

# GWA BATHROOMS & KITCHENS CONDITIONS OF SALE

These terms and conditions of sale apply whenever Caroma Industries Ltd ABN 35 000 189 499 or any of its related bodies corporate (as that term is defined in the Corporations Act 2001 (**Supplier**)) supplies goods to a customer (**Applicant**).

## FORMATION OF AGREEMENT

1. Quotations made by the Supplier shall not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it.
2. By placing an order, either verbally or in writing, with the Supplier, the Applicant acknowledges and agrees to the Supplier's terms and conditions of sale set out herein and such orders will constitute an offer on these terms and conditions. Written acceptance by the Supplier of the Applicant's offer shall complete an agreement for the supply of goods pursuant to these terms and conditions (**Agreement**).

## PRICE

3. Prices for goods will be as per the Supplier's Official Price List as at the date that the Applicant places an order or otherwise in accordance with a quotation given to the Applicant by the Supplier (as the case may be).
4. A quotation given to the Applicant is valid for ninety (90) days from the date of quotation.
5. Prices set out in the Supplier's Official Price List may be altered by the Supplier with thirty (30) days' prior written notice. Any such price changes will apply only to:
  - (a) orders that are placed by the Applicant after the price change became effective; or
  - (b) orders placed before the price change became effective for which the scheduled date of delivery of the goods is more than ninety (90) days after the date price change becomes effective. For such orders, the Applicant may cancel the order by written notice within five (5) business days from the date of the Supplier's written notice of the price change.
6. GST, delivery charges, extra packaging surcharges and government taxes, if any, are payable by the Applicant.
7. The Supplier may impose a handling and delivery charge of \$20 on invoices less than \$200 (excluding GST).

## PAYMENT TERMS

8. The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from the end of month of delivery of goods and payment is due and payable on that date.
9. Where the due date for payment falls on a gazetted local, state or federal public holiday applicable in the area in which the Applicant's address falls, as noted in the relevant order form, or a weekend, payment will be due and payable by the last working day of the month the invoice falls due.
10. Without limiting any of the Supplier's other rights and remedies, if the Applicant: fails to pay for the goods or services supplied by the Supplier by the due date for payment, or as agreed in writing by the Supplier from time to time, the Supplier shall be entitled to charge a monthly administration fee at the rate of 3% above the applicable cash rate published by the Reserve Bank of Australia until payment by the Applicant.
11. Accepted Method of Payment. EFT, Cheque and Credit Card. Where a payment is made via Credit Card, the Supplier reserves the right to levy a Credit Card merchant fee (including GST) to cover bank charges.

## JURISDICTION

12. The Applicant acknowledges and agrees that this Agreement shall be governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.
13. The parties to this Agreement submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.

## PURPOSE OF CREDIT

14. The Applicant acknowledges and agrees that any credit to be provided to the Applicant by the Supplier in connection with the supply of goods is to be applied wholly or predominantly for commercial purposes.

## ORDERS, DESPATCH AND DELIVERY

15. With the exception of the operation of clause 5(b), orders for goods cannot be suspended or cancelled except with the Supplier's consent. The Applicant shall pay all reasonable expenses incurred by the Supplier due to suspension or cancellation.
16. Delivery dates are estimates only and the Supplier is not liable for any loss or damage for failure to deliver by those dates.
17. The Supplier may make part deliveries of any order and render an invoice to the Applicant for the goods delivered. Failure to make delivery of the total order will not invalidate the sale.
- 17.1 Where the Applicant requests delivery of goods to a site that is not owned or controlled by the Applicant (for example, a building site), the goods are deemed to have been delivered to the Applicant upon signature for receipt of the goods by an individual on-site, whether or not the signature is provided by an employee or agent of the Applicant.

## RETURNS

Subject to and to the extent permitted by law including the Australian Consumer Law (ACL):

18. Products (including obsolete, made to order, core ranged, baths and products promoted as 'exclusive') are sold on a non-return basis and unless damaged or , faulty (refer clauses 0 to 44) or incorrectly delivered cannot be returned.
19. All returns must receive the prior approval of the Supplier.
20. The Supplier reserves the right to inspect goods to be returned.
21. Goods must be returned according to the Supplier's procedure for returns for credit or replacement. The Applicant must provide the Supplier with the original tax invoice number for each product sought to be returned.
22. The Applicant must retain signed return documentation as proof of a return.
23. Unless damaged, faulty or incorrectly delivered, a re-stocking fee of 20% and a \$100 minimum claim value applies to all goods returned and is payable within 30 days of the end of the month in which the goods are accepted for return by the Supplier.

