

## STANDARD TERMS AND CONDITIONS OF SALE

THE FOLLOWING TERMS AND CONDITIONS FORM THE BASIS FOR EVERY CONTRACT CONCLUDED WITH THE SUPPLIER AND THE ACCEPTANCE BY A CUSTOMER OF ANY GOOD SHALL COMPRISE ACCEPTANCE OF THESE TERMS.

### 1 DEFINITIONS

In this document (**Terms and Conditions**):

- (a) **Australian Consumer Law** means the Australian Consumer Law applying to the State;
- (b) **Collection Costs** means all costs incurred in the recovery of monies owing by the Customer to the Supplier or in otherwise enforcing the Supplier's rights against the Customer under the Contract (including legal and debt collection costs on a full indemnity basis) and includes default interest hereunder;
- (c) **Contract** means the contract formed between the Supplier and the Customer by an Order accepted by an Order Acknowledgment;
- (d) **Customer** means the person placing the Order with the Supplier;
- (e) **Due Date for Payment** means the earlier of: (i) when an Order Acknowledgment is received and (ii) when the Goods are delivered to the Customer;
- (f) **Goods** means any goods, products, services or materials to be supplied by the Supplier;
- (g) **Intellectual Property** means all industrial and intellectual property rights and confidential information owned by the Supplier from time to time including but without limiting the generality of the foregoing, rights to, or arising from, patents, designs, trade marks, copyrights, designs, rights to or arising from circuit or semi conductor designs, computer programmes, trade secrets, confidential information, valuable technology, inventions and the right to apply for the grant of any form of industrial or intellectual property rights;
- (h) **Order** is defined in Clause 3(a);
- (i) **Order Acknowledgment** is defined in Clause 3(b);
- (j) **Party** means the Supplier or the Customer as the context requires;
- (k) **State** means South Australia and the Commonwealth of Australia as the context requires;
- (l) **Supplier** means *ASSG Investments Pty Ltd ACN 143 367 702* trading as *All Seasons Gutter Guard*;
- (m) **Trade Supply** includes a Contract where the Customer is purchasing the Goods for the purposes of resupply or resale to another person;
- (n) **Transaction Tax** includes any goods and services tax, value added tax and sales tax as well as any identified or new transaction taxes that come into existence after the effective date of these Terms and Conditions,

and, unless otherwise stated, an expression used or defined in the *Corporations Act 2001*(Cth) has the same meaning in the Terms and Conditions.

### 2 SALE AND PURCHASE

The Supplier agrees to sell, and the Customer agrees to purchase, the Goods on the terms of these Terms and Conditions.

### 3 ORDERS, ORDER ACKNOWLEDGMENTS AND CONTRACT

- (a) An order or an offer to purchase Goods (each, an **Order**) may be made by the Customer in writing, electronically by the Supplier's website or verbally.
- (b) An Order is accepted when the Customer receives from the Supplier an acknowledgement of that Order (**Order Acknowledgment**) in writing or if writing is not received, acknowledgment verbally or delivery, whichever first occurs.
- (c) When an Order is accepted by an Order Acknowledgment, the Contract will be wholly documented by (in descending order of precedence) any specific term(s) agreed in writing, the Order Acknowledgment and these Terms and Conditions.
- (d) Previous dealings between the Supplier and the Customer shall not have any effect on the Contract.
- (e) Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.
- (f) A Contract constitutes the entire agreement between the Supplier and the Customer with respect to the Goods supplied under the Contract, all prior negotiations, proposals and correspondence are superseded by that Contract and these Terms and Conditions will in all circumstances prevail over the Customer's terms and conditions of purchase (if any).

### 4 PRICES

- (a) Unless otherwise agreed in writing, the price charged for the Goods shall be:
  - (i) exclusive of any Transaction Tax; and
  - (ii) as per the price determined by the Supplier at the date of delivery. Any price indications or price lists issued or released by the Supplier from time to time are subject to alteration in accordance with the price determined by the Supplier as at that date of delivery.
- (b) Where a Transaction Tax applies to any supply made under these Terms and Conditions, the Supplier may recover from the Customer an additional amount on account of that Transaction Tax.
- (c) The Supplier may recover Collection Costs from the Customer without notice or provision of any evidence thereof to the Customer and such amounts shall without notice form part of, and be due and payable at the same time and in the same manner as, the price charged for the Goods.
- (d) Notwithstanding any provision in the Contract, the Supplier may increase the price of Goods after an Order Acknowledgment and prior to delivery of the Goods if the price increase results from an increase in the price of any inputs which comprise part of the Goods.

