

The following terms and conditions of sale form part of any contract for the supply of goods or services by Womble Investments Pty Ltd (ACN 005 303 882) T/as East Coast Pipe Supplies ("ECPS") to another party ("the Customer").

**1. Orders, Order Acknowledgements & Contract**

- 1.1 An order or an offer to purchase is to be made by the Customer in writing.
- 1.2 Any quotation given or made by the ECPS, whether verbal or in writing, is not an offer to sell or supply goods or services to the Customer.
- 1.3 An order made by the Customer constitutes an offer by the Customer to purchase from ECPS the goods and services specified in the order subject to these Terms and Conditions.
- 1.4 An order placed by the Customer pursuant to a quotation is not binding on ECPS unless and until accepted by ECPS.
- 1.5 Acceptance by ECPS of an order placed by the Customer shall (regardless of any prior arrangements made in respect of organisation of collection or delivery or otherwise) only be deemed to have occurred when delivery is effected pursuant to clause 2.4. ECPS may, at any time prior to delivery being effected:
  - (a) advise the Customer that it is unable or unwilling to supply the goods;
  - (b) advise the Customer of any change in price for the goods.
- 1.6 Goods will be supplied at the price prevailing at the date of delivery.
- 1.7 If the Customer cancels an order, it must pay the ECPS for any loss, damage or expense incurred by the ECPS in relation to the supply or proposed supply of the order unless such cancellation follows notification by the ECPS of a change in price for the goods as contemplated by clause 1.6(b), in which case the Customer may cancel the order without penalty.
- 1.8 "Special Orders and Indent Stock" (stock that is specially ordered in or those orders that are that are value-added and cannot be re-sold to another Customer) cannot be cancelled and the Customer must take delivery and pay ECPS within ECPS' Terms and Conditions. A deposit maybe payable.
- 1.9 Previous dealings between ECPS and the Customer shall not have any effect on the Contract

**2. Delivery**

- 2.1 Upon receipt of an order, ECPS may advise the Customer if and when the goods ordered will be available for collection from ECPS' premises.
- 2.2 The Customer may arrange for the goods ordered to be collected from ECPS' premises or alternatively may request that ECPS arrange for the goods to be delivered to the Customer's premises. If the Customer requests that ECPS arrange delivery, the Customer acknowledges that ECPS will do so on the Customer's behalf and that the Customer will be responsible for all costs associated with delivery of the goods.
- 2.3 ECPS will make all reasonable efforts to have the Goods delivered to the Customer or his designated agent as agreed between the parties (or if there is no specific agreement than at ECPS' reasonable discretion), but ECPS shall not be liable for :
  - (a) any failure to deliver or delay in delivery for any reason; or
  - (b) any damage or loss due to unloading or packaging; or
  - (c) damage to property caused upon entering premises to deliver the Goods.

Any costs incurred by ECPS due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to ECPS. Except as required by law, ECPS will be under no obligation to accept Goods returned for any reason.

- 2.4 Delivery of the goods shall be deemed to be effected as soon as the goods are despatched from ECPS' premises (whether ECPS has arranged delivery or not).

**3. Detention/Demurrage**

- 3.1 ECPS reserves the right to charge the Customer for any costs, charges or expenses whatsoever that the ECPS may incur as a result of vehicle or wagon detention (to the extent the same is not caused or contributed to by ECPS).

**4. Prices**

- 4.1 Unless otherwise agreed in writing, the price charged for the Goods shall be
  - (i) exclusive of any transaction tax ("transaction tax" includes the goods and services tax as well as any identified or new transaction taxes that come into existence after the effective date of these Terms and Conditions), and
  - (ii) as per the price ruling as determined by ECPS at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling as at that date of delivery.

**5. Standard Grades of Materials**

- 5.1 Goods supplied which are not manufactured by ECPS (or to the extent that they are not manufactured by ECPS) are subject to the chemical composition, physical properties and product standards of the original manufacturer, and by such warranty as specified by the original manufacturer (if any), and ECPS does not, unless specifically required by law, give any warranty beyond such warranty.

