

BATHE PTY LTD

TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale apply to all sales made by the Seller and are deemed to be incorporated in any sale of sanitaryware, bathware and kitchenware goods entered into by the Seller whether arising from an order received from the Buyer or resulting from a Quotation or arising from oral acceptance of repeat or further orders for the same or similar goods and shall terminate, cancel and supersede any previous written or oral agreements and understandings entered into between the Buyer and Seller.

1. Interpretation

In these conditions, unless the context otherwise requires:

“Buyer” means the person or company named in the Sales Invoice, Purchase Order or Quotation and, in the case of an individual, his executors, administrators and assigns, and of a company its successors and assigns.

“Insolvency Event” means:

(a) In relation to any corporation:

- (i) the appointment of an administrator or provisional liquidator in respect of it;
- (ii) its winding up (whether voluntary or involuntary);
- (iii) dissolution occurs;
- (iv) a receiver, receiver and manager or trustee is appointed in respect of the corporation or its property;
- (v) the corporation enters into, or resolves to enter any arrangement, composition or compromise with or an assignment for the benefit of all or any class of its creditors;
- (vi) an application being made which is not dismissed or withdrawn within ten (10) business days for an order, resolution being passed or proposed, a meeting being convened or any other action being taken to cause anything described above;

(b) In relation to an individual, that person becoming an insolvent under administration as defined in Section 9 of the *Corporations Act 2001*;

(c) In relation to any person, anything analogous to or having a similar effect to anything described above in this definition under the law of any relevant jurisdiction.

“PPSA” means *Personal Property Securities Act 2009* (Cth) and a term that is used in italics has the same meaning as in the PPSA.

“Quotation” means the form of quotation of price submitted by the Seller to the Buyer.

“Seller” means Bathe Pty Ltd (Bathe).

Any special conditions set forth in a Quotation or Sales Order Confirmation shall be read and

construed so as to vary these printed terms and conditions but only to the extent of any inconsistency.

2. Purchase Order Terms

- 2.1. Orders will be initiated by a Buyer issuing to the Seller an order to purchase goods (“Purchase Order”). If it accepts the Purchase Order the Seller will issue a document to the Buyer (“Sales Order Confirmation”) and the sale contract is binding.
- 2.2. Any Quotation given by the Seller is not an offer and is valid for a period of 30 days from date of issue.
- 2.3. All Purchase Orders of less than \$100.00 (excl. GST) will be charged an administration fee of \$15.00 per order.
- 2.4. In the event that a Purchase Order contains a price inconsistent with the Seller’s current price list, the Seller has the right to amend the Purchase Order to include the current price.
- 2.5. Purchase Orders placed for delivery at a future date must contain a confirmed delivery schedule to avoid any shipping issues.
- 2.6. The Seller will not reserve stock and does not guarantee that a product will be available at the time of shipment.

3. Payment Terms

- 3.1. The Seller will generate an invoice on the date of shipment (“Sales Invoice”). Payment of the amount in the Sales Invoice shall be made on or before 30 days from end of month of date of invoice (“the Due Date”) unless otherwise agreed in writing between the parties.
- 3.2. Sales Invoices issued on the last day or working day of a calendar month will be due for payment at the end of the following month, regardless of the date of delivery unless otherwise agreed in writing between the parties.
- 3.3. Sales Invoices which are in full or part outstanding as at the Due Date will be deemed overdue and the Seller reserves the right to stop all deliveries to the Buyer until all overdue Sales Invoices are paid in full.
- 3.4. The Buyer must raise any query regarding the pricing contained in a Sales Order Confirmation or Sales Invoice immediately upon receipt.
- 3.5. The Seller will issue an account statement on the first working day of each month and it is the Buyer’s responsibility to advise the Seller of any missing Sales Invoices.
- 3.6. If, for whatever reason, the Buyer does not take delivery of all items contained in a Sales Order

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Confirmation within 60 days from the time of its issue then the Seller reserves the right to issue a Sales Invoice to the Buyer for the items which it has not taken delivery and the provisions of this clause 3 apply.

