

TRADING TERMS AND CONDITIONS

1. Definitions

In these Terms and Conditions the following definitions apply:

"**Agreement**" means any agreement for the supply of Goods by PSC to the Applicant.

"**Applicant**" means the person set out in the "Organisation Details" Section of the Application for Commercial Credit Account (which forms part of this document).

"**Arrears**" means when the Applicant has failed to pay any invoice rendered by PSC when due or when the Applicant has failed to pay PSC the amounts listed on a statement of account when due.

"**Board**" has the same meaning as defined in PSC's Rules.

"**CCA**" means the Competition and Consumer Act 2010 (Cth) and similar state-based fair trading legislation as amended.

"**Charged Property**" means all of the rights, property, title, estate and interest of whatever kind and wherever situated and whether present or future in any freehold or leasehold property and/or real estate and in any Land which the Applicant now has or may hereafter have.

"**Charged Co-op Shares**" means all of the rights, property, title and interest in all shares in PSC which the Applicant(s) now has or may hereafter have.

"**Charged Goods**" means:

- (a) all Goods previously supplied by PSC to the Applicant as well as their proceeds; and
- (b) all Goods that may be supplied in the future by PSC to the Applicant as well as their proceeds.

"**Confidential Information**" means all information relating to PSC or its business including but not limited to information as to details (not limited to prices, design, specifications or manufacture process) of Goods and other products available to be ordered from PSC.

"**Credit Account**" means commercial credit account opened by PSC in favour of the Applicant by which the Applicant is able to purchase Goods from PSC on credit.

"**Default Event**" means any event or circumstance specified as such in clause 6.

"**Financing change statement**" has the same meaning given to it by the PPSA.

"**Financing statement**" has the same meaning given to it by the PPSA.

"**Goods**" means any goods and/or services supplied and/or where appropriate to be supplied to the Applicant by PSC.

"**GST**" means goods and services tax.

"**Land**" means land and includes but is not limited to Land as defined in the Real Property Act 1900 (NSW) and/or the Conveyancing Act 1919 (NSW) and/or where appropriate their equivalents in other States or Territories of the Commonwealth of Australia, as amended.

"**Loss**" includes any direct or indirect losses, consequential loss, claims, legal costs, demands, damages, consequential damage, liabilities, expenses, charges, suits, actions and/or penalties.

"**Insolvency Event**" means in respect of the Applicant, any act of insolvency or bankruptcy, any formal or informal arrangement with creditors whether it be under the Bankruptcy Act 1966 (Cth) as amended, the Corporations Act 2001 (Cth) as amended or otherwise, any action taken to wind up the Applicant, to appoint an administrator, a trustee, a liquidator, a receiver, a receiver and manager, a restructuring practitioner or other like person.

"**PMSI**" means purchase money security interest as defined in the PPSA.

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

"**PSC**" means the Plumbers Supplies Co-operative Limited A.R.B.N. 053 236 436 and/or, where appropriate, its employees, agents and authorised representatives.

"**PSC's Rules**" means PSC's Rules as adopted by PSC's members at the 1998 annual general meeting and subsequent Board resolutions.

"**Receiver**" means a receiver or receiver and manager appointed by PSC.

"**Security agreement**" has the same meaning given to it by the PPSA.

"**Security interest**" has the same meaning given to it by the PPSA.

"**Special Order**" means any order for Goods that are not ex-stock and have to be sourced from and/or manufactured by a third party by PSC for the Applicant, whether they be to specification provided by the Applicant or otherwise.

"**Terms and Conditions**" means these Trading Terms and Conditions.

2. Interpretation

2.1. In these Terms and Conditions, unless the context indicates otherwise, reference to:

- (a) one gender includes others;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a person includes a natural person, firm, unincorporated association, corporation, partnership, joint venture and a government or statutory body or authority;
- (d) a statute, regulation or provision of a statute or regulation (**Law**) includes:
 - (i) that Law as amended or re-enacted;
 - (ii) a statute, regulation or provision enacted in replacement of that Law;
 - (iii) another regulation or statutory instrument made or issued under that Law; and/or
 - (iv) any amendment made to a statute, regulation or provision as a consequence of another statute, regulation or provision;
- (e) a thing (including any amount) is a reference to the whole and each part of it;
- (f) payment includes repayment, discharge or satisfaction.

2.2. If the Applicant comprises 2 or more persons:

- (a) a reference to the Applicant includes each and any 2 or more of them;
- (b) these Terms and Conditions binds each of them separately and any 2 or more of them jointly.

3. Order of Goods and credit account terms and conditions

In consideration of PSC providing a Credit Account to the Applicant:

