

## **Trend Bathroom & Kitchen Centre Terms and Conditions of Sale**

These General Terms and Conditions of Sale ("Conditions") shall apply to and form part of any contract for the supply of goods, products and materials and related services ("Goods") by Trend Bathroom and Kitchen Centre ("The Company").

### **1. Terms**

- 1.1 These terms are subject to alteration without notice.
- 1.2 This Agreement commences on the date the Purchaser accepts the Quotation in writing.

### **2. Quotations, orders and contracts**

- 2.1 All quotations are made and all orders for Goods are accepted by the Company on and subject to the Conditions and any special terms and conditions which are agreed to by the Company in writing. Unless otherwise expressly agreed by the Company, previous dealings between the Company and any Purchaser or the imposition of additional or alternative terms and conditions by a Purchaser shall not vary or replace these Conditions or be deemed in any circumstances whatsoever to do so.
- 2.2 The Company may withdraw, revoke or vary a written quotation at any time prior to the Purchaser submitting an order which accepts the offer to sell comprised by the written quotation.
- 2.3 The Company reserves the right to accept or decline, in whole or in part, any order for Goods placed by a Purchaser.
- 2.4 The agreement to supply Goods to the Purchaser starts on the date the Company agrees to supply the Goods to the Purchaser. This may not be the date the order is received by the Company.
- 2.5 Where in the period between acceptance of a quote and delivery of the relevant Goods, the Company incurs an increase in the cost of producing and/or delivering the Goods, the Company reserves the right to increase the quoted price of those Goods any time prior to delivery (a "price escalation"). The Purchaser shall accept any such price escalation.
- 2.6 These Conditions prevail over any terms and conditions of trade of the Purchaser whether or not any inconsistency arises.
- 2.7 The Company acknowledges that the supply of Goods by the Company under these Conditions to an individual, whose acquisition of the Goods is wholly or predominantly for personal, domestic or household use or consumption, will be a consumer contract for the purposes of the Australian Consumer Law ("Consumer Contract").
- 2.8 A deposit of 25% of the invoice price must be paid when placing an order and the balance of the invoice price must be paid in full before delivery.
- 2.9 Goods ordered for collection will be held for a maximum period of six (6) weeks and must be paid upfront in full.

### **3. Price**

- 3.1 The price of Goods will be the Company's current price at the time of delivery (or where clause 7.4(d) applies, the current price at the date of the invoice), subject to any contrary agreement (if any) between the Company and the Purchaser regarding price.
- 3.2 Where Goods supplied to a Purchaser are of a kind ordinarily acquired for personal, domestic or household use, the Company will provide a quotation or otherwise notify the Purchaser of a single total price, inclusive of GST, applicable to those Goods if the price is capable of being quantified. The Purchaser shall be liable to pay to the Company all amounts on account of GST in the same manner and by the same means as all other charges.
- 3.3 The price of Goods specified by the Company in any quotation:
  - a) Will remain valid for a period of 30 days for an order made by the Purchaser in accordance with the quotation, unless otherwise specified; and
  - b) Is the subject to any other conditions specified in the quotation.
- 3.4 Unless otherwise indicated, all prices for Goods are exclusive of all applicable taxes and charges. The Purchaser shall be liable for all excise, sales, GST or any other tax, charge or Government impost (domestic or foreign) upon the Goods or any part of the Goods, or upon the manufacture, use sale or delivery of the Goods in addition to the purchase price. Where Goods are subject to GST, the Customer must pay GST at the same time as payment for Goods is made.

3.5 Unless otherwise agreed, prices do not include the cost of delivery of Goods including but not limited to costs incurred by the Company arising out of late notification by the Purchaser of a change to agreed delivery schedule, storage charges where Goods are not collected immediately upon being made available and demurrage costs incurred by the Company.

3.6 Unless otherwise requested by the Purchaser in writing, prices quoted provide for the Company's standard packing arrangements.