## 5 DELIVERY

- (a) The Supplier will make all reasonable efforts to have the Goods delivered to the Customer or its designated agent as agreed between the Parties (or if there is no specific agreement then at the Supplier's reasonable discretion), but the Supplier shall not be liable for:
  - (i) any failure to deliver or delay in delivery for any reason; or
  - (ii) any damage or loss due to unloading or packaging; or
  - (iii) damage to property caused upon entering premises to deliver the Goods.
- (b) Any costs incurred by the Supplier due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to the Supplier.
- (c) Except as required by law or the Terms and Conditions, the Supplier will be under no obligation to accept Goods returned for any reason.
- (d) The Customer acknowledges and agrees that time is not of the essence in relation to delivery of the Goods and that it must accept and pay for the Goods even if they are delivered after a requested time.

## 6 PAYMENT

Subject to Clause **Error! Reference source not found.**, payment for the Goods must be made in full (without any set off except as made by the Supplier) and received by the Supplier by the Due Date for Payment unless otherwise identified by the Supplier on any statement of account or invoice. Payment is only received by the Supplier when it receives cash or when the proceeds of other methods of payment are credited and cleared to the Supplier's bank account.

## 7 TITLE AND RELATED MATTERS

- (a) The legal and equitable title to the Goods will only be transferred from the Supplier to the Customer when the Customer has met and paid all that is owed to the Supplier on any account whatsoever.
- (b) The Customer acknowledges that until the Customer has met and paid all that is owed to the Supplier on any account whatsoever, the Customer holds the Goods as bailee for the Supplier and that a fiduciary relationship exists between the Customer and the Supplier.
- (c) Until the Supplier receives full payment of all monies due to it from the Customer, the Customer shall keep the Goods separate and in good condition as fiduciary of the Supplier, clearly showing the Supplier's ownership of the Goods and shall keep books recording the Supplier's ownership of the Goods and the Customer's sale or otherwise of them in accordance with Clauses 7(e) and 7(f). The Customer, if required, shall deliver the Goods up to the Supplier.
- (d) If the Customer breaches these Terms and Conditions, in addition to its remedies set forth in Clause 8(b), the Supplier may take possession of the Goods (at the cost and risk of the Customer) wherever the Goods are located and the Customer agrees that representatives of the Supplier may enter upon the Customer's premises for that purpose.
- (e) For a Contract which is a Trade Supply, despite Clause 7(a), the Customer may sell as fiduciary (but not agent) for the Supplier the Goods to a third party in the normal course of the Customer's business provided that where the Customer is paid by that third party, the Customer holds the proceeds of sale to the extent of the amount owing by the Customer to the Supplier at the time of receipt of such proceeds on trust for the Supplier. The Customer must keep those proceeds separately on trust for the Supplier and not mix those proceeds with any other monies. Where the Customer has not been paid for the Goods by the third party, the Customer holds the debt owing to it by the third party in respect of the sale of the Goods upon trust for the Supplier and must assign that debt to the Supplier at the direction of the Supplier.
- (f) For a Contract which is a Trade Supply, if the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as related to the Goods on trust for the Supplier. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to the Supplier at the time of the receipt of such proceeds. The Customer must keep that part of the proceeds separate on trust for the Supplier and not mix those proceeds with any other monies.
- (g) Notwithstanding the above, the Customer is still required to pay the Supplier for Goods already delivered and for Goods manufactured or ordered to specification and not yet delivered.
- (h) If, at any time, the Supplier wishes or is required to take any further steps to protect its interest in the Goods under this Clause, for example by registering its interest, the Customer agrees to provide any assistance which may be required by the Supplier for that purpose.

