



HILL TOP GROUP PTY LTD - TERMS & CONDITIONS

1. Definitions

- 1.1 **"Conditions"** means these Terms and Conditions of the Supplier and includes any variations or annexures applicable hereto.
- 1.2 **"Customer"** means the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.3 **"Goods" and/or "Services"** means all Goods and/or Services supplied by the Supplier to the Customer.
- 1.4 **"Guarantor"** means that person (or persons), or Directors of the Customer (if a Proprietary Company), who expressly agrees to be liable for the debts and obligations of the Customer hereunder on a principal-debtor basis.
- 1.5 **"Supplier"** means Hill Top Group Pty Ltd (ABN 35 143 602 760) and its successors and assigns.
- 1.6 **"Price"** means the cost of the Goods and Services as agreed between the Supplier and the Customer, subject to Condition 5.

2. Acceptance

- 2.1 Any instructions whether written or verbal, received by the Supplier from the Customer for the supply of Goods/ Services, the Customer's acceptance of Goods/Services supplied by the Supplier, shall constitute acceptance of these Conditions.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price and performance of the Customer's obligations.
- 2.3 Upon acceptance of these Conditions by the Customer the terms and conditions hereof are irrevocable and can only be rescinded or amended in accordance with these Conditions or with the written consent of the Supplier.
- 2.4 None of the Supplier's agents or representatives are authorised to make any representations, statements, Conditions or agreements not expressed by the Supplier in writing nor is the Supplier bound by any such unauthorised statements.
- 2.5 The Customer undertakes to give the Supplier not less than fourteen (14) days prior written notice of any proposed 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).

3. Estimate

- 3.1 The Customer agrees and acknowledges that any estimate provided by the Supplier to the Customer have been prepared by the Supplier in reliance on the information, specifications and drawings provided by the Customer.
- 3.2 The Customer agrees and acknowledges that it is solely responsible for providing the correct information, specifications and drawings to the Supplier for the purposes of the Supplier providing the Customer with an estimate for the supply of the Goods/Services.
- 3.3 Any estimate provided by the Supplier to the Customer is only valid for a period of thirty (30) days from the date of the estimate.

4. Goods

- 4.1 The Goods/Services are as described on any invoice, estimate, work authorisation or any other work commencement forms as provided by the Supplier to the Customer.
- 4.2 The Supplier is not responsible or liable for any defects, shortages in quantity, errors, or omissions in the Goods/Services if the Goods/Services are supplied to the Customer in accordance with the estimate provided to the Customer.
- 4.3 If the Customer requests or requires, for any reason, amendments to the dimensions, specifications, colours, shapes, or any other aspect of the Goods/Services then it shall be liable to the Supplier for payment of the Price and any increases in costs caused by the amendments, at the sole discretion of the Supplier.
- 4.4 The Goods/Services shall be deemed or merchantable quality if they are made in accordance with the estimate provided and accepted by the Customer.

5. Price and Payment

- 5.1 At the Supplier's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Supplier to the Customer in respect of Goods/Services supplied; or



(b) the Supplier's estimate Price which shall be binding upon the Customer provided that the Customer shall accept the Supplier's estimate (based on specifications as provided by Customer) within three (3) months from the date of the estimate.

- 5.2 Before the Supplier will commence any works or supply any Goods/Services to the Customer, the Customer must pay to the Supplier a deposit equivalent to thirty per cent (30%) of the Price.
- 5.3 Subject to Condition 8.2, the Customer agrees that the deposit is fully non-refundable for any reason not attributable to the Supplier, unless agreed otherwise by the Supplier in writing.
- 5.4 Time for payment for the Goods/Services shall be of the essence and the Price will be payable by the Customer to the Supplier by way of a thirty per cent (30%) deposit (upon acceptance of estimate) with the balance payable immediately upon supply or collection of the Goods/Services or within 7 days from the date of the Supplier's invoice (the latter will only apply if previously agreed to in writing by the Supplier).
- 5.5 Payment will be made by bank transfer prior to delivery, or by bank cheque, or by credit card, or by direct credit, or by cash, or by any other method as agreed between the Customer and the Supplier.
- 5.6 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that tax is expressly included in any estimate given by the Supplier.
- 5.7 Before the Supplier commences any service and/or repairs, the Customer must pay the amount in full.
- 5.8 Any non-account customer who has over paid will be refunded either by same way of transaction (e.g. bank transfer, cheque or credit card).

6. Delivery of Goods/Services / Installation/Check Measures

- 6.1 Delivery of the Goods/Services shall be made to the Customer's nominated address. The Customer shall make all arrangements necessary to take delivery of the Goods/Services whenever they are tendered for delivery.
- 6.2 Delivery of the Goods/Services to a third party nominated by the Customer is deemed to delivery to the Customer for the purposes of these Conditions.
- 6.3 The Supplier shall not be liable for any loss or damage whatsoever suffered or incurred by the Customer, due to failure by the Supplier to deliver the Goods (or any part thereof) promptly or at a time previously indicated by the Supplier provided that the Goods/Services are delivered within a reasonable time.
- 6.4 Delivery's to upper levels may require a hoist and will incur additional cost.
- 6.5 Although care will be taken by **installers** the supplier will not be held responsible for any damage to surrounding areas during installation.

