



TERMS OF TRADE

1. About these Terms of Trade

1.1 These Terms of Trade apply to every contract that you enter into with us for the supply of products to us, and take precedence over any conflicting terms or conditions mentioned elsewhere, whether implied by law, trade, in your correspondence or otherwise.

2. Entering into contracts with Lowes

2.1 Before a contract can be entered into, you need to first send us a quotation. Each quotation is an offer from you to supply the products listed in the quotation to Lowes.

2.2 A contract will only be considered formed when:

- Lowes sends a purchase order to you referencing the quotation;
- Both parties agree on the specifications for the products; and
- Lowes provides you with a tech pack for the products, unless we inform you that a tech pack isn't necessary.

2.3 Once a contract is formed, you agree to sell to us, and we agree to purchase from you, the products as per the contract, free of encumbrances.

2.4 After a contract is entered into, the contract cannot be varied unless the variation is in writing and signed by you and us.

2.5 To the extent of any inconsistency between these Terms of Trade, a quotation, purchase order, the specifications or tech pack, the document listed first in this sentence will prevail.

3. Lowes policies

When performing your obligations under contracts, you must comply with all applicable Modern Slavery Laws, the [Lowes Code of Conduct](#), the [Lowes RFID Technology Policy](#) and all other Lowes policies that we notify you of, in each case as amended by us from time to time.

4. Quality requirements

4.1 You guarantee that, in respect of each contract, upon delivery and at all other relevant times:

- The products will meet the specified quality and description in the contract;
- They will match all approved samples, designs, and descriptions provided to Lowes;
- They will adhere to the specifications (subject to any allowances described in the specifications);
- They will meet all applicable Australian and New Zealand standards;
- They will be free from any legal claims or encumbrances;
- They will be of good quality, suitable for their intended use, and without defects in materials or workmanship;

- They will comply with all applicable consumer protection laws;
- They will meet all relevant statutory and regulatory requirements; and
- They will be of such quality and in a form that will allow Lowes to supply the products (without modification) to consumers in full compliance with the Australian Consumer Law.

4.2 If any product does not comply with the above guarantee (in whole or part), Lowes may, in addition to pursuing any other rights or remedies:

- Return the non-compliant product to you at your sole cost and risk; or
- Require you to provide us with a credit for the non-compliant product.

5. Quantity requirements

5.1 You must deliver the correct quantity of products as stated in the purchase order, undersupplied or oversupplied by up to 5% (except for contracts for the supply of quantities of more than 200 items of any school wear products: the undersupply/oversupply limit is 10%). If you otherwise deliver too much or too little, in addition to exercising any other rights available to it, Lowes can reject the incomplete deliveries and send back any excess items at your sole cost and risk.

5.2 We may give you estimates of how many products we think we'll need in the future. These estimates aren't a promise to buy that exact amount, but if we provide a written estimate of how many products we might need and agrees on a price with you for those products:

- You need to make sure that you have enough stock to fulfill orders for that estimated quantity for the 18 month period commencing on the date of the first order; and
- If we don't actually order at least 80% of that stock set out in the written estimate ("Minimum Order Threshold"), you can require us to place more orders until they together reach the Minimum Order Threshold.

6. Your inspection, warehousing and delivery obligations

6.1 You must store products in your warehouse for the period specified by us but in no event for more than 18 months, and we may draw down on such stock, by requiring you to deliver it to the delivery location specified in the relevant contract, unless otherwise agreed.

6.2 Before delivering, or making any products available, to us under any contract:

- You need to carefully check them to make sure they meet all of the requirements of the contract and do not have any defects;
- You must pack and secure the products so that they arrive in good condition at the destination and meet our packing requirements (including in relation to weight distribution).
- You must provide us with a sample of each product for our approval and any additional samples we require, before delivering the order and only send the order when we have approved all relevant samples (we won't unreasonably withhold approval of any samples);
- You must provide us with a packing list;
- You must tell us in writing if you can't deliver any products as per the contract;

6.3 You and we agree that:

- Where a purchase order specifies 'FIS', you must deliver the products in the purchase order within 10 days of the agreed delivery date;

- Where a purchase order specifies “FOB”, you must ensure the products in the purchase order reach the shipping company by the agreed ex-factory date; and
- In all other circumstances, you must deliver the products in a purchase order by any agreed delivery date and ensure they reach the shipping company by any agreed ex-factory date.

6.4 If you fail to deliver products to us, or if you fail to ensure they reach the shipping company, by any applicable date referred to in clause 6.3, without limiting any of our other rights and remedies, we may:

- In respect of the 28 day period after the applicable date referred to in clause 6.3, impose a late fee on you for late delivery equivalent to 5% of the price payable by us for the products under the contract, for each 7-day period that expires after the agreed delivery date or agreed ex-factory date (as applicable) before the products are delivered (where a delivery date was agreed) or reach the shipping company (where an ex-factory date was agreed). You agree:
 - That the late fee is a reasonable pre-estimate of the loss, or an amount less than the loss, that we will suffer as a result of late delivery in respect of each such 7-day period; and
 - To pay the late fee to us within 30 days from the date of any invoice for the late fee that we issue to you; or
- Terminate the contract for your breach of the contract, without complying with clause 10.1.

