

## SUPPLIERS OF CEMENT LINING – FABRICATION – SURFACE TREATMENT

### Pipe Lining & Coating Pty Ltd – Terms & Conditions of Sales

#### 1. Definitions

- 1.1 "PLC" Shall mean Pipe Lining & Coating Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Pipe Lining & Coating Pty Ltd.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the client) as described on any quotation, work authorisation or other form as provided by the PLC to the Client.
- 1.3 "Goods" shall mean Goods supplied by PLC to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by PLC to the client.
- 1.4 "Services" shall mean all Services supplied by PLC to the Client and includes any advice or recommendations (and where the context permits shall include any supply of Goods as defined above).
- 1.5 "Price" shall mean the Price payable for the goods as agreed between PLC and the Client in accordance with clause 4 of this contract.

#### 2. The Commonwealth Trade Practises Act 1974 ("TPA") and Fair Trading Acts ("FTA")

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the states and Territories of Australia, except to the extent permitted by those Acts where applicable.

#### 3. The Building and Construction Industry Security of Payment Act 1999

- 3.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act in each if the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

#### 4. Acceptance.

- 4.1 Any instruction received by PLC from the client for the supply of Goods and/or the Clients acceptance of Goods supplied by PLC shall constitute acceptance of the terms and conditions contained herein.
- 4.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the price.
- 4.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of PLC.
- 4.4 If for any reason the Client wishes to cancel an order after it has been placed, the client is responsible for payment for any materials that had been sourced for the job.
- 4.5 Goods are supplied by PLC only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions.

#### 5. Price and Payment

- 5.1 At PLC's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by PLC to the Client in respect of Goods supplied; or
- (b) the PLC's quoted Price (subject to clause 4.2) which shall be binding upon the PLC provided that the Client shall accept the PLC's quotation in writing within thirty (30) days.
- 5.2 The PLC reserves the right to change the Price in the event of a variation to the PLC's quotation. Any variation from the plan of scheduled works or specification (including, but not limited to, for additional works required due to hidden or unidentifiable difficulties beyond the control of the PLC such as non-access to execute delivery to the Client as arranged shall incur a redelivery fee in accordance with clause 5.3 and/or as a result of increases to the PLC in the cost of materials and labour) will be charged for on the basis of the PLC's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 At the PLC's sole discretion a deposit may be required.
- 5.4 At the PLC's sole discretion:
- (a) payment shall be due on delivery of the Goods; or
- (b) payment shall be due before delivery of the Goods; or
- (c) payment for approved Clients shall be due thirty (30) days following the date of the invoice.
- 5.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice of any other forms. If no time is stated, then payment shall be due thirty (30) days following the date of the invoice.
- 5.6 Payment will be made by cheque, or by bank cheque or by EFT or by any other method as agreed to between the Client and the PLC.
- 5.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

#### 6. Delivery of Goods

- 6.1 At the PLC's sole discretion delivery of the Goods shall take place when:
- (a) the Client takes possession of the Goods at the PLC's address; or
- (b) the Client takes possession of the Goods at the Client's nominated address (in the event the Goods are delivered by the PLC or the PLC's nominated carrier); or
- (c) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
- 6.2 At the PLC's sole discretion the cost of delivery is included in the Price.
- 6.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Client is unable to take delivery of the Goods as arranged, then the PLC shall be entitled to charge a reasonable fee for redelivery.
- 6.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.5 The PLC may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.



