

# TERMS AND CONDITIONS

## **1 Definitions:**

- 1.1 In these terms and conditions of supply of goods and or services:
  - 1.1.1 "Buyer" means the person, firm or company having signed this document;
  - 1.1.2 "Seller" means Pacific Hoseflex Pty Ltd;
  - 1.1.3 "Parties" means the Buyer and Seller collectively;
  - 1.1.4 "Goods" means the goods and or services supplied to the Buyer at the Buyer's request;
  - 1.1.5 "Rate" means 12% per annum.

## **2 Interpretation:**

- 2.1 The Parties agree that:
  - 2.1.1 These terms and conditions incorporate the whole of any negotiations between the Parties as regards the supply of goods and or services any variation to same must be in writing and signed by the Parties;
  - 2.1.2 If any provision herein is void, illegal or otherwise unenforceable then the Parties will amend that provision so as to achieve the intention of the Parties without illegality or that said provision may be severed from these terms at the discretion of the Seller;
  - 2.1.3 This agreement is deemed to have been made in Queensland and the Parties agree that any dispute will be heard by a court of competent jurisdiction located closest to the Seller's business premises.

## **3 Price and Payment:**

- 3.1 At the Seller's discretion the Price of the Goods will be as indicated on the invoice provided by the Seller to the Buyer.
- 3.2 Time is of the essence for payment of the Goods which must be made within 30 days of the date of any invoice issued by the Seller to the Buyer (the "Payment Date");
- 3.3 If payment is not received by the Seller by the Payment Date then the Seller will be entitled to recover from the Buyer:
  - 3.3.1 The amount of the Invoice; and
  - 3.3.2 Interest having accrued on the amount outstanding invoice from the Payment Date to the actual date of payment and such interest to compound daily at the Rate;
  - 3.3.3 All collections costs incurred by the Seller including legal expenses on a solicitor and client own basis and any debt collection commissions.

## **4 Risk and Title:**

- 4.1 The Parties agree that:
  - 4.1.1 Risk of the Goods will pass immediately upon supply;
  - 4.1.2 Title to the Goods will only pass to the Buyer when the Buyer has paid for the Goods along with any interest, costs and other expenses imposed by this agreement in full.

## **5 Retention of Title:**

- 5.1 The Parties agree that while title to the Goods has not passed to the Buyer, the Buyer will hold those goods as bailee and thereby:
  - 5.1.1 owes the Seller duties and liabilities as bailee;
  - 5.1.2 will not attempt to convey title to the Goods to any third party unless otherwise agreed by the seller in writing;
  - 5.1.3 must not prevent the Seller from entering the Buyer's property to take possession of the Goods.
- 5.2 The Seller is immediately entitled to take possession of the Goods whilst title has not yet transferred to the Buyer in the event of the Buyer:
  - 5.2.1 committing an act of bankruptcy;
  - 5.2.2 being wound up, placed into receivership or under administration;
  - 5.2.3 entering into an arrangement for the benefit of its creditors;

- 5.2.4 being in breach of any terms of this agreement.
- 5.3 The Buyer will indemnify the Seller for any claim made by any third party against the Seller as a result of the Seller taking possession of the Goods.
- 5.4 If the Buyer sells the Goods in contravention of this Agreement then the Buyer:
  - 5.4.1 holds the proceeds of the sale on trust as agent for the Seller immediately when they are received; and
  - 5.4.2 must pay the proceeds of sale of the Goods into a separate Bank account as trustee for the Seller.
- 5.5 Notwithstanding the provisions in this clause 5 and notwithstanding property in the goods not yet passing to the Buyer, the Seller is entitled to maintain an action against the Buyer for the Invoice, interest and other costs.