## RETENTION OF TITLE AND PERSONAL PROPERTY SECURITIES

24. In clauses 25 to 39:
  - (a) a reference to the PPSA is a reference to the Personal Property Securities Act 2009;
  - (b) a reference to "Goods" is a reference to the goods supplied by the Supplier; and
  - (c) a reference to "Security Interest" has the meaning given to that term in the PPSA.
25. Whilst the Applicant has not paid for the Goods supplied in full at any time, the Applicant agrees that property and title in the Goods shall not pass to the Applicant and the Supplier retains the legal and equitable title in those Goods supplied and not yet sold.
26. Until payment in full has been made to the Supplier, the Applicant will hold the Goods in a fiduciary capacity for the Supplier and agrees to store the Goods in such a manner that they can be identified as the property of the Supplier, and shall not mix the Goods with other similar goods.
27. The Applicant shall be entitled to sell the Goods in the ordinary course of its business, but until full payment for the Goods has been made to the Supplier, the Applicant shall sell as agent and bailee for the Supplier and the proceeds of sale of the Goods shall be held by the Applicant on trust for the Supplier absolutely.
28. The Applicant's indebtedness to the Supplier, whether in full or in part, shall not be discharged by the operation of clause 27 hereof unless and until the funds held on trust are remitted to the Supplier.
29. The Applicant agrees that whilst property and title in the Goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the Goods of the Supplier and to

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repossess the Goods which may be in the Applicant's possession, custody or control when payment is overdue.

30. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
31. The Applicant agrees that where the Goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the Goods, and if necessary, sell the goods with the trademark or name of the Applicant on those Goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the Goods bearing the name or trademark of the Applicant.
32. The Applicant acknowledges that the Supplier's interest in the Goods includes a 'purchase money security interest' pursuant to the PPSA.
33. The Applicant consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register.
34. The Applicant agrees to promptly do anything (including executing any new document, obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Supplier may require for the purposes of:
  - (a) ensuring that any Security Interest of the Supplier is enforceable, perfected and otherwise effective; or
  - (b) ensuring that any Security Interest of the Supplier is continuously perfected and/or perfected by control and/or perfected in a way that will reduce as far as reasonably possible the risk of a third party acquiring an interest in any property the subject of the Security Interest, to the extent possible under the PPSA; or
  - (c) enabling the Supplier to apply for registration, or give any notification, in connection with a Security Interest so that the Security Interest has the priority required by the Supplier; or
  - (d) enabling the Supplier to exercise any right or power in connection with the Security Interest.
35. To the extent permitted by law, and in respect of any Security Interest created by these Terms and Conditions:
  - (a) the parties contract out of sections 95, 121(4), 125, 130, 132(3) (d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA) and also contract out of the application under subsection 116(2) of the PPSA of any provision of Part 4.3 of the PPSA in relation to the Goods;
  - (b) the Applicant waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to a Security Interest, and also its right to receive any other notice required under the PPSA unless the provision of such notice can not be excluded.
36. The parties agree to the full extent permitted by law not to disclose information of the kind mentioned in section 275(1) of the PPSA. The Applicant agrees that it will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), if the Supplier approves.
37. The Supplier's Security Interest attaches to any proceeds (including proceeds within the definition of that term in the PSSA) derived, directly or indirectly from any sale or dealing with the Goods or otherwise arising out of or relating to the Goods whether or not the sale or dealing is permitted under these Terms and Conditions.
38. The Applicant will not, without the Supplier's prior written consent, create, purport, or attempt to create or permit to exist any other Security Interest, however ranking, over the Goods.
39. For the avoidance of doubt, pursuant to section 80 of the PPSA, the Applicant covenants not to assert any rights it would otherwise have under section 80(1) of the PPSA and it is intended specifically that any person the Applicant assigns some or all of its rights and obligations under these Terms and Conditions should have the benefit of this covenant.

## DAMAGE, SHORTAGE AND FAULTY GOODS

40. The Applicant must advise the Supplier of any damage or shortage of goods within seven (7) days after the delivery date ,

and ensure the faulty goods are made available for inspection and return on request by the Supplier.

41. Goods in transit may be insured against shipping and breakages if requested by the Applicant. Rates are available on application to the Supplier.
42. All damaged goods or goods of faulty manufacture will, at the Supplier's election, be refunded or replaced. .
43. The following applies to an Applicant who is a Consumer under the Australian Consumer Law:

"Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to:

  - (a) a replacement or refund for a major failure;
  - (b) compensation for any other reasonably foreseeable loss or damage;
  - (c) have the goods repaired or replaced if they fail to be of acceptable quality."
44. Once a product is installed the conditions of the applicable product warranty will apply. Faulty goods must be notified to the Supplier within the applicable warranty period, which commences from the date of the original purchase of the goods.

## LIMITATION OF LIABILITY

To the extent permitted by law, including the Australian Consumer Law:

45. The Supplier's liability is limited (at the Supplier's election) to:
  - (a) replacing the faulty goods; or
  - (b) the cost of providing equivalent goods; or
  - (c) the cost of having the faulty goods repaired.
46. Each party will not be liable for any special, exemplary, punitive or consequential loss or damage (including without limitation, loss of profit, loss of opportunity and loss of goodwill) incurred by the other party either directly or indirectly in connection with the supply of goods.

