

Terms and Conditions for Account Customers

These Terms and Conditions are also published on the company website (www.spplus.com.au) and are available upon request at each of our company's stores.

These Terms and Conditions for Account Customers ("**Account Terms and Conditions**") govern the purchase of Goods (defined below) from Southern Plumbing (defined below) as part of an approved Trade Account.

Southern Plumbing is not bound by any variation to the Account Terms and Conditions unless expressly agreed upon in writing and signed by a duly authorised Representative of Southern Plumbing and the Applicant. These Account Terms and Conditions herein shall apply notwithstanding any provision to the contrary which may appear on any order form or other document issued by the Customer (defined below) or any other party.

Southern Plumbing may at any time and from time to time alter these Account Terms and Conditions and the Customer agrees that by continuing to obtain Goods it will be deemed to have had notice of any change(s) to these Account Terms and Conditions and agreed to be bound by any subsequent versions of these Account Terms and Conditions as they appear on Southern Plumbing's website: www.spplus.com.au, whether or not the Customer has actual notice of the change(s).

A copy of the current version of the Account Terms and Conditions may also be obtained by request at each of Southern Plumbing's stores.

1. DEFINITIONS

- 1.1 "**Southern Plumbing**" means SOUTHERN PLUMBING SUPPLIES PTY LTD A.C.N 120 287 452 and its subsidiary and associated companies and its successors and assigns, whose registered office and principal place of business is 21 Lyell Street, Fyshwick ACT 2609.
- 1.2 "**Customer**" means the purchaser of Goods pursuant to an approved Application for Trade Account ("**Trade Account Application**").
- 1.3 "**Goods**" means any goods and/or services provided to the Customer and/or Guarantor by Southern Plumbing.

- 1.4 "**Guarantor(s)**" means the persons so named in the Deed of Guarantee and Indemnity forming part of this Trade Account Application.
- 1.5 "**Insolvency Event**" means one or more of the following events:
- (a) the appointment of a controller, liquidator or provisional liquidator (as defined in the *Corporations Act 2001* (Cth) ("**Corporations Act**") over the Customer or the Customer's property;
 - (b) the Customer becomes subject to external administration under Chapter 5 of the *Corporations Act*;
 - (c) the Customer calls a meeting of, or makes any arrangement or composition with, its creditors;
 - (d) a sequestration order is made against the estate of the Customer under the *Bankruptcy Act 1966* (Cth) ("**Bankruptcy Act**");
 - (e) the Customer commits an act of bankruptcy under the *Bankruptcy Act*;
 - (f) a secured party enforces a security interest and takes possession of the Customer's property;
 - (g) any analogous event under the law of an applicable jurisdiction.
- 1.6 "**PPSA**" means the *Personal Property Securities Act 2009* (Cth).

2. PERSONAL PROPERTY SECURITIES ACT 2009

- 2.1 If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 2.2 The Customer acknowledges and agrees that these Account Terms and Conditions constitute a security agreement for the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Southern Plumbing to the Customer. The Customer acknowledges and agrees that Southern Plumbing may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The

Customer waives its rights under s157 of the PPSA to receive notice of any verification of the registration.

2.3 The Customer undertakes to -

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Southern Plumbing may reasonably require to –
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 2.3(a)(i) or 2.3(a)(ii); or
 - (iv) otherwise derive the benefit of this security agreement;
- (b) indemnify, and upon demand reimburse, Southern Plumbing for all expenses incurred in registering a financing statement or financing change statement or security interest on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest between the parties without the prior written consent of Southern Plumbing;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Southern Plumbing;
- (e) immediately advise Southern Plumbing of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

2.4 Southern Plumbing and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Account Terms and Conditions.

2.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) 135, 142 and 143 of the PPSA.

2.6 The Customer waives their rights as a guarantor and/or a debtor under sections 142 and 143 of the PPSA.

2.7 The Customer must unconditionally ratify any actions taken by Southern Plumbing under clauses 2.3 to 2.5.

2.8 Subject to any express provisions to the contrary nothing in these Account Terms and Conditions is intended to have the effect of

contracting out of any of the provisions of the PPSA.

2.9 To the extent any part of these Account Terms and Conditions are invalid or unenforceable by reason of the operation of the PPSA, the part may be severed without any effect on the validity of the remainder of the Account Terms and Conditions.

3. QUOTATIONS, PRICES, SUPPLY

3.1 No quotation given by Southern Plumbing shall constitute a binding offer, except to the extent it becomes binding under subclause 3.2(b).

3.2 The price payable by the Customer with respect to Goods shall be either:

- (a) if subclause 3.2(b) does not apply, as indicated on invoices provided by Southern Plumbing to the Customer in respect of Goods supplied; or
- (b) Southern Plumbing's quoted price (subject to clause 3.3) which shall be binding upon Southern Plumbing provided that the Customer has accepted Southern Plumbing's quotation in writing within 30 days of the date of the quote.

