



## **TERMS & CONDITIONS OF SALE AND QUOTATION**

### **1. GENERAL**

**1.1** Unless expressly excluded or altered in writing the following terms & conditions apply to quotations given and sales effected and form part of the contract.

### **2. PRICE**

**2.1** The customer is bound to pay the price from the time that Watermelon Shade Ltd and/or its franchisee's (herein stated as WSL) accepts the customers order, such acceptance to be in writing. A quotation does not give rise to a binding contract until the customer places an order which is subsequently accepted by WSL.

### **3. TERMS OF PAYMENT**

**3.1** Payment, or balance of payment is due either:-

- (a)** when the job is completed and fitted, or ready for collection,
- (b)** within seven (7) days of completion, or,
- (c)** unless specific alternative arrangements are made in writing, payment of the contract price without any deductions is due no later than the 20th day of the month following the date of the invoice issued in respect of the goods.

**NB:** A deposit of not less than one tenth of the total price may be required when confirming the order.

**3.2** The purchaser agrees to pay interest calculated daily from the time when credit was first extended on any accounts overdue at such rates that WSL may determine.

**3.3** WSL may take such steps as it considers necessary to recover outstanding amounts and all costs involved in such recovery including but not limited to debt collection fees, Court fees and legal costs on a solicitor and client basis shall be payable by the purchaser.

**3.4** The purchaser by placing an order, requesting a quotation or by applying for credit authorises WSL to collect all information such as it may require from third parties and authorises third parties to release such information to WSL. The purchaser also authorises WSL to release details of, or information gained in the course of, the relevant dealings.

**3.5** WSL reserves the right to refuse to supply goods to a customer whose account has exceeded the credit terms until such time as all monies has been paid.

### **4. TRANSFER OF RISK**

**4.1** Notwithstanding any other provisions in this agreement, the risk of any loss, damage or deterioration of or to the goods shall pass to the purchaser from the time of their

delivery (either to the customer or into the custody of the customer's behalf) and it shall be the purchaser's responsibility to have arranged any insurance.

## **5. QUOTATIONS**

**5.1** Unless otherwise stated in writing or unless previously withdrawn, quotations remain open for acceptance for a period of thirty (30) days from the date of the quotation.

**5.2** No conditions attached to the acceptance shall form part of the contract.

**5.3** Where WSL provides a quotation on the basis of plans and specifications supplied to it, WSL takes no responsibility for the accuracy of quantities or suitability of materials for the purposes stated or any particular purpose.

**5.4** Acceptance of quotations must be confirmed in writing prior to contracted work being started.

**5.5** Delivery dates are indicative only and WSL is not liable for delay in delivery, whether caused by Act of God or otherwise.

## **6. DELIVERY**

**6.1** Delivery shall be deemed to occur where:-

- (a) the seller moved possession of the goods to a carrier for transportation to the buyer or to a place designated by the buyer.
- (b) the customer or his agent take possession of the goods, or,
- (c) production of the goods if WSL agrees to store the goods.

**6.2** The customer shall accept delivery of the goods at any time once they are available unless the seller agrees to a delay in delivery.

**6.3** Without prejudice to any other rights and remedies the seller may charge storage and transportation expenses if the buyer fails or refuses to accept or permit delivery or requests a delay in delivery.

**6.4** Goods are deemed to be sold and invoiced when they are delivered.

**6.5** Any time stated for delivery is an estimate only. WSL is not liable.

## **7. FORCE MAJEURE**

**7.1** WSL is not under any liability whatsoever in respect of any failure to deliver or delay in delivery, due to any cause beyond WSL's control of whatever nature. In no circumstances whatsoever shall WSL be liable for consequential loss whether suffered by the purchaser and/or any third party.

## **8. WARRANTIES**

**8.1** WSL will at its option repair or replace free of charge any goods which are proved to be defective or damaged. Alternatively WSL may at its option refund or credit the amount of the purchase price applicable to any such goods. This warranty is subject to the requirement that the purchaser must give notice to WSL of the alleged defects, damages,

or shortages within five (5) days of the delivery and further this warranty will cease to apply if goods have been altered or repaired other than by arrangement with WSL or have been subjected to any improper or abnormal use of storage.