4. Return of Goods

- 4.1. The Buyer may request to return delivered goods (except for special or non-standard products such as Multipoint and AIR Spas) provided that;
 - (a) The Buyer has paid the full amount contained in the Sales Invoice to which the request applies;
 - (b) the request is in writing and includes details of the Sales Invoice associated to the goods and the reasons for the request.
 - (c) the request is made *within 30 days* of shipment date.
- 4.2. Goods which are part of a project order, especially imported, manufactured, machined or cut to size or to Buyer's specifications are not returnable.
- 4.3. If the request is approved by the Seller in its sole discretion it will issue a 'Goods Return Authority' (GRA) to the Buyer which must be attached to the goods being returned.
- 4.4. Goods must be returned in the original undamaged packaging and in re-saleable condition.
- 4.5. Return freight is the responsibility and at the cost of the Buyer. Any goods returned that are damaged in transit will not be credited. Any missing items will be deducted from the credit amount.
- 4.6. A re-stocking fee of 15% will apply to all returns.
- 4.7. Goods are to be returned within 21 days from the date that the GRA is issued.
- 4.8. Any refund by the Seller to the Buyer for goods which have been approved for return will be made within 30 days of receipt of the returned goods.

5. Project Orders

- 5.1. If the Purchase Order is for a project then the Buyer must inform the Seller in writing of the confirmed delivery schedule at least 14 weeks prior to the date that the Buyer requires delivery, failing which the Seller does not accept any liability for delays to delivery.
- 5.2. The Seller will not reserve stock and does not guarantee that a product will be available at the time of shipment.

- 5.3. Upon arrival of goods as ordered, into Australia, deliveries, will be made, as per the delivery schedule, to the Buyer and will not be held by the Seller.
- 5.4. If, for whatever reason, the Buyer does not take delivery of items contained in the delivery schedule within 60 days from the time delivery is scheduled, then the Seller reserves the right to issue a Sales Invoice to the Buyer for the items which it has not taken delivery of and the provisions of clause 3 apply.

6. Contingencies

- 6.1. Sales tax, Goods and Services Tax (GST) or any other value added impost, if applicable, shall be to the Buyer's account.
- 6.2. If between the date of order and delivery there is an increase in the price of supplying the goods which is beyond the control of the Seller, then such increase shall be to the account of the Buyer.

7. Shipment and Delivery

- 7.1. The Seller shall have the right to nominate the time/date, place and manner of delivery and change any one of those details at any time.
- 7.2. If the Seller is unable to deliver within the stipulated time then the Seller shall not be liable for any loss or damage (including consequential loss or damage) whether direct or indirect, arising from delays in shipping or delivery.
- 7.3. The Seller reserves the right to withhold deliveries in the event that the Buyer's account balance exceeds an approved credit limit.

8. Part Deliveries

- 8.1. Unless agreed to the contrary in writing, the Seller reserves the right to deliver part of any order. Failure to make a delivery of the total order shall not invalidate the sale. Where delivery is affected by delivering only some of the goods ordered then the Seller shall be entitled to issue a Sales Invoice for the goods delivered.
- 8.2. The Buyer shall be responsible for and indemnify the Seller for loss of or damage to the goods from the time of delivery until paid in full.

9. Passing of Property and Risk

- 9.1. Property in the goods supplied by the Seller to the Buyer does not pass to the Buyer until:
 - (a) the money owing for those goods; and
 - (b) any other money owing by the Buyer to the Seller;has been paid (whether or not the goods are delivered at different times, are the subject of

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separate invoices or, after delivery, may be determined by the Seller to be the subject of a specific invoice).

9.2. Should the Buyer fail to make due payment for the goods, or by an act or omission enable the appointment of a liquidator, receiver, receiver and/or official manager, administrator or being a natural person become insolvent or bankrupt or commit an act of bankruptcy, the right of the Buyer to sell or deal with the goods in the ordinary course of its business or otherwise terminates immediately without the need for the Seller to provide written confirmation. The Seller may without prejudice to any other rights it may have and at its option, do any of the following:

- (a) Withdraw any credit facilities which may have been extended to the Buyer and demand immediate payment of all monies owing to the Seller;
- (b) Withhold any further deliveries of goods whether in transit or not;
- (c) Where the goods have been delivered enter the premises to recover the goods and resell them for its own benefit;
- (d) Suspend and/or terminate performance without penalty of any other contract for sale which the Seller has with the Buyer.