3.3 Southern Plumbing reserves the right to change the price in the event of a variation to the Customer's quotation.

3.4 If a Customer cancels or alters any order for Goods after Southern Plumbing has received the order, Southern Plumbing may recover from the Customer (on a full indemnity basis) all costs and charges incurred in cancelling or altering the order or part order, together with the costs of any labour and handling to the date of such cancellation or alterations.

3.5 Unless otherwise stated, prices quoted are in Australian dollars and are **exclusive of GST**.

3.6 Prices shown in price lists are subject to change without notice.

3.7 Southern Plumbing reserves the right to decline any order for Goods when the size of the order or the requested delivery date inhibits or prejudices Southern Plumbing's ability to fulfil its contractual commitments to its franchisees, licencees or other Customers.

3.8 Southern Plumbing reserves the right to sub-contract the manufacture and/or supply of any part of the Goods quoted or of any materials or services to be supplied.

3.9 Any sample produced at the request of the Customer will be at the Customer's expense. Any such sample produced will be indicative of the general nature of the product. Southern Plumbing does not warrant or guarantee that the sample product will correspond with any

colour, texture or blend of the sample provided by the Customer or with any previous sample provided by either party.

4. TERMS OF PAYMENT

4.1 The granting of credit to a Customer shall be at the absolute discretion of Southern Plumbing. Any credit facilities granted to a Customer may be withdrawn on overdue accounts at Southern Plumbing's discretion without prior notice to the Customer

4.2 Payment will be made by cash, cheque, bank cheque, credit card (in which case any applicable credit card surcharge fee will also be payable), direct credit or by any other method as agreed to between Southern Plumbing and the Customer.

4.3 At Southern Plumbing's sole discretion, payment shall be due either

- (a) on delivery of the Goods, or
- (b) before delivery of the Goods, or
- (c) for approved Customers, within 30 days from the end of the month in which the Goods were invoiced to the Customer.

4.4 If the Customer fails to make payment in accordance with clause 4, Southern Plumbing shall be entitled at its absolute discretion to:

- (a) require the payment of cash upon delivery of any further Goods;
- (b) charge interest at the rate of two per centum (2%) per month on a cumulative basis on all overdue amounts (including late payment charges and amounts other than the prices), calculated on a day to-day basis on any monies due but unpaid, such interest to be computed from the due date for payment AND the parties agree that such charges shall be payable on demand;
- (c) claim from the Customer all losses and costs relating to any action taken by Southern Plumbing to recover monies or goods due from the Customer, including any mercantile agents costs and legal costs and disbursements on a full indemnity basis;
- (d) cease any further deliveries to the Customer; and/or
- (e) terminate any agreement in relation to Goods that have not been delivered.

5. DELIVERY

5.1 Delivery of the Goods shall be deemed to have taken place when (as is applicable):

- (a) the Customer takes possession of the Goods at Southern Plumbing's nominated address;

(b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Southern Plumbing or Southern Plumbing's nominated carrier); or

(c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.

5.2 Any date or time quoted for delivery is an estimate only. Southern Plumbing shall endeavour to effect delivery at the time or times requested by the Customer but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer or render Southern Plumbing liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.

5.3 The Customer shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery or any strike, lockout, unavailability of raw materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, floods, storm or tempest, transport delays, acts of God, restrictions or interventions imposed by any laws, regulations, governments or agencies thereof and any other cause beyond the control of Southern Plumbing or any other cause whatsoever.

5.4 Southern Plumbing's obligation to deliver Goods shall be discharged on arrival of the Goods at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. If the Customer is unable or unwilling to accept physical delivery of the Goods when the Goods are ready for delivery, Southern Plumbing shall be entitled to charge a fee for any cost consequently incurred and may arrange for the storage of the Goods at the risk and cost of the Customer, including all transportation, storage and other consequential costs.

5.5 Southern Plumbing may, at its sole discretion, make and invoice partial deliveries of Goods and each partial delivery shall be a separate sale pursuant to these Account Terms and Conditions. Southern Plumbing reserves the right to charge a handling fee for all orders.

6. RETURNS AND INSPECTION

6.1 The Customer shall examine the Goods immediately after delivery and will, within 48 hours of the delivery, notify Southern Plumbing

of any alleged defect, mis-delivery, shortage in quantity, damage or failure to comply with the description or quote.

