

SOUTHERN PLUMBING PLUS

TERMS & CONDITIONS

1. Definitions

1.1 The following words have the following meaning:

- (a) "Buyer" means the buyer (or any person acting on behalf of and with the authority of the Buyer) as described on the Application for Trade Account, any quotation or other form approved by the Seller.
- (b) "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller.
- (c) "Guarantor" means the person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.
- (d) "Price" shall mean the price payable for the Goods and/or Services.
- (e) "Seller" shall mean Southern Plumbing Supplies Pty Ltd A.C.N 120 287 452, its successors and assigns.
- (f) "Services" shall mean all services supplied by the Seller to the Buyer including but not limited to the provision of designs, drawings, plans, specifications, installations, photographic or computer generated images and as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller

2. Offer & Acceptance

- 2.1 All price quotations expire thirty (30) days after the date of the quote unless otherwise agreed in writing.
- 2.2 Purchase orders for Goods or Services will constitute an offer by the Buyer to the Seller. Any amendments to purchase orders for Goods or Services must be approved by the Seller in writing.
- 2.3 The Buyer's acceptance of a price quotation, either in writing or verbally, shall constitute the Buyer's agreement for the Seller to supply the Goods or Services.
- 2.4 All Goods on a price quotation are provided to the Buyer as a total package and are unable to be ordered separately without the specific agreement of the Seller.

- 2.5 Any instructions received by the Seller from the Buyer for the supply of Goods or Services shall constitute acceptance of these terms and conditions. Upon acceptance of these terms and conditions, the terms and conditions are binding and can only be amended with the written consent of the Seller. Only these terms (not other terms and conditions which may be attached to or incorporated in a purchase order) form part of the agreement between the parties.

3. Supply & Delivery

- 3.1 The costs of delivery are in addition to the Price. The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions. The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated. The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 3.2 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation. In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation. The Seller will not be liable for any delays in service delivery caused by matters beyond its control. Extensive delays caused by the Buyer hindering the Seller will entitle the Seller to charge a further "delay fee" which must be paid before the Seller is obliged to deliver the Goods.
- 3.3 At the Seller's sole discretion delivery of the Goods or Services shall take place when:
 - (a) the Buyer takes possession of the Goods or Services at the Buyer's nominated address;
 - (b) the Buyer's nominated carrier takes possession of the Goods or Services in which event the carrier shall be deemed to be the Buyer's agent.

4. Payment Terms

- 4.1 At the Seller's sole discretion the Price shall be either;

- (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods and Services supplied; or
- (b) the Seller's quoted Price which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation in writing within thirty (30) days.

GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

- 4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. At the Seller's sole discretion a deposit may be required.
- 4.3 Payment shall be due no later than thirty (30) days from the date of the Seller's invoice. Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be cash on delivery. Payment must be made by cheque, or by bank cheque, or by direct credit, EFT, direct deposit or by any other method as agreed to between the Buyer and the Seller. Payments for orders accepted in Australia shall be made in Australian Dollars.
- 4.4 Accounts which remain unpaid after 30 days will be charged with:
 - (a) An account keeping fee of at least \$10.00 per month unpaid;
 - (b) Interest at the rate of 1.5% per month on the unpaid monies.
- 4.5 At the Seller's sole discretion, Goods may be held in stock for the Buyer for up to 6 months, subject to the Goods being paid for in full and an additional handling charge of 5% of the total value of the Goods. Goods uncollected after 6 months may be re-sold by the Company without reimbursement of any amount paid.
- 4.6 In the event that credit terms are offered, the Buyer authorises the Seller:
 - (a) to obtain from a credit reporting agency a credit report containing personal information about Buyer and its Guarantors pursuant to Section 18K(1)(b) of the Privacy Act;
 - (b) to obtain a report from a credit reporting agency and other information in relation to the Buyer's commercial credit activities. The Buyer understands the information can be used for the purposes of assessing its creditworthiness.

5. Defects

- 5.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods which the Seller has agreed in writing the Buyer is entitled to reject, the Seller's liability is limited to either replacing or repairing the Goods at the Seller's sole discretion.
- 5.2 The provisions of 5.1 above do not limit or revoke any rights afforded to the Buyer under Commonwealth or State legislation.
- 5.3 Goods will not be accepted for return other than in accordance with 5.1 above.
- 5.4 A handling charge of 15% of the Purchase Price, or equivalent to the amount charged to the Seller by his supplier, shall be payable by the Buyer to the Seller when:-
 - (a) Goods are returned;
 - (b) Goods are ordered and subsequently cancelled.
- 5.5 Goods or Services which are especially configured to the Buyer's specifications will be non-refundable and non-returnable. The Buyer shall remain liable for the full Purchase Price.