#### **4. Precedence**

4.1 These Terms, the Quotation, the Rates Schedule, the Credit Application, the Credit Terms and any other written instruction or authority provided by the Company to proceed constitutes the entire agreement ("Agreement") between the Purchaser and the Company to the maximum extent permitted by law; and:

- a) Subject to clause 4.1(b), this Agreement supersedes all prior or contemporaneous oral or written communications, proposals, terms and representations to the maximum extent permitted by law and prevails over any conflicting or additional terms of any quote, order, acknowledgement, or similar communication between the parties during the term of the Agreement; and
- b) No modification to the Agreement will be binding, unless in writing and signed by a duly authorised representative of each party.

#### **5. Payment**

5.1 Unless the Company grants credit to the Purchaser and subject to the Company's right to withdraw credit, payment for Goods purchased from the Company must be paid by the Purchaser by cash, bank cheque (prior arrangement must be made) or EFTPOS and without deduction unless otherwise agreed immediately prior to delivery of the Goods.

5.2 Where the Purchaser has an approved credit account with the Company, the Purchaser shall ensure that payment for the Goods is made to the Company in accordance with the terms agreed between the Company and the Purchaser. All payments are required to be made by the Purchaser by no later than 30 days after the date of the Company's invoice or such other date for payment as the Company and the Purchaser agree in writing.

5.3 The Company reserves the right to charge interest on any amount overdue from the date it became due to the date payment is received at the rate prescribed by the *Penalty Interest Rates Act 1983 (Vic.)* plus 2%. All payments made by the Purchaser will first be applied to the accrued interest.

5.4 The Company may set off any amount owed by the Purchaser to the Company against any amount of money owed, or may become owing, by the Company to the Purchaser. The Purchaser waives any right to set off any amount that is, or may become, owing by the Purchaser to the Company against any amount owing by the Company to the Purchaser. This clause overrides any other document or agreement to the contrary.

5.5 Payments made by credit card may be subject to a surcharge.

#### **6. Credit Information**

6.1 The Purchaser irrevocably authorises the Company, its servants and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Purchaser from time to time including the making of enquiries with persons nominated as trade references, the bankers of the Purchaser, any other credit provider or a credit reporting agency (hereinafter called "the Information Sources"). The Purchaser authorises the Information Sources to disclose to the Company such information concerning the Purchaser which is within their possession and which is required by the Company to the fullest extent permitted by the relevant privacy laws of the territory.

6.2 The Purchaser agrees that the information provided on any credit application signed by the Purchaser concerning the Purchaser may be disclosed by the Company to a credit reporting agency or any other interested person to the fullest extent permitted by the relevant privacy laws of the territory.

#### **7. Default by Purchaser**

7.1 Where the Purchaser is in default in the performance of any of its obligations under these Conditions and the Goods have not been supplied under a Consumer Contract, the Company may refuse, without prejudice to any other rights it may have under these Conditions or at law, to supply or deliver further Goods to the Purchaser until such time as the Purchaser has remedied that default, and/or may choose to terminate the contract.

7.2 If the Goods have been supplied by the Company under a Consumer Contract and the Purchaser is in default in the performance of any of its material obligations under these Conditions, the Company may refuse to deliver further Goods until such time as the Purchaser has remedied that default and where:

- a) The Purchaser has not notified the Company of any damage, inaccuracies or defects under clause 9 of this Contract; and
- b) The Purchaser does not remedy that default within 14 days of the Purchaser receiving written notification, or such other time as may be agreed by the parties,

7.3 The Company may terminate the contract in relation to Goods that have not been delivered.

7.4 If the Purchaser (including a Purchaser under a Consumer Contract) commences to be wound up or is placed under official management or into liquidation or has a receiver and/or manager appointed in respect of any of its assets or becomes insolvent, commits any act of bankruptcy or becomes subject to any other analogous event, the Company may at its option exercise any or all of the following rights in addition to any other rights it may have under these Conditions or at law:

- a) Suspend deliveries of further Goods to the Purchaser whether under this contract or otherwise;
- b) Terminate the contract in relation to Goods that have not been delivered;
- c) Withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owed to the Company by the Purchaser;
- d) Issue an invoice for, and demand immediate payment of, Goods ordered by the Purchaser but not delivered.