6.5 If we terminate a contract under clause 6.4:

- You must on demand by us compensate us for all and any loss and damage that we suffer as a result of the late delivery and termination of the contract, including for our lost profits; and
- You must attend a meeting with us at any time and location reasonably requested by us, to discuss the compensation payable to us.

7. Risk and property

Except where otherwise agreed in writing by you and us in respect of any contract:

- You are responsible for the products until delivery to the delivery location specified in the purchase order.
- Where required by us, you must unload the products at the delivery location, using all reasonable care and as instructed by us.
- At all times, we exclusively own all intellectual property rights in the products, including in any designs, drawings, logos, patterns and other elements of the products and in any improvements (“Lowe’s IP”) and to the extent you own any Lowe’s IP, by entering into the contract you assign all Lowe’s IP in the products to us.
- Before entering into any contract, you must get written permission from the authors of any intellectual property rights associated with the products to transfer all intellectual property rights owned by them to Lowe’s and permission for Lowe’s to exercise all moral rights they may have that are associated with the products. You must provide us with evidence, upon request, of your compliance with this paragraph.
- Other than as set out above in relation to intellectual property rights, we become the owner of the products, once delivered, except where we pay for them before delivery, in which case ownership transfers to us when payment is made.
- You must not disclose Lowe’s IP to anyone, and you may only use Lowe’s IP to fulfil the contract and not for any other purpose.

8. Payment for the products

- 8.1 Product prices are stated in the purchase order. All such prices exclude Goods and Services Tax (GST), are fixed and are inclusive of delivery, packaging, shipping, carriage, insurance and duties, except as set out otherwise in the purchase order.
- 8.2 You must pay us an advertising contribution in an amount equivalent to 4% of the prices payable by Lowes under each purchase order, in the form of a credit note. This will apply each time a contract is entered into, but you only need to provide us with the credit notes within 30 days of our request. We will request the credit notes on a bi-annual basis.
- 8.3 We will pay the product prices within the 60 day period commencing on the date we receive a statement from you, for products that have been delivered and invoiced to us. Invoices must comply with applicable laws.
- 8.4 We will be entitled to:
- A discount of 3% off the prices payable under any contract where we make payment between 31 - 60 days from the date we receive a statement from you, for products that have been delivered and invoiced to us;
 - A discount of 4% off the prices payable under any contract where we make payment between 1 - 30 days from the date we receive a statement from you, for products that have been delivered and invoiced to us; and
 - Such other discounts for early payment as may be agreed by you and us from time to time – please contact us if you would like to discuss this.
- 8.5 We may also set-off any amount owing by you to us from any amount payable to you.

9. Indemnification

You must indemnify and hold us harmless from all claims and all liabilities, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, us as a result or in connection with:

- Any alleged or actual infringement, whether or not under Australian law, of any third party's copyright, trademark, moral rights or other intellectual property rights or other rights arising out of the use, manufacture, sale, resale, supply or re-supply of the products (except in respect of intellectual property in designs that we provide to you);
- Defective workmanship, quality or materials in or in relation to the products;
- Any claim (including any claim arising out of the design, quality and regulatory compliance (or lack thereof) of any products) made against us in respect of any liability, loss, damage, injury, death, cost or expense sustained by us or our officers, employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the products as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of a contract by you howsoever arising;
- Any wilful misconduct or unlawful act or negligent act or omission by you or your employees, subcontractors or suppliers; and/or
- Any breach by you of the Lowes Code of Conduct.

10. Termination of a contract

- 10.1 A contract may only be terminated in accordance with an express provision of this clause 10 or another provision of these Terms of Trade.
- 10.2 If you or we have breached a contract (“Defaulting Party”) the other party (“Non-Defaulting Party”) can terminate the contract by written notice to the Defaulting Party:
- If the breach cannot be remedied; or
 - If the breach can be remedied, but is not remedied within 14 days of the Defaulting Party’s receipt of a written notice from the Non-Defaulting Party requiring the Defaulting Party to remedy the breach.
- 10.3 Either party can also terminate a contract if the other party suffers an insolvency event.
- 10.4 Termination of a contract doesn’t change any rights, responsibilities, or liabilities that the parties had before termination, including the right to claim damages for any breaches that occurred before the contract ended.