- 6.2 The Customer shall afford Southern Plumbing an opportunity to inspect the Goods within a reasonable time following the provision of notice under clause 6.1.
- 6.3 If the Customer fails to comply with these provisions, the Goods shall be presumed to be free from any defect or damage.
- 6.4 Any claim of the Customer relating to the alleged failure of Southern Plumbing to supply Goods conforming to the Customer's orders will be waived unless made in writing to Southern Plumbing within seven (7) days after delivery of the Goods to the Customer.
- 6.5 No claim involving labour charges or product replacement will be recognised by Southern Plumbing unless Southern Plumbing has agreed to the value of the claim and Southern Plumbing has been given sufficient time to investigate and take such action it considers necessary to resolve the problem.
- 6.6 No claim(s) against Southern Plumbing will arise for any loss or damage or injury of any kind whatsoever suffered by the Customer arising directly or indirectly from the Customer's failure to obtain independent professional and/or tradesman advice in relation to the suitability of the Goods for any specific purpose. The Customer must rely on its own knowledge and expertise in selecting Goods for any purpose. The Customer acknowledges that if it relies upon any advice or assistance given by Southern Plumbing it does so at the Customer's own risk.
- 6.7 Southern Plumbing shall not be liable to the Customer for any loss of profits or consequential, indirect or special loss, damage or injury of any kind whatsoever, arising directly from any defect in the Goods or their installation.
- 6.8 For defective Goods which Southern Plumbing has agreed in writing that the Customer is entitled to reject, Southern Plumbing's liability is limited to either (at Southern Plumbing's sole discretion) replacing the Goods or repairing the Goods.
- 6.9 Goods will not be accepted for return other than in accordance with this Clause.

7. TITLE AND RISK

- 7.1 It is the intention of Southern Plumbing and agreed to by the Customer that ownership and title of the Goods shall not pass until the Customer has:

- (a) paid all amounts owing for the particular Goods (including all applicable sales taxes and other taxes, levies and duties); and
- (b) met all other obligations due by the Customer to Southern Plumbing in respect of all contracts between Southern Plumbing and the Customer.

- 7.2 Any payment made by or on behalf of the Customer which is later avoided by the application of any statutory provision shall be deemed not to have discharged the Customer's indebtedness and, in such an event, the parties are to be restored to the rights and obligations which each respectively would have had if the avoided payment had not been made.
- 7.3 Notwithstanding any period that Southern Plumbing retains ownership and title of the Goods under this clause 7, all risk for the Goods passes to the Customer upon delivery to the Customer in accordance with clause 5.
- 7.4 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Southern Plumbing is entitled to receive all insurance proceeds payable with respect to the Goods. The production of these Account Terms and Conditions by Southern Plumbing is sufficient evidence of Southern Plumbing's rights to receive the insurance proceeds without the need for any person dealing with Southern Plumbing to make further enquiries and the Customer agrees to take all necessary steps to give effect to this clause.
- 7.5 The Customer acknowledges that it is in possession of the Goods solely as a bailee for Southern Plumbing until the circumstances set out in clause 7.1 have arisen. The Customer shall store the Goods separately from its own goods and those of any other party and in a manner which clearly identifies the Goods, whether as separate chattels or as components, as the property of Southern Plumbing.
- 7.6 The Customer hereby irrevocably grants to Southern Plumbing, its agents and servants, an unrestricted right and licence, without notice, to enter premises occupied by the Customer to identify and remove any of the Goods the property of Southern Plumbing in accordance with these Account Terms and Conditions. The Customer indemnifies Southern Plumbing against any liability to the Customer or any person claiming through the Customer arising from Southern Plumbing exercising its rights under the licence. Southern Plumbing shall have the right to sell or dispose of any such Goods removed or otherwise in its sole

discretion and shall not be liable for any loss occasioned thereby.

- 7.7 Southern Plumbing licenses the Customer to sell products manufactured using the Goods. If the Goods are affixed to other material, the totality thereof shall be the sole and exclusive property of Southern Plumbing in accordance with this clause 7, unless the other material or part thereof are or is the property of a party or parties other than the Customer, in which case the totality thereof shall be deemed to be owned as tenants in common with such other party or parties other than the Customer in shares corresponding to the respective amounts paid or payable by the Customer in respect of such other party or parties.
- 7.8 The Customer shall be at liberty to agree to sell the Goods (independently or affixed to other materials) subject to the condition that until ownership and title to the Goods has passed to the Customer, the Customer shall sell as an agent and bailee for Southern Plumbing and that the entire proceeds from the sale thereof shall be held in a separate account on trust for Southern Plumbing.
- 7.9 The right to on-sell or otherwise dispose of the Goods in the normal course of trade may be revoked at any time by Southern Plumbing and shall automatically cease if an Insolvency Event occurs and/or where the Customer is in default of any of its obligations to Southern Plumbing under any contracts between Southern Plumbing and the Customer.

