

# Terms & Conditions of Trade

Fontaine Industries Pty Ltd A.C.N. 151 076 836



## 1. Definitions

- 1.1 "Australian Consumer Law" or "ACL" means Schedule 2 of the Competition and Consumer Act 2010 (Cth)
- 1.2 "ATL" means an Authority to Leave.
- 1.3 "Consumer" has the meaning defined in the ACL.
- 1.4 "Credit Account Application" means the credit account application completed by the Customer and approved by Fontaine to allow the Customer to purchase the Products on account in accordance with these Terms and Conditions.
- 1.5 "Credit Limit" means the credit limit approved by Fontaine for the Customer's credit account.
- 1.6 "Customer" means the Customer (or any person acting on behalf of and with the authority of the Customer) to purchase Products from Fontaine.
- 1.7 "Financing Statement" has the meaning given to it in the PPSA.
- 1.8 "Financing Change Statement" has the meaning given to it in the PPSA.
- 1.9 "Fontaine" means Fontaine Industries Pty Ltd A.C.N. 151 076 836 trading as Fontaine Industries and includes its successors and assigns.
- 1.10 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.11 "Minimum Spend" means an amount not less than ten thousand Australian dollars (AUD\$10,000.00) per annum.
- 1.12 "Order" means an order made by the Customer with Fontaine for the purchase of the Products.
- 1.13 "Product(s)" means the products sold by Fontaine to the Customer as described on the tax invoices or any other forms provided by Fontaine to the Customer at the time of placing an Order.
- 1.14 "Price" shall mean the price payable by the Customer for the Products in accordance with these Terms and Conditions.
- 1.15 "Privacy Act" means the Privacy Act 1988, as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012.
- 1.16 "Purchase Money Security Interest" has the meaning given to it in the PPSA.
- 1.17 "PPSA" means the Personal Properties Securities Act 2009 (Cth).
- 1.18 "PPSR" means Personal Property Securities Register within the meaning of the PPSA.
- 1.19 "RRP" means the recommended retail price of the Products.
- 1.20 "Security Interest" means a security interest within the meaning of the PPSA.
- 1.21 "Terms and Conditions" means the Terms and Conditions of Trade described in this document.
- 1.22 "Trade Discount" means a discount of eight percent (8%) off the RRP of the Products.
- 1.23 "Trade Discount Application" means the trade account application completed by the Customer and approved by Fontaine to allow the Customer to purchase the Products at a Trade Discount in accordance with these Terms and Conditions.

## 2. Australian Consumer Law ("ACL")

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the ACL except to the extent permitted.

## 3. Acceptance

- 3.1 The Customer acknowledges that it has read and accepted these Terms and Conditions prior to signing the Credit Account Application and the Trade Discount Application.
- 3.2 Each Order placed by the Customer for Products will be a separate binding agreement between the Customer and Fontaine if accepted by Fontaine. The Customer agrees to purchase the Products on these Terms and Conditions.
- 3.3 Fontaine may vary these Terms and Conditions from time to time in accordance with business requirements and as required by law. The Terms and Conditions will be published on the website of Fontaine, and updated by Fontaine if and when necessary.
- 3.4 The Customer shall give Fontaine not less than fourteen (14) days' prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, contact details and email address). The Customer shall be liable for any loss incurred by Fontaine as a result of the Customer's failure to comply with this clause.

## 4. Credit Account Application

- 4.1 Any Credit Account Application must be lodged in writing and submitted directly to Fontaine or through Fontaine's website.
- 4.2 Prior to accepting any Credit Account Application, Fontaine may require a guarantor(s) to jointly and severally guarantee to Fontaine the payment of all debts by the Customer.
- 4.3 Fontaine may also require the Customer to provide a bank guarantee to secure the Customer's performance for the payment of debts owing to Fontaine.
- 4.4 Fontaine will inform the Customer in writing if its Credit Account Application is approved.