## 8 DEFAULT

- (a) The Customer will be in default if:
  - (i) the Customer fails to perform in whole or in part any of its obligations under, or is in breach in whole or in part of any of, the Terms and Conditions;
  - (ii) payment for the Goods has not been received by the Supplier by the Due Date for Payment;
  - (iii) the Customer being an individual commits an act of bankruptcy, dies or becomes permanently incapacitated or becomes an insolvent under administration;
  - (iv) the Customer being a body corporate becomes insolvent, an externally-administered body corporate or has an application for winding up filed against it.
- (b) If the Customer defaults, in addition to any other rights at law the Supplier may have, the Supplier may take one or more of the following actions:
  - (i) treat the whole of the Contract and any other contract with the Customer as repudiated and sue for breach of contract; and/or
  - (ii) refuse to supply any Goods to the Customer; and/or
  - (iii) claim the return of any Goods in the Customer's possession where title has not passed to the Customer. (The Supplier, for that purpose, may without notice enter any premises occupied by the Customer where those Goods are held and remove those Goods); and/or

- (iv) without notice to the Customer require the immediate payment by the Customer of all monies owing by the Customer to the Supplier under any Contract or on any account.

- (c) Termination of a Contract shall not affect rights and remedies accrued or accruing to a Party prior to the termination.

## **9 RISK**

- (a) Risk in the Goods (including all risks associated with unloading) passes to the Customer upon delivery or upon title in the Goods passing to the Customer, whichever is the earlier.
- (b) The Customer shall bear any duties and taxes that may be levied by reason of delivery of the Goods.

## **10 INTELLECTUAL PROPERTY - OWNERSHIP**

- (a) The Customer acknowledges that all of the Intellectual Property used in or in relation to the Goods are the property of the Supplier and the Customer will take all such steps as are practicable to ensure that the Intellectual Property vests in and remains vested in the Supplier in the jurisdiction of the Customer.
- (b) The Customer shall not:
  - (i) take register or assert any ownership or proprietary right in any Intellectual Property (or any concept similar thereto); or
  - (ii) without the prior written consent of the Supplier permit any trademark, symbol, brand or other intellectual property of the Customer to be combined or associated with any Intellectual Property,either during the life of this Contract or upon its termination.
- (c) If the Contract is a Trade Supply, where it is or becomes advisable for an application to be made for the registration of any trade mark in the jurisdiction of the Customer, the Customer will render all reasonable assistance to the Supplier to facilitate registration. Should it be desirable that any such application should be made in the name of the Customer, application shall be made by the Customer at the expense of the Customer and any registration so obtained shall be promptly assigned at no cost to the Supplier together with any goodwill associated with the Goods in the Territory gained by the Customer.
- (d) If the Contract is a Trade Supply, in any catalogue, price list or similar publication issued by the Customer in which any reference is made to the Goods and to the Intellectual Property relating thereto, there shall be included in legible type a statement informing the reader of the ownership of the Supplier in the Intellectual Property, the form of which shall be approved by the Supplier.
- (e) If the Contract is a Trade Supply, if the Customer becomes aware of any infringement or potential infringement of the rights of the Supplier in Intellectual Property in the Territory the Customer will promptly inform the Supplier and render any assistance the Supplier reasonably requests to challenge such actual or potential infringement.

## **11 FORCE MAJEURE**

The Supplier is not liable for failure to perform the Contract to the extent and for so long as its performance is prevented or delayed because of:

- (a) circumstances outside the Supplier's control;
- (b) failure of the Supplier's machinery; or
- (c) failure of a supplier to the Supplier.

## **12 REPRESENTATIONS AND FITNESS FOR PURPOSE**

- (a) Except as expressly provided to the contrary in the Contract, all representations, warranties, terms and conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- (b) The Customer agrees that if it is aware (or should be aware) that the Goods, the subject of an Order, are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will clearly specify that purpose or those characteristics in any such Order.

