

FIREPLUMB SUPPLIES PTY LTD - ABN 61 144 956 659

TRADING TERMS AND CONDITIONS

The terms and conditions set out below will apply to credit extended by FIREPLUMB SUPPLIES PTY LTD ABN 61 144 953 659 (FPS) and the signed Application will be evidence of the Customer's agreement to these Terms & Conditions

1. DEFINITIONS

- 1.1 Application means the application for credit completed and signed by the Customer and accepted by FPS including the terms of any guarantee attached to these Terms & Conditions;
- 1.2 CCA means the *Competition and Consumer Act 2010* (Cth) as amended;
- 1.3 FIREPLUMB SUPPLIES PTY LTD - to be known as FPS and assigns any person acting on behalf of and with the authority of FPS.
- 1.4 Credit Limit means the approved credit limit;
- 1.5 Customer means the Customer (or any person acting on behalf of and with the authority of the customer) as described on any Application or any other form as provided by FPS to the Customer
- 1.6 Guarantor means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis as set out in the Application;
- 1.7 Goods mean all goods supplied by FPS to the Customer and are as described on the invoices, quotation, work authorisation or any other forms as provided by FPS to the
- 1.8 PPSA means the *Personal Property Securities Act 2009* (Cth) as amended;
- 1.9 PPSR means the Personal Property Securities Register;
- 1.10 Price means the Price payable for the Goods as agreed between FPS and the Customer in accordance with clause 3 of the Terms & Conditions; and
- 1.11 RFC means FPS' current return for credit application submitted pursuant to these Terms & Conditions

2. ACCEPTANCE

- 2. Acceptance
- 2.1 The Customer acknowledges that the supply of Goods on credit will not take effect until the Customer has completed the Application with FPS and it has been approved with a credit limit established for any account of the Customer.
- 2.2 In the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, FPS reserves the right to refuse supply and/or delivery of any Goods.
- 2.3 Any instructions received by FPS from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by FPS will constitute acceptance of these Terms & Conditions.
- 2.4 Upon acceptance of these Terms & Conditions by the Customer the Terms & Conditions are binding and can only be varied with the written consent of both FPS and the Customer.
- 2.5 Where more than one Customer has entered into these Terms & Conditions, the Customers will be jointly and severally liable for all payments of the Price.
- 2.6 The Customer will give FPS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer will be liable for any loss incurred by FPS as a result of the Customer's failure to comply with this clause.
- 2.7 Goods are supplied by FPS only on these Terms & Conditions to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these Terms & Conditions unless such Terms and Conditions have been varied in accordance with this clause.

3. PRICE AND PAYMENT

- 3.1 At FIREPLUMB's sole discretion the Price will be either:
 - 3.1.1 as indicated on invoices provided by FPS to the Customer in respect of Goods supplied or delivered; or
 - 3.1.2 FPS's current price at the date of delivery of the Goods according to FPS's current price list.
- 3.2 FPS may request payment by the Customer of a non-refundable deposit prior to the supply or delivery of the Goods.
- 3.3 FPS may, in its sole discretion, require payment of the Price by the Customer either prior to or on delivery of the Goods.
- 3.4 Payment of the Price will be off the essence and as stated on the invoice or any other form
- 3.5 Payment of the Price must be made by cash, personal cheque, bank cheque, credit card, direct credit, or by any other method as agreed to between the Customer and FPS. Any payment of the Price by credit card will incur a surcharge of up to three percent (3%) of the Price.
- 3.6 Unless otherwise stated, GST and other taxes and duties that may be applicable to the supply of the Goods by FPS will be added to the Price.

4. DELIVERY OF GOODS

- 4.1 At FIREPLUMB's sole discretion, delivery of the Goods will take place when:
 - 4.1.1 the Customer takes possession of the Goods at FPS's nominated business address; or
 - 4.1.2 the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by FPS's nominated carrier);
 - 4.1.3 the Customer's nominated carrier takes possession of the Goods in which event the carrier will be deemed to be the Customer's agent.
- 4.2 At FIREPLUMB's sole discretion the cost of delivery will be either:
 - 4.2.1 included in the Price; or
 - 4.2.2 in addition to the Price; or
 - 4.2.3 for the Customer's account.
- 4.3 The Customer will make all arrangements necessary to take delivery of the Goods on the day and time nominated by FPS. In the event that the Customer is unable to take delivery of the Goods at the nominated day and time, FPS will be entitled to charge a reasonable fee for redelivery of the Goods.
- 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms & Conditions.
- 4.5 FPS may, in its sole discretion, deliver the Goods by separate instalments. Each separate instalment will be invoiced by FPS and paid by the Customer in accordance with these Terms & Conditions.
- 4.6 The Customer will take delivery of the Goods notwithstanding that the quantity so delivered may be either greater or lesser than the quantity ordered by the Customer provided that:
 - 4.6.1 such discrepancy in quantity does not exceed five percent (5%); and
 - 4.6.2 the Price is adjusted pro rata to the extent of the discrepancy.
- 4.7 Where the Customer expressly requests FPS to either:
 - 4.7.1 leave Goods outside FPS' nominated business premises for collection; or
 - 4.7.2 to deliver the Goods to an unattended location,such Goods will be left at the nominated location at the Customer's sole risk.
- 4.8 Any failure or delay in delivery of the Goods by FPS will not entitle either party to treat the Terms & Conditions as repudiated.
- 4.9 FPS will not be liable for any loss or damage whatsoever due to any failure by FPS to deliver the Goods (or any of them) promptly or at all, where such failure is due to circumstances beyond the control of FPS.