10. Buyer's Rights

10.1. Until the goods have been paid for in full, the Buyer:

- (a) must properly store, protect and insure the goods including storing them separately and in a manner that clearly identifies them as the property of the Seller;
- (b) must not sell the goods, other than in the ordinary course of its business;
- (c) may use the goods in a manufacturing or construction process of its own or a third party in the ordinary course of business; and
- (d) must not sell, assign, charge or otherwise encumber or grant any interest over any debts and other obligations which any third party may owe to the Buyer as a result of the use, manufacture or resale of the goods.

Nothing in this clause 9 limits or excludes the Seller's interest as principal in those debts and other obligations.

11. Sale of goods

If the Buyer sells any of the goods while they remain the property of the Seller, and receives proceeds of the sale or receives any other proceeds, whether tangible or intangible, direct

or indirect, of any dealing with the goods (including any proceeds from insurance claims) the Buyer grants to the Seller a *security interest* in every payment to the Buyer for the goods (both as *proceeds* of the goods and as original *collateral*).

12. Use of goods in manufacture

If the Buyer uses any of the goods in a manufacturing or construction process of its own or a third party and sells the product of the manufacturing or construction process, then the Buyer grants to the Seller a *security interest* in that portion of every payment to the Buyer for the manufactured product that relates to any goods sold to the Buyer and which are used in the manufacturing and construction process (both as *proceeds* of the goods and as original *collateral*).

13. Balance of sale price remains a debt

If the sale price of all goods sold to the Buyer is greater than the sum of all payments actually received by the Seller in respect of the goods, the difference remains a debt owing by the Buyer to the Seller.

14. Insolvency of Buyer

14.1. If the Buyer suffers an Insolvency Event, without prejudice to any other rights of the Seller:

- (a) the Buyer's right to sell the goods in the ordinary course of business and any other rights of the Buyer in respect of the goods immediately ceases; and
- (b) the Buyer must immediately return to the Seller the goods in which title has not passed.

15. Authority to inspect and reclaim

15.1. The Buyer irrevocably authorises the Seller at any time, to enter any premises upon which the goods are stored to enable the Seller to inspect the goods (including any records pertaining to the goods) and, if the Buyer has breached these terms and conditions or suffers an Insolvency Event, to reclaim possession of the goods.

15.2. If the Seller enters any premises for the purpose of reclaiming possession of the goods, and incurs any liability to any person in connection with the entry or reclamation, the Buyer indemnifies the Seller against that liability.

16. Goods joined to other product or fixed to land

16.1. If any of the goods have been joined to another product, then in taking possession, the Seller must, where it is possible to do so, remove the

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product that was not supplied by the Seller or in which title has passed to the Buyer. To the extent it is unable to remove the other product, the Seller's property in the goods is not affected by their ongoing connection to that other product.

16.2. The Seller's property in the goods is not affected by the fact that the goods become fixtures attached to premises of the Buyer or a third party.

17. Acknowledgements

17.1. If at any time the Seller retains legal title to the goods as contemplated by these terms and conditions of sale, the Buyer acknowledges and agrees that:

- (a) these terms and conditions are a *security agreement*;
- (b) these terms and conditions create a *security interest* in all present and after acquired goods and any *proceeds* as security for the Buyer's obligations to the Seller;
- (c) the Seller is a *secured party* in relation to the goods and any *proceeds* of the goods, and is entitled to register its interest on the *register* as:
 - (i) a *security interest*; and
 - (ii) if applicable, a *purchase money security interest*;at the discretion of the Seller;
- (d) the Seller may, by notice to the Buyer, require the Buyer to take all steps that the Seller considers necessary or desirable to ensure its *security interest* in the goods and the *proceeds* is enforceable, and to perfect, or better secure the position of the Seller under these terms and conditions;
- (e) the Buyer must comply with a notice from the Seller under this provision at the cost and expense of the Buyer;
- (f) the Buyer must promptly inform the Seller of any change to information that it provides to the Seller under this provision;
- (g) the Seller is not obliged to give any notice, document or information under the PPSA, including, but not limited to:
 - (i) notice of removal of accession under section 95 of the PPSA;
 - (ii) notice of enforcement of liquid assets under section 121(4) of the PPSA;
 - (iii) notice of disposal of *collateral* under section 130 of the PPSA;

(iv) a statement of account after disposal of *collateral* containing the information in section 132(3)(d) of the PPSA;

(v) a statement of account under section 132(4) of the PPSA;

(vi) notice of retention of *collateral* under section 135 of the PPSA; and

(vii) notice of a verification statement under section 157 of the PPSA;

unless the provision of the notice, document or information is required by the PPSA and cannot be excluded; and

(h) the Buyer consents to the waiver of the requirement for notice, copies of documents or information under clause 17.1(g).