7.5 The Purchaser as beneficial owner charges in favour of the Company all of its interest in all of the present and future real property of the Purchaser as security for the due and punctual payment of all debts and monetary liabilities owed by the Purchaser to the Company pursuant to a contract on or including the terms of these Conditions. The Purchaser consents to the Company lodging a caveat to note its interest. Upon demand by the Company, the Purchaser agrees to immediately execute a mortgage on terms satisfactory to the Company to more particularly describe the security interest conferred by this clause. Should the Purchaser fail within a reasonable time of such demand to execute such mortgage then the Purchaser irrevocably appoints the Company as its attorney with authority to do on its behalf anything that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Purchaser.

7.6 All costs incurred by the Company relating to any action taken by the Company to recover monies due from the Purchaser (including, without limitation, legal or other debt collection costs) shall be payable by the Purchaser on demand.

## **8. Return Policy and Supply**

8.1 Subject to the Purchaser's statutory rights under the CCA:

- a) Any Goods supplied in accordance with the Purchaser's custom requirements or specially sourced by the Company for the Purchaser will not be acceptable for return and/or credit;
- b) Where the Purchaser makes a claim for a credit or refund in respect of Goods, the Goods must be in their original undamaged packaging, other than where the Purchaser is making a claim in respect of the Goods under the CCA;
- c) No Goods will be accepted for return and credit after seven (7) days from the date of invoice unless the return or a claim is made under the CCA, in which case the Goods must be returned within a reasonable time;
- d) If the Company in its sole discretion agrees to accept the return of any Goods, they must be in an "as new" and saleable condition free of any damage;
- e) Upon the receipt of the returned Goods, the Company will credit to the Purchaser the Purchase Price for the Goods, less any restocking fee charged by the Company from time to time ("Restocking Fee") or other monies owing by the Purchaser to the Company; and
- f) The Purchaser will be responsible for the Cost of and for effecting the delivery to the Company of any Goods returned under this Clause 8. The Company will be responsible for the cost of, and for effecting, the delivery to the Purchaser of any Goods replaced under this Clause.

8.2 Nothing in this clause affects any statutory obligations of the Company in relation to the Goods (or corresponding rights of the Purchaser), that may not lawfully be excluded.

8.3 Non-stock items will incur a restocking fee by the Purchaser to the Company. The Company may in its discretion accept the return of stock items and in so doing may charge the Purchaser a restocking charge.

## **9. Specifications, materials or special orders**

9.1 All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in catalogues, price lists or other advertising matter of the Company or elsewhere are approximations only. They are intended by the Company to be a general description for information and identification purposes and do not create a sale by description.

- 9.2 The Company shall not be bound to accept any change in product dimension, materials or finish, a reduction in the quantity ordered or other particulars of an order for Goods after the Company has ordered special materials or commenced tooling for manufacture.
- 9.3 Unless otherwise stated on a quotation, Goods will be supplied by the Company with the tolerances in regard to quantity, weight, dimension and chemical composition as specified in the relevant order or, if not specified, as consistent with usual industry practice.
- 9.4 In the case of goods or components not of the Company's manufacture, the Company shall give the Purchaser, and use its best endeavours to enforce at the cost of and for the benefit of the Purchaser, such warranties and guarantees as the Company has obtained from its suppliers.
- 9.5 Where the Company is required to order special material or qualities for which a supplier of the Company requests minimum order quantities, the Purchaser may be requested to accept an increase of the minimum quantity required to be ordered by the Company to fulfil the order and if so requested the Purchaser shall be obliged to accept and pay for such increase. The price for the additional product shall be determined according to the unit price for the products requested in the order.
- 9.6 If the Company is required to process the Purchaser's goods or materials then the Company does not give any warranty or assurance that materials supplied by the Purchaser are suitable for such processing subject to the rights of Consumers as set out in clause 18.2, the Company accepts no responsibility and shall not in any way be liable to the Purchaser for any damage done or caused to such materials or goods, except if you are a Purchaser under a Consumer Contract and such loss or damage arises from the negligence or wilful misconduct of the Company or any of its officers, employees or agents.
- 9.7 Notwithstanding any other provision of these Conditions, it is a term of the contract made between the Company and the Purchaser that the Company has discretion to refuse to supply Goods to the Purchaser (without liability to the Purchaser) where:
- a) Goods are unavailable or insufficient for any reason whatsoever;
  - b) The Purchaser has failed to comply with terms on which the Company has agreed to provide credit to the Purchaser;
  - c) The Purchaser or a Related Corporation of it has breached a contract with the Company including these Conditions; or
  - d) The Company considers it necessary or desirable to do so for any reason at all.
- 9.8 Subject to the rights of Consumers set out in clause 18.2, unless the Goods have been supplied to the Purchaser by the Company under a Consumer Contract, the Purchaser agrees that it does not rely on the skill or judgment of the Company in relation to the suitability of any of the Goods for a particular purpose unless it has indicated that purpose in writing to the Company and the Company has acknowledged in writing that the Goods will be fit for the particular purpose.

