



## Australia – Terms & Conditions of Sale

### 1. DEFINITIONS

- 1.1 COLLECTING AGENT means the Seller, who has been appointed (pursuant to the Franchise Agreement between Seller and Installer) by the Installer to collect monies owed by the Customer to the Installer.
- 1.2 CUSTOMER means the individual or organization that buys or agrees to buy Goods and Services from the Seller and Installer.
- 1.3 CONTRACT means the contract between the Seller, the Installer and the Customer for the sale and purchase of Goods and Services incorporating these Terms and Conditions. The Contract may be either verbal or written.
- 1.4 GOODS means a range of waterproofing membranes and such other goods as determined by the Seller from time to time, combined with a system of installation for those Goods.
- 1.5 INSTALLER means the person who carries out the Services as an independent operator acting as a Franchisee of the Seller.
- 1.6 MAJOR FAILURE means a failure as defined by Australian Consumer Law.
- 1.7 SELLER means Wet-seal Management Pty Ltd, the independent franchisor of the Wet-seal Franchise System operating in Australia.
- 1.8 SERVICES means the installation of waterproofing and such other goods that have been developed by the Seller and are installed by the Installer.
- 1.9 SITE means the building location at which the Goods and Services are to be (or have been) installed.
- 1.10 SITE INSPECTION means an inspection at the site by the Customer and the Installer at a pre-arranged mutually-convenient time for the purpose of determining an estimate of price for the provision of the Goods and Services.
- 1.11 SITE INSPECTION FEE means the fee payable to the Installer by the Customer to compensate the Installer for the time spent travelling to the site and the time actually spent by the Installer determining the estimate.
- 1.12 TERMS AND CONDITIONS means the terms and conditions of sale set out in this document, and any further special terms and conditions agreed in writing between the parties.
- 1.13 WARRANTY means:
- (a) those guarantees, warranties and undertakings that are provided by the *Competition and Consumer Act (2010)*; and
  - (b) those additional guarantees, warranties and undertakings that are contained in these Terms and Conditions and in the Installation Certificate issued by the Seller and the Installer.

- 1.14 WARRANTY PERIOD means the period for which the Seller guarantees the Goods, and the Installer guarantees the Services. The Warranty Period will be 7 (seven) years unless otherwise stated in the Installation Certificate.
- 1.15 (a) Words and phrases in these Terms and Conditions shall have the same meaning given to them in the *Competition and Consumer Act 2010* or the *Trade Practices (Industry Codes – Franchising) Regulations 1998*.
- (b) References to “a party” includes its employees, agents, representatives and sub-contractors.

## **2. CONDITIONS**

- 2.1 The provisions of the Australian Consumer Law shall prevail over the provisions of these Terms and Conditions, should there be any conflict.
- 2.2 These Terms and Conditions shall apply to all Contracts for the sale of Goods by the Seller and /or the provision of Services by the Installer to the Customer, and shall prevail over any other documentation or communication from the Customer.
- 2.3 Acceptance of delivery of the Goods and Services shall be deemed conclusive evidence of the Customer’s acceptance of these Terms and Conditions.
- 2.4 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the Customer and the Installer) shall be inapplicable unless agreed to in writing by the parties.

## **3. ORDERING, PRICE AND PAYMENT**

- 3.1 The Services are only available for purchases of Goods supplied by the Seller and installed by the Installer.
- 3.2 All orders for Goods and Services shall be deemed to be an offer by the Customer to purchase the Goods and Services pursuant to these Terms and Conditions and are subject to acceptance by the Installer. The Installer may choose not to accept an order for any reason.
- 3.3 An estimate of a price for the supply of the Goods and Services may be provided by the Installer. Due to the complexity and variability of the Services the Installer’s price estimate is usually an approximation and should not be considered to be a firm or exact quotation.
- 3.4 Terms: Full payment is due and payable by the Customer to the Seller (who has been appointed Collecting Agent by the Installer) on completion of the Services unless the Installer gives prior approval of terms, in which case full payment is required by the 14<sup>th</sup> day of the month following the invoice date.
- 3.5 A surcharge will apply for Services carried out on a Sunday or Public Holiday.
- 3.6 The Customer must pay all amounts due to the Seller under these Terms and Conditions in full and without any set-off or deduction.
- 3.7 If the Customer elects to pay the amount due by credit card a surcharge of 1.5% of the amount due will apply.

3.8 Any amounts unpaid after the 14<sup>th</sup> day of the month following the invoice date shall bear interest at the rate of 10% per annum.

3.9 If the Customer fails to pay any amount due under these Terms and Conditions within a period of sixty days from the date of invoice, the Seller may report the payment default to a credit-reporting/collection agency and add the collection costs to the amount owed by the Customer.

#### **4. RIGHTS OF THE SELLER**

4.1 The Seller and Installer reserve the right to adjust the price and specifications of any Goods or Services available at their discretion.