- 3.1. The Applicant acknowledges and agrees that these Terms and Conditions apply to and form part of every and any Agreement and that these Terms and Conditions shall prevail and take precedence over any other terms and conditions contained in any document provided by or to the Applicant at any time whatsoever.
- 3.2. The Applicant acknowledges and agrees that:
 - (a) any request and/or order by the Applicant to PSC for Goods shall constitute confirmation by the Applicant of its acceptance of these Terms and Conditions, whether the order is placed through the PSC website or otherwise;
 - (b) prices are as quoted on the PSC website at the time the Applicant submits an order. Where a quotation is provided by PSC, the price is only current at the time of quotation and is subject to change by PSC at any time without notice to the Applicant;
 - (c) the Applicant is responsible for ensuring its orders and any specification submitted by the Applicant for Special Orders are complete and accurate;
 - (d) once a Special Order is placed and accepted, it will be invoiced automatically and may not be cancelled without PSC's written consent;
 - (e) an order is accepted by PSC when PSC notifies the Applicant that the order is accepted. This Agreement will only cover Goods in the accepted order;
 - (f) if the Applicant wants to change an order after it has been accepted by PSC, and PSC agrees to such change (which it may determine in its sole discretion), PSC may modify the total price of the order accordingly; and
 - (g) the Applicant must make payment in accordance with clause 16.
- 3.3. The Applicant represents and warrants to PSC that the Credit Account and/or any Agreement and/or any Goods is/are for commercial purposes only and that such commercial purpose includes using the Goods up, transforming the Goods and supplying or resupplying the Goods for the purpose of the Applicant's business and/or in trade or commerce.
- 3.4. The Applicant consents and authorises PSC to collect, use and/or disclose commercial and/or consumer information (including personal information) and/or credit reporting information about the Applicant from/to any credit reporting agency and/or any other credit providers including credit bureaus for the purposes of assessing the Applicant's credit worthiness and/or credit limit with PSC from time to time and the enforcing of PSC's rights.
- 3.5. The Applicant acknowledges and agrees that:
 - (a) PSC can, in its absolute discretion and for any reason whatsoever, vary the level of credit allowed to the Applicant at any time; and
 - (b) PSC is not responsible for any Loss or damage howsoever caused or arising from the refusal of PSC to supply Goods on credit because the limit of the Credit Account having been exceeded.
- 3.6. The Applicant shall provide written notification to PSC within seven (7) days of any change in the Applicant's constitution or structure or the sale of the business operated by the Applicant and agrees that it shall continue to be liable to PSC for any sums outstanding on any account opened for or on behalf of the Applicant until:
 - (a) written notice is received by PSC from the Applicant that it has changed the constitution or structure or the sale of the business; and
 - (b) full payment of any outstanding amounts in relation to orders of Goods made by the Applicant has been received by PSC.
- 3.7. In consideration for the rights set out in this clause, the Applicant grants the Charge in favour of PSC in accordance with clause 4 of these Terms and Conditions.

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4. Charging Clause

- 4.1. The Applicant, in order to secure all monies payable by the Applicant to PSC:
- (a) hereby grants to PSC a charge over all of the Charged Property and Charged Goods (the **Charge**);
 - (b) hereby irrevocably authorises PSC to lodge a caveat over any or all of the Charged Property noting PSC's interest so as to prevent any dealings on the title(s) of that Charged Property until all monies payable have been paid to PSC;
 - (c) agrees that if more than one person comprises the Applicant, then each such person separately grants the Charge; and
 - (d) hereby irrevocably consents to and requests PSC to appoint any such person which PSC deems fit to be the attorney of the Applicant for the execution of any document necessary to give effect to this charging clause.
- 4.2. Further to clause 4.1 and without limiting the effect of that clause in any way, the Applicant further, in order to secure all monies payable by the Applicant to PSC:
- (a) hereby grants to PSC a charge over all of the Charged Co-op Shares (the **Share Charge**);
 - (b) agrees that if more than one person comprises the Applicant, then each such person separately grants the Share Charge;
 - (c) hereby irrevocably consents to and requests PSC to appoint any such person which PSC deems fit to be the attorney of the Applicant for the execution of any document necessary to give effect to this charging clause; and
 - (d) hereby irrevocably consents to PSC (including by its attorney) dealing with the Charged Co-op Shares in accordance with PSC's Rules.

5. Authority to Complete Blank Spaces etc

- 5.1. The Applicant authorises PSC:
- (a) to complete and/or amend at any time any blank, incomplete or inaccurate particulars and/or spaces in the Applicant's Application for a Commercial Credit Account (which forms part of this document) with PSC; and
 - (b) to otherwise complete at any time any formalities so as to render these Terms and Conditions and any Agreement complete and/or enforceable.

6. Default

- 6.1. Each of the following events listed in this clause is a Default Event (whether or not it is in the control of the Applicant):
- (a) **Obligations under any Agreement:** The Applicant fails to:
 - (i) pay or repay PSC in accordance with its obligations under any Agreement when due; or
 - (ii) comply with any provision under any Agreement or with any condition of any waiver or consent by PSC under or in connection with any Agreement;
 - (b) **Misrepresentation:** any representation, warranty or statement by or on behalf of the Applicant under or in connection with any Agreement, which is not true or is misleading when made or repeated;
 - (c) **Insolvency Event:** An Insolvency Event occurs with respect to the Applicant;
 - (d) **Enforcement against assets:** a security interest becomes enforceable or is enforced, or a distress, attachment or other execution is levied or enforced over, all or any of the assets of the Applicant;
 - (e) **Reduction of capital:** without the prior consent in writing of PSC, the Applicant reduces its capital or passes a resolution referred to in section 254N(1) of the Corporations Act 2001 (Cth) as amended;
 - (f) **Investigation:** an investigation into all or part of the affairs of the Applicant commences under any law;
 - (g) **Credit Account used for different purpose:** the Credit Account provided by PSC is used for a purpose other than the stated purpose as set out in the Applicant's Application for a Commercial Credit Account;
 - (h) **Natural persons:** if the Applicant is a natural person and they die, the Applicant no longer has full legal capacity or becomes incapable of managing their own affairs;
 - (i) **Partnerships:** if the Applicant is a partnership and without the prior written consent of PSC:
 - (i) The constitution of the partnership is changed; or
 - (ii) The partnership is dissolved;
 - (j) **Associations:** if the Applicant is an association or cooperative and without the prior written consent of PSC:
 - (i) An application is made, a resolution is passed or an order is made for the winding up of that Applicant; or
 - (ii) That Applicant becomes externally administered or a controller of a trustee for creditors is appointed in respect of its property.