## 10. Delivery and Risk

- 10.1 Unless otherwise agreed, the Company shall deliver Goods to the Purchaser as follows:
- a) The Company reserves the right to arrange transport by any means in its absolute discretion;
  - b) Delivery will be made during Working Hours to the location agreed by the parties ("Delivery Point");
  - c) The Company or its transport contractor will deliver the Goods so close ("Drop Spot") to the Delivery Point as, in the opinion of the Company or its transport contractor, it is safe or prudent to do so and delivery occurs and risk in the Goods passes to the Purchaser when the Company's or its transport contractor's delivery vehicle arrives at the Drop Spot;
  - d) The Company reserves the right to charge the Purchaser any costs which it incurs as a result of any delay by the Purchaser in unloading the Goods or where unloading of the goods cannot be effected, including, if applicable, a return delivery fee at the prevailing freight rates;
  - e) The unloading of Goods at a Drop Spot is the Purchaser's responsibility at its own cost and risk but the Company or its transport contractor may, without liability to the Purchaser, unload the Goods at the Drop Spot if the Purchaser requests the Company to do so or is absent from the Drop Spot at the time the Company or its transport contractor wishes to unload and, subject to the rights of Consumers set out in clause 18.2, the Purchaser releases and forever discharges the Company and its transport contractor from and against any claim, cause of action or liability arising out of the unloading of Goods at the Drop Spot;
  - f) Where the Purchaser attends the Company's premises to acquire the Goods, the Company may, in its absolute discretion:
    - i) Deliver the Goods into or onto the Purchaser's vehicle in which case risk in the Goods passes to the Purchaser and delivery is effected when the Goods are set down in or on the Purchaser's vehicle; or
    - ii) Deliver the Goods by setting them down along side the Purchaser's vehicle in which case risk in the Goods passes to the Purchaser and delivery is effected when the Goods are set down along side the Purchaser's vehicle notwithstanding that the

Company's staff may, on request, assist the Purchaser to load the Goods into or onto the Purchaser's vehicle.