4.2 The Seller reserves the right to withdraw any Services from the Installer at any time.

4.3 The Seller shall not be liable to any party for withdrawing any Services or for refusing to process an order.

#### **5. DELIVERY AND INSTALLATION**

5.1 Where a specific date and/or time has been agreed for a Site Inspection or the provision of the Goods and Services, and where this date and/or time cannot be met by the Installer, the Customer will be notified by the Installer and given an opportunity to agree to a new date and time.

5.2 The Installer shall use reasonable endeavours to meet any date or time agreed for Site Inspection or the provision of the Goods and Services. In any event, time of Site Inspection or the provision of the Goods and Services shall not be of the essence and the Installer and Seller shall not be liable for any losses, costs, damages or expenses incurred by the Customer or any third party arising directly or indirectly out of any failure to meet any arranged date and/or time for a Site Inspection or the provision of the Goods and Services.

5.3 Goods and Services shall be provided at the Customer's address specified in the order and the Customer shall make all arrangements necessary to be available, or have an authorised representative available when the Site Inspection or the provision of the Goods and Services is due to take place.

5.4 The Customer is to remove all rubbish and debris from the area in which the Goods and services are to be located prior to the scheduled commencement of the Services.

5.5 The Customer must ensure toilet facilities are made available to Installers on site.

5.6 The Customer must ensure good access and parking is made available on all sites. Bad access and difficult parking may incur a surcharge.

5.7 Any unforeseen circumstances which arise during installation will be notified to the Customer and charged for accordingly.

#### **6. CANCELLATION, REFUNDS, AND DISPUTES**

- 6.1 The Customer may cancel orders for Goods and Services at any time prior to the Services being carried out, subject to the specific limitations on refunds detailed below. Charges will not be refunded for Services that are cancelled by the Customer during the installation process or after the Services have been delivered.
- 6.2 If the Customer fails to attend a pre-arranged Site Inspection appointment or an appointment for the installation of the Goods and Services, the full Site Inspection Fee is payable.
- 6.3 The Site Inspection Fee is payable at the time of the Site Inspection and may be deducted from the final installation cost, at the discretion of the Installer.
- 6.4 Any dispute raised by the Customer in relation to the Goods and/or Services must be made by telephoning the Seller on (Australia) 1800 025 081. The Seller operates between 9:00 am and 5:00 pm AEST Monday to Friday, except for Public Holidays.
- 6.5 If an order is cancelled within 24 hours of the time agreed for installation, the Installer reserves the right to invoice the Customer an amount up to 20% of the total amount quoted to cover costs that may have been incurred.

## **7. GOODS AND SERVICES WARRANTY**

- 7.1 The Australian *Competition and Consumer Act (2010)* (including the Australian Consumer Law) as well as other laws in state jurisdictions guarantee certain conditions, warranties and undertakings, and give Customers other legal rights, in relation to the quality and fitness for purpose of Wet-seal products and workmanship sold in Australia.
- 7.2 Wet-seal Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. The Consumer is entitled to a replacement or refund for a major failure and for compensation of any other loss or damage. The Consumer 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 a major failure. What constitutes a major failure is set out in the Australian Consumer Law.
- 7.3 Nothing in this Warranty purports to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the Australian *Competition and Consumer Act (2010)* and other laws. This Warranty gives the Customer additional protection for their Wet-seal product and the workmanship involved in its installation, and identifies a preferred approach to resolving warranty claims which will be quickest and simplest for all parties, subject to the exclusions, terms and conditions herein.
- 7.4 The Goods and Services are covered by a Warranty. The Period of the Warranty is shown on the Installation Certificates and the Warranty will commence on the date of completion of the Services.
- 7.5 The Warranty that applies to the Goods is the responsibility of the Seller. The Warranty that applies to the Services is the responsibility of the Installer.
- 7.6 The Seller shall be required to rectify free of charge any failure of the Goods, and subsequent damage caused as a result of the failure, during the warranty period.

- 7.7 The Installer shall be required to rectify free of charge any failure of the Services, and subsequent damage caused as a result of the failure, during the warranty period.
- 7.8 Because of the nature of the Goods and Services it is often the case that additional materials (tiles, etc.) have been fixed over the top of the Goods. The Customer acknowledges that in most cases it will be necessary for the Installer to remove some or all of such covering materials in order to determine the specific cause of the failure of the Goods or Services.
- 7.9 The Customer also acknowledges that upon removal of the covering materials it may be determined that the cause of the Goods and Services failing to perform their intended purpose may be as a result of some damage to the integrity of the Goods and Services caused subsequent to the installation of the Goods and Services by a third party.
- 7.10 In the event that the Seller or Installer, while determining the cause of the failure of the Goods or Services, determines that the cause of the failure was due to something or someone other than any problem with the quality and effectiveness of the Goods or the proper provision of the Services, neither the Seller or Installer will be liable for any repairs under the guarantee.
- 7.11 In the circumstances described in 7.10 the Customer will pay the Seller and/or the Installer the cost of providing such services as were required to determine the actual cause of the failure, and the Seller and/or Installer will not be responsible for the replacement of any covering materials.
- 7.12 In the event that it is determined that the circumstances described in Clause 7.10 apply, the Seller and/or Installer will provide the Customer with a estimate of the cost of repair of the Goods and Services, and in the event that the Customer requests the Seller or Installer to undertake the repairs, then the Customer accepts full responsibility for the payment to the Seller for the cost of such repairs.