7. Risk

Whilst the Supplier retains property in the Goods until payment is made for the Goods in full, nonetheless all risk for the Goods passes to the Customer on delivery.

8. Errors and Omissions

- 8.1 The Customer shall inspect the Goods on delivery and shall within twenty-four (24) hours of delivery notify the Supplier of any alleged damage, defect, shortage in quantity, errors, or omissions not in compliance with the invoice or estimate ("Defects"). The Customer shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods to be defective in any way. If the Customer fails to comply with these provisions, the Goods shall be conclusively presumed to have been made and supplied correctly in accordance with the invoice or estimate and these Conditions and accordingly to be free from any Defect.
- 8.2 For defective Goods, provided that the Customer has complied with the provisions of Condition 8.1, the Supplier's liability is limited to either giving credit, replacing the Goods or repairing the Goods, at the Supplier's sole discretion.
- 8.3 Subject to Condition 8.2 above, the Price is fully due and payable and there shall be no entitlement of the Customer for a refund or credit of the Price for any alleged Defects.
- 8.4 The supplier offers warranty on all materials which is provided by the manufacturer (local import agent) of the materials selected by the client. The suppliers provide this warranty to the client solely on the conditions that it is supported by the manufacturer (local import agent).



8.5 The Price is fully due and payable, and the Customer indemnifies and will hold harmless, the Supplier from and against any and all loss or damage suffered for any alleged Defects, caused by the Customer providing incorrect information as to the specifications, quantities, drawings and finishes of the Goods.

9. Customer Disclaimer

The Customer hereby disclaims any right to rescind, or cancel these Conditions or to sue for damages or to claim restitution arising out of any misrepresentation to him by Supplier or any servant or agent of the Supplier and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgment.

10. Trade Practices Act 1974, Fair Trading Acts and other Applicable Legislation

Nothing in these Conditions is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974, the Fair Trading Acts or any other applicable legislation in each of the States and Territories of Australia, except to the extent permitted by those Acts, where applicable. In the event that any provision contained in these Conditions is contrary to any of those Acts (or their replacements), then that provision shall be excised from these Conditions, but without in any way limiting or affecting the validity or enforceability of the remaining Conditions.

11. Cancellation

11.1 The Supplier may cancel these Conditions or cancel delivery of the Goods/Services at any time before the Goods/Services are delivered by giving written notice to the Customer outlining the reasons for cancellation. The Supplier shall not be liable for any loss or damage whatever suffered or incurred by the Customer, and arising from such cancellation.

11.2 At the Supplier's sole discretion, the Customer may cancel supply or delivery of the Goods/Services. In the event that the Customer cancels the supply or delivery of the Goods/Services the Customer shall be liable to the Supplier for payment of the Price, or any costs incurred by the Supplier up to the time of cancellation, at the Supplier's sole discretion.

12. Default & Consequences of Default

12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due until the date of payment at a rate of 1.5% compounding interest per calendar month and will incur a \$5.00 per week administration fee.

12.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify and hold harmless the Supplier from and against any and all of the Supplier's costs and disbursements relating to such default, including on a solicitor and own client basis and in addition all of the Supplier's nominees costs of collection.

12.3 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any of its obligations (including those relating to payment), the Supplier may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Conditions. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier exercised its rights under this Condition.

12.4 If any account remains unpaid at the end of the second month after supply of the Goods an immediate amount at the discretion of the Supplier between \$100.00 (minimum) or 100% of the amount overdue (maximum), may be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under Condition 11.1.

12.5 In the event that:

- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) 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
- (c) a receiver, administrator, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer;

then without prejudice to the Supplier's other remedies at law:

- (i) the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies it may have consequent upon the happening of that event; and



- (ii) all amounts owing to the Supplier shall, whether or not due for payment, immediately become due and payable.

13. Title and Repossession

- 13.1 The Supplier retains ownership and property in and to the Goods until the Customer has paid in full all amounts owing for the particular Goods.
- 13.2 In the event of a failure by the Customer to pay in full all amounts owing to the Supplier, the Supplier may, at its sole discretion, and to the extent permitted by law, enter upon the Customer's premises or other property where the Goods are located, for the purpose of recovering possession of the Goods.
- 13.3 The Customer must not give away or sell the Goods to any other person or entity until the Customer has paid in full all amounts owing to the Supplier for the particulars Goods in agreement and acknowledgment that the Supplier retains ownership and property in and to the Goods.