- 10.2 Goods ordered for collection will be held for a maximum period of six (6) weeks and the balance of the invoice price must be paid in full before collection. If the Goods are not collected by that time, they may be delivered to (at the Company's option) the Purchaser's site or store or to a store selected by the Company and all costs incurred by the Company in relation to the holding and delivery of the goods shall be charged to and be paid by the Purchaser.
- 10.3 The Goods are at the Purchaser's risk from the time at which they are delivered to the Purchaser or its nominee.
- 10.4 Handling Safety – Company product may be sharp and heavy. It is recommended that heavy-duty cut resistant gloves and appropriate manual handling techniques or a lifting plan be used when handling material.
- 10.5 Dates and times quoted for delivery are estimates only.
- 10.6 The Company shall not be obliged to complete any order in one delivery and expressly reserves the right to deliver by instalments. Where the Company delivers by instalments, each instalment shall be deemed to be sold to the Purchaser under a separate contract. Failure to deliver any one instalment by the time quoted for delivery of that instalment (if any) shall not entitle the Purchaser to repudiate the order.
- 10.7 Where the Company or its transport contractor enters the Purchaser's premises or the premises of a third party nominated by the Purchaser as a delivery point, the Purchaser:
- a) Releases the Company from any claim the Purchaser may at any time have had against the Company but for its release in respect of damage occasioned to the Purchaser's premises or injury to persons arising out of the delivery by the Company or its transport contractor of Goods to such premises; and
  - b) Indemnifies and holds the Company harmless from and against any loss, damage or liability suffered or incurred by the Company in respect of damage occasioned to the third party's premises or injury to persons arising out of the delivery by the Company or its transport contractor of Goods to the premises of the third party except for and to the extent that such loss, damage or liability suffered or incurred by the Company arises out of the negligence or wilful misconduct of the Company or its transport contractor.
- 10.8 No defect or claim in respect of Goods delivered shall entitle the Purchaser to reject delivery of other Goods, which are not subject to any defect or claim, delivered as part of the order.
- 10.9 If the Company is prevented either directly or indirectly from performing any of its obligations under these conditions, including without limitation, making a delivery of the Goods or any part of the Goods by reason of *force majeure*, it shall be entitled, at its option, by notice to the Purchaser, either to:
- a) Extend the time for delivery of the Goods for a reasonable period; or
  - b) Subject to refunding the Purchaser for any payment already made to the Company in respect of those particular Goods (if any), terminate this contract,

and the Purchaser shall not have any claim against the Company for damages or any other remedy for breach of contract. *Force majeure* shall mean an act of God, war, fire, strike, lockout, trade or industrial disputes, Government interference, lack of production capacity of raw materials, transport delays, supplies or any other cause beyond the Company's control.

## 11. Retention of Title

- 11.1 The Purchaser agrees that legal and equitable title to the Goods is retained by the Company until the Company receives payment in full from the Purchaser for the Goods and all other monies owing by the Purchaser to the Company at any time. Prior to title in the Goods passing to the Purchaser, the Purchaser:
- a) Must hold the goods as bailee and fiduciary agent of the Company;
  - b) Where the Purchaser processes the Goods, either by using the Goods to manufacture other goods or by incorporating the Goods in or with any other goods, must hold such part of the new goods ("Processed Goods") on trust for the Company as bailee and fiduciary agent of the Company;
  - c) Must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party so that they are readily identifiable as the property of the Company;
  - d) Must keep the Goods in good and merchantable condition and fully insure the Goods against loss or damage however caused;

- e) Must not sell the Goods except with the prior written consent of the Company or in the ordinary course of the Purchaser's business, provided that any such sale is at arms' length and on market terms;
  - f) Any proceeds of re-sale insofar as they relate to the Goods shall be held on trust for the Company in a separate account; and
  - g) Must not create any encumbrance over the Goods which is inconsistent with the Company's title and ownership of the Goods.
- 11.2 For purpose of this clause 11, "such part" means an amount equal in dollar terms to the amount owing by the Purchaser to the Company at the time the Goods are used in the manufacture of, or incorporated into, the Processed Goods.
- 11.3 If the Purchaser is in breach of these Conditions including, without limitation, failure by the Purchaser to make payment for the Goods by the date specified by the Company to the Purchaser or in the Company's reasonable opinion the payment of any amount in respect of the Goods supplied by the Company is in jeopardy, the Purchaser must return the Goods to the Company immediately on demand.
- 11.4 If the Purchaser does not return the Goods to the Company on demand under clause 11.3, the Purchaser irrevocably authorises representatives of the Company to enter upon any site where the Goods are located to take possession of the Goods without prior notice, and the Purchaser indemnifies the Company for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against the Company in connection with the retaking possession of the Goods or the exercise by the Company of its rights under this clause, and the Purchaser shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

## 12. Dispute Resolution

- 12.1 If a dispute arises in any way out of this Agreement, or its breach, termination or validity or the Goods the subject of this Agreement, the parties agree to endeavour to settle the dispute by mediation before having recourse to litigation, other than for disputes involving the payment for Goods by the Purchaser.
- 12.2 Any costs incurred in relation to the mediation of a dispute are to be shared equally between the Company and the Purchaser.
- 12.3 Nothing in this Agreement prevents either party from seeking urgent interlocutory intervention.