## **13 LIMITATION OF LIABILITY**

- (a) Subject to Clause 12(a), the Supplier's liability to the Customer (and any party claiming through the Customer against the Supplier) for any claim for loss or damages (including legal expenses) made in connection with the Contract for contract, tort (including negligence), under statute, in equity or otherwise shall be as follows:
  - (i) if the Customer is a consumer (as defined in the Australian Consumer Law) and:
    - (A) the Supplier is in breach of a guarantee in the Australian Consumer Law (other than a guarantee in section 51, 52 or 53 of the Australian Consumer Law) in connection with the supply of goods (other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption), the Supplier may (in its absolute discretion):
      - (1) replace those goods;
      - (2) supply equivalent goods;
      - (3) repair those goods;
      - (4) pay the cost of replacing those goods;
      - (5) pay the cost of acquiring equivalent goods; or
      - (6) pay the cost of having those goods repaired,and the Supplier's liability is limited to that extent;
    - (B) the Supplier is in breach of a the guarantee in the Australian Consumer Law in connection with the supply of services (other than services of a kind ordinarily acquired for personal, domestic or household use or consumption) the Supplier may (in its absolute discretion):
      - (1) supply those services again; or
      - (2) pay the cost of having those services supplied again,

and the Supplier's liability is limited to that extent.

- (ii) if the Supplier is in breach of a Contract (other than a breach referred to in Clause 13(a)(i)), the Supplier's liability is strictly limited to:
    - (A) for goods, products or materials - the cost of replacement of the defective Goods as soon as reasonably practicable, or the supply of equivalent Goods, or the repair of the defective Goods or the repayment (or allowance) of the invoice price of the defective Goods at the option of the Supplier;
    - (B) for services - to the provision of the services again or payment of the cost of having the relevant services provided again at the option of the Supplier;
  - (iii) the Supplier's liability for breach of a Contract does not extend beyond the defective Goods to any other Goods that are part of an Order or otherwise;
  - (iv) where loss or damage is not covered by Clauses 13(a)(i) or 13(a)(ii), the Supplier is not liable to the Customer under statute, in equity or in tort (including negligence or otherwise) for any loss or damage to person or property arising from or caused in any way by the Goods (except to the extent that the Supplier's conduct is deliberate, is illegal, is fraudulent or constitutes a criminal offence);
  - (v) subject to Clauses 13(a)(i) and 13(a)(ii), the Supplier shall not be liable for any indirect, special or consequential loss resulting from or caused in any way by the Supplier, its officers, employees or agents arising out of or in connection with the supply of the Goods;
  - (vi) **indirect, special or consequential loss or damage** includes:
    - (A) any loss of income, profit or business;
    - (B) any loss of goodwill or reputation;
    - (C) any loss of value of intellectual property.
- (b) Any claim under Clause 13(a)(ii) by the Customer in respect of defective Goods and/or damaged Goods must be made in writing within 14 days of the delivery of the Goods.

#### 14 MEASURES

- (a) Any and all statements made by the Supplier as to weight, length, quantity or other characteristics of Goods are approximate and the Supplier may supply Goods on an actual or calculated basis.
- (b) A calculated basis will be in accordance with the applicable Australian standards.
- (c) The Supplier's statements as to weight, length, quantity or other characteristics are final and the Supplier is not liable for any errors in such statements unless the Customer gives the Supplier:
  - (i) written notice of any error within 14 days of delivery;
  - (ii) a reasonable opportunity to examine and re-test the Goods before they are used or dealt with.

#### 15 SHORTAGES

- (a) The Customer must inspect the Goods on or immediately after delivery. In the event that the Customer discovers that all or any portion of the Goods as delivered differs, in quantity or kind, from the description in the invoice or are damaged (other than due to an act or omission of the Customer), the Customer must notify in writing, and make an immediate claim, against the Supplier. No claim by the Customer for shortages of Goods may be made unless such claim is notified to the Supplier within forty-eight (48) hours of such inspection.
- (b) In the event that the Customer does not make a claim in accordance with this Clause, the Goods shall be deemed to be in conformity with the Contract and the Customer shall be deemed to have accepted them.
- (c) The Supplier will endeavour to rectify any shortages as soon as practicable after receiving notice but will not suffer any liability from or in respect of such rectification.

