

Terms of Trade

1. Transactions

- 1.1 These Terms of Trade apply to all transactions between You and Us relating to the provision of Goods and Services, including all quotations, contracts and variations. These Terms of Trade take precedence over Terms of Trade contained in any document You prepare or submit or elsewhere.
- 1.2 The variation or waiver of a provision of these Terms of Trade or a consent to a departure from a provision of these Terms of Trade is ineffective unless in writing signed by You and Us.
- 1.3 We may amend any details in a Quote by notice in writing to You. Such amended details supersede any relevant prior detail in dealings between You and Us.

2. Quotes

- 2.1 We may provide You with a Quote. Any Quote issued by Us is valid for 30 days from the date of issue.
- 2.2 Unless otherwise expressly agreed in writing, a Quote does not include delivery and/or installation of any Goods.
- 2.3 Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume Your timely supply of necessary material and instructions to Us.
- 2.4 Following provision of a Quote to You, We are not obliged to commence any work until the Quote has been accepted by You by completing an Order form and returning the form to Us.
- 2.5 We reserve the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. We will notify You of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these Terms of Trade.
- 2.6 An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding on Us.

3. Orders

- 3.1 Every Order by You for the provision of Goods or Services must be submitted in writing on Our standard Order Form (unless otherwise agreed).
- 3.2 An Order will not be placed by You unless the Order clearly identifies the Goods or Services ordered and Our Quote. Any costs incurred by Us in reliance on incorrect or inadequate information may result in the imposition of an Additional Charge.
- 3.3 Orders must be signed by Your authorised representative and must specify the required date of delivery.

3.4 Placement of an Order by You signifies acceptance by You of these Terms of Trade and any most recent Quote.

3.5 We may in Our absolute discretion refuse to provide Goods or Services where:

- 3.5.1 Goods are unavailable for any reason;
- 3.5.2 credit limits cannot be agreed or have been exceeded; or
- 3.5.3 payment for Goods or Services previously provided to You or any related corporation or to any other party who is, in Our reasonable opinion, associated with You under the same or another supply contract, has not been received by Us.

3.6 An Order cannot be cancelled without Our prior written consent. Where an Order is cancelled, You indemnify Us against any Loss We incur as a result of the cancellation, including, but not limited to loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

4. Variations

- 4.1 You may request that an Order be varied by providing a request in writing to Us. A request for a variation must be agreed to in writing by Us in order to have effect.
- 4.2 If You wish to vary Your requirements after a Quote has been prepared or after the placement of an Order, we reserve the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accord with Our then current charge rates. A revised Quote issued by Us in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods and/or Services.
- 4.3 We shall be entitled to an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

5. Invoicing and payment

- 5.1 We may in Our absolute discretion, issue an invoice to You in any one or more of the following ways:
 - 5.1.1 prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and any Additional Charges where We have not previously carried out work for You or where We choose to do so;
 - 5.1.2 at the end of each week before the Order is completed, We may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at Our discretion either for work done to that point, work in the future or both) and require that proportion of the Quote be

paid in advance of any further Goods or Services being provided; or

5.1.3 on completion of the provision of the Goods and/or Services or any later time for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing Our charge for the work performed and/or Goods and/or Services provided in completing the Order and for any Additional Charges.

5.2 The amount payable on an invoice is as per any most recent Quote and any Additional Charges.

5.3 You must pay an invoice issued by Us within 14 days of a valid tax invoice being issued to You.

5.4 If any invoice is due but unpaid, We may withhold the provision of any further Goods or Services until any overdue amount is paid in full.

5.5 We may at Our absolute discretion apply any payment received from You to any amount owing by You to Us.

5.6 You are not entitled to retain any money owing to Us notwithstanding any default or alleged default by Us pursuant to these Terms of Trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects Your rights for any alleged failure of a guarantee under the Australian Consumer Law.

5.7 You shall pay Us on demand interest at the rate of 10% per annum on all overdue amounts owed by You to the Us, calculated daily. Any interest which remains unpaid after 30 days shall be compounded and likewise attract interest until paid in full.

5.8 All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses incurred by or passed on to Us must be paid by You as a debt due and payable under these Terms of Trade.

5.9 You and Us agree to comply with our respective obligations in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

6. Additional Charges

6.1 We may require You to pay Additional Charges in respect of costs incurred by Us as a result of reliance on inadequate or incorrect information or material provided by You or information or material supplied later than required by Us in order for Us to provide the Goods or Services within any specified time frame.