## 13. Force Majeure

- 13.1 The Company will not be liable in damages or otherwise for any failure to provide the Goods which is caused, whether wholly or partially, by an event beyond its reasonable control including (but not limited to) Act of God, force majeure, war, fire, explosion, acts of terrorism, rioting, burglary, theft, civil disturbances, restrictions by Governments (local, municipal, State or Federal) or other competent authority, general economic trends, strikes, industrial action or lockouts (whether at the Company's premises or not), accidents either at the Company's premises or when in transit to or from those premises, failure by subcontractors and the late arrival of inventory or other material.

## 14. Application of the PPSA

- 14.1 In this clause 14, PPSA means the *Personal Property Securities Act 2009*. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 14.2 This clause 14 applies to the extent that the Company's interest in any Goods is a security interest.
- 14.3 The Goods are bathroom and kitchen appliances and products.
- 14.4 The Purchaser acknowledges and agrees that the Company may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Purchaser waives its right under s.157 of the PPSA to receive notice of any verification of the registration.
- 14.5 The Company can apply amounts it receives from the Purchaser towards amounts owing to it in such order as the Company chooses.
- 14.6 If the Purchaser defaults in the performance of any obligation owed to the Company under these Conditions or any other agreement for the Company to supply Goods to the Purchaser, the Company may enforce its security interest in any Goods by exercising all or any of its rights under these conditions or the PPSA. To the maximum extent permitted by law, the Purchaser and the Company agree that the following provisions of the PPSA do not apply to the enforcement by the Company of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.

- 14.7 The Purchaser and the Company agree not to disclose information of the kind mentioned in s.275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
- 14.8 The Purchaser must promptly do anything required by the Company to ensure that the Company's security interest is a perfected security interest and has priority over all other security interests in the Goods.
- 14.9 Nothing in this clause 14 is limited by any other provision of these Conditions or any other agreement between the parties.

#### **15. Damage, Inaccuracies and Defects**

- 15.1 The Purchaser shall check all Goods received immediately upon unloading and shall notify the Company in writing of any inaccuracies or short supply of Goods or any fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract made pursuant to these Conditions within seven (7) Business Days of the date of delivery of the Goods.
- 15.2 Subject to the rights of Consumers set out in these terms and conditions, if the Purchaser does not notify the Company in writing within seven (7) Business Days of the date of delivery, the Company will not be responsible for any loss or damage whatsoever and howsoever caused arising out of or resulting from such inaccuracies or short supply of Goods, or fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract, except if you are a Purchaser under a Consumer Contract and such loss or damage arises from the negligence or wilful misconduct of the Company, or any of its officers, employees or agents.
- 15.3 Subject to the rights of Consumers set out in clause 18.2, if the Purchaser notifies the Company in writing of a fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract made pursuant to these Conditions within seven (7) Business Days of delivery then the Company will, if in its opinion, the Purchaser's notice is reasonable and the Purchaser has not used the Goods, at the Company's option and subject to the manufacturers warranty and terms and conditions, repair or replace the Goods that appear to be faulty, damaged or defective or not in compliance with the terms of a contract made pursuant to these Conditions and the Company shall have no additional liability to the Purchaser.
- 15.4 Any queries regarding items shown on invoices issued by the Company shall be lodged by the Purchaser with the Company within seven (7) days of the issue date of the relevant invoice.

