

Terms & Conditions of Trade – Steins Plumbing Solutions

The following Terms and Conditions are between STEINS PLUMBING SOLUTIONS (“the Company, Contractor, SPS”) and you (“the Customer, Client”), to perform services as authorised by you or an Authorised Body. By accepting the quote provided, you recognise that you are legally obligated to adhere to the terms and conditions as set out in this Agreement by STEINS PLUMBING SOLUTIONS including the terms of payment. The Contractor reserves the right to amend these Terms and Conditions without notice and at their discretion. Any changes will be in effect immediately once the Customer is notified of the change.

1. Definitions

- 1.1. “SPS” shall mean ISO Holdings T/A Steins Plumbing Solutions its successors and assigns or any person acting on behalf of and with the authority of ISO Holdings T/A Steins Plumbing Solutions.
- 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 SPS to the Client.
- 1.3. “Guarantor” shall mean the person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4. “Goods” shall mean Goods supplied by SPS to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) an are as described on the invoices, quotation, work authorisation or any other forms as provided by SPS to the Client.
- 1.5. “Services” shall mean all Services supplied by SPS to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6. “Price” shall mean the amount payable for the Goods and Services as agreed between SPS and the Client in accordance with clause 5 of this contract.

2. AUSTRALIAN CONSUMER LAW (“ACL”) 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 ACL or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Application of these terms and conditions to consumers

- 3.1. Clause 10 (Defects) and clause 11 (Warranty) shall **NOT** apply to the Client where the Client is purchasing Goods or Services not for resale or hire where the Price of the Goods or Services does not exceed \$40,000AUD, or where the Price of the Goods or Services does exceed \$40,000AUD and are of a kind ordinarily acquired for personal, domestic or household use or consumption, or where the Client is in any other way a consumer within the meaning of the TPA or the FTA of the relevant state or territories of Australia.

4. Acceptance

- 4.1. Any instructions received by SPS from the Client for the supply of Goods and/or the Client’s acceptance of Goods supplied by SPS 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 SPS.
- 4.4. The Client shall give SPS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other changes in the Client’s details (including but not limited to, changes in the Client’s address, contact details or business practice). The Client shall be liable for any loss incurred by SPS as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1. At SPS’s sole discretion, the Price shall be either:
 - 5.1.1. As indicated or on invoices provided by SPS to the Client in respect of Goods or Services supplied; or
 - 5.1.2. SPS’s quoted price (subject to clause 5.2) which shall be binding upon SPS provided that the Client shall accept SPS’s quotation in writing within thirty (30) days.
- 5.2. Any variation from the plan of scheduled works or specifications (including but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties beyond the reasonable control of SPS such as hard rock barriers below the surface or iron reinforcing rods in concrete) will be made in writing and charged for on the basis of SPS’s quotation and will be shown as a variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3. At SPS’s sole discretion, a deposit may be required.
- 5.4. SPS may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of materials delivered to the site but not installed.
- 5.5. At SPS’s sole discretion:
 - 5.5.1. Payment shall be due on delivery of the goods; or
 - 5.5.2. Payment for approved Clients shall be made by instalments in accordance with SPS’s pay schedule.
- 5.6. Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no payment is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 5.7. Payment will be made by cash, or by cheque, or by bank cheque, or by EFT, or by direct credit, or by any other method as agreed to between the Client and SPS.
- 5.8. 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 SPS’s sole discretion delivery of the Goods shall take place when the Client takes possession of the Goods at the Client’s nominated address (in the event that the Goods are delivered by SPS or SPS’s nominated carrier).
- 6.2. At SPS’s sole discretion the costs of delivery are 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. In the event that the Client I unable to take delivery of the Goods as arranged, then SPS shall be entitled to charge a reasonable fee for delivery.
- 6.4. Delivery of the Goods to a third party nominated by the Client is deemed to be delivered to the Client for the purposes of this agreement.
- 6.5. SPS may deliver the Goods by separate instalments. Each separate instalment may be invoiced and paid in accordance with the provisions set out in these terms and conditions.
- 6.6. The failure of SPS to deliver shall not entitle either party to treat this contract as repudiated.
- 6.7. SPS shall not be liable for any loss or damage whatever due to failure by SPS to deliver the Goods (or any of them) promptly or at all due to circumstances beyond the control of SPS.

7. Risk

- 7.1. If SPS 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, SPS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SPS is sufficient evidence of SPS’s right to receive the insurance proceeds without the need for any person dealing with SPS to make further enquiries.
- 7.3. The Client acknowledges and agrees that the presence of plant/tree root growth and/or blockages generally indicated damaged pipes. Accordingly, the Client agrees that these pipes cannot be fixed by simply removing plant/tree root growth or cleaning the drain, therefore no warranty is provided against this situation arising again in the future and in respect of any work carried out in relation hereto. In the event that any of SPS’s equipment becomes lodged in the Client’s faulty drain, it shall be removed at the expense of the Client.

8. Underground Locations

- 8.1. Prior to commencing any work, the Client must advise SPS of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify, including but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, and any other services that may be on site.
- 8.2. Whilst SPS will take care to avoid damage to any underground services, the Client agrees to indemnify SPS in respect to services not precisely located and notified as per clause 8.1.

9. Title

- 9.1. SPS and the Client agree that ownership of the Goods shall not pass until:
 - 9.1.1. The Client has paid SPS all amounts owing for the particular Goods; and
 - 9.1.2. The Client has met all other obligations due by the Client to SPS in respect to all contracts between SPS and the Client.