## CANCELLATION OF TERMS OF CREDIT

47. Where the Applicant is in default under the terms of this Agreement and fails to rectify that default within a reasonable time period notified in writing by the Supplier, the Supplier reserves the right to withdraw credit on any order for goods and not grant credit on future orders.
48. Upon the withdrawal of credit in accordance with clause 46 above, all liabilities incurred by the Applicant become due and payable to the Supplier five (5) business days from the date on which credit is withdrawn, or such other date in excess of five (5) business days which the Supplier considers reasonable, and otherwise in accordance with the payment terms set out in clauses 8 to 10.

## PROVISION OF FURTHER INFORMATION

49. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.

## TRADEMARKS

50. The Applicant cannot use the Supplier's trademarks and trade names without the prior written approval of the Supplier.

## CORPORATIONS

51. If the Applicant is a corporation, the Applicant:
  - 51.1 warrants that all of its directors have agreed to the Applicant entering into this Agreement on these terms and conditions; and
  - 51.2 acknowledges and agrees that in connection with any supply of goods on credit:
    - (a) the Supplier may require that all or any of its directors enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier under this Agreement;
    - (b) the Supplier is not obliged to supply any goods to the Applicant on credit unless and until the Supplier has received each signed guarantee and indemnity required by the Supplier in accordance with clause 51.2(a).

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52. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

## TRUSTEE CAPACITY

53. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
- (a) the Applicant enters into this Agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Applicant has the right to be indemnified out of trust assets;
  - (c) the Applicant has the power under the trust deed to sign this Agreement; and
  - (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
54. The Applicant must give the Supplier a copy of the trust deed upon request.

## PARTNERSHIP

55. If the Applicant enters into this Agreement as partners, the Applicant:
- 55.1 warrants that all of the partners have agreed to the Applicant entering into this Agreement on these terms and conditions; and
- 55.2 acknowledges and agrees that in connection with any supply of goods on credit:
- (a) the Supplier may require that all or any of the partners enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier under this Agreement; and
  - (b) the Supplier is not obliged to supply any goods to the Applicant on credit unless and until the Supplier has received each signed guarantee and indemnity required by the Supplier in accordance with clause 55.2(a).
56. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

## INSOLVENCY

57. If the Applicant becomes insolvent, the Applicant remains liable under this Agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this Agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

## WAIVER

58. A waiver of any provision or breach of this Agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this Agreement by the Applicant must be made by the Applicant's authorised officer in writing.

## TAXES AND DUTY

59. The Applicant must pay for all stamp duty and other taxes payable on this Agreement (if any).
60. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this Agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
61. If as a result of:
- (a) any legislation becoming applicable to the subject matter of this Agreement; or
  - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

## SET-OFF

62. All payments required to be made under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding.

## FORCE MAJEURE

63. Neither party is liable for any loss caused to the other party for any failure or delay in performing any of its obligations under this Agreement by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the party's control.

## SEVERANCE

64. If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
65. If any part of this Agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

## VARIATION

66. The Applicant agrees that these terms and conditions may be varied, added to, or amended by the Supplier from time to time by publishing an updated version of the terms and conditions on the Supplier's website which can be accessed using the following link: <https://www.caroma.com/au/>.
67. With the exception of the operation of clause 5(b), the updated terms and conditions will apply to orders placed after the date of publication and the Supplier will not change any terms for an existing order that has been accepted by the Supplier; the terms that will apply to the existing order are the terms that applied at the time the Applicant placed the order.
68. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request by providing reasons in writing.

## ENTIRE AGREEMENT

69. To the extent permitted by law, this Agreement:
- (a) constitutes the entire agreement between the parties relating in any way to its subject matter; and
  - (b) supersedes any prior agreement or understanding of the parties (whether written or otherwise).

## PRIVACY ACT

70. The Applicant agrees to the terms of the Privacy Act 1988 authorisation contained in this document. This authorisation allows the Supplier, amongst other things, to collect information about the Applicant from a credit reporting agency.
71. The Supplier collects information about the Applicant in order to provide the Applicant with the goods requested, to assess any credit application made by the Applicant, or to review any existing credit. If the Applicant does not provide the information requested, the Supplier will be unable to provide the goods requested or process the Applicant's application.
72. The Supplier may disclose information about the Applicant to its related companies, or to a credit reporting agency, ratings agency and any business which provides information about the credit worthiness of persons. The Supplier may also disclose information about the Applicant where the Supplier is permitted by the Privacy Act 1988 to do so.
73. The Applicant is able to access the information held by the Supplier, and seek the correction of such information, by contacting the Supplier using the details provided above. Details with respect to accessing and correcting information are also available in the Supplier's Privacy Policy which can be accessed using the following link: <https://www.caroma.com/au/privacy/>.
74. Details with respect to how the Applicant may complain about a breach of the Privacy Act 1988 and how the Supplier will deal with such a complaint are available in the Supplier's Privacy Policy which can be accessed using the following link: <https://www.caroma.com/au/privacy/>.