18. Cancellation of Contract

18.1. Unless expressly provided in writing the Buyer shall have no right to cancel any order (or part thereof) after the Seller issues the Sales Order Confirmation.

18.2. Without prejudice to any other rights the Seller may have, the Buyer shall indemnify the Seller for any loss, damage or expense incurred by the Seller should the Buyer cancel any order (or part thereof) or does not proceed with the Sales Order.

19. Dimensions, Performance Data and Other Descriptive Detail

As the goods are the subject of continuous evaluation and the production methods subject to change, the Seller reserves the right to change without notice the construction, design, dimension and performance data of the goods.

20. Warranty

20.1. All implied conditions, warranties and undertakings other than those implied by the Trade Practice Act (1974) or the Competition and Consumer Act (2010) are expressly excluded.

20.2. Where the goods are of a kind other than goods ordinarily acquired for personal, domestic or household use, then the Seller's liability for breach of a condition, term or warranty implied by Part V of the Trade Practices Act (1974) or the Competition and Consumer Act (2010) is limited at its option, to any one or more of the following:

(a) the replacement of the goods or the supply of equivalent goods;

(b) the repair of the goods;

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- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- (d) the payment of the reasonable cost of having the goods repaired.
- 20.3. This warranty applies only within the Commonwealth of Australia.
- 21. Acceptance of goods**
The Buyer shall be deemed to have accepted the goods to be of the description, quality and quantity ordered unless particulars of any claim to the contrary are notified to the Seller in writing by fax or email (sales@bathe.net.au) within forty-eight (48) hours after delivery. This acknowledgment will be required to support any claim for return of goods and refund.
- 22. Outside Interference**
The Seller shall not be liable to the Buyer for any defect, loss, damage or delay caused by strikes, lock-outs, damage to or breakdown of plant, Government interference, acts of God, earthquakes, civil commotion, war, fire, force majeure or any other cause beyond the control of the Seller.
- 23. Discount**
The Seller reserves the right to cancel all trade discounts or rebates in the event that the Buyer fails to comply with these terms and conditions of sale.
- 24. Default by Buyer**
- 25.1 If the Buyer should default on any of its obligations contained herein then:
- (a) Credit facilities may be withdrawn at the Seller's sole discretion, without notice.
- (b) The Buyer agrees to pay all reasonable collection costs, including commissions and legal charges, on all monies outstanding to the credit of the Buyer's account.
- 25. Indemnity**
The Buyer hereby indemnifies the Seller against any liability, claim, demand, loss or damage, including claims for consequential damages, loss of profit, costs and the costs of settling any pending or threatened proceedings whether arising directly or indirectly from or in connection with:
- (a) any breach of the Purchase Order, Sales Order Confirmation or any other part of the contract; and,
- (b) any loss or damage to property or injury to or death of persons where such loss or damage, injury or death is caused by or contributed to directly or indirectly by any defect in any material provided under the Sales Order Confirmation and notwithstanding that such material may have been used, resold or incorporated into any other things.
- 26. Seller's Right to Charge Interest**
In the event that the Buyer fails to make payment of any monies due under any invoice issued by the Seller within the due time for payment specified therein, the Buyer hereby agrees to pay interest at the rate equivalent to the Bank Bill Swap Reference Rate (BBSW) as published by the Australian Financial Review on the Due Date plus two (2) per cent calculated and charged on daily rates from the Due Date until payment is made in full.
- 27. Confidentiality**
The parties may not disclose any information of a kind referred to in section 275(1) of the PPSA that is not in the public domain.
- 28. Severability**
If any phrase, clause or provision is declared void then any other provision shall not be affected.
- 29. Amendment to Terms and Conditions**
The Seller may change these terms and conditions at any time. In the event that the Seller does it will publish the new terms and conditions on its website at www.bathe.net.au. The amended terms and conditions will take effect and be binding upon all Buyers from the time that the amended terms and conditions are uploaded to the Seller's website.
- 30. Applicable Law**
The contract shall in all respects be construed in accordance with the laws in force from time to time in the State where the Contract for Sales is made. The clause headings shall not affect the construction. If any of the provisions are found to be unlawful or invalid under any applicable statute or rule of law, they are to that extent deemed omitted.