**8.2** WSL will use its best endeavours to assist the purchaser to enforce any warranty given by the manufacturer of the goods sold to WSL.

**8.3** The purchaser shall be entitled to damages not exceeding in total the sum of \$10.00 in respect of any matters mentioned in Section 5 of the Contractual Remedies Act 1977 and Sections 6 to 10 of that Act shall at all times have that effect subject to that provision.

**8.4** Other than the warranties provided in the clause, no warranty either expressed or implied by law, custom or otherwise is given by WSL as to the quality, state or condition of any goods sold, their packaging, appearance, content or their fitness to any particular purpose. The purchaser remains responsible for ensuring the compliance of goods with any relevant standard, by-law or other requirement.

## **9. DISCLAIMER.**

**9.1** Because of the wind pressures sunshade sails are subjected to, WSL recommend and Engineer approve the fixing points before the sun shades are fitted.

**9.2** It is the responsibility of the person or persons ordering the sun shade to consult an Engineer.

**9.3** If that person or persons chooses to have the sun shade fitted without an Engineers approval, WSL does not accept any responsibility for any damage that may subsequently be caused to either the sunshade sail or to any strutters the sunshade is fitted to for whatever reason.

## **10. OWNERSHIP**

**10.1** Unless specific alternative arrangements are made with WSL for the provision of security or otherwise in relation to the passing of title, title in the goods shall only pass in accordance with the provisions of this clause.

**10.2** Regardless of any period of credit agreed, legal and beneficial ownership of all goods supplied remains with WSL until payment is made for them and for all other goods supplied by WSL to the purchaser in the same sale.

**10.3** If payment is overdue in respect of any goods supplied by WSL, WSL may, in addition to any other rights it may have, retake possession of and may resell any or all of the goods or any part of them, and its employees or agents may enter the purchaser's property for those purposes. This right shall be available even if the goods supplied have been permanently installed or have become part of other goods and even if loss or damage will be caused by their removal and WSL shall not be liable for that loss or damage.

**10.4** The purchaser shall not sell on any goods supplied by WSL without its consent until title in those goods passes. If a sale is effected before its title passes the proceeds of the sale shall be the property of WSL until payment in full is made to it and shall in the meantime be held on trust for WSL and the purchaser will ensure that the proceeds of such sale are at all times identifiable.

## **11. FREIGHT**

11.1 Freight is payable by the customer.

## **12. PERMITS AND RESOURCE CONSENTS.**

12.1 The cost and responsibility of obtaining permits and/or resource consent shall be the customer's care.

## **13. UNDERGROUND SERVICES AND CABLING.**

13.1 The quotation does not include any allowance for the location of underground services and cabling.

13.2 The purchaser is responsible for clearly identifying and notifying WSL of any undergone services such as drainage/sewer/water pipes, power or telephones cabling etc. If notification has not been given WSL accepts no responsibility for any damage incurred or costs involved in repairing such damage.

## **14. INSTALLATION / SITE ACCESS / SITE CLEARANCE.**

14.1 Generally installation is a two-part process- the posts and fittings are installed, precise measurements taken and then the cloth is made- to- measure then installed. Installation is quoted on the basis that soil is free from rocks, stones, tree roots and other underground obstructions. Extra costs may be incurred if additional work is required and/or installation delayed because of the foregoing.

14.2 WSL requires free and unencumbered access to the site. Any unnecessary double handling of materials and/or extra unreasonable distance involved in bringing materials to the site may incur additional charges.

14.3 WSL is responsible for clearing the site upon completion of the installation, of all tools, surplus concrete, products and materials. The purchaser is responsible for the removal and dispersal of surplus soil/fill removed from holes during the installation process.

## **15. SIGNAGE.**

15.1 All WSL installations are identified by an appropriate logo and artwork which invariably is adhered to the sun-sail or post supporting the sunshade sail.

15.2 In addition, the purchaser may grant permission to WSL to display the appropriate roadside hoarding sign, placed in a conspicuous place, signifying that the purchaser is a proud owner of a WSL shade system.

**WATERMELON SHADE LTD and/or its FRANCHISEE'S ARE MEMBERS OF OFPANZ  
(OUTDOOR FABRIC PRODUCTS ASSN OF NZ) and IFAI( INDUSTRIAL FABRICS  
ASSOCIATION INTERNATIONAL)**