7. Enforcement following default

- 7.1. In addition to any other rights provided by any law or under any Agreement, at any time after a Default Event has occurred:
- (a) each security interest and/or PMSI arising under this document becomes immediately enforceable; and/or
 - (b) PSC:
 - (i) may, in the name of the Applicant or otherwise, at any time, do anything that the Applicant, or if the Applicant is a corporation or a trust, its directors or trustee (as the case may be), could do in relation to the Charged Property, the Charged Goods and/or the Charged Co-op Shares;
 - (ii) has all other rights conferred by any law in relation to the Charged Property, the Charged Goods and/or the Charged Co-op Shares; and
 - (iii) may appoint one or more receivers, and may do anything that a Receiver may do under clause 8.

8. Receivers

8.1. Appointment of Receiver

- (a) In addition to the powers under clause 7, PSC may appoint any one or more persons as Receiver to any part of the Charged Property, the Charged Goods and/or the Charged Co-op Shares in addition to and without prejudice to any of its other rights:
 - (i) if the Applicant requests PSC to do so;
 - (ii) at any time after a Default Event occurs; or
 - (iii) if PSC, in its sole discretion, believes that any of the Charged Property, the Charged Goods and/or the Charged Co-op Shares is at risk of being seized, becoming subject to a security interest or otherwise being dealt with in a manner inconsistent with the terms of this document.
- (b) In exercising the power to appoint a Receiver, PSC may:
 - (i) appoint a Receiver under clause 8.1 either before or after it has taken possession of the Charged Property, the Charged Goods and/or the Charged Co-op Shares and either before or after any order has been made or a resolution passed for the winding up of the Applicant;
 - (ii) appoint a different Receiver for different parts of the Charged Property, the Charged Goods and/or the Charged Co-op Shares;
 - (iii) if more than one person is appointed as Receiver of any part of the Charged Property, the Charged Goods and/or the Charged Co-op Shares, empower them to act jointly or jointly and separately;
 - (iv) remove the Receiver, appoint another in substitution if the Receiver is removed, retires or dies, and reappoint a Receiver who has retired or been removed; and fix the remuneration of the Receiver.
- (c) PSC may appoint any person or any 2 or more persons jointly or jointly and separately as its agent to exercise any of its rights under this document, in which case the provisions of clause 8.1 apply as if the agent was a Receiver.

8.2. Receiver as agent

- (a) Subject to clauses 8.2(b) and 8.2(c), a Receiver will be the agent of the Applicant who alone will be responsible for the Receiver's acts and omissions and remuneration.
- (b) PSC may appoint a Receiver as the agent of PSC and delegate to a Receiver any of PSC's rights under this document.
- (c) To the extent that as a result of any order being made or a resolution being passed for the winding up of the Applicant, a Receiver ceases to be the agent of the Applicant, the Receiver will immediately become the agent of PSC.

8.3. Powers of Receiver

- (a) A Receiver will have the right in relation to any property in respect of which the Receiver is appointed to do everything that the Applicant may lawfully authorise an agent to do on behalf of the Applicant in relation to that property and, without limitation, a Receiver may in relation to that property exercise:
 - (i) the rights capable of being conferred on receivers and receivers and managers by the
 - (ii) Corporations Act 2001 (Cth) as amended, the PPSA as amended, the Bankruptcy Act 1966 (Cth) as amended any other legislation and the laws of any relevant jurisdiction;
 - (iii) the rights set out in clause 7;
 - (iv) the rights of the Applicant and the directors of the Applicant; and
 - (v) any other rights PSC may by notice to a Receiver give to a Receiver.
- (b) PSC may by notice to a Receiver at the time of a Receiver's appointment or any subsequent times give any rights to a Receiver that PSC determines.

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9. Delivery of Goods

- 9.1. Delivery of Goods is completed at the earlier of:
 - (a) when the Applicant (or any third party on the Applicant's behalf) collects or takes possession of the Goods from the location of delivery; or
 - (b) when PSC dispatches the Goods for delivery to the Applicant under clause 9.4; regardless of whether the Goods are subject to a Special Order.
- 9.2. Unless otherwise agreed with the Applicant:
 - (a) the Applicant agrees that the Applicant is responsible for collecting or arranging collection of the Goods it ordered as agreed with PSC; and
 - (b) PSC shall not be responsible for or under any duty to physically deliver or arrange for the physical delivery of any Goods to the Applicant.
- 9.3. If the Applicant fails to collect the Goods as agreed with PSC, PSC must (at its election) either store the Goods until the Goods are collected by the Applicant or arrange for the physical delivery of any Goods to the Applicant to the Applicant's address most recently notified to PSC. PSC may charge the Applicant all related costs and expenses (including but not limited to storage cost, insurance, delivery and transportation cost).
- 9.4. If PSC agreed with the Applicant to arrange for physical delivery of Goods to an agreed location of delivery, PSC will deliver the Goods as agreed and the Applicant authorises PSC to deliver Goods to the location of delivery. The Applicant must provide reasonable access to and from the location of delivery and do all things reasonably necessary to facilitate the efficient delivery and unloading of Goods. PSC shall not be liable for any loss or damage to the Goods after their delivery to the location of delivery. PSC may charge the Applicant, and the Applicant must pay, a delivery fee for the delivery of the Goods, such fee to be either:
 - (a) PSC's standard delivery fees which may vary from time to time and which PSC will publish in writing on the PSC website or other publication that are accessible to the Applicant; or
 - (b) a special delivery fee which will be part of a written quotation given to the Applicant or as otherwise agreed with the Applicant.
- 9.5. The time for the delivery of any Goods shall not, in any circumstances, be of the essence notwithstanding any representations (oral and/or written) by PSC or the Applicant.
- 9.6. PSC shall not be liable for any Loss arising in any way from any delay in delivery or any failure to deliver any Goods (either whole or in part), howsoever any such delay or failure arises unless such delay or failure arises from the negligent act or omission, wilful misconduct or breach by any Agreement by PSC. PSC must notify the Applicant if it expenses material delay in delivery.