8. WARRANTY

- 8.1 Subject to payment in full being made as defined in clause 7, Southern Plumbing shall use its best endeavours to pass on to the Customer the benefit of any warranties or guarantees it receives in respect of the Goods supplied to the Customer which are not manufactured by Southern Plumbing.
- 8.2 Except to the extent provided for under the Australian Consumer Law, Southern Plumbing does not (unless expressly provided for) provide any additional warranties or guarantees by reason of the supply of Goods the subject of a manufacturer's warranty.

9. LIMITATION OF LIABILITY

- 9.1 The Customer shall indemnify and hold indemnified Southern Plumbing

against any claim, suit, proceedings or demand made by a third party for loss or damage suffered, whether directly or indirectly, by infringement of its intellectual property rights.

- 9.2 These Account Terms and Conditions do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which by law cannot be excluded, restricted or modified.
- 9.3 In the case of Goods supplied by Southern Plumbing to a Customer who is a consumer as defined by the Australian Consumer Law, to the extent that the Goods are not consumer products or goods, the liability of Southern Plumbing to the Customer for breach of any warranty or condition or the breach of any duty of care shall in all cases be limited, at the option of Southern Plumbing to any one or more of: the replacement of the Goods; the supply of equivalent Goods; the repair of the Goods; the payment of cost of replacing the Goods or acquiring equivalent Goods; the payment of the cost of having the Goods repaired.
- 9.4 Except for those conditions and warranties implied by the Australian Consumer Law or consumer protection legislation which may not be excluded, the Customer agrees that it has not relied on any inducement, representation or statement made by or on behalf of Southern Plumbing in purchasing the Goods and there are no implied conditions or warranties herein and no collateral contracts in connection herewith (except such as may be in writing and signed by a duly authorised representative of Southern Plumbing).
- 9.5 This clause sets out the entire liability of Southern Plumbing in respect of its liability under the Australian Consumer Law or otherwise in respect of liabilities to the consumer for a breach of a condition or warranty with respect to the sale of Goods. In no circumstances will Southern Plumbing incur any liability in respect of, arising out of, or in connection with, any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the Customer.

10. FORCE MAJEURE

- 10.1 Southern Plumbing shall not be liable to the Customer or person claiming through the Customer for any failure or delay to supply or deliver the Goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of Southern Plumbing

including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

11. TERMINATION

11.1 If the Customer fails to comply with these Account Terms and Conditions or an Insolvency Event occurs, Southern Plumbing may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately recover possession of any Goods not paid for in accordance with these Terms.

12. RETURNS

12.1 Other than in respect of Southern Plumbing's obligations pursuant to clause 9, Southern Plumbing shall not be liable to accept any returned products but may in its absolute discretion elect to accept the return of Goods, provided that such Goods shall only be accepted for credit and with the prior written approval of a duly authorised representative of Southern Plumbing.

12.2 Goods returned for credit pursuant to this clause must be returned in unused condition, together with the original invoice, and will be subject to a handling and administration charge of 15% or equal to the manufacturer's return charge (if applicable) plus five percent (5%). The Customer will be liable for return freight and other expenses which must be paid for before credit will be issued.

12.3 Returns of non-standard products will not be accepted.

13. ADVERTISING

13.1 The Customer shall not advertise in any media the sale or disposal of Goods purchased from Southern Plumbing, without the prior written consent of a duly authorised Representative of Southern Plumbing. The Customer shall indemnify and hold indemnified Southern Plumbing against any liability in respect of, or in connection with, any special, consequential, direct or indirect loss, damage, harm or injury suffered as a result of false, misleading or deceptive advertising and/or untrue representation(s) or statement(s) made to any

person by the Customer in the course of advertising. The Customer further warrants and acknowledges that it will not use any existing logo or brand name similar to those used by Southern Plumbing, or attempt to register a trade mark name similar to Southern Plumbing, without the prior written consent of a duly authorised Representative of Southern Plumbing.

14. CONFIDENTIAL INFORMATION

14.1 The Customer warrants that it will not disclose to any person confidential information of Southern Plumbing (including but not limited to Southern Plumbing's materials, procedures, tests, reports and equipment) that is disclosed to the Customer during the course of purchasing Goods, or comes into the Customer's knowledge or possession from any other source, without the prior written consent of a duly authorised Representative of Southern Plumbing.

15. GOVERNING LAW

15.1 The Customer agrees that these terms shall be construed according to the laws of New South Wales.

15.2 The Customer submits to the exclusive jurisdiction of the Courts of New South Wales and the Commonwealth of Australia.

16. SERVICE OF DOCUMENTS

16.1 The Customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last notified address of the Customer.

17. ASSIGNMENT

17.1 The Customer must not assign or transfer any rights or obligations under these Account Terms and Conditions without the prior written consent of Southern Plumbing.

18. STATEMENT OF DEBT

18.1 A written Statement of Debt duly signed by an authorised employee of Southern Plumbing shall be prima facie evidence and proof of the amount of indebtedness by the Customer to Southern Plumbing at that time.