- 4.5 Fontaine will open a credit account for the Customer upon the approval of a Credit Account Application.
- 4.6 Fontaine requires a Minimum Spend to be maintained by the Customer or the Customer's credit account facility will be closed without notice to the Customer.
- 4.7 Fontaine may review and change the Customer's Credit Limit at any time.
- 4.8 The Customer is responsible for and indemnifies Fontaine for any unauthorised use of the Customer's Credit Account with Fontaine.
- 4.9 The Customer must notify Fontaine in writing immediately when it becomes aware of any unauthorised transactions on the Customer's Credit Account.
- 4.10 Fontaine may in its sole discretion and without providing any reason, suspend or terminate the Customer's Credit Account within seven (7) days of notifying the Customer in writing.
- 4.11 Fontaine may terminate the Customer's Credit Account immediately if:
- (a) Fontaine was induced by a fraudulent misrepresentation or false information given by the Customer to approve a Credit Account Application;
- (b) any money payable by the Customer to Fontaine becomes overdue;
- (c) In the opinion of Fontaine, any change in the Customer's circumstances including the Customer's legal and beneficial ownership, change in management or the Customer's ability to provide security for payment of the amounts which have been charged or will be charged to the Customer's Credit Account; or the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment to the benefit of its creditors; or
- (d) a receiver, manager, liquidator or similar person is appointed in respect of the Customer or any asset of the Customer; or
- (e) The Customer is otherwise in default under Fontaine's Terms and Conditions of Trade.
- 4.12 If Fontaine suspends or terminates the Customer's Account, then any amount owing or incurred by the Customer but not billed becomes immediately due and payable by the Customer.

## 5. Price, Trade Discount And Payment

- 5.1 The Price charged by Fontaine for the Products sold to the Customer shall be the Price as indicated on the tax invoice issued by Fontaine for the Products sold.
- 5.2 Any applicable Trade Discount will be applied to all Orders made by the Customer
- 5.3 Time for payment for the Products shall be of the essence. Payment for the Products shall be due within seven (7) days from the date of the tax invoice issued by Fontaine unless otherwise agreed.
- 5.4 If a tax invoice issued by Fontaine is incorrect, the Customer must notify Fontaine in writing within two (2) days from the date of issue of the tax invoice failing which the Customer will be deemed to have accepted the tax invoice.
- 5.5 Payment may be made by cash, bank cheque, credit card, by electronic funds transfer or by direct deposit and without deduction to the bank account nominated by Fontaine. Credit card payments will attract a fee.
- 5.6 GST shall be added to the Price except when they are expressly included in the Price.

## 6. Delivery Of Products

- 6.1 The Customer will not be permitted to cancel an Order after an order has been accepted by Fontaine.
- 6.2 Products sold to the Customer may be collected by the Customer from Fontaine's warehouse or delivered by Fontaine to the Customer.
- 6.3 If the Customer requests that the Products be delivered by Fontaine to the Customer, then the Customer must pay for all delivery costs which are in addition to the Price.
- 6.4 On delivery of the Products, the Customer will be required to sign for delivery unless the Customer gives Fontaine an ATL. If the Customer has given Fontaine an ATL, then the Customer acknowledges that he or she is giving Fontaine or their selected courier permission to leave the Products at the delivery address without obtaining a signature confirming delivery at the delivery address, and will release Fontaine and its courier from any liability if the Products are stolen or damaged.
- 6.5 Delivery of the Products to a third party nominated by the Customer is deemed to be delivery to the Customer.
- 6.6 If Fontaine arranges delivery to the Customer's location or premises of a third party as nominated by the Customer as the delivery address, the Customer releases Fontaine from any claims which the Customer may have against Fontaine in respect of damage occasioned to the Customer's premises or injury to persons arising out of any loading, unloading or delivery of the Products to such premises.
- 6.7 Fontaine shall not be liable for any loss or damage whatsoever due to its failure to deliver the Products if caused by circumstances beyond Fontaine's control.