10. The PPSA

- 10.1. The Applicant acknowledges and agrees that:
 - (a) these Terms and Conditions and/or any Agreement constitute a security agreement;
 - (b) a security interest and/or a PMSI exists in PSC's favour in:
 - (i) the Charged Goods; and
 - (ii) the Charged Co-op Shares;
 - (c) PSC has not authorised any disposal or dealing or agreement to deal with any of:
 - (i) the Charged Goods; or
 - (ii) the Charged Co-op Shares;
 - (d) PSC has not agreed that any disposal or dealing or agreement to deal with any of:
 - (i) the Charged Goods; or
 - (ii) the Charged Co-op Shares,will extinguish any security interest and/or PMSI held by PSC.
 - (e) such security interests and/or PMSI's shall continue despite any disposal or dealing or agreement to deal with the Charged Goods or Charged Co-op Shares;
 - (f) PSC has given value to the Applicant for its security interest and/or PMSI including by its promises under these Terms and Conditions or by providing or continuing to make available any financial accommodation (including but not limited to a Credit Account) to the Applicant;
 - (g) Nothing in these Terms and Conditions is intended to be construed such that any security interest and/or PMSI under these Terms and Conditions attaches at a later time than the time specified in section 19(2) of the PPSA; and
 - (h) It has not made any other document with PSC to vary the time of attachment of any security interest and/or PMSI.
- 10.2. The Applicant agrees:
 - (a) To promptly sign any documents and/or provide any information (such information to be complete, accurate and up-to-date) which PSC may require in order to:
 - (i) Register a financing statement or financing change statement in relation to any type of security interest on the Personal Property Securities register established under the PPSA;
 - (ii) Register any other document required to be registered by the PPSA; and/or
 - (iii) Correct any defect in a financing statement or financing change statement; and/or
 - (iv) Do anything else PSC may be required or entitled to do under the PPSA.
 - (b) And consents to PSC registering a financing statement or a financing change statement on the Personal Properties Securities register established under the PPSA.
 - (c) To pay PSC for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities register established under the PPSA or releasing any Charged Goods and/or Charged Co-op Shares charged and/or secured thereunder.
 - (d) Not to register or permit to be registered a financing change statement in respect of a security interest or a PMSI in relation to Charged Goods (or the proceeds from their sale) and/or Charged Co-op Shares without the prior written consent of PSC.
 - (e) Not to register or permit to be registered a financing change statement in respect of a security interest or a PMSI in relation to Charged Goods (or the proceeds from their sale) and/or Charged Co-op Shares in favour of a third party without the prior written consent of PSC.
 - (f) To immediately provide written notification to PSC of any material change in its business practices of selling or disposing of or dealing with Charged Goods which might result in a change in the nature of proceeds from such sales.
 - (g) That until title in the Charged Goods or the Charged Co-op Shares passes from PSC to the Applicant (see clause 14), the Applicant waives its rights under the following provisions of the PPSA:
 - (i) to receive a notice of intention of removal of an accession (section 95);
 - (ii) to receive a notice that PSC decides to enforce its security interest in accordance with land Law (section 118);
 - (iii) to receive notice on enforcement of security in liquid assets (section 120),
 - (iv) to receive a notice on enforcement action against liquid assets (section 121 (4))
 - (v) to receive a notice to seize collateral (section 123),
 - (vi) to receive a notice of disposal of collateral by PSC purchasing the collateral (section 129);
 - (vii) to receive a notice of disposal of collateral (section 130);
 - (viii) to receive a statement of account following disposal of collateral (section 132(3)(d));
 - (ix) to receive a statement of account if no disposal of collateral for each 6 month period (section 132(4));
 - (x) to receive notice of any proposal of the Seller to retain goods (section 135);
 - (xi) to redeem the collateral (section 142);
 - (xii) to reinstate the security agreement (section 143); and/or
 - (xiii) to receive a notice of any verification statement (see section 157(1) and section 157(3))
 - (h) That sections 96, 117 and 125 of the PPSA shall not apply insofar as they confer any rights upon the Applicant;
 - (i) That where PSC has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply;
 - (j) Not to postpone the time for attachment of any security interest and/or PMSI granted to PSC under these Terms and Conditions;
 - (k) And irrevocably grants to PSC the right to enter upon the Applicant's property or premises, without notice, and without being in any way liable to the Applicant or any third party, to exercise any of PSC's rights under section 123 and/or 128 of the PPSA, and the Applicant shall indemnify and keep indemnified PSC against any and all Loss claimed by any third party or for any and all Loss which may be made or brought against or suffered or incurred by PSC as a result of PSC exercising any such rights; and
 - (l) Nothing in this clause 10.2 prohibits PSC or any receiver or attorney from giving a notice under the PPSA or any other Law.

