

GWA BATHROOMS & KITCHENS **CONDITIONS OF SALE**

PAYMENT TERMS

1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from the end of month of delivery of goods and payment is due and payable on that date. Caroma Industries Ltd ABN 35 000 189 499 and each of its related bodies corporate (as that term is defined in the Corporations Act 2001 (Supplier)) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion upon thirty (30) days' written notice to the Applicant.
2. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier shall be entitled to charge an administration fee of 10% of the amount of the invoice payable per year, or part thereof, from the date the goods or services were supplied (and not the day when the Supplier's invoice was payable) until payment by the Applicant.
 - 2.1 Accepted Method of Payment. EFT, Cheque and Credit Card. Where a payment is made via Credit Card, the Supplier reserves the right to levy a Credit Card merchant fee (including GST) to cover bank charges.

JURISDICTION

3. The Applicant acknowledges and agrees that this Agreement shall be governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.
4. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Applicant and the Applicant is formed at the address of the Supplier.
5. The parties to this Agreement submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.

SECURITY/CHARGES

6. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
7. The Applicant charges in favour of the Supplier all present and after acquired property, interests, rights and proceeds in respect of which the Applicant has at any time sufficient rights to grant a Security Interest (as defined in the Personal Property Securities Act 2009) or charge to secure the satisfaction of its obligations under this Agreement and for payment to the Supplier of any money which from time to time is owed or becomes payable to the Supplier under this Agreement and any other agreement with the Supplier.
8. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, where the Applicant is in default of its obligations under this Agreement for the payment to the Supplier of any money which from time to time is owed or becomes payable to the Suppliers under this Agreement and any other Agreement with the Supplier.

PURPOSE OF CREDIT

9. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

PRICE

10. Prices for goods will be as per the Supplier's Official Price List.
11. Prices may be altered by the Supplier with thirty (30) days' notice.
12. GST, delivery charges, extra packaging surcharges and government taxes, if any, are payable by the Applicant.
13. The Supplier may impose a handling and delivery charge of \$15 on invoices less than \$100 (excluding GST).

ORDERS, DESPATCH AND DELIVERY

14. Orders for goods cannot be suspended or cancelled except with the Supplier's consent. The Applicant shall pay all reasonable expenses incurred by the Supplier due to suspension or

cancellation.

15. Delivery dates are estimates only and the Supplier is not liable for any loss or damage for failure to deliver by those dates.
16. The Supplier may make part deliveries of any order and render an invoice to the Applicant for the goods delivered. Failure to make delivery of the total order will not invalidate the sale.

RETURNS

Subject to and to the extent permitted by the Australian Consumer Law (ACL):

17. Products are sold on a non-return basis and unless damaged (refer clauses 41 and 42), faulty (refer clauses 43, 44 and 45) or incorrectly delivered cannot be returned.
18. All returns must receive the prior approval of the Supplier.
19. The Supplier reserves the right to inspect goods to be returned.
20. Goods must be returned according to the Supplier's procedure for returns for credit or replacement
21. The Applicant must retain signed return documentation as proof of a return.
22. Unless damaged, faulty or incorrectly delivered, a re-stocking fee of 20% and a \$100 minimum claim value applies to all goods returned and is payable within 30 days of the end of the month in which the credit is issued.

FORMATION OF CONTRACT

23. A quotation given to the Applicant is not an offer, and is valid for ninety (90) days from the date of quotation.
24. Quotations made by the Supplier shall not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer shall complete a contract.
25. Placement of an order, either verbally or in writing, shall imply acceptance of the Supplier's offer and of these terms and conditions.