## 7. Cancellation

- 7.1 If Fontaine is unable to deliver or provide the Products, then Fontaine may cancel any Order by giving written notice to the Customer. Fontaine shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 7.2 In the event that the Customer cancels delivery of the Products after the Order has

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been accepted by Fontaine, then the Customer shall be liable for any loss incurred by the Fontaine (including, but not limited to, any loss of profits) up to the time of cancellation.

## 8. Risk

- 8.1 All risk for the Products passes to the Customer on delivery.
- 8.2 If the Customer gives Fontaine an ATL to leave the Products outside Fontaine's premises for collection or to deliver the Products to an unattended location then such Products shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Products are insured adequately.

## 9. Title

- 9.1 Title in the Products shall not pass to the Customer until the Customer has paid Fontaine all amounts owing for the Products and there is no debt owing by the Customer to Fontaine on any account.
- 9.2 Until such time as Fontaine has received full payment for the Products, Fontaine holds a lien over the Products and may enter the Customer's premises to recover possession of the unpaid Products. Alternatively, Fontaine can issue proceedings to recover the Price of the Products delivered to the Customer notwithstanding that title in the Products may not have passed to the Customer.

## 10. Inspection of Products

- 10.1 All Products are checked by Fontaine prior to being collected by the Customer or despatched by Fontaine from its premises. If the Products are collected by the Customer from Fontaine's premises, the Customer must inspect the Products for any visible defects.
- 10.2 If the Products are delivered to the Customer, then the Customer must inspect the Products upon delivery and shall within seven (7) days of delivery notify Fontaine of any visible defect/damage. If the Customer fails to comply with this clause, then the Products shall be deemed to be free from any visible defect or damage.
- 10.3 Delivered goods may not be returned by the Customer unless the Products are defective or damaged in transit.
- 10.4 The Customer bears the costs for returning any defective or damaged Product to Fontaine for inspection. Thereafter, the Customer shall allow Fontaine an opportunity to inspect the Product within a reasonable time following delivery.
- 10.5 If Fontaine agrees that a Product is defective, then Fontaine may at its option:
- (a) Accept the return of the defective Product and give the Customer a full refund subject to the Product being returned in its original condition and packaging; or
- (b) Repair or replace the defective Product.
- 10.6 Any Products returned by the Customer that are not found to be defective will be returned to the Customer and Fontaine will charge the Customer for the returned delivery costs.
- 10.7 If the Product returned by the Customer is found to be defective, Fontaine will deliver the replacement Product to the Customer at Fontaine's cost

## 11. No Representation

- 11.1 The Customer shall rely on its own knowledge and expertise in selecting the Products for its intended purpose. Any recommendation or assistance given by Fontaine shall be accepted at the Customer's risk and shall not be relied on or deemed to be a representation by Fontaine as to the suitability of the Product of which the Customer has relied on.

## 12. Warranty

- 12.1 Fontaine makes every effort to ensure that the Products which it supplies are manufactured to the highest standards. Fontaine's Products come with a warranty that the Products will, from the date of purchase, be free from defects due to faulty workmanship and materials. Products are sold subject to individual manufacturer's warranty. These warranties are stipulated in the Products listings and descriptions, of which are typically as follows:
- (a) Accessories: 7 Year product warranty
- (b) Basins: 5 Year product warranty
- (c) Basins (Black): 3 Year product warranty
- (d) Basins (Stone): 2 Year product warranty
- (e) Baths: 7 Year product warranty
- (f) Cabinets: 2 Year product warranty
- (g) Heated Towel Ladders: 3 Year product warranty
- (h) Kitchen Sinks: 7 Year product warranty
- (i) Kitchen Appliances: 2 year Parts & Labour
- (j) Mirrors: 5 Year product warranty
- (k) Shower Bases: 2 Year product warranty
- (l) Shower Grates: 5 Year product warranty
- (m) Shower Screens: 7 Year product warranty

- (n) Shower Liners: 5 Year product warranty
- (o) Stone: 5 Year product warranty
- (p) Tapware: 7 Year product warranty
- (q) Tapware (pull out): 5 Year product warranty
- (r) Timber: 1 Year product warranty
- (s) Toilets: 7 Year product warranty\*
- (t) Sale items: Subject to independent warranty^

\* Inwall cisterns, valves, seats, button assembly, links, flush pipes and other internal components which carry a 3 year replacement warranty.