## **6 Defects:**

- 6.1 The Buyer will have until the Payment Date to inspect the Goods and notify the Seller in writing as to any defect/s. The Buyer will give the Seller opportunity to inspect the allegedly defective Goods.
- 6.2 After the Seller has inspected the Goods it will either:
  - 6.2.1 deny the Goods are defective;
  - 6.2.2 Confirm the Goods are defective and agree to remedy the defect under clause 7.4.
- 6.3 The Seller's Liability is confined to clause 6.2 and will not extend to any other claims for loss or damage occurring in respect to the supply of the Goods.
- 6.4 If the Buyer should fail to strictly comply with clause 6.1 above then the Goods are conclusively deemed to be supplied in accordance with these terms and conditions and free of any defect of damage.

## **7 Warranty and Limitation of Liability:**

- 7.1 The Seller makes no warranty as to the suitability of the Goods for the purpose for which they are required by the Buyer unless the Buyer has provided the Seller with full details in writing of the conditions in which the Goods will be operating prior to the Buyer' acceptance of this agreement.
- 7.2 If the Buyer should fail to strictly comply with clause 7.1 then the Buyer has satisfied itself as to the suitability of the Goods for the purpose for which they are required by the Buyer and the Seller shall not be liable for any loss or damage direct or indirect should the Goods not be suitable for that purpose.
- 7.3 Except as provided herein all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded and the Seller shall not be liable for 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 the Goods or arising out of the Seller's negligence in any way whatsoever.
- 7.4 The Seller's liability for breach of a conditional warranty implied by any law is limited to:
  - 7.4.1 the replacement of the Goods or supply of equivalent Goods; or
  - 7.4.2 the repair of the Goods; or
  - 7.4.3 the payment of the costs of replacing the

- 7.4.4 Goods or of acquiring equivalent Goods; or the payment of having the Goods repaired.

## **8 Guarantee:**

- 8.1 The Guarantors request the Seller to make supply to the Buyer under this contract, and agree that they receive valuable consideration by the Seller agreeing to do so.
- 8.2 The Guarantors jointly and severally guarantee to the Seller the due and punctual performance by the Buyer of the Buyer's obligations under this agreement.
- 8.3 The Guarantors indemnify the Seller in relation to the performance of this agreement, and agree that their liability to the Seller is the same as if each guarantor alone was the Buyer, and all transactions between the Seller and the Buyer were transactions between the Seller and that guarantor;
- 8.4 This guarantee and indemnity is continuing, and is not affected by any delay or failure by the Seller to strictly enforce its rights against the Buyer or the Guarantors, nor any waiver by the Seller of any of its rights against the Applicant or the Guarantors except to the extent specifically waived.

## **9 Security:**

- 9.1 The Buyer and Guarantors hereby charge all their beneficial interest (freehold and leasehold) in real property held now or in the future by them with payment of monies in compliance with all obligations owed by them to the Seller under this agreement.
- 9.2 The Buyer and Guarantors agree that if demand is made by the Seller in accordance with this clause the Buyer and Guarantors will immediately execute a mortgage in registrable form or a consent to caveat, as required by the Seller to secure the interest of the Seller pursuant to this equitable mortgage.
- 9.3 In the event the Buyer and Guarantors fail to execute a document in accordance with clause 9.2, then the Buyer and Guarantors hereby irrevocably and by way of security appoint the Seller or a Solicitor engaged by the Seller to be their true and lawful attorney to execute and register any such instrument as described in clause 9.2. For the purposes of this appointment, the Buyer and Guarantors authorise the Attorney appointed by this clause to enter into conflict transactions within the meaning of the Power of Attorneys Act 1998.
- 9.4 **The Buyer has read all the above terms and conditions and agrees to be bound by the same as evidenced by the Buyer's execution hereunder:**

\_\_\_\_\_  
Buyer's signature

\_\_\_\_\_  
Date

- 9.5 **The Guarantors have read all the above terms and conditions and agrees to be bound by the same as evidenced by the Buyer's execution hereunder:**

\_\_\_\_\_  
Guarantor's signature

\_\_\_\_\_  
Guarantor's signature

\_\_\_\_\_  
Date