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11. Defects

- 11.1. This clause 11 shall be read subject to clause 20 of these Terms and Conditions.
- 11.2. The Applicant shall inspect the Goods upon physical delivery and will, within 48 hours, provide written notification to PSC of any defects, short deliveries or any failure to fulfil any quotation or order (**the Defect Notice**). Such Defect Notice shall not be effective unless it is addressed to PSC's National Credit Manager at credit@plumberscoop.au and until such time as it has actually been received by PSC's National Credit Manager.
- 11.3. The Applicant will, within a reasonable time following receipt of a Defect Notice, grant PSC access to the Goods in order to inspect them for any alleged defects with the Goods.
- 11.4. Should the Applicant fail to provide a Defect Notice to PSC within the specified period of 48 hours then the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever and the Applicant is deemed to have accepted the Goods.

12. Passing of risk and When Goods Taken to be Sold

- 12.1. Notwithstanding any statutory provision to the contrary, Goods are taken to be sold by PSC to the Applicant when there has been delivery of the Goods, whether or not title or property in them has passed from PSC to the Applicant.
- 12.2. Notwithstanding the retention of title provisions in clause 14, the risk of loss or damage to Goods shall pass to the Applicant upon delivery of the Goods.

13. Return of Goods

- 13.1. Subject to clause 20 of these Terms and Conditions, PSC may, in its sole discretion and subject to any conditions it deems appropriate, agree to accept the return of Goods which remain in clean, unused, good order and condition with original packaging and all original parts, however:
 - (a) any restocking fee or surcharge levied by any third party supplier or manufacturer will be debited to the Applicant's account with PSC and payable by the Applicant to PSC; and
 - (b) any restocking fee or surcharge levied by PSC will be debited to the Applicant's account with PSC and payable by the Applicant to PSC; and
 - (c) any Goods being the subject of a Special Order shall not be returnable to the Applicant without the express written agreement of PSC's National Credit Manager and the relevant third party supplier or manufacturer.

14. Retention of title

- 14.1. Title in Goods, whether separate, processed, commingled or accessioned, shall remain vested in PSC and shall not pass to the Applicant until all monies owing to PSC by the Applicant have been paid to PSC in full. Until title in the Goods passes to the Applicant, the Applicant acknowledges that these Terms and Conditions create, in PSC's favour, a security interest and/or a PMSI in the Goods and/or in the proceeds of their sale.
- 14.2. Until title in Goods, where such goods are processed, commingled or accessioned with any other goods, passes to the Applicant, then the Applicant agrees that the title in those other goods immediately passes to PSC and/or the proceeds of the sale of those other goods. To avoid any doubt regarding the ownership of those other goods, the Applicant agrees that title in those other goods passes to PSC at the beginning of the operation or event by which the Goods were processed, commingled or accessioned with the other goods.
- 14.3. If Goods (whether processed, commingled or accessioned with other goods) or those other goods are on-sold by the Applicant, then PSC shall have the right to trace any proceeds of their sale.
- 14.4. Until payment has been received by PSC for the Goods, PSC shall be entitled to and retain all of the Applicant's rights in respect of the sale price of Goods, including but not limited to, any chose of action accruing to the Applicant in relation to the purported sale of Goods by the Applicant to any third party and the Applicant agrees to provide all necessary assistance to PSC (including the provision of evidence) should PSC so require.
- 14.5. Until title in Goods has passed to the Applicant, PSC may demand at any time that the Applicant returns them to PSC in which case all costs incurred in returning them will be debited to the Applicant's account with PSC and payable by the Applicant to PSC.
- 14.6. If the Applicant is at any time in Arrears or an Insolvency Event occurs or the Applicant defaults in the payment of any monies owing to PSC, then PSC may, without any notice and without prejudice to any of its other rights, enter upon the Applicant's premises, or any other premises where Goods are known to be stored, to repossess Goods and for this purpose the Applicant shall grant reasonable access rights to PSC and PSC shall be entitled to do all things reasonably necessary to secure repossession of Goods.
- 14.7. Until title in Goods has passed to the Applicant, the Applicant shall store the Goods in a way that clearly manifests PSC's title in them, shall store them in such a manner so as to be clearly identifiable as the property of PSC, shall not allow the Goods to become an accession to or commingled with any other property that is not fully owned by the Applicant, shall keep separate records of any sales of such Goods and shall hold such goods as bailee and trustee of PSC.
- 14.8. If the Applicant sells any Goods (including Goods that have been processed, commingled or accessioned to other goods) whilst in Arrears then the Applicant shall undertake such sales as agent of and fiduciary for PSC and the Applicant shall disclose the agency relationship to its customer(s), hold the proceeds of such sales on trust for PSC and promptly account fully to PSC for the proceeds of such sales.

15. Fees & Taxes

- 15.1. Except as may be expressly stated otherwise, the prices quoted by PSC for the supply of Goods do not include sales tax or stamp duty or any other tax or duty (including, but not limited to, any GST) and the cost of sales tax, stamp duty, GST or any other tax shall be borne by the Applicant.