^ Some sale items, clearance items, new factory items, seconds, or selected ranges and products may subject to independent product warranty, these will be clearly stipulated in the product listings and the tax invoice.

- 12.2 If the Products are returned during the warranty period and deemed to be covered by this warranty, Fontaine will have the option to repair or replace the defective Product. The warranty shall not, however, apply where the product has been modified or repaired by the Customer. To the extent permitted by law, Fontaine will not be liable for any personal injury, direct or indirect or consequential loss arising out of or in relation to the supply of a defective Product.
- 12.3 In addition to this warranty, if the Customer is a Consumer for the purposes of the ACL, then Fontaine's Products come with guarantees that cannot be excluded under the ACL. For a major defect, the Customer is entitled to a replacement or refund (and compensation for any other reasonably foreseeable loss or damage). For a minor defect where the Products fail to be of acceptable quality, the Customer is entitled to have the Products repaired or replaced.
- 12.4 All samples, display models, descriptions, specifications, illustrations, drawings contained in catalogues, price lists or other advertising materials of Fontaine are intended by Fontaine to be a general description of the Products only. The Products supplied by Fontaine may be subject to minor modifications and tolerances consistent with usual industry standards and practice.
- 12.5 The Customer agrees that the following variations in the Products will not be considered to be defects for the purposes of this clause:
- (a) Minor surface imperfection and finish variation in a Product which is handmade, hand-painted or hand-sprayed due to the nature of the process which is carried out by hand.
- (b) Variations in the crystalline structure, mineral inclusions, veining and colour of which are the inherent features of a Product such as natural stone.
- (c) Naturally-occurring variations in the colour, knots, grain variation, gum marks, pinholes, hairline cracks and mineral streaks of natural timber.
- (d) Minor variations in colour, shading, size, texture, crazing and other imperfections in ceramic Products due to the nature of the production process of ceramic Products.
- 12.6 Notwithstanding clauses 12.1 and 12.2 above, the warranty and the guarantee provided by Fontaine shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (a) Failure by the Customer to properly use any Products; or
- (b) Failure by the Customer to ensure that Products are properly installed by licensed plumbers, electricians, or glaziers, as the case may be, in accordance with the applicable Australian Standards and regulations.
- (c) failure on the part of the Customer to follow any instructions or guidelines provided by Fontaine; or
- (d) any use of any Products otherwise than for its intended use; or fair wear and tear, or
- (f) any faults which the Customer was made aware of prior to making the Order; or
- (g) failure by the Customer to inspect the Products immediately at the time of collection or in the case of delivery, failure to notify Fontaine within 7 days from the date of delivery of any defects which would have been visible at the time of delivery; or
- (h) Losses which are not reasonably foreseeable as being caused by the defective Product; or
- (i) Other causes other than faulty workmanship or materials eg. water leakage to storage cabinets supplied by Fontaine.
- 12.7 If examination of Products alleged to be defective shows that a defect is not covered by Fontaine's warranty obligations, then the Customer bears the costs which are incurred by Fontaine in connection with the inspection of such Products.
- 12.8 If the Product returned by the Customer is found to be covered by Fontaine's warranty obligations, Fontaine will deliver the repaired or replacement Product to the Customer at Fontaine's cost.
- 12.9 In all cases, the Customer bears the costs for returning any defective Products to Fontaine for inspection pursuant to a warranty claim.

