

# TERMS & CONDITIONS

## 1. Definitions

- 1.1 "Seller" shall mean Spa industries Pty Ltd T/A Signature Spas and its successors and assigns.
- 1.2 "Buyer" shall mean the buyer or any person or Seller acting on behalf of and with the authority of the Buyer. Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer if a Limited Liability Buyer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Services as defined supra).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.

## 2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Services and/or Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.3 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

## 3. Goods

- 3.1 The Goods shall be as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Seller to the Buyer.

## 4. Price And Payment

- 4.1 At the Sellers sole discretion;
  - (a) The Price shall be the Seller's current price at the date of delivery of the Goods according to the Sellers current Price list; or
  - (b) The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
  - (c) The Price of the Goods shall be the Sellers quoted Price which shall be binding upon the Seller provided that the Buyer shall accept in writing the Sellers quotation within thirty (30) days.
- 4.2 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods/Service.
- 4.3 At the Seller's sole discretion, payment for approved Buyers shall be due on thirty (30) days from date of invoice.
- 4.4 Payment will be made by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
- 4.5 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 such taxes are expressly included in any quotation given by the Seller.

## 5. Delivery Of Goods / Services

- 5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.2 Orders with an invoice value of less than \$120.00 will incur a delivery and handling fee of \$12.00 due upon delivery of the Goods. All orders with an invoice value of less than \$20.00 will be on a cash basis only. Cash sales picked up will not incur any handling charges. The Seller reserves the right to vary the amounts mentioned in this paragraph without prior notice.
- 5.3 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
- 5.4 Where there is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.
- 5.5 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;
  - (a) such discrepancy in quantity shall not exceed 5%, and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

## 6. Risk

- 6.1 If the Seller retains property in the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

## 7. Defects

- 7.1 7.1 The Buyer shall inspect the Goods on delivery and shall within five (5) days of delivery notify the Seller in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. In the instance of an alleged defect or damage, the buyer is to submit photos of the alleged defect or damage (including product packaging) to the seller. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

## 8. Return Of Goods

- 8.1 For defective Goods which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
  - (a) the Buyer has complied with the provisions of clause 7.1;
  - (b) the Goods are returned at the Buyers cost within seven (7) days of the delivery date;
  - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner;
  - (d) 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 reasonable possible in the circumstances.

## 9. Warranty

- 9.1 The conditions applicable to the warranty given on Goods/Services supplied by the Seller are contained on the "Warranty Card" that will be supplied with the Goods / Services.
- 9.2 For Goods not manufactured by the Seller the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.

## 10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 10.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## 11. Buyers Disclaimer

- 11.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

## 12. Default & Consequences Of Default

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of EC Credit Control Pty Ltd's costs of collection.
- 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause
- 12.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$20.00 or 10% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 In the event that:
  - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
  - (b) the Buyer 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, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
  - (i) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

## 13. Title

- 13.1 It is the intention of the Seller and agreed by the Buyer that property in the Goods shall not pass until:
  - (a) The Buyer has paid all amounts owing for the particular Goods; and
  - (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 13.2 It is further agreed that:
  - (a) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.

- (b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
- (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
- (d) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
- (e) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
- (f) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
- (g) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

#### 14. Security And Charge

- 14.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- (a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer 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 Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee, namely EC Credit Control Pty Limited as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Seller and/or EC Credit Control Pty Limited shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

#### 15. Cancellation

The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

#### 16. Privacy Act 1988

- 16.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 16.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer 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 Buyer;
  - (b) To notify other credit providers of a default by the Buyer;
  - (c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
  - (d) To assess the credit worthiness of Buyer and/or Guarantor/s.
- 16.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
- (a) provision of Services & Goods;
  - (b) marketing of Services and or Goods by the Seller, its agents or distributors in relation to the Services and Goods;
  - (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Services/Goods;
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
  - (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.
- 16.5 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Buyer; and or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.
- 16.6 In accordance with Section 81K(l)(e) of the Privacy Act the Buyer authorises a trade insurer in relation to an application by the Buyer for commercial credit

to obtain the Buyers consumer credit report to assess whether to insure or the risk of insuring the Seller or to assess the risk of default by the Buyer on the commercial credit.

- 16.7 In accordance with Section 18(N)(l)(bg) the Buyer authorises the Seller to disclose information about the Buyers personal credit worthiness to persons involved in funding mortgage credit for the purpose of enabling those persons so involved to perform tasks necessary in the funding or mortgage credit.
- 16.8 The Buyer authorises the Seller to give to the guarantor/s or any proposed guarantor/s of personal or commercial credit facilities which the Seller has provided to the Buyer, or for which the Buyer have applied, any personal credit information or record that has a bearing on the Buyers credit worthiness, credit standing, credit history or credit capacity in connection with such credit facilities or for any purpose enforcement of the guarantee for those facilities, the Buyer acknowledges that this authority remains in force for so long as the Seller provides credit to the Buyer.
- 16.9 The Buyer acknowledges that each of the above clauses remains a continuing authority and until cancelled in writing by the Buyer applies in relation to all credit approved or to be provided by the Seller to the Buyer.

#### 17. Intellectual Property

- 17.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 17.2 Conversely, in such a situation, where the Buyer has supplied drawings, the Seller in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller). Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

#### 18. Unpaid Sellers Rights To Dispose Of Goods

- 18.1 In the event that:
- (a) the Seller retains possession or control of the Goods; and
  - (b) payment of the Price is due to the Seller; and
  - (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
  - (d) the Seller has not received the Price of the Goods,
- then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

#### 19. Lien & Stoppage in Transit

- 19.1 Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the Seller shall have:
- (a) a lien on the goods;
  - (b) the right to retain them for the price while the Seller is in possession of them;
  - (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
  - (d) a right of resale,
  - (e) the foregoing right of disposal,
- provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained.

#### 20. Storage

- 20.1 In the event that the buyer is unable to take possession of goods manufactured within 7 days from notification of completion, the seller is entitled to charge the buyer a weekly storage fee.

#### 21. Blemished Goods / "B" Rated Product

- 21.1 A "Blemished" product is defined as a product that has been manufactured with a defect or blemish in the acrylic surface. These products are also referred to as "B" rated product. The associated warranty does not cover the repaired or "blemished" area of the product. "Blemished" products are rated as follows: B1 – Rub marks or small acrylic fill repair - not painted, B2 – Acrylic repair, painted surface less than 10cm and B3 – Acrylic repair, painted surface greater than 10cm.

#### 22. General

- 22.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 All Services/Goods supplied by the Seller are subject to the laws of Victoria and the Seller takes no responsibility for changes in the law which affect the Services/Goods supplied.
- 22.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 22.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 22.5 The Buyer shall not set off against the Price amounts due from the Seller.
- 22.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 22.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer of such change.
- 22.8 Neither party shall be liable for any default due to any act of God, war, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.