11. General

- 11.1 Each contract and written variations agreed to in writing by you and us represent the whole agreement between you and us relating to the subject matter of the contract. A contract supersedes all oral and written negotiations, communications and agreements made by and on behalf of either of the parties relating to the subject matter of the contract. The United Nations Convention on Contracts for the International Sale of Goods is excluded from each contract in its entirety.
- 11.2 If the whole or any part of a provision of a contract is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not, except where the severance would materially affect or alter the nature or effect of either party’s obligations under the contract.
- 11.3 No party may rely on the words or conduct of the other party as being a waiver of any right, power or remedy arising under or in connection with a contract unless the other party expressly grants a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.
- 11.4 Any clause of a contract which by its nature is intended to survive termination of the contract shall so survive.
- 11.5 The rights and obligations under a contract cannot be assigned or novated by a party without the prior written consent of the other party.
- 11.6 You are an independent contractor and no relationship of agency, partnership or joint venture is formed under any contract.
- 11.7 You are wholly responsible for all acts and omissions of your employees, officers, subcontractors and suppliers as if they were your acts and omissions; and you and we expressly contract out of any common law and legislation that would otherwise permit you to apportion or exclude liability for the acts and omissions of your employees, officers, subcontractors and suppliers.
- 11.8 Each contract is governed by the laws in force in the State of New South Wales and the courts of appeal therefrom. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state in relation to any dispute between the parties or proceedings commenced by either party concerning a contract and waives any right it has to object to the venue of any legal process in those courts on the basis that the process has been brought in an inconvenient forum or that those courts do not have jurisdiction.

12. Definitions and interpretation

12.1 In these Terms of Trade, the following definitions apply (whether used in lowercase or uppercase):

Australian Consumer Law: Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Contract: the Quotation, Specifications, Tech Pack, these Terms of Trade and any other documents, terms and conditions incorporated by reference therein by these Terms of Trade.

Encumbrance: in relation to any asset or property, any right, interest or power in favour of a person other than the owner of that asset or property that has the effect of restricting or limiting the way in which the owner may deal with or use that asset or property, including:

- (a) any Security Interest;
- (b) any right or interest arising as a consequence of the enforcement of a judgment; or
- (c) any agreement or arrangement (whether legally binding or not) to grant, create, or allow to exist, anything referred to in paragraphs (a) or (b).

Improvement: any improvement, development, adaptation, enhancement, modification or derivative of a Product, or its design or manufacturing process, whether or not it would make the Product cheaper, more effective, more useful or more valuable, or would in any other way render the Product more commercially competitive.

Insolvency Event: means the occurrence of any of the following events in relation to a party (in each case, the relevant party): (A) the relevant party ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to do so; (B) a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to the relevant party or any of its assets; (C) the relevant party enters into, or resolves to, enter into, a scheme or arrangement, compromise or composition with any class of creditors; (D) a resolution is passed or an application to a Court is taken for the winding up, dissolution, official management or administration of the relevant party; (E) any liquidator, receiver or manager enters into possession of any of the assets of the relevant party; (F) a mortgagee, chargee or other holder of security, by itself or by or through an agent, enters into possession of all or any part of the assets of the relevant party; (G) the relevant party applies for, consents to, or acquiesces in the appointment of a trustee or receiver in respect of the party or any of its property; (H) except to reconstruct or amalgamate while solvent, the relevant party enters into or resolves to enter into a scheme of arrangement, compromise or re-construction with its creditors (or any class of them) or with its members (or any class of them) or proposes a reorganisation, re-arrangement, moratorium or other administration of the party's affairs; or (I) anything having a substantially similar effect to any of the events specified above happens with respect to the relevant party under the law of any applicable jurisdiction

Intellectual Property Rights: all intellectual property rights of any kind, in any jurisdiction, subsisting at any time whether at the time a contract is entered into or in the future (including business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration.

Late Delivery: failure to deliver products to us or to ensure they reach the shipping company, by any applicable date referred to in clause 6.2.

Lowes, we, us, our: Lowes - Manhattan Pty Ltd ABN 31 000 307 666

Modern Slavery: has the same meaning as defined in section 4 of the *Modern Slavery Act 2018* (Cth).

Moral Rights: has the meaning given to it in the *Copyright Act 1968* (Cth).

PPSA: the *Personal Property Securities Act 2009* (Cth).

Products: the products agreed in the contract to be purchased by Lowes from you.

Purchase Order: Lowes' written instruction to supply the Products for the price set out in a Quotation.

Quotation: a quotation issued by you to Lowes.

Security Interest: any of the following:

- (a) an interest or power reserved in or over an interest in any asset or created or otherwise arising over any interest in any asset under a security agreement, charge, mortgage, pledge, bill of sale, hypothecation, lien, arrangement concerning the deposit of documents evidencing title, trust, power, title retention arrangement or any other covenant or arrangement of any nature made by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance or observance of an obligation;
- (b) a security interest (as that term is defined in the PPSA);
- (c) any agreement or arrangement (whether legally binding or not) to grant or create anything referred to in paragraphs (a) or (b).

Specifications: any specifications agreed by Lowes and you in respect of any Products.

You, your: the party specified in the Purchase Order as the supplier of the Products.

Tech Pack: a document described by Lowes as a 'tech pack' or similar, agreed by Lowes and you at any time in respect of any Products.

- 12.2 In these Terms of Trade, (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) a reference to "party" is to Lowes or you as the context dictates and a reference to "parties" is to both you and Lowes; (b) words denoting the singular have a comparable meaning when used in the plural, and vice versa; (c) unless the context otherwise requires, references in these Terms of Trade to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder; (d) the parties intend these Terms of Trade to be construed without regard to any presumption or rule requiring construction or interpretation against the party who drafted a provision or caused a provision to be drafted; and (e) the headings in these Terms of Trade are for reference only and do not affect its interpretation.