#### **16. Warranties, Liabilities and Indemnities**

- 16.1 Where applicable, Goods shall be installed in accordance with the Company's supplier recommended fixing procedures as included with the product installation instructions available on request from your customer service representative.
- 16.2 The Company acknowledges that consumer legislation contains certain guarantees for the supply of goods or services that cannot be excluded, restricted or modified by these Conditions. For example, for Consumers:
- a) Goods come with non-excludable guarantees that they are of acceptable quality and fit for the purpose for which they are commonly acquired or for a purpose made known to the Company and based on which the goods are supplied; and
  - b) Services come with non-excludable warranties that they will be provided with due care and skill and are fit for the purpose for which they are commonly acquired or for a purpose made known to the Company and based on which the services are supplied.

Nothing in these Conditions is intended to excluded or restrict the application of such laws.

- 16.3 Subject to the rights of Consumers set out in clause 16.2:
- a) The Company shall not be responsible for the consequence of any representation made or technical advice given by its employees, agents or subcontractors in connection with the design, installation and use of the Goods, and the Purchaser agrees that all such advice is accepted by the Purchaser entirely at the Purchaser's risk;
  - b) Or as otherwise expressly specified in the terms of any applicable written warranty provided by the Company, the Company's liability to the Purchaser (whether arising under statute, contract, tort [including negligence], equity or otherwise) for any defect in the Goods, or the supply of the Goods, is limited, at the Company's option, to:
    - i) In the case of Goods, the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods; or
    - ii) In the case of services, the re-supply of services or paying for the cost of re-supplying the services;

- c) And also subject to clause 16.3(b), the Company is not liable to the Purchaser or anyone else in connection with the Goods or the supply of the Goods or with these Conditions (including any changes to the Conditions), including without limitation for:
- i) Any losses, costs, damages, expenses, claims, demands, actions, suits or proceedings (including without limitation for damage to the Goods or injury to any person) arising from:
    - the loading, unloading or delivery of the Goods;
    - a failure to deliver, or delay in delivering, the Goods;
    - a failure to install the Goods in accordance with the company's recommended fixing procedures as published from time to time;
    - the removal of defective Goods or the installation of replacement Goods; or
    - the use of any tool or equipment loaned or hired out by the Company;
  - ii) Any direct, indirect or consequential loss or damage, any loss of actual or anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss; and
  - iii) Any claim, action or proceeding by a third party against the Purchaser (or any loss, damages or liability incurred or suffered by the Purchaser as a result of any such claim, action or proceeding); and
- d) The Purchaser indemnifies the Company from and against all losses, damages, costs and expenses suffered or incurred by the Company, and all claims, demands, suits, actions or proceedings made or brought against the Company arising out of:
- i) The Company's use of or reliance on any materials, design, drawing or specification provided to the Company by the Purchaser (including any allegation or claim that any such use or reliance by the Company infringes the intellectual property rights of any person);
  - ii) Any loss or damage caused by or during the processing of materials supplied to the Company by the Purchaser; or
  - iii) Any loss or damage caused by any tool or equipment, or the use of any tool or equipment, hired out by the Company to the Purchaser,

except if you are a Purchaser under a Consumer Contract and such loss or damage arises from the negligence or wilful misconduct of the Company, or any of its officers, employees or agents.

## 17. Privacy and Financial Information

- 17.1 The Purchaser acknowledges and consents to the use by the Company and its employees, officers and agents for the purpose of supply of Goods to the Purchaser hereunder and for the purposes of assessing and approving any credit application of the Purchaser and any guarantor's personal information in respect of but not limited to any application for credit, credit history, and in respect of obtaining reports in relation to same or for general marketing purposes and otherwise in accordance with the Company's privacy policy from time to time, which is available upon request. Other than in the circumstances allowed under the relevant privacy laws of the territory or its privacy policy, the Company will not disclose such personal information to other parties. The Purchaser may contact the Company's Privacy Officer at any time to access or change any personal information provided to the Company.
- 17.2 The Purchaser irrevocably authorises the Company to seek and use any reports from a credit reporting agency of its choosing containing personal information about the Purchaser in relation to the collection of any monies owing by the Purchaser to the extent permitted by law. The Purchaser consents to the Company giving any information relating to the collection of any outstanding amounts to any credit-reporting agency to the extent permitted by law.
- 17.3 The Purchaser will provide any and all necessary instructions and/or authorities required by the Company's accountants, debtor insurers and bankers to enable the Company to make investigations from time to time into the Purchaser's trading and financial position.
- 17.4 The Purchaser's details, including its purchases will be added to the Company's database and will be used by the Company:
- a) To identify the Purchaser;
  - b) To provide services to the Purchaser, including the processing of any application for or granting of credit and the management and administration of those services;
  - c) To provide the Purchaser with information about the Goods;
  - d) In undertaking risk assessment management; and
  - e) In gathering data and disclosing data to third parties such as:
    - i) insurance brokers and insurers;
    - ii) credit reporting agencies; and
    - iii) financial institutions.
- 17.5 A copy of the Company's privacy policy can be viewed at [www.trendbathroomandkitchen.com.au](http://www.trendbathroomandkitchen.com.au).