6.2 The imposition of Additional Charges may also occur as a result of Your cancellation of an Order where cancellation results in Loss to Us, storage costs for goods not collected from Us within one week of the date on which the Goods are made ready for delivery at the rate set out in the Quote, photocopying, communication costs, couriers, packing and handling, Government or council taxes or charges, additional work required by You or any other occurrence which causes Us to incur costs in respect of Your Order additional to the quoted cost.

7. Acceptance of Goods

If You fail to advise Us in writing of any fault in Goods or failure of Goods to accord with Your Order within 48 hours of delivery, You are deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Your Order. Nothing in this paragraph affects Your rights for any alleged failure of a guarantee under the Australian Consumer Law.

8. Title and risk

8.1 Risk in Goods passes to You immediately upon delivery.

8.2 Property in Goods supplied to You pursuant to these Terms of Trade does not pass to You until all money (including money owing in respect of other transactions between Us and You) due and payable to Us by You have been fully paid.

8.3 Where Goods are supplied by Us to You without payment in full of all moneys payable in respect of the Goods and any Services provided by Us in respect of those Goods, You:

8.3.1 shall be a bailee of the Goods until property in them passes to You;

8.3.2 irrevocably appoint Us as Your attorney to do all acts and things necessary to ensure the retention of title to the Goods including the registration of any security interest in favour of Us with respect to the Goods under any applicable law;

8.3.3 must be able on demand by Us to separate and identify as belonging to Us the Goods supplied by Us from other goods which are held by You;

8.3.4 must not allow any person to have or acquire any security interest in the Goods;

8.3.5 agree that We may repossess the Goods if payment is not made within 14 days (or such longer time as We may, in our absolute discretion, approve in writing) of the supply of the Goods; and

8.3.6 grant an irrevocable licence to Us or Our agent to enter Your premises in order to recover possession of Goods pursuant to this paragraph. You indemnify Us in respect of any damage to property or personal injury which occurs as a result of Us entering Your premises.

8.4 Where Goods are supplied by Us to You without payment in full of all moneys payable in respect of the Goods and any Services provided by Us in respect of those Goods, and You mix the Goods with other goods or the Goods become part of other goods (**New Goods**), You agree with Us that the ownership of the New Goods shall immediately pass to Us. You will hold the New Goods on trust for Us until payment of all sums owing to Us whether under these Terms of Trade or any other contract have been made and We may require You to store the New Goods in a manner that clearly shows Our ownership.

8.5 For the avoidance of doubt, under the preceding paragraph the ownership of the New Goods shall pass to Us at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.

8.6 Notwithstanding the preceding paragraph You may transfer, sell or dispose of Goods, including New

Goods, to a third party in the ordinary course of business provided that:

8.6.1 where You are paid by a third party in respect of Goods including New Goods, You hold the whole of the proceeds of sale less any GST on trust for Us - in a separate account - until all amounts owed by You to Us have been paid; or

8.6.2 where You are not paid by a third party, You agree to assign all of Your rights against the third party to Us on Us giving You notice in writing to that effect and for the purpose of giving effect to that You irrevocably appoint Us as Your attorney.

8.7 Where Goods are supplied by Us to You without payment in full of all moneys payable in respect of the Goods and any Services provided by Us in respect of those Goods, You acknowledge that We have a right to register and perfect a personal property security interest.

8.8 If:

8.8.1 a PPS Law applies or commences to apply to these Terms of Trade or any transaction contemplated by them, or We determine (based on legal advice) that this is the case; and

8.8.2 in Our opinion, the PPS Law:

8.8.2.1 does or will adversely affect Our security position or obligations; or

8.8.2.2 enables or would enable Our security position to be improved without adversely affecting You,

We may give You notice requiring You to do anything (including amending these Terms of Trade or execute any new terms and conditions) that in Our opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated above or improve Our security position. You must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in Our opinion Our security position or obligations under or in connection with these Terms of Trade have been or will be materially adversely affected, We may by further notice to You cancel these Terms of Trade, in which case You must immediately pay to Us any money owed to Us by You.

9. Intellectual Property Rights

9.1 You acknowledge represent and agree that You own all Intellectual Property Rights pertaining to Your Order for Goods or Services or You have a licence to authorise Us to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied to Us by You for the purposes of the Order. Further, You indemnify and agree to keep Us indemnified against any Loss incurred by Us in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied to Us by You.

9.2 Unless specifically agreed in writing between Us and You, all Intellectual Property Rights in any works created by Us on behalf of You vest in and remain Our property.