RETENTION OF TITLE AND PERSONAL PROPERTY SECURITIES

In clauses 26 to 41:

- (a) a reference to the PPSA is a reference to the Personal Property Securities Act 2009;
- (b) a reference to "Goods" is a reference to the goods supplied by the Supplier; and
- (c) a reference to "Security Interest" has the meaning given to that term in the PPSA.
26. Whilst the Applicant has not paid for the Goods supplied in full at any time, the Applicant agrees that property and title in the Goods shall not pass to the Applicant and the Supplier retains the legal and equitable title in those Goods supplied and not yet sold.
27. Until payment in full has been made to the Supplier, the Applicant will hold the Goods in a fiduciary capacity for the Supplier and agrees to store the Goods in such a manner that they can be identified as the property of the Supplier, and shall not mix the Goods with other similar goods.
28. The Applicant shall be entitled to sell the Goods in the ordinary course of its business, but until full payment for the Goods has been made to the Supplier, the Applicant shall sell as agent and bailee for the Supplier and the proceeds of sale of the Goods shall be held by the Applicant on trust for the Supplier absolutely.
29. The Applicant's indebtedness to the Supplier, whether in full or in part, shall not be discharged by the operation of clause 28 hereof unless and until the funds held on trust are remitted to the Supplier.
30. The Applicant agrees that whilst property and title in the Goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the Goods of the Supplier and to repossess the Goods which may be in the Applicant's possession, custody or control when payment is overdue.
31. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 30. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.

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32. The Applicant agrees that where the Goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the Goods, and if necessary, sell the goods with the trademark or name of the Applicant on those Goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the Goods bearing the name or trademark of the Applicant.
33. The Applicant acknowledges that the Supplier's interest in the Goods includes a 'purchase money security interest' pursuant to the PPSA.
34. The Applicant agrees to promptly do anything (including executing any new document, obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Supplier may require for the purposes of:
 - (a) ensuring that any Security Interest of the Supplier is enforceable, perfected and otherwise effective; or
 - (b) ensuring that any Security Interest of the Supplier is continuously perfected and/or perfected by control and/or perfected in a way that will reduce as far as reasonably possible the risk of a third party acquiring an interest in any property the subject of the Security Interest, to the extent possible under the PPSA; or
 - (c) enabling the Supplier to apply for registration, or give any notification, in connection with a Security Interest so that the Security Interest has the priority required by the Supplier; or
 - (d) enabling the Supplier to exercise any right or power in connection with the Security Interest.
35. The Applicant agrees that it will bear all costs and expenses that the Applicant incurs in complying with clauses 34 to 41 and any costs and expenses incurred by the Supplier for the purposes set out in clause 34.
36. To the extent permitted by law, and in respect of any Security Interest created by these Terms and Conditions:
 - (a) the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA) and also contract out of the application under subsection 116(2) of the PPSA of any provision of Part 4.3 of the PPSA in relation to the Goods;
 - (b) the Applicant waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to a Security Interest, and also its right to receive any other notice required under the PPSA unless the provision of such notice can not be excluded.
37. The parties agree to the full extent permitted by law not to disclose information of the kind mentioned in section 275(1) of the PPSA. The Applicant agrees that it will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), if the Supplier approves.
38. The Supplier's Security Interest attaches to any proceeds (including proceeds within the definition of that term in the PPSA) derived, directly or indirectly from any sale or dealing with the Goods or otherwise arising out of or relating to the Goods whether or not the sale or dealing is permitted under these Terms and Conditions.
39. The Applicant will not, without the Supplier's prior written consent, create, purport, or attempt to create or permit to exist any other Security Interest, however ranking, over the Goods.
40. For the avoidance of doubt, pursuant to section 80 of the PPSA, the Applicant covenants not to assert any rights it would otherwise have under section 80(1) of the PPSA and it is intended specifically that any person the Applicant assigns some or all of its rights and obligations under these Terms and Conditions should have the benefit of this covenant.

DAMAGE, SHORTAGE, LOSS IN TRANSIT

41. The Applicant must advise the Supplier of any damage or shortage of goods within two (2) days after the delivery date, otherwise no liability will be accepted.
42. Goods in transit may be insured against shipping and breakages if requested by the Applicant. Rates are available on application to the Supplier.