**6. Credit**

- 6.1 The extension of credit shall be at the absolute discretion of ECPS and the application will contain or annex such financial information and documents as ECPS may require.
- 6.2 Until ECPS grants the Customer credit by notice in writing, ECPS will only supply Goods to the Customer on the basis of cash in advance.

- 6.3 Where credit terms are approved, payment must be made within 30 days of the end of the month in which the goods are delivered or the services performed, unless otherwise agreed in writing by ECPS.

- 6.4 The Customer must notify ECPS in writing if there is a change in shareholding or ownership of the Customer or any material change in the Customer's financial position.

- 6.5 The customer agrees that if requested by ECPS the Customer will:
  - i) charge in favour of ECPS all beneficial interests (freehold and leasehold) in real estate held now or in the future by it as security for payment of all and any moneys payable by the Customer to ECPS.
  - ii) execute a mortgage or other instrument of security in form requested by ECPS.

- 6.6 Without in any way limiting ECPS' right to require payment in full on the due date, ECPS may charge interest on overdue accounts at the rate of 1.5% per month. Such interest is to be charged and debited to the Customer's account.

- 6.7 All losses, expenses and costs incurred by ECPS as a result of the Customer's failure to pay any amounts owing when due (including legal fees on an indemnity basis and any fees and costs incurred by ECPS in engaging a collection recovery service) are recoverable from the Customer by ECPS. Any such losses, expenses and costs are to be charged and debited to the Customer's account.

**7. Title and Related Matter**

- 7.1 Risk in the goods passes to the Customer upon delivery (including all risks associated with unloading) or upon the title of the Goods passing to the Customer, whichever is the earlier.
- 7.2 If ECPS notifies the Customer that the goods are ready for delivery and the Customer requests ECPS to hold the goods on its behalf or refuses to accept delivery, such goods will be held by ECPS at the Customer's risk and ECPS shall be entitled to charge a reasonable storage fee in respect of the goods. Where this is requested for "Special Orders and Stock Indents" (see clause 1.8), as well as a reasonable storage charge, ECPS will invoice the Customer for the goods and payment will be due as per these Terms and Conditions

- 7.3 Legal and equitable title in the goods will remain with ECPS until full payment is made for all goods and services supplied by ECPS to the Customer.

- 7.4 Until such time as title to the goods passes to the Customer in accordance with clause 7.3 the Customer:
  - (a) shall hold the goods as fiduciary agent and bailee of ECPS and shall return the goods, at Customer's cost, to ECPS if so requested;
  - (b) shall store the goods separately from any products belonging to the Customer and shall identify the goods as belonging to ECPS.

- 7.5 Without limiting any other remedies ECPS may have, if payment for any delivery of goods is not made when due, duly authorised representatives for ECPS may, without giving notice to the Customer, enter the premises where ECPS reasonably believes the goods are situated and re-take possession of the goods.

- 7.6 Notwithstanding the foregoing the Customer as fiduciary may, subject to clause 7.3 sell the goods in the ordinary course of its business.

- 7.7 The Customer will receive all proceeds, whether tangible or intangible, direct or indirect of any dealing with the goods in trust for ECPS and will keep such proceeds in a separate account until all liability to ECPS has been fully discharged.

- 7.8 The Customer shall insure the goods at the Customer's expense against loss or damage from any cause whatsoever, noting on any such policy or policies the interest of ECPS, and shall produce to ECPS a copy of the policy or policies evidence of payment and the coverage of the interest of ECPS, whenever reasonably required by ECPS to do so.

**8. Intellectual Property**

- 8.1 The Customer warrants ECPS that all documents provided by the Customer are accurate and that ECPS is entitled to use all such documents for the purposes of the Contract and that such use does not infringe any third party's intellectual property rights.

- 8.2 The Customer indemnifies ECPS against all claims and all losses and damages incurred by ECPS as a result of documents provided by the Customer to ECPS for the purposes of or in the course of supply of the Goods breaching a third party's intellectual property rights.

- 8.3 If the Customer receives any confidential information from ECPS the Customer may not use or disclose such information unless it receives the prior written consent of ECPS, such information enters the public domain (other than as a result of a breach of this paragraph), or the use or disclosure is required by law.