9.3 Subject to payment of all invoices due in respect of any Goods or Services supplied by Us to You, We grant to You a perpetual, non-exclusive licence to use the works created or produced by Us in connection with the provision of Goods or Services under these Terms of Trade for the purposes contemplated by the Order.

10. Agency and assignment

10.1 You agree that We may at any time appoint or engage an agent to perform any obligation arising pursuant to these Terms of Trade.

10.2 We have the right to assign and transfer to any person all or any of Our title, estate, interest, benefit, rights, duties and obligations arising from these Terms of Trade provided that the transferee agrees to assume any of Our duties and obligations owed to You under these Terms of Trade.

10.3 You must not transfer or attempt to transfer any of Your obligations or rights under these Terms of Trade without Our prior written consent.

11. Default by Customer

11.1 Each of the following occurrences constitutes an event of default:

11.1.1 You breach these Terms of Trade for any reason (including, but not limited to, defaulting on any payment due under these Terms of Trade) and You fail to remedy that breach within 14 days of Us giving You written notice to do so;

11.1.2 You, being a natural person, commit an act of bankruptcy;

11.1.3 You, being a corporation, become subject to:

11.1.3.1 a petition being presented, an order being made or a meeting being called to consider a resolution for You to be wound up, deregistered or dissolved;

11.1.3.2 a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of Your property and undertaking;

11.1.3.3 a scheme of arrangement (other than for the purpose of restructuring);

11.1.3.4 any assignment for the benefit of Your creditors;

11.1.4 You purport to assign Your rights under these Terms of Trade without Our prior written consent;

11.1.5 You cease or threaten to cease the conduct of Your business in the normal manner.

11.2 Where an event of default occurs, except where We have received payment in full We may:

11.2.1 terminate these Terms of Trade;

11.2.2 terminate any or all Orders and credit arrangements (if any) with You,

- 11.2.3 refuse to deliver any Goods or provide any further Services;
 - 11.2.4 repossess and re-sell any Goods delivered to You, the payment for which has not been received; or
 - 11.2.5 retain (where applicable) all money paid on account of Goods or Services or otherwise.
- 11.3 In addition to any action We are permitted to take pursuant to the preceding paragraph on the occurrence of an event of default all invoices will become immediately due and payable.

12. Termination

In addition to the express rights of termination provided in these Terms of Trade, a party may terminate these Terms of Trade by giving 30 days written notice to the other party.

13. Exclusions and limitation of liability

- 13.1 You agree that use of the Goods and Services is at Your sole risk. To the maximum extent allowed by law, Our liability for breach of any term implied in these Terms of Trade by any law is excluded.
- 13.2 All information, specifications and samples provided by Us in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect Your use of any Goods or Services will not entitle You to reject the Goods on delivery, or to make any claim in respect of them.
- 13.3 We give no warranty in relation to any Services provided or supplied. Under no circumstances are We or any of Our suppliers liable or responsible in any way to You or any other person for any loss, damage, cost, expense or other claim (including consequential damages and loss of profits or loss of revenues), as a direct or indirect result of any defect, deficiency or discrepancy in the Goods or Services including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
 - 13.3.1 any Goods or Services supplied to You;
 - 13.3.2 any delay in supply of any Goods or Services; or
 - 13.3.3 any failure to supply any Goods or Services.
- 13.4 Any advice, recommendation, information, assistance or service given by Us in relation to any Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty of accuracy, appropriateness or reliability. We do not accept any liability or responsibility for any Loss suffered as a result of Your reliance on such advice, recommendation, information, assistance or service.
- 13.5 To the maximum extent permitted by law, We are not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide any Goods or Services, or otherwise arising out of the provision of any Goods or Services, whether based on these Terms of Trade, negligence, strict liability or otherwise, even if We have been advised of the possibility of damages.

- 13.6 You acknowledge that any Goods or Services supplied by Us to You or at Your direction are not for personal, domestic or household purposes.
- 13.7 The Australian Consumer Law may give to You certain guarantees. Where liability for breach of any such guarantee can be limited, Our liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

14. Indemnity

- 14.1 You indemnify Us and Our servants and agents in respect of any claim or demand made or action commenced by any person including (but not limited to) You against Us or, for which We may be liable, in connection with any Loss arising from or incidental to the provision of any Goods or Services, any Order or the subject matter of these Terms of Trade including, (but not limited to) any legal costs incurred by Us in relation to meeting any claim or demand or any party/party legal costs for which We may be liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms of Trade.

