

ARK Services WA - TERMS AND CONDITIONS OF TRADE

1. Interpretation – In the interpretation of these Terms:

- a. "Customer" means the Customer.
- b. "Goods" means all goods and chattels, all services, all charges for work and labour, hire charges, fees, service charges, repairs, materials or insurance charges associated with the supply, manufacture, constructions, installations or repair of the goods or services supplied to the Customer.
- c. "Supplier" means ARK Services WA.

2. Terms of Sale:

- a. All prices quoted to the Customer by the Supplier are subject to change without notice.
- b. All goods must be paid for as follows:
 - i. An initial "Deposit" amount to be specified by Supplier, must be paid by way of Deposit, upon acceptance of this Agreement by the Supplier;
 - ii. The balance thereof is due and payable on the day of completion
- c. The Customer:
 - i. Shall make payment for any Goods irrespective of the manner in which the order was made, whether in person, by telephone or by other means, and notwithstanding any minor or inconsequential defects or deviations from the specifications that do not affect the performance of the Goods;
 - ii. Acknowledges and accepts that the terms of this Agreement constitute the contractual basis for the supply of Goods by the Supplier to the Customer.
 - iii. Warrants to the Supplier that all drawings, specifications and other design information provided to the Supplier are accurate and correct in all respects;
 - iv. Acknowledges that the amount or estimation provided by the Supplier as to the likely costs of completing the installation is for the completion of standard installation only, and the Customer agrees and undertakes to pay any additional costs of installation as deemed necessary by the Supplier;
 - v. Will forfeit 5.5% of the purchase price of the Goods in the event the Customer cancels this agreement for any reason prior to the date of installation.
- d. All money payable by the Customer under this Agreement shall be paid free and clear of any and all deductions, set-offs or counter-claims.
- e. If the Customer defaults in the payment of any account, then:
 - i. All monies due to the Supplier shall immediately become due and payable;
 - ii. The Supplier is entitled to charge interest on the overdue amount, at the rate currently applicable pursuant to section 323 of the Supreme Court Act 1932, from the due date for payment, to the date of actual payment;
 - iii. Any expenses, costs or disbursements incurred by the Supplier in recovering any outstanding monies due to the, or enforcing any of the Terms under this Agreement, or undertaking or exercising any of the rights due to the Supplier under this Agreement or at law, including but not limited to any debt collection agency fees and solicitors' costs calculated on an indemnity basis, shall be paid by the Customer;

iv. The Supplier shall be entitled to terminate, without notice, any credit arrangement with the Customer.

v. The Supplier:

i. Shall complete the installation pursuant to the attached instructions. If for any reason the Supplier deems or considers it to be not possible to complete the installation pursuant to the attached instructions and the Supplier deems or considers alternative options not suitable, this Agreement shall be deemed at an end, and the Supplier will refund the deposit to the Customer;

ii. Reserves the right to cancel the Agreement in writing, in the event of the Customer not taking delivery of the Goods within seven (7) days of the date from which the Goods become available to the Supplier. In the event the Supplier cancels this Agreement in accordance with the provisions of this sub-clause, the Customer acknowledges, accepts and agrees that any deposit paid by the Customer to the Supplier shall be forfeited to the Supplier, and any cost incurred by the Supplier by the cancellation shall be a debt due and payable by the Customer, immediately upon demand by the Supplier;

iii. Accepts no responsibility or liability for, the removal or disposal of packaging resulting from the installation;

iv. Accepts no responsibility or liability for, any inadequacies or utilities including but not limited to, water, gas, power, and the internet, as required to operate and or facilitate usage of the Goods. Residential Current Devices ("RCD's) are required by law pursuant to AS/NZS3000:2007, and additional charges are applicable in the event the Supplier deems or considers it necessary to undertake and or complete RCD upgrades and or installations;

v. Accepts no responsibility or liability for, any cost associated with power outages at the premises whilst performing work pursuant to Electricity (Licensing) Regulations 1991 – R.55.

vi. Accepts no responsibility or liability for promotions that may from time to time be run by manufacturers. The Supplier accepts no responsibility or liability for the redemption of any manufacturer promotions and is not authorised by manufacturers to verify, pay or advise with regard to any claim, offer or promotion.

3. **Security for Payment** – To secure monies owing to the Supplier:

a. The Supplier shall be entitled at any stage during this Agreement, to request such security or additional security as the Supplier shall think reasonable to secure the due performance by the Customer of the Terms. The Customer shall provide the security as soon as practicable, and the Supplier shall be entitled to withhold supply of any Goods, or suspend credit arrangements, until the security is provided.

b. The Customer agrees:

i. To charge any land now owned, or acquired in the future, by the Customer and/or the Guarantors to secure their and each of their performance of the Terms and to enter into a Mortgage over such land at the request of the Supplier;

ii. Authorises the Supplier to register an absolute Caveat over any land now owned by the Customer or by the Guarantors, or in the future acquired by the Customer or the Guarantors;

iii. The security shall be prepared by the Supplier's solicitor on such terms and conditions as the Supplier's solicitor deems appropriate;

iv. The Customer irrevocably grants to the Supplier the right to enter any premises or property of the Customer without notice, and without being in any way liable to the Customer or any other person, if the Supplier has cause to exercise any of its rights under these Terms, the Customer agrees to indemnify the Supplier against such liability.