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- 9.2.** Receipt by SPS for any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then SPS's ownership or rights in respect of the Goods shall continue.
- 9.3.** It is further agreed that:
- 9.3.1.** Where practicable the Goods shall be kept separate and identifiable until SPS has received payment and all other obligations of the Client have been met;
- 9.3.2.** Until such time as the ownership of the Goods shall pass from SPS to the Client, SPS may give notice in writing to the Client to return the Goods or any of them to SPS. Upon such notice the rights of the Client to obtain ownership or any other interest in the Good shall cease;
- 9.3.3.** SPS shall have the right of stopping the Goods in transit whether or not delivery has been made;
- 9.3.4.** If the Client fails to return the Goods to SPS then SPS or SPS's agent may enter upon and into land a 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;
- 9.3.5.** The Client is only a bailee of the Goods and until such time as SPS has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for SPS;
- 9.3.6.** The Client shall not deal with the money of SPS in any way which may be adverse to SPS;
- 9.3.7.** 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 SPS;
- 9.3.8.** SPS can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- 9.3.9.** Until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that SPS will be the owner of the end products.
- 10. Defects**
- 10.1.** The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify SPS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford SPS an opportunity to inspect the Goods within a reasonable amount of 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 SPS has agreed in writing that the Client is entitled to reject, SPS's liability is limited to either (at SPS's discretion) replacing the Goods or repairing the Goods.
- 10.2.** Goods will not be accepted for return other than in accordance with clause 10.1.
- 11. Warranty**
- 11.1.** Subject to the conditions of warranty set out in clause 11.2, SPS warrants that if any defect in any workmanship of SPS becomes apparent and is reported to SPS within twelve (12) months of the date of delivery (time being of the essence) then SPS will either (at SPS's sole discretion) replace or remedy the workmanship.
- 11.2.** The conditions applicable to the warranty given by clause 11.1 are:
- 11.2.1.** The warranty shall not cover any defect or damage which may be cause or partly caused by or arise through:
- 11.2.1.1.** Failure on the part of the Client to properly maintain any Goods;
- 11.2.1.2.** Failure on the part of the Client to follow any instructions or guidelines provided by SPS;
- 11.2.1.3.** Any use of any Goods otherwise than for any application specified on a quote or order form;
- 11.2.1.4.** The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; and
- 11.2.1.5.** Fair wear and tear, any accident or act of God.
- 11.2.2.** The warranty shall cease and SPS shall thereafter in no circumstances be liable under the terms of warranty if the workmanship is repaired, altered or overhauled without SPS's consent.
- 11.2.3.** In respect of all claims SPS shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 11.3.** For Goods not manufactured by SPS, the warranty shall be the current warranty provided by the manufacturer of the Goods. SPS 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. Intellectual Property**
- 12.1.** Where SPS has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in SPS, and shall only be used by the Client at SPS's discretion.
- 12.2.** The Client warrants that all designs or instructions to SPS will not cause SPS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify SPS against any action taken by a third party against SPS in respect of any such infringement.
- 13. Security & Charge**
- 13.1.** Despite anything to the contrary contained herein or any other rights which SPS may have howsoever:
- 13.1.1.** 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 hereby charge all of their joint and/or several interest in the said land, realty or any other asset to SPS or to SPS's nominee to secure all amounts and other monetary obligations payable hereunder have been met.
- 13.1.2.** Should SPS elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the client and/or Guarantor shall indemnify SPS from and against all SPS's costs and disbursements including legal costs on a solicitor and own client basis.
- 13.1.3.** The Client and/or Guarantor (if any) agree to irrevocably nominate constitute and appoint SPS or SPS'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 13.1.
- 14. Cancellation**
- 14.1.** SPS 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, SPS shall repay to the Client any sums paid in respect of the Price. SPS shall not be liable for any loss or damage whatever 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 SPS (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15. Privacy Act 1988**
- 15.1.** The Client and/or the Guarantor/s agree for SPS to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by SPS.
- 15.2.** The Client and/or Guarantor/s agree that SPS may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in consumer credit report issued by a credit reporting agency for the following purposes:
- 15.2.1.** To assess an application by Client;
- 15.2.2.** To notify other credit providers of a default by the Client;
- 15.2.3.** 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
- 15.2.4.** To assess the credit worthiness of Client and/or Guarantor/s.
- 15.3.** The Client consents to SPS being given a consumer credit report to collect overdue payment on commercial credit (Privacy Act 1988).
- 15.4.** The Client agrees that personal credit information provided may be used and retained by SPS for the following purposes and for other purposes as shall be agreed between the Client and SPS or required by law from time to time:
- 15.4.1.** Provision of Goods;
- 15.4.2.** Marketing of Goods by SPS, its agents or distributors in relation to the Goods;
- 15.4.3.** Analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods;
- 15.4.4.** Processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
- 15.4.5.** Enabling the daily operation of Client's account and/or the collection or amounts outstanding in the Client's account in relation to the Goods.
- 15.5.** SPS may give information about the Client to a credit reporting agency for the following purposes:
- 15.5.1.** To obtain a consumer credit report about the Client; and/or
- 15.5.2.** Allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 16. Building and Construction Industry Security of Payments Act 1999**
- 16.1.** At SPS's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 16.2.** Nothing in this agreement is intended to have the effect on contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

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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 New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 17.3. SPS shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by SPS of these terms and conditions.
- 17.4. In the event of any breach of this contract by SPS, the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 17.5. The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by SPS.
- 17.6. SPS may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.7. The Client agrees that SPS 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 SPS notifies the Client of such a change.
- 17.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 17.9. The failure by SPS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SPS's right to subsequently enforce that provision.