5. TITLE

- 5.1 FPS and the customer agree that title in and to the Goods will not pass until:
5.1.1 the customer has met all other obligations due by the Customer to FPS in respect of all other invoices and contracts as and between FPS and the Customer
5.1.2 FPS's title or rights in the Goods will continue until any form of payment by the Customer has been received, honoured, cleared and acknowledged by FPS
5.3 The parties acknowledge and agree as follows:
5.3.1 where practicable, the Customer will keep the Goods separate and identifiable until FPS has received payment in accordance with the Terms & Conditions and all other obligations of the Customer have been complied with;
5.3.2 until such time as title in and to the Goods passes from FPS to the Customer pursuant to these Terms & Conditions, FPS may give notice in writing to the Customer to return the Goods or any of them to FPS. Upon receipt of such notice by the Customer, any right of the Customer to title or any other interest in the Goods will immediately cease;
5.3.3 FPS will have the right of stopping the Goods in transit whether or not delivery has been made;
5.3.4 if the Customer fails to return the Goods to FPS as may be required by FPS pursuant to these Terms & Conditions then FPS or FPS's agent may (as the invitee of the Customer) enter upon and into land premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods;
5.3.5 the Customer is only a bailee of the Goods and until such time as FPS has received payment in full for the Goods then the Customer will hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to FPS for the Goods, on trust for FPS. The Customer will not deal with the money of FPS in any way which may be adverse to FPS;
5.3.6 the Customer will not charge the Goods in any way nor grant nor otherwise give any interest (including any security interest) in the Goods while such Goods remain the property of FPS;
5.3.7 FPS may issue proceedings to recover the Price from the Customer, notwithstanding that title to or in the Goods may not have passed to the Customer; and
5.3.8 until such time as title to or in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that FPS will be the owner of any end products comprising the Goods.

6. RISK

- 6.1 Notwithstanding clause 5, all risk in the Goods passes to the Customer on delivery of the goods in accordance with these Terms and conditions
6.2 If any of the Goods are damaged or destroyed following delivery of the Goods but prior to title in the Goods passing to the Customer, FPS is entitled to receive all insurance proceeds received by the Customer for the Goods.
6.3 The production of these Terms and Conditions by FPS is sufficient evidence of FPS's rights to receive the insurance proceeds without the need for any person dealing with FPS to make further enquiries.

7. CCA

- 7.1 Subject to FPS' statutory obligations under the CCA the following provisions apply:
7.2.1.1 FPS' liability for a breach of a condition or warranty implied by Pt 3-2 Div 1 of the CCA is limited to:
(i) in the case of goods, any one (1) or more of the following:
(A) the replacement of the Goods or the supply of equivalent goods;
(B) the repair of the Goods;
(C) the payment of the cost of replacing the Goods or of acquiring equivalent goods;
(D) the payment of the cost of having the Goods repaired; or
(ii) in the case of services:
(A) the supplying of the services again; or
(B) the payment of the cost of having the services supplied again.
7.2.1.2 Subject to FPS' statutory obligations under the CCA and except as provided in these Terms & Conditions, all express and implied warranties, guarantees and Conditions under statute or general law as to merchantability, description, quality, suitability or fitness of goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded
7.2.1.3 FPS is not liable to the Customer for any physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of and Good or arising out of our negligence or in any way whatsoever.
7.1.4 FPS' liability under s274 of the CCA is expressly limited to a liability to pay the Customer an amount equal to:
(i) The cost of replacing the Goods;
(ii) The cost of obtaining equivalent Goods; or
(iii) The cost of having the Goods repaired, whichever is the lowest amount.