16. Payment and set off

- 16.1. The Applicant must pay PSC for all Goods.
- 16.2. The amounts listed on statements of account issued by PSC are payable within 30 days of the date of the statement or such other timeframe as specified by PSC (**the Payment Term**). Payment can be made by cash, cheque, electronic fund transfer or approved credit card (Visa, MasterCard or American Express), although payment by approved credit card may attract a surcharge calculated as a percentage of the payment amount (PSC suggest the Applicant enquires as to the amount of the surcharge prior to the time of making the payment). All such surcharges will be debited to the Applicant's account with PSC and payable by the Applicant to PSC.
- 16.3. Applicants who are members of PSC may be entitled to a settlement discount if payment is received within the Payment Term. The amount, timing and method of provision of the discount, which shall be at PSC's absolute discretion, may be adjusted by PSC at any time, and the settlement discount itself may be withdrawn completely by PSC at any time (although this will not affect any liability for settlement discounts accrued prior to and up to the date of such withdrawal).
- 16.4. Interest may be charged by PSC on overdue payments calculated at the cash rate set by the Reserve Bank of Australia as at the date the statement of account is issued by PSC, plus 2% for so long as the overdue payment or part thereof is outstanding. Interest payable under this clause accrues on a day-to-day basis from the due date of the relevant statement of account up to and including the date of actual payment.
- 16.5. The Applicant shall not be entitled to set-off or deduct from any amount payable to PSC under any Agreement any amounts payable by PSC to the Applicant, including without limitation any damages, Losses, costs, warranty claim and/or expenses alleged to be recoverable by the Applicant from PSC in consequence of any alleged breach of any Agreement, any credit claim by the Applicant or any other legal claim by the Applicant.

17. Warranties

- 17.1. Express Warranty. In addition to any rights the Applicant may have under aw, including under any provision of the CCA and subject to clauses 18 and 20, PSC warrants for a period of 3 months from the date of delivery that Goods manufactured by PSC will, under proper use and/or installation, be free from any defects in construction or operation arising solely from faulty design, manufacture or workmanship on the part of PSC. Any products, items or components which constitute Goods (or which form part of Goods) and which are not manufactured by PSC shall be warranted only by PSC only to the extent that they are warranted by PSC's relevant supplier or manufacturer and PSC is able to pass on the benefit of such warranty to the Applicant.
- 17.2. Should the Applicant find a fault or defect with any of the Goods the Applicant may make a claim only by sending a written notice to PSC to Level 1, 1 Clyde Street, Silverwater NSW 2128 (**the Express Warranty Notice**).
- 17.3. The Express Warranty Notice must:
 - (a) State that it is an express warranty notice;
 - (b) specify when the product was purchased;
 - (c) specify PSC's invoice number by which it was purchased;
 - (d) state when the Applicant first discovered the fault or defect;
 - (e) specify the location and address of the product; and
 - (f) provide a full and proper description of the fault or defect.
- 17.4. Upon receiving the Express Warranty Notice PSC may, in its absolute discretion:
 - (a) request access to the Goods, such access to be given to PSC and which must be provided by or made available by the Applicant at the Applicant's expense; and/or
 - (b) request the Goods to be returned to PSC at the Applicants expense so PSC can assess whether there is a fault or defect in the Goods.

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- 17.5. A claim under this Express Warranty cannot be made by the Applicant until all of the Goods (including Goods the subject of the Express Warranty Notice) are paid for in full, the Applicant's Credit Account with PSC is not in Arrears and/or the Applicant's Credit Account is within the credit limit as approved or varied from time to time by PSC. Until such a time as all the Goods (including Goods the subject of the Express Warranty Notice) are paid for in full, the Applicant's Credit Account with PSC is not in Arrears and the Applicant's Credit Account is within the credit limit approved or varied from time to time by PSC, any claim under this Express Warranty will not be processed by PSC and the Applicant's Credit Account shall incur interest in accordance with clause 16.4 of these Terms and Conditions.
- 17.6. The Express Warranty for Goods manufactured by PSC is limited to the replacement of the Goods and the delivery of such replaced Goods shall be at the Applicant's expense.
- 17.7. Once PSC has complied with clause 17.6, PSC is not liable to the Applicant and the Applicant has no further remedy arising of or in connection with the Goods' failure to comply with clause 17.1.

18. Exclusions

- 18.1. Subject to clause 20, the warranty set out in clause 17 does not apply where:
- a defect arises from ordinary wear and tear, excessive heating, neglect, misuse, accident, lack of care or incorrect installation, storage or working conditions;
 - the Applicant has in any way modified, serviced or repaired the Goods without PSC's prior written consent;
 - the Applicant has not complied with any written or oral instructions concerning the installation, storage, use, operation or maintenance of the Goods; or
 - the Applicant makes any further use of the Goods after giving notice in accordance with clause 17.2.

19. Limitation of Liability

- 19.1. Subject only to clause 20 and clause 22.3 and notwithstanding any other provision of any Agreement or otherwise:
- except to the extent caused by the negligent act or omission, wilful misconduct or breach by any Agreement by PSC, PSC shall not be liable to the Applicant for any Loss which may be made or brought against or suffered or incurred by the Applicant or any other person arising out of or in any way connected with the supply of or purported supply of Goods by PSC and the Applicant shall indemnify and keep indemnified PSC in respect of any such Loss;
 - all representations, express or implied, relating to any quotations or orders prior to an Agreement being representations which might otherwise form part of an Agreement or form part of any collateral agreement are excluded to the extent that they conflict with these Terms and Conditions;
 - no dealing between PSC and the Applicant shall be or be deemed to be a sale by sample.