14. Security and Charge

Despite anything to the contrary contained herein or any other rights which the Supplier may have howsoever:

- (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under these Conditions. The Customer and/or the Guarantor acknowledge and agree that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat over the title to that land, realty or other asset, which caveat shall only be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should the Supplier elect to proceed in any manner in accordance with this Condition or any part thereof, the Customer and/or Guarantor shall indemnify the Supplier from and against any and all of the Supplier's costs and disbursements incurred in so proceeding, including legal costs on a full indemnity basis.
- (c) To give effect to the provisions of Condition 14.1 (a) and (b) inclusive hereof, the Customer and/or the Guarantor (if any) do hereby irrevocably nominate, constitute and appoint the Supplier or the Supplier's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute any relevant mortgages and charges (whether registrable or not) including such other items and Conditions as the Supplier and/or the Supplier's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Supplier and in the Customer's and/or Guarantor's obligations and indebtedness to the Supplier and further do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Supplier's absolute discretion which may be necessary or advantageous to give effect to the provisions of this condition.

15. Guarantee and Indemnity

- 15.1 The Guarantor(s) hereby agree and undertake to:
 - (a) Guarantee to the Supplier the due and punctual observance and performance of the Customer's obligations under these Conditions; and
 - (b) Indemnify the Supplier and keep the Supplier indemnified against all losses, expenses, claims, and damages incurred or reasonably expected to be incurred by the Supplier by reason of any breach of the Customer's obligations under these Conditions.
- 15.2 The Guarantor's obligations under these Conditions are an irrevocable and continuing guarantee and indemnity, and the Guarantor will not be wholly or partially released from the obligations of this Condition by any matter or thing.
- 15.3 These Conditions are enforceable against the Guarantor(s) and the Guarantor(s) are liable under these Conditions notwithstanding any claims that the Supplier is estopped from enforcing any term of these Conditions, or that the Customer has any other defence against an action by the Supplier to enforce any term of these Conditions, and binds the Guarantor until the Customer is released from the Customer's obligations under these Conditions.
- 15.4 The Guarantor' obligations under these Conditions are principal obligations and are not ancillary or collateral to any other obligation or instrument.



15.5 If the Supplier is unable to recover from any person any money owing under these Conditions, or to enforce a remedy for any other breach of the Customer's obligations, the Guarantor also agree to pay the Supplier on demand the loss, damage, costs and expenses suffered or incurred by the Supplier in respect of the breach of those covenants and the other provisions of these Conditions apply as far as is possible to the indemnity conferred on the Supplier by this Condition.

15.6 This guarantee and indemnity:

- (a) continues until the Customer has performed all the Customer's obligations; and
- (b) extends to claims by the Supplier for any liability arising from the repudiation of these Conditions and any default under these Conditions by the Customer, and any action taken by the Supplier as a result of a default including the Customer's terminating these Conditions.

15.7 If a payment to the Supplier in connection with these Conditions is void or voidable under laws relating to insolvency or protection of creditors the Supplier remains entitled to the rights against the Guarantor which the Supplier had under this Condition before that payment was made.

15.8 If the Guarantor comprises more than one (1) person, the obligations of each Guarantor are joint and several.

15.9 The Supplier may assign the rights under, and the benefit of, the obligations of the Guarantor under these Conditions.

16. Privacy Act 1988

16.1 The Customer and/or the Guarantor/s agree for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.

16.2 The Customer and/or the Guarantor/s agree that the Supplier may exchange information about Customer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a) To assess an application by Customer;
- (b) To notify other credit providers of a default by the Customer;
- (c) 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
- (d) To assess the credit worthiness of Customer and/or Guarantor/s.

16.3 The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1)(h) Privacy Act 1988).

16.4 The Customer agrees that personal data provided may be used and retained by the Supplier for the following purposes and for other purposes as shall be agreed between the Customer and Supplier or required by law from time to time:

- (a) provision of Goods/Services;
- (b) marketing of Goods/Services by the Supplier, its agents, or distributors in relation to the Goods/Services;
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provisions of Goods/Services;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
- (e) 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/Services.

16.5 The Supplier may give, information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer; and or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

17. General

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

17.2 All Goods/Services supplied by the Supplier are subject to the laws of Western Australia and the Supplier takes no responsibility for changes in the law which affect the Goods supplied.



- 17.3 To the fullest extent permitted at law, the Supplier shall be under no liability whatever to the Customer for any loss and/or expense (including loss of profit) suffered by the Customer arising in any way from or out of these Conditions.
- 17.4 In the event of any breach of these Conditions by the Supplier the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Supplier under these Conditions exceed the Price of the Goods.
- 17.5 The Customer shall not set off against the Price amounts due from the Supplier, if any.
- 17.6 The Supplier may license, assign or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.7 The Supplier reserves the right to review these Conditions at any time and from time to time. If following any such review, there is to be any change in such Conditions, that change will take effect from the date on which the Supplier notifies the Customer of such change.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm, or other event beyond the reasonable control of either party.
-
-