4. Retention of Title

- a. Until payment has been made in full by the Customer to the Supplier:
 - i. The Supplier shall remain the sole legal or equitable owner of the Goods;
 - ii. The Customer is in possession of the Goods supplied on credit, as bailee for the Supplier.
- b. The Customer's right to possession of such Goods shall cease, and the Supplier will be entitled to repossession of any Goods not paid for in full, if the Customer does anything or fails to do anything which would result in the following:
 - i. The Customer failing to comply with any of the Terms;
 - ii. The Customer filing for bankruptcy.
- c. The Supplier:
 - i. May assign or sub-contract its rights and obligations under this Agreement without notice to the Customer;
 - ii. Shall not be responsible to the Customer for any damage reasonably caused by the Supplier to any vehicle, vessel, property or equipment in which the Goods are installed or to which the Goods are attached.

5. Warranty

- a. The Supplier's Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or a refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to be a major failure.
- b. To the extent permitted by law, all statutory and other implied conditions and warranties relating to the supply of the Goods by the Supplier are negated, and the liability of the Supplier pursuant to any provision of legislation of the Commonwealth or any State or Territory, or pursuant to any other potential liability (whether arising from negligence or not) including consequential loss, is limited at the option of the Supplier to the replacement of the Goods or supply of equivalent Goods, the repair of the Goods, the payment of the cost of replacing the Goods or acquiring equivalent Goods, or the payment of the cost of having the Goods repaired. Without limiting the foregoing, nothing in these Terms excludes, restricts or modifies any condition warranty or liability, or a consumer guarantee under sections 51, 52 or 53 of the Competition and Consumer Act 2010 (C'th), (CCA), which is implied by the CCA or other applicable laws where to do so is illegal or would render any provision of these Terms void.
- c. To make claim under a warranty, the Customer is to:
 - i. Cease use of the Goods immediately upon learning of a warranty, operational or other issue with respect to the Goods;
 - ii. Telephone the Supplier on 1300 275 247 or email info@arkserviceswa.com.au, at the time of contacting the Supplier, the Customer is to provide the Supplier with proof of purchase together with the operating instructions.
- d. The Customers acknowledges and accepts liability to meet any and all costs associated with making a claim under warranty, including but not limited to:
 - i. Costs associated with travel outside the Perth Metropolitan Area or as otherwise stipulated by the applicable manufacturer's warranty;

- ii. Costs associated with gaining safe, clear, unimpeded access to the Goods, particularly when the Goods are installed in elevated and/or restricted access, unsafe, remote and potentially dangerous locations;
- e. The Customer acknowledges and accepts liability to meet any and all costs incurred by the Supplier and or manufacturer if the problem for which the Supplier or Manufacturer is contacted is deemed by the Supplier or Manufacturer to be outside the provisions of this warranty or the Customer's Statutory Rights.
- f. The Customer is to retain any and all warranty cards and purchase receipts relevant to the Goods.
- g. Liability – Subject to clause 5(a) the Customer does not have under any circumstances any cause of action against or right to claim or recover from the Supplier for, or in respect of, any loss or damage of any kind whatsoever, caused directly or indirectly by:
- i. Any breach of these Terms; or
 - ii. Any misuse, abuse, neglect, accidental damage or modification of the Goods; or
 - iii. Infestation by insects or vermin; or
 - iv. Improper voltage or mains supply problems; or
 - v. Natural disasters or acts of God; or
 - vi. Any fact, matter or thing relating to the Goods; or
 - vii. Rust or damage caused by exposure to corrosive conditions; or
 - viii. Accessories, components or other equipment not supplied by the Supplier; or
 - ix. Improper maintenance by the Customer (refer to maintenance section of Operating Instructions);
 - x. Work performed on the Goods by third parties save for properly authorised representatives of the Supplier;
 - xi. Any delay occasioned by the Supplier, or any employee, contractor or agent of the Supplier or of any person for whom the Supplier has legal responsibility relating to the supply, delivery or installation of the Goods;
 - xii. Any error (whether negligent or in breach of contract or not) in information supplied to the Customer or a user before or after the date of the Customer's or user's use of the Goods;
 - xiii. Any defect in material or workmanship of, or any other defect whatsoever in, or unsuitability for, any purpose of the Goods or any part of the Goods; or
 - xiv. Incorrect information, drawings, illustrations, design specifications or data provided by the Customer or its agents; or
 - xv. By default or negligence on the part of the Supplier or of any employee, contractor or agent of the Supplier or of any person for whom the Supplier has legal responsibility relating to the supply or performance of, or otherwise concerning Goods or any part of the Goods, and including but not limited to, the need to deal with, install the Goods into, or otherwise work in the presence of Lathen plaster ceilings, ornate and/or décor ceilings, roof tiles and asbestos. The Customer acknowledges and agrees that the Supplier and its manufacturers will not be bound by any warranty in the event the Customer has not paid the Supplier for the Goods, in full, pursuant to the provisions of this Agreement.