20. Consumer Rights

- 20.1. No provision of these Terms and Conditions purports to exclude, restrict or modify or have the effect of excluding, restricting or modifying:
- the application, in relation to Goods, of any provision of the CCA; or
 - any liability of PSC for breach of a condition or warranty implied by any such provision.
- 20.2. If Goods under an Agreement constitutes a supply of goods and/or services to a consumer, as defined in the CCA:
- nothing in that Agreement shall be construed as excluding, restricting or modifying any express or implied condition, warranty, right or remedy conferred by the CCA on the Applicant; and
 - the liability of PSC in respect of any breach of a condition or warranty implied by the CCA (other than any non excludable implied conditions or warranties contained in the CCA), shall be limited at PSC's sole discretion to, in the case of goods, the resupply or repair of the goods, and in the case of services, the resupply of the services.

21. Acknowledgment

- 21.1. Subject to clause 20 and to the full extent permitted by law the Applicant acknowledges and agrees that:
- it relies on its own skill and judgment in relation to Goods; and
 - PSC shall be under no liability for any unsuitability for any purpose of Goods irrespective of any knowledge it may possess as to the purpose for which Goods were required by the Applicant.

22. Limitation of Warranties etc

- 22.1. Subject to any condition, warranties and rights implied by statute which cannot by law be excluded by agreement, including any provision of the CCA:
- PSC gives no warranties and the Applicant has no other right other than those expressly set out in these Terms and Conditions and in any other express warranties provided by PSC to the Applicant; and
 - all implied conditions, warranties and rights are excluded.
- 22.2. Where any condition, warranty or right is implied by law and cannot be excluded, the liability of PSC to the Applicant for breach of, or other act contrary to that implied condition, warranty or right in respect of any goods and/or services provided by or on behalf of or under any arrangement with PSC to the Applicant or any other person, subject to the qualifications set out in section 64A of Schedule 2 of the CCA or any other law, shall be limited as set out in clause 22.4 or, otherwise, to the extent permitted by law.
- 22.3. PSC limits any other liability it may have in relation to any claim, demand or proceedings of any kind whatsoever in respect of any goods and/or services provided by or on behalf of or under any arrangement with PSC to the Applicant or any other person, whether in contract, in tort (including negligence), under any statute (to the extent permitted by law) or otherwise, as set out below in clause 22.4 below.
- 22.4. Pursuant to clauses 22.2 and 22.3, and subject to any condition, warranties and rights implied by statute which cannot by law be excluded by agreement, including any provision of the CCA, PSC limits its liability:
- In connection with any goods supplied by PSC, to any one or more of the following (as PSC may determine in its absolute discretion):
 - The replacement of the goods or supply of similar or equivalent goods;
 - The repair of the goods;
 - Payment of the costs of replacement or acquiring similar or equivalent goods; or
 - Payment of the costs of having the goods repaired.
 - In connection with any services supplied by PSC, to one of the following (as PSC may determine in its absolute discretion):
 - The supply of the services again; or
 - Payment of the cost of having the services supplied again.

23. Indemnity

- 23.1. To the extent permitted by law, and subject to clause 20, the Applicant unconditionally and irrevocably indemnifies and must keep indemnified PSC from and against any and all Loss which may be made or brought against or suffered or incurred by PSC, the Applicant and/or any third party, including but not limited to:
- (Property damage): for any and all Loss which may be made or brought by or suffered or incurred by any person (including but not limited to PSC, the Applicant and/or any third party) for any and all damage to that person's property (whether real or personal) arising in any way whatsoever out of or in connection with the Applicant's carriage, use, installation, storage or keeping of any Goods;
 - (Personal injury): for any and all Loss which may be made or brought by or suffered or incurred by any person (including but not limited to PSC, the Applicant and/or any third party) for any injury such person may sustain arising in any way whatsoever out of or in connection with the Applicant's carriage, use, installation, storage or keeping of any Goods;
 - All expenses, costs, disbursements, legal costs, search fees and/or debt collection fees incurred by PSC:
 - in relation to the recovery of any monies owing by the Applicant to PSC;
 - in relation to the collection and/or repossession of any Goods;
 - enforcing its rights against the Applicant whether under these Terms and Conditions or otherwise; and/or
 - any unauthorised use of the Applicant's account.

24. Termination

- 24.1. If a Default Event occurs then PSC may by notice to the Applicant with immediate effect:
- Terminate any Agreement(s) with the Applicant; and/or
 - Cease supplying any further Goods; and/or
 - Commence proceedings against the Applicant, including for any monies owing and/or the seeking of any available remedies or relief; and/or
 - Exercise any other rights.

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25. Result of termination

- 25.1. Termination of an Agreement pursuant to clause 24 shall be without prejudice to the rights of PSC accruing up to the date of termination.
- 25.2. In the event of termination of an Agreement, the Applicant shall pay PSC:
 - (a) all monies owing resulting from any Agreement up to and including the date of termination; and/or
 - (b) for any Loss suffered by PSC, including without limitation PSC loss of profit on any Agreement; and/or
 - (c) the legal costs of PSC (on an indemnity basis) incurred in relation to the termination or any prior breach and in PSC pursuing and/or exercising any consequential rights and remedies.