8. PPSA

- 8.1 In this clause:
8.1.1 Financing statement has the meaning given to it by the PPSA;
8.1.2 Financing change statement has the meaning given to it by the PPSA;
8.1.3 Security agreement means the security agreement under the PPSA created between the Customer and FPS by Terms & Conditions; and
8.1.4 Security interest has the meaning given to it by the PPSA.
8.2 Upon assenting to these Terms and Conditions in writing the Customer acknowledges and agrees that these Terms and Conditions:
8.2.1 Constitute a security agreement for the purposes of the PPSA; and
8.2.2 Create a security interest in:
8.2.2.1 All Goods previously supplied by FPS to the Customer (if any);
8.2.2.2 All Goods that will be supplied in the future by FPS to the Customer.
8.3 The Customer undertakes to:
8.3.1 promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which FPS may reasonably require to:
8.3.1.1 Register a financing statement or financing change statement in relation to a security interest on the 8.3.1.2 register any other document required to be registered by the PPSA; or
8.3.1.3 correct a defect in a statement referred to in clause 8.3.1.1 or clause 8.3.1.2;
8.3.2 indemnify, and upon demand reimburse, FPS for all expenses incurred in registering a financing statement or financing change statement on the PPSR established by the PPSA or releasing any Goods charged thereby;
8.3.3 Not register a financing change statement in respect of a security interest without the prior written consent of FPS
8.3.4 not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of FPS; and
8.3.5 Immediately advise / FPS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales
8.4 FPS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms & Conditions.
8.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
8.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
8.7 Unless otherwise agreed to in writing by FPS, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
8.8 The Customer will unconditionally ratify any actions taken by FPS under clauses 8.3, 8.4 and 8.5.

9. WARRANTIES

- 9.1 To the extent permitted by law, FPS does not warrant the following:
- 9.1.1 any of the Goods that are not manufactured by FPS, and in such case the Customer will only have the benefit of the warranty (if any) of the manufacturer of those Goods which forms part of the contract between FPS and the manufacturer; or
- 9.1.2 defects or deterioration which, in the opinion of FPS, have been caused by careless or improper handling, negligence, misuse, non-adherence to operating, cleaning, care or maintenance instructions, alterations or repairs carried out by anyone other than FPS's authorised representatives, or by fair wear and tear; or
- 9.1.3 the Customer acknowledges and agrees that they have had the opportunity to review the variety of Goods offered by FPS together with their specifications and quality and that unless specifically stated otherwise, that the Good is fit for use.
- FPS will not be liable to the Customer in any way for any costs, damage or loss of any kind whatsoever (including, without limitation, liability for direct, indirect, special or consequential loss or damage) incurred or sustained by you or any third party arising from or in connection with the Goods and any damage caused.
- 9.2 Where Regulation 90 of the Australian Consumer Law applies in respect of any warranty for defects, the Customer can, at its cost, contact FPS at 495 Beaudesert Road, Moorooka in the State of Queensland on (07) 3277 1600 and provide FPS with details of the Good, a description of the defect, the Customer's details and proof of purchase. FPS will then process and advise the Customer on its claim in a timely manner. FPS will make, at its own discretion, an election to either replace or repair the Goods.
- 9.3 FPS does not have to repair or replace a Good under a warranty of the Good has been modified, disassembled, misused, improperly or inappropriately installed, operated or repaired, abused, damaged or not maintained in accordance with the manufacturer's instructions.
- 9.4 Where applicable: FPS' goods come with guarantees that cannot be excluded under the Australia Consumer Law. You are entitled to a replacement or refund for major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does amount to a major failure. The benefits under the warranty are in addition to other rights you may have at law.
- 9.5 For the purpose of making any claim under this clause 9, the Customer must:
- 9.5.1 immediately upon becoming aware of circumstances giving rise to a claim, notify / FPS in writing setting out full details of the claim
- 9.5.2 provide FPS with proof of purchase of the Goods in relation to which the claim is made; and
- 9.5.3 allow FPS, its employees and/or agents full and free access to the Goods in relation to which the claim is made and to the place where the Goods are located for the purpose of conducting any inspection and tests that / FPS may in its absolute discretion consider necessary to determine whether the claim is justified or not.
- 9.6 Where a Good or any part of a Good is not manufactured by FPS, FPS will use all reasonable endeavours to assign to the Customer the benefit of any warranty in respect of that part of the Good.
- 9.7 Any warranty of FPS cannot be assigned or transferred to any third party.