## 13. Default & Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic) plus 2%. All payments made by the Purchaser will first be applied to the accrued interest.
- 13.2 In the event that the Customer's payment is dishonoured for any reason, the Customer shall be liable for any dishonour fees incurred by Fontaine.
- 13.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Fontaine from and against all costs and disbursements incurred by Fontaine in pursuing the debt including legal costs on a solicitor and own client

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- basis and Fontaine's collection agency costs.
- 13.4 Without prejudice to any other remedies Fontaine may have, if at any time the Customer is in breach of any obligation (including those relating to payment), then Fontaine may suspend or terminate the supply of the Products to the Customer.
- 13.5 Without prejudice to Fontaine's other remedies at law, Fontaine shall be entitled to cancel all or any part of an Order which remains unfulfilled and all amounts owing to Fontaine become immediately payable in the event that: (a) any money payable to Fontaine becomes overdue, or in Fontaine's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer 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 or similar person is appointed in respect of the Customer or any asset of the Customer; or
- (d) The Customer fails to notify Fontaine in writing of any change in its legal and beneficial ownership and/or management including any change in directors and shareholders within seven days of the date of any such change.

## 14. Personal Properties Securities Act 2009 ("PPSA")

- 14.1 For so long as any monies owing by the Customer to Fontaine under the Order remain unpaid, the Customer acknowledges that Fontaine has a Security Interest in the Products under the PPSA.
- 14.2 For the purposes of the PPSA:
- (a) terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these Terms and Conditions are a security agreement and Fontaine has a Purchase Money Security Interest in all present and future Products supplied by Fontaine to the Customer and the proceeds of the Products;
- (c) the Security Interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (d) the Customer must do whatever is necessary in order to give a valid Security Interest over the Products which is able to be registered by Fontaine on the Personal Property Securities Register.
- (e) The Security Interest attaches to the Products when delivery occurs and not at any later time.
- (f) Fontaine may apply to register a Security Interest in the Products at any time before or after delivery of the Products.
- 14.3 The Customer undertakes to execute all documents and provide all information of which Fontaine may require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register.
- 14.4 The Customer agrees to indemnify and reimburse Fontaine for all expenses incurred in registering a Financing Statement or Financing Change Statement in relation to Security Interests on the PPSR or releasing any Security Interests.
- 14.5 The Customer must not register or permit to be registered a Financing Change Statement in the Products without the prior written consent of Fontaine.
- 14.6 The Customer must provide Fontaine with not less than 7 days' prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or any other such change in the Customer's details registered on the PPSR to register a Financing Change Statement
- 14.7 To the extent permissible under the PPSA, the Customer waives its right to receive notice of any verification of the registration.
- 14.8 To the extent permitted by the PPSA, Fontaine and the Customer agree that for the purposes of enforcement by Fontaine of its Security Interest under sections 115(1) and 115 (7) of the PPSA:
- (a) Fontaine need not comply with sections 95, 118, 121 (4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
- (b) sections 142 and 143 of the PPSA do not apply.
- 14.9 For the purposes of section 115(7) of the PPSA, Fontaine need not comply with sections 132 and 137(3) of the PPSA.

## 15. Dispute Resolution

- 15.1 If a dispute arises between the parties, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute.
- 15.2 Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.
- 15.3 The parties agree not to take any legal action against each other until they have attempted to resolve the dispute in good faith.

## 16. Privacy Act

- 16.1 The Customer and/or the Guarantor/s agree for Fontaine to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s and to make such enquiries as necessary including trade references or any other credit provider from time to time to in relation to credit

provided by Fontaine.

- 16.2 Fontaine's rights to obtain personal credit information about the Customer under this clause will be subject to the restrictions contained in the Privacy Act.

## 17. General

- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria.
- 17.3 To the extent permitted by law, Fontaine shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Fontaine of these terms and conditions. In the event of any breach of this contract by Fontaine, the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Products.
- 17.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Fontaine nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.6 The failure by Fontaine to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Fontaine's right to subsequently enforce that provision.
- 17.7 A notice sent by either party must be in writing and handed personally, by email or by prepaid post to the last known address of the receiving party.