26. Assignment

- 26.1. The Applicant shall not assign any of the Applicant's rights in relation to any Agreement without the prior written consent of PSC, which shall not be unreasonably withheld.
- 26.2. The Applicant consents to PSC assigning any of PSC's rights in relation to any Agreement.
- 26.3. PSC may assign any of its rights in relation to any Agreement without having to give any notice to the Applicant.

27. Waiver

- 27.1. Any waiver by PSC of strict compliance with these Terms and Conditions shall not be deemed a waiver unless it is in writing, it specifies the specific right which it waives, it is specifically referred to as a waiver and it is signed by an authorised officer of PSC. A single or partial exercise or waiver by PSC of a right will not prevent PSC from exercising that right or any other right.

28. Unauthorised use of the Applicant's account with PSC

- 28.1. The Applicant acknowledges and agrees that:
 - (a) PSC will not be liable in any way whatsoever for any unauthorised use of the Applicant's account with PSC; and
 - (b) The Applicant will nevertheless be liable to PSC for payment of any goods and/or services ordered on the Applicant's account with PSC even if such orders were made without the Applicant's authority.

29. Amendment of Terms and Conditions

- 29.1. The Applicant acknowledges and agrees that these Terms and Conditions may be amended by PSC at any time by sending written notice of such amendment to the Applicant.
- 29.2. Any such amendments to these Terms and Conditions shall be effective two business days after PSC provides the notice in accordance with this clause and whether or not the Applicant receives such notice and shall apply to any orders for Goods (including the goods that are subject of a Special Order) from that time.
- 29.3. In the event that the Applicant does not consent to any amendments by PSC to the Terms and Conditions, the Applicant can terminate its Credit Account with PSC and such termination must be in writing and sent to and received by PSC's National Credit Manager PSC. In the event the Applicant terminates its Credit Account under this clause 29.3 then:
 - (a) The Applicant shall, without prejudice to PSC's rights under these Terms and Conditions accruing up to the date of such termination, continue to be liable to PSC for any sums outstanding on any account opened for or on behalf of the Applicant and for all Goods, in accordance with these Terms and Conditions; and
 - (b) the Applicant will not be permitted to make any further orders for Goods, or Agreement, with PSC.

30. Invalid and Unenforceable Terms

- 30.1. Should any of these Terms and Conditions or any part of these Terms and Conditions be illegal, invalid or unenforceable for any reason then they shall be severed from the other Terms and Conditions and shall not affect the remaining Terms and Conditions.

31. Service of Notices etc

- 31.1. Service of any notice, demand proceedings, summonses, suits or action (collectively called "Process") upon the applicant may be effected by PSC or its solicitors by sending same to the email, postal, trading or street address most recently advised by the Applicant to PSC or obtained by PSC. The choice of address and method of sending will be at the absolute discretion of PSC. The Process shall be deemed served one business day after sending by PSC whether or not it has been received by the Applicant. Unless stated otherwise, the service of any notice on PSC must be effected by sending the notice to Plumbers Supplies Co-op, Level 1, 1 Clyde Street, Silverwater NSW 2128 and such service will only be valid and effected upon the actual receipt of such notice.

32. Confidentiality

- 32.1. The Applicant agrees that it will not disclose Confidential Information of PSC, except:
 - (a) where the information is in the public domain as at the date of this Agreement (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality of the Applicant);
 - (b) if the Applicant is required by applicable law to disclose the information;
 - (c) where disclosure is made by the Applicant to its financiers, lawyers or other professional advisors to the extent necessary to enable the Applicant to conduct its business, provided that is done under similar obligations of confidentiality to those set out in this clause;
 - (d) where disclosure is expressly permitted under this Agreement; or
 - (e) where PSC has consented in writing before the disclosure.

33. Accuracy of information

- 33.1. The Applicant acknowledges that all information on the PSC website or any other PSC publications, including pricing, product information, images and photos, is subject to change and PSC does not warrant the accuracy, currency, completeness or adequacy of that information.

34. Survival

- 34.1. Clauses 23 (Indemnity), 25 (Result of termination), 31 (Service of notices etc), 32 (Confidentiality), 35 (Jurisdiction) and other clauses that by their nature are intended to survive termination, continue to apply after termination of any Agreement between PSC and the Applicant.

35. Jurisdiction

- (a) Any legal proceedings between PSC and the Applicant will be governed by the laws of New South Wales and the Commonwealth of Australia as applicable;
- (b) PSC and the Applicant irrevocably submit to the exclusive jurisdiction of the courts of New South Wales for any legal proceedings between PSC and the Applicant;
- (c) Any legal proceedings between PSC and the Applicant shall be instituted in a court of competent jurisdiction in New South Wales (including the New South Wales Registries of the Federal Court of Australia or the Federal Magistrate's Court of Australia should it be a matter where a State court of New South Wales lacks jurisdiction);
- (d) The Applicant shall not try to intervene or interfere in any way whatsoever with PSC's choice of jurisdiction, such choice being the jurisdiction in which PSC commences any proceedings;
- (e) The Applicant shall not try to intervene with the jurisdiction of any court of New South Wales or the operation of this clause by seeking a stay (for example, under the Service and Execution of Process Act 1992 (Cth)) or a transfer of proceedings on the basis that they should be held in another jurisdiction; and
- (f) The Applicant hereby expressly waives any rights under section 20 of the Service and Execution of Process Act 1992 (Cth) as amended to apply for a stay of any proceedings in relation to any proceedings between the Applicant and PSC.