#### 16 DEFAULT INTEREST

Any amounts due to the Supplier and unpaid or any other payments made by the Supplier in default of payment by the Customer under a Contract shall be regarded as cash advances made on the due date or the date of payment by the Supplier respectively, repayable on demand and shall, until repayment to the Supplier, bear interest calculated on the daily balances of such advances at a rate equal to 12% per annum calculated daily and paid on written demand or as instructed by the Supplier.

#### 17 NO PARTNERSHIP, AGENCY OR TRUSTEESHIP

Nothing in this Agreement or in the execution or performance of its terms shall constitute any Party the partner or agent of any other Party and no trusteeship shall be implied as between any of the Parties.

#### 18 WAIVER

The Supplier waives a right under a Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

#### 19 SEVERANCE

If a provision of a Contract would, but for this Clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result;
- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

#### 20 VARIATION

The Supplier may vary the Terms and Conditions without notice to the Customer.

**21 SURVIVAL**

Clauses 1, 7, 10, 12, 13, 16, 21, 22, 24 and 25 survive the termination or expiry of the Contract.

**22 TRADE SPECIFIC TERMS**

If the Contract is a Trade Supply:

- (a) The Customer must pay to the Supplier, and indemnify the Supplier for, all costs and expenses incurred by the Supplier in connection with the Contract including legal expenses (on a solicitor-client basis), stamp duty and Collection Costs incurred in the recovery of monies owing by the Customer to the Supplier or in otherwise enforcing the Supplier's rights against the Customer under the Contract.
- (b) The Customer indemnifies the Supplier against any action, claim, proceeding, demand, damages, loss, liability, cost or expense (including Collection Costs and other costs on a solicitor/ client basis) which the Supplier may suffer or incur arising out of or connected with the Terms and Conditions, any Contract or the Goods.
- (c) The Supplier may at any time apply and set off any money that the Customer may owe the Supplier towards the satisfaction of any sum of money that the Supplier owes the Customer. The Customer may not set off any amounts.
- (d) The Customer warrants to the Supplier that all documents provided by the Customer are accurate and that the Supplier is entitled to use all such documents for the purposes of the Contract and that such use does not infringe any third party's intellectual property rights.
- (e) The Customer indemnifies the Supplier against all claims and all losses and damages incurred by the Supplier as a result of documents provided by the Customer to the Supplier for the purposes of or in the course of the supply of the Goods breaching a third party's intellectual property rights.
- (f) If the Customer receives any confidential information from the Supplier the Customer may not use or disclose such information unless it receives the prior written consent of the Supplier, such information enters the public domain (other than as a result of a breach of this paragraph) or the use or disclosure is required by law.

**23 ASSIGNMENT**

- (a) The Supplier may assign to any person this document and any Contract.
- (b) The Customer shall not assign, transfer, encumber or declare trusts in respect of this document or any Contract.

**24 APPLICABLE LAW**

This document is governed by the law of the State and the courts of that State have non-exclusive jurisdiction in connection with this document.

**25 PRIVACY STATEMENT AND CONSENT**

The Supplier collects the Customer's information in order to determine whether to supply Goods to the Customer and in, ordering Goods from the Supplier, the Customer agrees that the Supplier may:

- (a) use the personal information about the Customer which the Customer or others have provided at any time to the Supplier in order to manage the Supplier's relationship with the Customer and, where required, to comply with legislative and regulatory requirements; and
- (b) disclose that information to the Supplier's related bodies corporate, regulatory and law enforcement bodies, debt collection agencies, any organisation proposing to fund the acquisition of, or acquire, any interest in any obligation the Customer may owe the Supplier, and to any person to the extent necessary, in the Supplier's view, to carry out any instruction the Customer give to the Supplier or to enforce any rights of the Supplier against the Customer.

The Customer acknowledges that, subject to the provisions of the *Privacy Act 1988* (Cth), the Customer may access the information which the Supplier holds about the Customer at any time by writing to the Supplier.

**26 UNFAIR CONTRACT TERMS**

To the extent that these Terms and Conditions are a *consumer contract* (within the meaning of the Australian Consumer Law) and a *standard form contract* (within the meaning of the Australian Consumer Law), any term of these Terms and Conditions which would be void because the term is unfair:

- (a) must be read down to the extent necessary to avoid that result; and
- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.