in merchantable quality. The customer agrees and acknowledges to ensure that all goods received or collected should be signed by an authorised representative or authorised agent of the customer and may not make a claim against DCS for any person that signs as acknowledgement of receipt of the goods. The customer agrees and warrants that the transportation company nominated by the customer to collect goods from DCS acts as agents on behalf of the customer and is authorised to sign and acknowledge that the goods are of merchantable quality upon collection.
- 5.7 Any product identified as defective by the customer's representative or agent at the time of delivery or collection shall be replaced by DCS. The word defective shall only refer to products that display punctures or products that are significantly distorted and such profiles that are unable to snap-clip to each other.
- 5.8 The customer agrees that upon delivery or collection of the product the customer acknowledges that the product is of merchantable quality and may not make a claim for return, credit or refund.

**6. DELIVERY AND STORAGE**

- 6.1 **DELIVERY PROGRAM / LEAD TIME** – The customer's orders will be manufactured in accordance with the **DINCEL<sup>®</sup>** Order Form and will be delivered to the construction site on or about the agreed delivery dates.

Subject to the receipt of the deposit / full payment and transportation availability:

- ◆ A minimum of **seven (7)** working days for as per order lengths of **200P-1 and 200P-3 profiles**.
- ◆ A minimum of **seven (7)** working days for as per order lengths of **110P-1 profiles**.
- ◆ A minimum of **two (2)** working days for 3000mm stock lengths of **110P-1 profiles**.

- 6.2 **STORAGE COST** – Each produced order must be cleared from DCS's factory within two (2) days (maximum) after the agreed delivery date irrespective of all conditions including weather that may be applicable to the delivery address. If the product is not cleared within two (2) days, the produced goods will be delivered to a storage space with all associated transportation and storage costs to be paid by the customer. DCS shall not accept any liability for the goods sent for storage. Storage shall be at the rate of \$0.50 per day per lineal meter of the product P-1 or at the storage rate per day per lineal meter as is from time to time posted on our web site.
- 6.3 DCS shall not be liable for any delays or failures or inability to deliver for issues that are reasonably beyond its control.
- 6.4 Deliveries to be charged at the rate of \$285.00 + GST per truck load consisting of an 8m long tray within a 40km radius of Parramatta CBD, New South Wales region. When delivered goods cannot be received and are returned for re-delivery by the construction site for any reason including access problems due to wet weather, a return to yard charge of \$285.00 + GST and an additional re-delivery charge of \$285.00 + GST plus storage charge will be payable by the customer.
- 6.5 Delivery charges include first half hour waiting period on arrival. Any additional waiting time will be charged as extra at the rate of \$100.00 + GST per hour or part thereof.
- 6.6 It is the customer's responsibility to provide a flat and clean area with timber sleepers placed at 1000mm (maximum) centres to receive the delivered product. The drop-off area to be organised along the public road frontage immediately beyond the site boundary (the drop-off distance from the public road kerb and gutter alignment to be maximum 10m). The delivery trucks of DCS will not leave the public roads for drop-off.
- 6.7 Customers organising their own transportation are required to read and understand the DCS Transport Information document which is available in our website under Commercial Information/Business With Us.

**7. FORCE MAJEURE**

DCS will not be liable for any loss incurred as a result of delay or failure to make any supply of goods or services or to observe any of these Conditions due to an event of force Majeure, being any cause or circumstance beyond the reasonable control of DCS, including but not limited to, any lack of production capacity or raw materials, strikes, lock-outs, labour disputes, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-government authorities or embargoes. During the continuance of an event of force Majeure DCS's obligations under these conditions will be suspended.

**8. INTELLECTUAL PROPERTY AND ADVERTISING RIGHTS**

All intellectual property rights of any description (including without limitation patent, design, trade mark or copyright rights) attaching to or arising out of the design or manufacture of the goods by DCS are the sole property of DCS. Except as agreed to in writing by DCS, the Purchaser must not use those rights.

The customer hereby consents to DCS displaying a banner or sign advertising DCS, at the front of the construction site in a position visible to the public until completion of construction.

**9. PERMITTED USE**

The purchaser acknowledges that DCS has agreed to sell the product to the purchaser on the strict understanding that the product will be used by the purchaser in Australia only; that the purchaser will not on-sell or gift the product and will not export the product. Sale and export rights of the product are the sole and exclusive rights of DCS. The purchaser agrees to these terms of sale and further agrees that DCS will be entitled to damages for any breach of the same.

**10. GOVERNING LAW**

These Conditions of Sale and Quotations are governed by and must be construed in accordance with the laws of New South Wales, Australia.

**11. AGREEMENT**

The customer agrees that he has read and understands the conditions of sale contained herein and that by placing his first order for DCS product he agrees to be bound by each and every one of the said conditions for such first and all subsequent orders whether the same relates to the project or any subsequent job or project.