6. Risk & Delivery

- a. Risk in the Goods passes to the Customer upon the earlier of:
 - i. Actual or constructive delivery; or
 - ii. Collection from the Supplier, bailee, agent, carrier or courier of the Supplier.
- b. Delivery of the Goods will be deemed to have been effected, upon delivery of the Goods to the place of delivery nominated by the Customer. If no such address is nominated by the Customer, delivery will be deemed to have been effected, at the time the Goods are made available for collection at the Supplier's premises.

7. Return of Goods

- a. Goods will not be accepted for return without the Supplier's prior consent.
- b. In the event the Supplier accepts Goods for return from the Customer, the Supplier reserves the right to charge the Customer a restocking fee, the dollar value and amount of applicable restocking fee to be determined at the discretion of the Supplier.
- c. All Goods returned will not be considered for warranty replacement until they are processed and accepted by the Supplier. Goods which are determined by the Supplier to be defective will be accepted for return by the Supplier. The Supplier will arrange for the repair or the replacement of the defective Goods in accordance with the applicable manufacturer's conditions of warranty, provided that:
 - i. The Customer provides to the Supplier written claims against short delivery or damaged Goods. The written request must specify the original invoice number applicable to the Goods, as proof of purchase; and
 - ii. The Supplier must be satisfied as to the accuracy of the written claim.

8. Variations – If a Customer requests variations to a purchase order:

- a. The Customer will incur and be liable to pay a separate quotation fee;
- b. The Customer shall be liable to pay for any work commenced and/or completed, and for any materials used and/or ordered prior to the request for variation to the Customer's purchase order;
- c. Any variation will form the subject of a new quotation and a new purchase order with delivery time to be adjusted accordingly.

9. Force Majeure – If the Supplier or the Customer is unable to perform in whole or in part any obligation under this Agreement by reason of a force majeure event (including without limitation Acts of God) that party is relieved of that obligation under this Agreement to the extent and for the period of time that it is so unable to perform and is not liable to the other party to this Agreement in respect of such inability.

10. Goods and Services Tax – Unless otherwise specifically stated, all amounts payable under these Terms are expressed on a GST inclusive basis.

11. Variation of Terms of Trading – The Supplier may vary these Terms from time to time, by providing written notice of the change to the Customer, and the variation shall take effect from the date of notification of the change.

12. **Arbitration** – In the event of a dispute arising under this Agreement:

- a. Either party may refer the dispute to arbitration. The party wishing to refer the matter to arbitration shall, by notice in writing ("the Notice"), advise the other of the matter in dispute and of the intention to refer the matter to arbitration, and shall nominate an arbitrator. The other party shall, within seven (7) days, advise in writing as to whether the party accepts or rejects the nominated arbitrator, and in the event of the other party rejecting the nominated arbitrator, or not responding to the Notice within the 7-day period as herein specified, then the matter shall be referred to an arbitrator appointed by the President of the Law Society. The Arbitrator shall, at the first meeting determine the procedure for the Arbitration.
- b. Either party shall be entitled to be represented by a legal practitioner.
- c. The parties further agree that the arbitrator shall be entitled to award costs for the legal representation, and such costs shall be calculated on a solicitor own client basis.

13. **Notices** – Any notice, invoice or statement to be served by one party on the other under this Agreement must be in writing and is deemed to have been duly served if given:

- a. By mail, two (2) business days after it is posted where the party's last known address is in the Commonwealth of Australia, and five (5) business days after it is posted by airmail where the party's last known address is outside the Commonwealth of Australia; or
- b. By hand, at the time it is left at the party's last known place of residence or business; or
- c. By Email, upon receipt or if applicable upon receipt by the sender of the confirmation receipt; or
- d. By facsimile transmission, at the time of transmission to the party's last known facsimile number; or
- e. Such earlier time if acknowledged by the receiving party.

14. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of Western Australia and the parties agree to submit to the jurisdiction of the Courts of that State.

15. **Severability** – In the event that any of the provisions or conditions of the Terms or any clause or sub-clause of the Terms cannot be given full force or effect by reason of statutory invalidity, uncertainty or otherwise, the said provision or condition, clause or sub-clause, as the case may be, which cannot be given full force or effect shall be severed, ignored or read down restrictively to maintain and uphold so far as possible, the remaining conditions and provisions of the Terms.

16. **Waiver** – The failure of the Supplier to enforce any right or part of any right under the Terms shall not be considered a waiver of that right or part of a right, and shall not prevent the Supplier enforcing that right or part of a right in the future.

17. **Entire Agreement** – This Agreement is the entire Agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.