15. Unavoidable Delay

- 15.1 If circumstances beyond Our control prevent or hinder Our provision of any Goods or Services, We shall be freed from any obligation to provide the Goods or Services while those circumstances continue. We may elect to terminate any transaction or keep the transaction on foot until such circumstances have ceased.
- 15.2 Circumstances beyond Our control include, (but are not limited to), unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, terrorism, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failure or malfunction of computers or other information technology systems.

16. Dispute Resolution

- 16.1 If a dispute arises between You and Us, the following procedure applies:
 - 16.1.1 A party may give another party a notice of the dispute and the dispute must be dealt with in accord with the procedure set out in this paragraph.
 - 16.1.2 A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accord with this paragraph.
 - 16.1.3 A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
- 16.2 If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 5 Business Days (or other period as agreed).

16.3 Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives the parties agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation. The mediation must be conducted in accord with the ACDC Guidelines for Commercial Mediation which are operating at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the ACDC Guidelines are incorporated by reference into these Terms of Trade. This paragraph survives termination of these Terms of Trade.

16.4 Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Terms of Trade.

16.5 The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

17. Other Matters

17.1 These Terms of Trade apply to all Quotes and Orders made by You to Us for the supply of goods and/or the provision of any services by Us to You or at Your direction.

17.2 These Terms of Trade are governed by the laws of the State of Victoria in Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Victoria in Australia.

17.3 These Terms of Trade and any Quotes and written variations agreed to in writing by You and Us represent the whole agreement between the parties relating to the subject matter of these Terms of Trade.

17.4 These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.

17.5 You have not relied on any warranty, representation or statement, whether oral or written, made by Us or any of Our employees or agents relating to or in connection with the subject matter of these Terms of Trade.

17.6 If any provision of these Terms of Trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.

17.7 Our failure or delay to exercise a power or right does not operate as a waiver of that power or right.

17.8 A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote or other communication between You and Us (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified; sent by facsimile transmission to the facsimile number of the addressee specified with acknowledgment of receipt from the facsimile machine

of the addressee or sent by e-mail to the e-mail address of the addressee specified with acknowledgement of delivery.

17.9 A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by facsimile or e-mail before 4 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

17.10 A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.

18. Definitions

In these Terms of Trade:

18.1 **Additional Charge** means:

18.1.1 fees or charges for additional work performed at Your request or reasonably required as a result of Your conduct, calculated in accord with Our then current prices

18.1.2 expenses incurred by Us, at Your request or reasonably required as a result of Your conduct.

18.2 **Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

18.3 **Goods** means any goods supplied by Us including those supplied in the course of providing Services.

18.4 **Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

18.5 **Loss** includes, but is not limited to, costs (including party to party legal costs and Our own legal costs), expenses, lost profits, award of damages, personal injury and property damage.

18.6 **Order** means a purchase order for Goods or Services placed by You whether or not in response to a Quote and as varied in writing from time to time by the parties.

18.7 **PPS Law** means:

18.7.1 the Personal Property Security Act 2009 (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and

18.7.2 any amendment made at any time to any other legislation as a consequence of a PPS Law.

18.8 **Quote** means a written description of any Goods or Services to be provided, an estimate of Our charges for the performance of any required work and an estimate of the time frame for the performance of any work.

18.9 **Services** means any services to be provided by Us to or for You in accord with a Quote and these Terms of Trade.

- 18.10 **Terms of Trade** means this document and any replacement as published on Our Website from time to time.
- 18.11 **We** or **Us** or **Our** means Platypus Bathroomware Pty Ltd as the supplier of any Goods or Services on a Quote or Order and includes Our agents and permitted assigns.
- 18.12 **Website** means www.platypusbathroomware.com.au.
- 18.13 **You** or **Your** means the person identified on a Quote or Order or other communication between You and Us as the customer and includes Your agents and permitted assigns.

19. Interpretation

In these Terms of Trade, unless the context otherwise requires:

- 19.1 a reference to writing includes email and other communication established through Our Website;
- 19.2 the singular includes the plural and vice versa;
- 19.3 a reference to a paragraph is a reference to a paragraph of these Terms of Trade;
- 19.4 a reference to a party to these Terms of Trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- 19.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 19.6 headings are for ease of reference only and do not affect the meaning or interpretation of these Terms of Trade; and
- 19.7 if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
- 19.7.1 if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
- 19.7.2 in all other cases, must be done on the next Business Day.