**9. Force Majeure**

- 9.1 ECPS is not liable for failure to perform the Contract to the extent and for so long as its performance is prevented or delayed because of:
  - a) circumstances outside of ECPS control;
  - b) failure of ECPS machinery; or
  - c) failure of a supplier to ECPS

**10. Damaged or Non Conforming Goods**

- 10.1 The Customer shall inspect the goods immediately upon delivery and if the Customer believes that the goods are damaged or not otherwise in conformity with the relevant order made by the Customer and accepted by ECPS, the Customer shall give written notice to ECPS within twenty-four (24) hours of delivery.

- 10.2 Any goods in respect of which the Customer has given a notice in accordance with clause 10.1 shall :
- (a) be left in the state and condition in which they were delivered; and
- (b) be stored by the Customer in a safe and secure location, until such time as ECPS or its duly authorised representative has inspected and/or re-tested the goods, such inspection to be carried out in a reasonable time after notification by the Customer. The Customer shall allow ECPS or its duly authorised representative access to the goods at any time during business hours for the purpose of effecting such inspection.
- 10.3 If :
- (a) the goods are not left in the state and condition in which they were delivered; or
- (b) the Customer fails to store the goods in a safe and secure location pending inspection by ECPS and, as a result, the goods are stolen, lost, destroyed or damaged in any way, the Customer shall be deemed to have accepted the goods and shall pay the purchase price for the goods delivered in full.
- 10.4 If, upon inspection by ECPS or its duly authorised representative, ECPS acknowledges that the goods delivered are damaged or not otherwise in conformity with the relevant order made by the Customer and accepted by ECPS, then ECPS shall, as soon as practicable, replace the damaged or non-conforming goods. This shall be the Customer's only remedy in respect of the supply by ECPS of damaged or non-conforming goods.
- 10.5 If, upon inspection by ECPS or its duly authorised representative, ECPS disputes that the goods delivered are damaged or not otherwise in conformity with the relevant order made by the Customer and accepted by ECPS, the dispute shall be resolved in accordance with clause 12
- 11. Warranties and Conditions**
- 11.1 The Customer warrants that:
- (a) the Customer is a party to this contract for supply of goods and services as a principal in its own right. If the Customer acts as agent or trustee of a trust, it must inform ECPS in writing of the details of this relationship;
- (b) any financial information ECPS may require the Customer to give is true and accurate and the Customer will keep ECPS informed of any material adverse change;
- © the Customer will not make any false or misleading representations or claims about the goods or services to people to whom it sells them;
- (d) the Customer will comply with all legislation and hold all requisite regulatory permits and licences to allow it to purchase and sell the goods and services and, where applicable, to warehouse, transport and distribute the goods. The Customer must provide ECPS, at ECPS' request, with copies of appropriate permits and licences.
- 11.2 The Customer acknowledges and agrees that ECPS has not made any representations or warranties in relation to the goods or services except as set out in these Terms and Conditions.
- 11.3 Any description of goods supplied, given or used by ECPS is by way of identification only and shall not constitute any sale of such goods as a sale by description.
- 11.4 It is the responsibility of the Customer to satisfy itself that goods supplied are of the description, quality and character ordered and ECPS shall not be liable for any loss or damage, direct or indirect, howsoever arising from the failure of the Customer to satisfy itself.
- 11.5 The Customer acknowledges and agrees that it does not rely on the skill or judgement of ECPS in relation to the suitability of any goods or services for a particular purpose unless it has indicated that purpose in writing to ECPS and ECPS has acknowledged in writing that the goods will be fit for that purpose. In the event that ECPS has acknowledged in writing that the goods will be fit for a particular purpose and the goods supplied are ultimately not fit for that purpose, ECPS' liability for any breach of the warranty relating to fitness for purpose shall be limited to replacement of goods or the supply of equivalent goods.
- 11.6 All implied warranties and conditions are excluded to the maximum extent permitted by law. To the extent that ECPS is unable to exclude the operation of any implied warranties, ECPS' liability for any breach of any implied warranty is limited to:
- (a) in the case of goods, the replacement of goods or the supply of equivalent goods;
- (b) in the case of services, the supply or re-supply of equivalent services.
- 11.7 To the maximum extent permitted by law, ECPS is not liable for:
- (a) any loss or damage to the goods resulting from any act or omission on the part of the Customer, or its employees, contractors or agents;
- (b) any special, consequential, direct or indirect loss or damage incurred by the Customer.
- 12. Dispute Resolution**
- 12.1 If a dispute between the parties arises out of, or on connection with, this Agreement, each party must notify the other party, in writing, of the issues in dispute immediately ("Dispute Notice").
- 12.2 Within seven (7) days of a party receiving a Dispute Notice, the parties must confer at least once to resolve the issues in dispute with, or without, the assistance of a mediator.
- 12.3 If the dispute has not been resolved within fourteen (14) days of service of the Dispute Notice, the parties must immediately refer the dispute to an expert appointed by:
- (a) agreement between the parties; or
- (b) the President of the Queensland Law Society, for determination. The parties agree to be bound by the determination.
- 12.4 In adjudicating the dispute, the expert must act as an expert and not as an arbitrator.
- 12.5 The procedure to be followed by the expert is to be in accordance with the Expert Determination Rules of the Institute of Arbitrators and Mediators of Australia.
- 12.6 All discussions and correspondence between the parties of and incidental to any dispute or difference between them shall be privileged.
- 13. Termination of Credit**
- 13.1 ECPS may, in its absolute discretion, elect to terminate the extension of credit to the Customer by giving the Customer thirty (30) days notice of its intention to do so.
- 13.2 ECPS may, in addition to any other course of action available to it, elect to immediately terminate the extension of credit to the Customer without giving the Customer any notice if the Customer:
- (a) is served with any proceedings under the *Bankruptcy Act* or the winding-up provisions of the *Corporations Act* or similar legislation;
- (b) is insolvent or unable to pay its debts as and when they fall due;
- © is placed in liquidation, provisional liquidation, voluntary administration or if it or any of its assets are placed in receivership or under external management or control; or
- (d) commits a breach of these terms and fails to remedy such breach after being given seven (7) days written notice by ECPS to do so.
- 13.3 On termination all invoices rendered by ECPS are payable immediately, without ECPS needing to make any demand for payment.
- 14. Guarantee**
- 14.1 Each of the directors named in Part B of the application to which these Terms and Conditions are attached who sign the application ("the Guarantors") :
- (a) hereby jointly and severally guarantee to ECPS the due and punctual performance and observance by the Customer of any and all of the covenants, provisions and stipulations on the part of the Customer to be performed and observed under and pursuant to these Terms and Conditions ("the guaranteed obligations"); and
- (b) jointly and severally indemnify and agree to keep indemnified ECPS against and in respect of any and all actions, claims, demands, losses, damages, costs and expenses whether legal or equitable and whether arising directly or indirectly from any failure by the Customer to perform the guaranteed obligations when due.
- 14.2 This guarantee and indemnity shall be a continuing guarantee and indemnity until the whole of the guaranteed obligations are performed and shall not be affected in any way by any delay or period of grace or other indulgence given or allowed by ECPS or by any other thing which, but for this provision, would have the effect of releasing the Guarantors from liability hereunder (including, without limitation, failure by any director named in Part B of the application to sign the application).
- 14.3 The Guarantors hereby consent to the lodgement, by ECPS, of a caveat over any land owned by the Guarantors for the purposes of securing payments to be made by the Guarantors to ECPS pursuant to this Agreement.
- 15. Waiver**
- ECPS waives a right under a Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and the specific purpose for which it is given.
- 16. Severance**
- If a provision of a Contract would, but for this clause, be unenforceable:
- a) the provision must be read down to the extent necessary to avoid that result;
- b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract
- 17. Variation**
- ECPS may vary the Term and Conditions without notice to the Customer.
- 18. Applicable Law**
- 18.1 This contract shall be governed by and construed in accordance with the law in effect in Queensland and the parties accept the jurisdiction of the courts of Queensland in relation to any dispute between them.
- 18.2 The rights provided under this agreement are cumulative and not exclusive of any rights provided by law.
- 19. Assignment**
- The Customer shall not assign or otherwise deal with any part of their rights or obligations under this agreement without the prior written consent of the ECPS.