FAULTY GOODS

43. All damaged goods or goods of faulty manufacture (excluding unavoidable imperfections) will be credited or replaced if the Supplier is advised within seven (7) days after the delivery date, and

the faulty goods are made available for inspection and return. To the extent permitted by the ACL the Supplier's liability is limited (at the Supplier's election) to:

- (a) replacing the faulty goods; or
 - (b) the cost of obtaining equivalent products; or
 - (c) the cost of having the faulty goods repaired.
44. The Supplier will not be liable for any special, exemplary, punitive or consequential loss or damage (including without limitation, loss of profit, loss of opportunity and loss of goodwill) incurred by the Applicant either directly or indirectly in connection with the supply of goods.
 45. Once a product is installed the conditions of the applicable product warranty will apply.

CANCELLATION OF TERMS OF CREDIT

46. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this Agreement or not.
47. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

INDEMNITY

48. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

PROVISION OF FURTHER INFORMATION

49. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
50. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

TRADEMARKS

51. The Applicant cannot use the Supplier's trademarks and trade names without the prior written approval of the Supplier.

CORPORATIONS

52. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this Agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

TRUSTEE CAPACITY

53. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
 - (a) the Applicant enters into this Agreement in both its capacity as trustee and in its personal capacity;
 - (b) the Applicant has the right to be indemnified out of trust assets;
 - (c) the Applicant has the power under the trust deed to sign this Agreement; and
 - (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
54. The Applicant must give the Supplier a copy of the trust deed upon request.

PARTNERSHIP

55. If the Applicant enters into this Agreement as partners, the Applicant warrants that all of the partners have signed this Agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
56. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

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INSOLVENCY

57. If the Applicant becomes insolvent, the Applicant remains liable under this Agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this Agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

WAIVER

58. A waiver of any provision or breach of this Agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this Agreement by the Applicant must be made by the Applicant's authorised officer in writing.

COSTS

59. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this Agreement (if any).
60. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
61. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows.
- (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 31 and 69.
 - (b) Secondly, in payment of any interest incurred in accordance with clause 64.
 - (c) Thirdly, in payment of the outstanding invoice(s).

TAXES AND DUTY

62. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this Agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
63. If as a result of:
- (a) any legislation becoming applicable to the subject matter of this Agreement; or
 - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

INTEREST RATES

64. The interest rate on any outstanding debts is a fixed rate of 2% per month.

SET-OFF

65. All payments required to be made by the Applicant under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
66. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

MISCELLANEOUS

67. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
68. In relation to the supply of goods, to the extent permitted by the ACL, the Supplier's liability is limited to:
- (a) replacing the goods or supplying similar goods;
 - (b) repairing the goods;
 - (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
 - (d) providing the cost for having the goods repaired.

69. In relation to the supply of services to the extent permitted by the ACL, the Supplier's liability is limited to:
- (a) supplying the service again; or
 - (b) providing for the cost of having the services supplied again.
70. To the extent permitted by the ACL, the Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.

SEVERANCE

71. If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
72. If any part of this Agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

VARIATION

73. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.
74. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

CONSENT TO REGISTER

75. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
76. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the PPS Register.

ENTIRE AGREEMENT

77. This Agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.

PRIVACY ACT

78. The Applicant agrees to the terms of the Privacy Act 1988 authorisation contained in this document. This authorisation allows the Supplier, amongst other things, to collect information about the Applicant from a credit reporting agency.
79. The Supplier collects information about the Applicant in order to provide the Applicant with the goods requested, to assess any credit application made by the Applicant, or to review any existing credit. If the Applicant does not provide the information requested, the Supplier will be unable to provide the goods requested or process the Applicant's application.
80. The Supplier may disclose information about the Applicant to its related companies, or to a credit reporting agency, ratings agency and any business which provides information about the credit worthiness of persons. The Supplier may also disclose information about the Applicant where the Supplier is permitted by the Privacy Act 1988 to do so.
81. The Applicant is able to access the information held by the Supplier, and seek the correction of such information, by contacting the Supplier using the details provided above. Details with respect to accessing and correcting information are also available in the Supplier's Privacy Policy.
82. Details with respect to how the Applicant may complain about a breach of the Privacy Act 1988 and how the Supplier will deal with such a complaint are available in the Supplier's Privacy Policy.