## **8. LIMITATION OF LIABILITY**

- 8.1 All terms, conditions or warranties that may be implied into these Terms and Conditions; statutory or otherwise, relating to the supply of the Goods and Service are excluded to the fullest extent permitted by law.
- 8.2 The Customer acknowledges that he/she is aware that the waterproof membrane (if such has been installed) is UV-sensitive and requires covering with paint, tiles or some other recommended material within eight weeks of installation to prevent degradation. The warranty is void if the membrane is not so covered within eight weeks of installation.
- 8.3 The membrane is NOT trafficable or weatherproof unless it is protected appropriately immediately after installation. Should damage be incurred as a result of the actions or omissions of any third party (such as, but not limited to, piercing of the membrane by other builders or tradesmen) or by destructive weather conditions (such as, but not limited to, piercing of the membrane by hail or wind-blown objects) the warranty is void.
- 8.4 The liability of the Seller or Installer for breach of any term, condition or warranty or under any remedy implied by law (which cannot be excluded) will be:

8.4.1 limited (if permitted by law) at the option of the Seller to the repair or re-supply of the Service or the payment of the cost of having the Service re-supplied; and

8.4.2 reduced to the extent that such liability is caused by negligent acts or omissions by the Customer, or a breach by the Customer of these Terms and Conditions.

8.5 The Seller and/or Installer do not have any liability to the Customer or to any other person for:

8.5.1 the acts or omissions of any other entity, including any third party;

8.5.2 faults or defects in the Goods or Services which are caused by the conduct of the Customer or any third party;

8.5.3 any loss of revenue, profits or anticipated savings, loss of data, loss of bargain, other economic loss of any kind, damage to reputation or for any form of indirect or consequential loss, or special or penalty damages, whether in respect of negligence or other tort, breach of contract, equity or otherwise, arising out of or in connection with the provision of the service or these Terms and Conditions;

## **9. WAIVER**

9.1 No waiver by the Seller or Installer (whether express or implied) in enforcing any of its rights under this contract at any time shall prejudice its rights to do so in the future.

## **10. FORCE MAJEURE**

10.1 The Seller and/or Installer shall not be liable for any delay or failure to perform any of their obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, national or local emergency, acts of government, acts of war or civil disorder, military operation, industrial disputes, weather damage, subsidence or earthquake, or other events which are beyond the reasonable control of the Seller and/or Installer and the Seller and/or Installer shall be entitled to a reasonable extension of its obligations.

## **11. SEVERANCE**

11.1 If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid illegal or unenforceable provision eliminated.

## **12. CHANGES TO TERMS AND CONDITIONS**

12.1 The Seller and/or Installer shall be entitled to alter these Terms and Conditions at any time, but this right shall not affect the existing Terms and Conditions accepted by the Customer upon making a purchase or the provisions of relevant Australian Consumer Law.

## **13. GOVERNING LAW AND JURISDICTION**

- 13.1 These Terms and Conditions shall be governed by and construed in accordance with the Australian Consumer Law. Any dispute under these terms shall be subject to the exclusive jurisdiction of the courts of the State/Country in which the installation of the Goods and Services takes place.

#### **14. STANDARDS**

- 14.1 All work undertaken by the Installer must comply with Australian Standards AS3740, AS/NZS4858, and the Building Code of Australia (BCA) as amended.

#### **15. SPECIAL CONDITIONS**

- 15.1 Any increase in costs attributable to strikes, lockouts and/or shortage of materials, any difference in award rates and/or any difference in price of materials during the currency of this Contract shall be added to or deducted from the Contract Price, as the case may require.
- 15.2 An aluminium angle, or a plastic strip bead, will be fitted across doorways leading from wet areas.
- 15.3 On multi-storey dwellings the full, upstairs, wet area flooring shall be sealed.
- 15.4 Wherever Particle Board, Marine Ply or Fibre Cement Sheeting has been used the full wet area floor shall be sealed.
- 15.5 If drainage flanges have not been fitted all wastes will be cut off level with the floor. The waterproofing membrane will be dressed down into the waste. For suspended floors a drainage flange **MUST BE** installed in showers. NOTE: In South Australia all showers must have drainage flanges.
- 15.6 If a hob is required it must be constructed from brick, concrete, concrete masonry or any other materials compatible to the waterproofing membrane excluding timber.
- 15.7 All shower verticals will be sealed to a minimum height of 1.8m.
- 15.8 Bond breakers will be fitted in all showers.
- 15.9 Regardless of substrate used all showers will have the full base sealed.
- 15.10 If the membrane is damaged, by other than the Independent Franchisee of the Wet-seal Franchise System, the Guarantee shall be voided.
- 15.11 All Shower Screens must be installed on the inside edge of the hob (if applicable).