

Green Specifier Pty Ltd – Terms & Conditions of Trade

1. Definitions			
1.1	"Seller" means Green Specifier Pty Ltd, its successors or assigns or any person acting on behalf of and with the authority of Green Specifier Pty Ltd	receive all insurance proceeds payable for the Goods. The production of documents by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.	12.2
1.2	"Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.	If the Client requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.	12.3
1.3	"Goods" means all Goods or Services supplied by the Seller to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).		8.1
1.4	"Price" means the Price payable for the Goods as agreed between the Seller and the Client in accordance with clause 5 below.		8.1
2. Acceptance			
2.1	The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.		
2.2	These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.		9.1
2.3	Goods are supplied by the Seller 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 of trade.		9.2
3. Electronic Transactions Act 2000			
3.1	Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000) or any other applicable provisions of that Act or any Regulations referred to in that Act.		9.3
4. Change in Control			
4.1	The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.		9.3
5. Price and Payment			
5.1	At the Seller's sole discretion the Price shall be either: (a) as indicated on any invoice provided by the Seller to the Client; or (b) the Price as at the date of delivery of the Goods according to the Seller's current price list; or (c) the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.		10.1
5.2	The Seller reserves the right to change the Price: (a) if a variation to the Goods which are to be supplied is requested; or (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or (c) where additional Goods are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, availability of stock, transportation delays, etc.) which are only discovered on commencement of the Services; or (d) in the event of increases to the Seller in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Seller's control.		10.1
5.3	Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be: (a) on delivery of the Goods; (b) before delivery of the Goods; (c) by way of instalments/progress payments in accordance with the Seller's payment schedule; (d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices; (e) the date specified on any invoice or other form as being the date for payment; or (f) falling any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Seller.		10.2
5.4	Payment may be made by cash, cheque, bank cheque, electronic-line banking, credit card (plus a surcharge of up to one percent (1%) of the Price), or by any other method as agreed to between the Client and the Seller.		10.2
5.5	Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.		10.2
5.6	The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with the Seller and it has been approved with a credit limit established for the account.		10.4
5.7	In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse delivery until the account is brought into order.		10.6
6. Delivery of Goods			
6.1	Delivery ("Delivery") of the Goods is taken to occur at the time that: (a) the Client or the Client's nominated carrier takes possession of the Goods at the Seller's address; or (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.		10.7
6.2	At the Seller's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.		10.8
6.3	The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.		10.9
6.4	The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.		11.1
6.5	Any time or date given by the Seller to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.		11.2
6.6	Any orders placed by the Client where the GST exclusive value of the order is under the Seller's minimum order value as advised on the Seller's price list shall be subject to a handling charge as shown on the price list.		11.3
7. Risk			
7.1	Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.		12.1
7.2	If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to		12.1
1.1		alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Seller to inspect the Goods.	15.3
1.2		Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).	16.1
1.3		The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.	16.1
1.4		Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.	16.2
1.5		If the Client is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.	16.2
1.6		If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Client has paid for the Goods.	16.3
1.7		If the Client is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is: (a) limited to the value of any express warranty or warranty card provided to the Client by the Seller at the Seller's sole discretion; (b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods; (c) otherwise negated absolutely.	16.3
1.8		Subject to this clause 12, returns will only be accepted provided that: (a) the Client has complied with the provisions of clause 12.1; and (b) the Seller has agreed that the Goods are defective; and (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.	16.4
1.9		Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of: (a) the Client failing to properly maintain or store any Goods; (b) the Client using the Goods for any purpose other than that for which they were designed; (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user; (d) the Client failing to follow any instructions or guidelines provided by the Seller; (e) fair wear and tear, any accident, or act of God.	16.4
1.10		In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Seller as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Seller has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 12.10.	16.5
1.11		The Seller may in its absolute discretion accept non-defective Goods for return in which case the Seller may require the Client to pay handling fees of twenty percent (20%) of the value of the returned Goods plus any freight costs.	16.5
1.12		Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.	16.5
1.13		Intellectual Property Where the Seller has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Seller.	16.6
1.14		The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.	16.6
1.15		The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Client.	16.7
1.16		Default and Consequences of Default 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 Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	17.1
1.17		If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).	17.2
1.18		Further to any other rights or remedies the Seller may have under this contract, if a Client has made payment to the Seller by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.	17.3
1.19		Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.	17.4
1.20		Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if: (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due; (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with its creditors, or makes an assignment for the benefit of its creditors; or (c) the Client's manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.	17.5
1.21		Cancellation The Seller 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 Seller shall repay to the Client any money paid by the Client for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.	18.1
1.22		In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including but not limited to, any loss of profits).	18.2
1.23		Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.	18.3
1.24		Privacy Act 1988 The Client agrees for the Seller to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Seller.	18.4
1.25		The Client agrees that the Seller may exchange information about the Client with third credit providers and with related body corporates for the following purposes: (a) to assess an application by the Client; and/or (b) to notify other credit providers of a default by the Client; and/or (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 creditworthiness of the Client including the Client's repayment history in the preceding two years.	18.5
1.26		The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.	18.6
1.27		The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other agreed purposes or required by): (a) the provision of Goods; and/or (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or (d) enabling the collection of amounts outstanding in relation to the Goods.	18.7
1.28		The Seller may give information about the Client to a CRB for the following purposes: (a) to obtain a consumer credit report; (b) allow the CRB to create or maintain a credit information file about the Client including credit history.	18.8
1.29		The information given to the CRB may include: (a) personal information as outlined in 16.1 above; (b) name of the credit provider and that the Seller is a current credit provider to the Client; (c) whether the credit provider is a licensee; (d) type of consumer credit; (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested); (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debit recovery action commenced or alternately that the Client no longer has any overdue accounts and the Seller has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments); (g) information that, in the opinion of the Seller, the Client has committed a serious credit infringement;	18.9
1.30		advise that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).	18.10
1.31		The Client shall have the right to request (by e-mail) from the Seller: (a) a copy of the information about the Client retained by the Seller and the right to request that the Seller correct any incorrect information; and (b) that the Seller does not disclose any personal information about the Client for the purpose of direct marketing.	18.11
1.32		The Seller will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.	18.12
1.33		The Client can make a privacy complaint by contacting the Seller via e-mail. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au .	18.13
1.34		Unpaid Seller's Rights Where the Seller has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any monies owing to it by the Client, the Seller shall have, until all monies owing to the Seller are paid: (a) a lien on the item; and (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.	19.1
1.35		The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any monies owing to the Seller having been obtained against the Client.	19.2
1.36		General The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. 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.	19.3
1.37		These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which the Seller has its principal place of business, and are subject to the jurisdiction of the courts in New South Wales.	19.4
1.38		Subject to clause 12, the Seller 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 Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).	19.5
1.39		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 the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.	19.6
1.40		The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.	19.7
1.41		The Client agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Seller to provide Goods to the Client.	19.8
1.42		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.	19.9
1.43		The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.	19.10