## 18. Miscellaneous

- 18.1 These Conditions set out the entire agreement between the parties in relation to their subject matter. The terms of the United Nations Convention of Contracts for the International Sale of Goods 1980 are expressly excluded.
- 18.2 The law applicable to the agreement between the Company and the Purchaser is the law of the State or Territory in which the Goods are delivered. The Company and the Purchaser submit to the jurisdiction of the relevant State or Territory courts.
- 18.3 Nothing in these Conditions shall constitute the Company as a subcontractor of the Purchaser. The Company's obligations are limited to those of a material supplier.
- 18.4 A party waives a right under these conditions only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of a term of these Conditions does not operate as a waiver of another breach of the same term or any other term.
- 18.5 If a provision in these Conditions is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from these Conditions. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.
- 18.6 The Company and the Purchaser may conduct business by Electronic Data Interchange (EDI). The Purchaser agrees that if it has EDI capability with the Company's EDI is the preferred method of conducting business. The Company and the Purchaser agree that EDI will be conducted in accordance with the terms of any Electronic Trading Partner Agreement to which they are parties and into which these Conditions of sale are incorporated.

## 19. Jurisdiction

- 19.1 All contracts between the Company and the Purchaser shall be subject to the laws of the State of Victoria and the Purchaser agrees to submit to the non-exclusive jurisdiction of the Courts of Victoria and the Federal Court of Australia.

## 20. Severance

- 21.1 If any provision of this Agreement does not comply with any law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be treated as severable from the rest of this Agreement.

## 21. Variation

- 21.1 Any variation to this Agreement must be in writing and signed by both parties.

## 22. Interpretation

In these Conditions:

**Agreement** means the agreement between the Company and the Purchaser to provide Goods to the Purchaser subject to these Terms and Conditions of Trade ("Terms") as defined in clause 4.1 above.

**Business Day** means Monday to Saturday (inclusive) excluding public holidays at the place of delivery.

**CCA** means the *Competition and Consumer Act 2010* (Cth) and any amendment thereof.

**Consumer** means a person who acquires Goods from the Company where:

- a) The amount paid or payable for the Goods did not exceed \$40,000.00; or
- b) The Goods were of a kind ordinarily acquired for personal, domestic or household use or consumption, unless the Goods were acquired for the purpose of re-supply or the purpose of using them up or transforming them in trade or commerce.

**Consumer Guarantee** means the guarantees provided for in Part 3-2 Division 1 of the Australian Consumer Law or any amendment thereof.

**Credit Agreement** means the credit application, guarantee and terms and conditions of credit of the Company as amended from time to time applicable to the Purchaser upon being granted credit by the Company.

**GST** means the tax payable on Taxable Supplies within the meaning of the *GST Act*.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

**Purchaser** means a person, being an incorporated or unincorporated business or an individual, who acquires Goods from the Company and includes a Consumer.

**Related Corporation** has the meaning given to the term "related body corporate" in section 50 of the *Corporations Act 2001*.

**Working Hours** means Monday to Friday from 8:30am to 5:00pm and Saturday 9:00am to 3:00pm (inclusive) excluding public holidays at the place of delivery.