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- 6.6 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be wither greater or lesser then the quantity purposed provided that:  
(a) such discrepancy in quantity shall not exceed five percent (5%); and  
(b) the Price shall be adjusted pro rata to the discrepancy.
- 6.7 The failure to the PLC to deliver shall not entitle either party to treat this contract as repudiated.
- 6.8 The PLC shall not be liable for any loss or damage whatsoever due to failure by the PLC to deliver the Goods (or any of them) promptly or at all, where due circumstance beyond the control of the PLC.
- 7. Risk**
- 7.1 If the PLC retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the PLC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the PLC is sufficient evidence to the PLC's rights to receive the insurance proceeds without the need for any person dealing with the PLC to make further enquiries.
- 8. Title**
- 8.1 The PLC and the Client agree that ownership of the Goods shall not pass until:  
(a) the Client has paid the PLC all amounts owing for the Goods; and  
(b) the Client has met all other obligations due by the Client to the PLC in respect of all contracts between the PLC and the Client.
- 8.2 Receipt by the PLC of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the PLC's ownership or rights in respect of the Goods shall continue.
- 8.3 It is further agreed that:  
(a) where practicable the Goods shall be kept separate and identifiable until the PLC shall have received payment and all other obligations of the Client are met; and  
(b) until such time, as ownership of the Goods shall pass from the PLC to the Client the PLC may give notice writing to the Client to return the Goods or any of them to the PLC. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and  
(c) the PLC shall have the right of stopping the Goods in transit whether delivery has been made or not; and  
(d) if the Client fails to return the Goods to the PLC then the PLC or the PLC's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and  
(e) the Client is only a bailee of the Goods and until the PLC has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the PLC for the Goods, on trust for the IGS; and  
(f) the Client shall not deal with the money of the PLC in any way which may be adverse to the PLC; and  
(g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the PLC; and  
(h) the PLC can issue proceedings to recover the Price and the Goods sold notwithstanding that ownership of the Goods may now have passed to the Client; and  
(i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the PLC will be the owner of the end products.
- 9. Defects**
- 9.1 The Client shall inspect the Goods on delivery and shall within thirty (30) days of delivery (time being of the essence) notify the PLC of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the PLC an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the PLC has agreed in writing that the Client is entitled to reject, the PLC's liability is limited to either (at the PLC discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (CWith) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 10. Returns**
- 10.1 Returns will only be accepted provided that:  
(a) the Client has complied with the provision of clause 8.1; and  
(b) the PLC has agreed in writing to accept the return of the Goods; and  
(c) the Goods are returned at the Client's cost with in sixty (60) days of the delivery date; and  
(d) the PLC will not be liable for Goods which have not been stored or used in a proper manner; and  
(e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 10.2 The PLC will not accept the return of Goods for credit.
- 10.3 Non-stock list items or Goods made to the Client's specifications are under non- circumstances acceptable for credit or return.
- 11. Warranty**
- 11.1 Subject to the conditions of warranty set out in clause 10.2 the PLC warrants that if any defect in any workmanship of the PLC becomes apparent and is reported to the PLC within twelve (12) months of the date of delivery (time being of the essence) then the PLC will either (at the PLC's sole discretion) replace or remedy the workmanship.
- 11.2 The conditions applicable to the warranty given by clause 10.1 are:



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- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Client to properly maintain any Goods; or
  - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the PLC; or
  - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
  - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease, and the PLC shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the PLC's consent.
- (c) in respect of all claims the PLC shall not be liable to compensate the Client of any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 11.3 For Goods not manufactured by the PLC, the warranty shall be the current warranty provided by the manufacturer of the Goods. The PLC shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

### **12. Default and Consequences of Default**

- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the PLC'S sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the PLC.
- 12.3 If the Client defaults in payment of any invoices when due, the Client shall indemnify the PLC from and against all costs and disbursements incurred by the PLC in pursuing the debt including legal costs on a solicitor and own client basis and the PLC's collection agency costs.
- 12.4 Without prejudice to any other remedies the PLC may have, if at any time the Client is in breach of obligation (including those relating to payment) the PLC may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The PLC will not be liable to the Client for any loss or damage the Client suffers because the PLC has exercised its rights under this clause.
- 12.5 If any account remains overdue after thirty (30) days then an amount of the greater of ten dollars (\$10.0) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.6 Without prejudice to the PLC's other remedies at law the PLC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the PLC shall, whether due for payment or not, become immediately payable in the event if:
- (a) any money payable to the PLC becomes overdue, or in the PLC's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into any arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### **13. Security and Charge**

- 13.1 Despite anything to the contrary contained herein or any other rights which the PLC may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of the joint and/or several interest in the said land, realty or any other asset to the PLC or the PLC's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the PLC (or the PLC's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - (b) should the PLC elect to proceed in any manner in accordance with this clause and/or its subclauses, the Client and/or Guarantor shall indemnify the PLC from and against all the PLC's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the PLC or the PLC's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

### **14. Cancellation**

- 14.1 The PLC may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the PLC shall repay to the Client any sums paid in respect of the Price. The PLC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the PLC (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14.3 Cancellation of orders for Goods made to the Client's specifications or non-stock list items will not be accepted, once production has commenced.

### **15. Privacy Act 1988**

- 15.1 The Client and/or the Guarantor/s agree for the PLC to obtain from a credit reporting agency or credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the PLC/
- 15.2 The Client and/or the Guarantor/s agree that the PLC may exchange information about the Client and the Guarantor/s with those credit providers wither named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or



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- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 15.3 The Client consents to the PLC being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by the PLC for the following purposes and for other purposes as shall be agreed between the Client and PLC or required by law from time to time:
- (a) provision of Goods; and/or
  - (b) marketing of Goods by the PLC, its agents or distributors in relation to the Goods; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
  - (e) enabling the daily operation of Clients accounts and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 15.5 The PLC may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 16.** **General**
- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, or existence, legality and enforceability of the remaining provision shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 16.3 The PLC shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the PLC of these terms and conditions.
- 16.4 In the event of any breach of this contract by the PLC remedies or the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 16.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed or be owed to the Client by the PLC nor withhold payment of any invoice because part of that invoice is in dispute.
- 16.6 The PLC may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.7 The Client agrees that the PLC may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the PLC notifies the Client such change.
- 16.8 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.
- 16.9 The failure by the PLC to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the PLC's right to subsequently enforce that provision.