10. RETURNS

- 10.1 Any return of Goods by the Customer will only be accepted by FPS provided that:
- 10.1.1 the Customer has an approved credit account with FPS;
- 10.1.2 the Customer has completed and submitted to FPS a RFC;
- 10.1.3 FPS has agreed in writing to accept a return of the Goods;
- 10.1.4 the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances;
- 10.1.5 where the Goods are returned within thirty (30) days of delivery of the Goods to the Customer, the Customer pay to FPS a restocking fee equal to fifteen percent (15%) of the price.
- 10.1.6 where the Goods are returned within sixty (60) days of delivery of the Goods to the Customer, the Customer pay to FPS a restocking fee equal to twenty five percent (25%) of the Price; and
- 10.1.7 any clearing fees and freight charges that are incurred in the return of the Goods are payable by the Customer in accordance with these Terms & Conditions.
- 10.2 FPS will not be liable for Goods which have not been stored or used in a proper manner.
- 10.3 Notwithstanding any other clause of these Terms & Conditions, non-stockist items of FPS or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

11. DEFAULT

- 11.1 Interest on overdue invoices will accrue daily from the date when payment becomes due, until the date of payment, at a rate of nine percent (9%) per annum (and at FPS's sole discretion such interest will compound daily at such a rate) after as well as before any judgment.
- 11.2 In the event that the Customer's payment is dishonoured for any reason the Customer will be liable for any dishonour fees incurred by FPS
- 11.3 If the Customer defaults in payment of the Price or any invoice when due, the Customer will indemnify FPS from and against all costs and disbursements incurred by / FPS in pursuing the debt including legal costs on a solicitor and own Customer basis and FPS's collection agency costs
- 11.4 Without prejudice to any other rights or remedies FPS may have against the Customer, if at any time the Customer is in breach of any obligation (including those relating to payment) FPS may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Terms & Conditions. FPS will not be liable to the Customer for any loss or damage the Customer suffers because FPS has exercised its rights under this clause.
- 11.5 If any account remains overdue after sixty (60) days then an amount of the greater of fifty dollars (\$50.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred and fifty dollars (\$250.00)) will be levied for administration fees which sum will become immediately due and payable by the customer to FPS.
- 11.6 Without prejudice to FPS's other remedies at law FPS will be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to FPS will, whether or not due for payment, become immediately payable in the event that:
- 11.6.1 any money payable to FPS becomes overdue, or in FPS's opinion the Customer will be unable to meet its payments as they fall due; or
- 11.6.2 the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- 11.6.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

12. CANCELLATION

- 12.1 Notwithstanding any other clause in these Terms & Conditions, FPS may cancel any supply or delivery of Goods to which these Terms & Conditions apply at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice FPS will repay to the Customer any sums paid in respect of the Price. FPS will not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Customer cancels any supply or delivery of Goods the Customer will be liable for any loss incurred by FPS (including, but not limited to, any loss of profits) up to the time of cancellation.
- 12.3 Cancellation of orders for Goods made to the Customer's specifications or non-stockist items will definitely not be accepted, once production has commenced.

13. PRIVACY ACT 1988

- 13.1 The Customer and/or the Guarantors (in this clause referred to as the Customer) agree for / FPS to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by FPS.
- 13.2 The Customer agrees that FPS may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- 13.2.1 to assess an application by the Customer; and/or
- 13.2.2 to notify other credit providers of a default by the Customer; and/or
- 13.2.3 to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- 13.2.4 to assess the creditworthiness of the Customer.
- 13.3 The Customer understands and agrees that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are all owed to exchange under the *Privacy Act 1988* (Cth).
- 13.4 The Customer consents to FPS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988* (Cth)).
- 13.5 The Customer agrees that personal credit information provided may be used and retained by FPS for the following purposes (and for other purposes as will be agreed between the Customer and FPS or required by law from time to time):
- 13.5.1 the provision of Goods; and/or
- 13.5.2 the marketing of Goods by FPS, its agents or distributors; and/or
- 13.5.3 analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- 13.5.4 processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- 13.5.5 enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 13.6 FPS may give information about the Customer to a credit reporting agency for the following purposes:
- 13.6.1 to obtain a consumer credit report about the Customer;
- 13.6.2 allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 13.7 The information given to the credit reporting agency may include:
- 13.7.1 personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's license number;
- 13.7.2 details concerning the Customer's application for credit or commercial credit and the amount requested;
- 13.7.3 advice that FPS is a current credit provider to the Customer;
- 13.7.4 advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- 13.7.5 that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- 13.7.6 information that, in the opinion of FPS, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- 13.7.7 advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- 13.7.8 that credit provided to the Customer by / FPS has been paid or otherwise discharged.

14. GENERAL

- 14.1 These Terms & Conditions are governed by the laws of the State of Queensland, Australia and the Customer irrevocably submits to the exclusive jurisdiction of the courts of that State.
- 14.2 If any provision of these Terms & Conditions is deemed to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 14.3 If any provisions of these Terms & Conditions are inconsistent with the PPSA or CCA, the PPSA or the CCA (as the case may be) will prevail to the extent of that inconsistency.
- 14.4 The Customer will not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by FPS nor to withhold payment of any invoice because part of that invoice is in dispute
- 14.5 FPS may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 14.6 Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 14.7 The failure by FPS to enforce any provision of these Terms and Conditions will not be treated as a waiver of that provision, nor will it affect FPS's right to subsequently enforce that provision.