6. Risk & Title

- 6.1 If the Seller retains ownership of the Goods, all risk for the Goods passes to the Buyer on delivery. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6.2 The Seller retains a lien, security interest and right of possession in the Goods and Services until the Buyer makes full payment of all sums outstanding at which time the Seller shall transfer full title to Buyer. Until such time as ownership of the Goods passes from the Seller to the Buyer the Seller may give notice to the Buyer to return the Goods. If the Buyer fails to

return the Goods, the Seller may enter upon the Seller's land and premises as an invitee and repossess the Goods without claim from the Buyer.

- 6.3 Where the Buyer and or Guarantor own real property or any other asset capable of being charged (the "security property") they jointly and severally charge their interest in the security property to the Seller to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and the Guarantors acknowledge and agree that the Seller shall be entitled to lodge a caveat or such other security document as the Seller may deem necessary.

7. **Buyer Acknowledgement**

- 7.1 The Buyer acknowledges that the Goods or Services are bought relying solely upon the Buyer's skill and judgement.

- 7.2 The Buyer acknowledges that the Seller has not made any warranty or representation, express or implied, in relation to the Goods or Services, including whether they are suitable for a particular purpose (whether such purpose was made known to the Seller or not), unless provided in writing.

- 7.3 The Buyer acknowledges that, unless otherwise agreed in writing, all intellectual property rights attaching to the Goods or Services are and will remain the property of the Seller (or its supplier, where such rights are owned by that supplier).

- 7.4 The Buyer acknowledges and agrees that these terms and conditions are in full force and effect and are incorporated in to every order.

8. **Warranty**

- 8.1 Where the Seller provides Services, the Seller warrants that if there is a defect in the works and such defect is due to the Seller's defective workmanship which is reported to the Seller within twelve (12) months of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship.

- 8.2 The conditions applicable to the warranty given by clause 8.1 are:

- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through (i) failure on the part of the Buyer to properly maintain any Goods; or (ii) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller;

or (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or (v) fair wear and tear, any accident or act of God.

- (b) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
- (c) In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or remedying the workmanship or in properly assessing the Buyer's claim.

- 8.3 For Goods not manufactured by the Seller, the Seller will if requested seek to assign the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.

9. **Limitation of liability**

- 9.1 The Seller will not be liable to the Buyer for any indirect or consequential damages including loss of profits, revenue or data arising out of or in relation to the supply of Goods or Services, even if the Seller knew or should have known of the possibility of such loss or damage and whether damages are claimed in contract, tort (including negligence) or statute. Except in relation to liability for personal injury (including sickness and death), or damage to tangible property, the Seller' liability to the Buyer in respect of any loss or damage (including consequential or indirect loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the supply of Good or Services shall be, in aggregate, limited to an amount equal to the amount paid by the Buyer to the Seller.

- 9.2 To the fullest extent permitted by law, the parties agree to exclude any terms which would otherwise be implied into these terms by any statute. The liability of the Seller for a breach of a condition or warranty implied into these terms by the Trade Practices Act, 1974 is limited at the option of the Seller:

- (a) if the breach relates to goods, to the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired.
- (b) if the breach relates to services, the supplying of the services again or the payment of the cost of having the services supplied again.

10. Termination

10.1 Where the Buyer:

- (a) makes a default in any payment or breaches any of these terms;
- (b) becomes unable to pay its debts as and when they fall due; or
- (c) commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up,

The Seller, without prejudice to any of its rights or remedies, may by notice to the Buyer:

- (a) suspend further supply and require payment in advance for future supply;
- (b) recover possession of any Good for which payment has not been made;
- (c) terminate all or any purchase orders for Goods or Services which have been accepted by the Seller;
- (d) claim immediate payment of all moneys due by the Buyer in respect of all Goods and Services which will be deemed immediately due and payable.

10.2 The Buyer acknowledges that should they breach any terms of this agreement or default on any payment when due, they will indemnify the Seller against all costs and disbursements incurred by the Seller in pursuing the payment of that debt including, but not limited to, all debt collection agency fees and all legal fees on a Solicitor and own client basis.

11. General

11.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

11.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

11.3 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller.

11.4 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

11.5 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change.

11.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

11.7 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

11.8 The Seller and the Buyer agree that they will keep at all times as strictly confidential any confidential information that is disclosed or provided by one party to the other. In this clause, "commercial in confidence" means information in any form but does not include information that is already in the public domain.