



## Terms and Conditions of Supply 26<sup>TH</sup> JUNE 2010

1. In these terms and conditions, unless the context otherwise requires:
  - (a) 'Wags' means W.A. Grouting Systems Pty Ltd Pty. Limited, its related and subsidiary companies;
  - (b) 'the buyer' means the person (including its successors, personal representative and permitted assigns) acquiring goods from
  - (c) WAGS and where there is more than one buyer, the covenants on their part contained herein shall be deemed to be joint and several covenants; and
  - (c) 'goods' means all goods and/or services supplied by Wags to the Buyer pursuant to this contract.
2. These terms and conditions are deemed to be incorporated into all contracts (expressed or implied) for the supply of goods to the Buyer and supersede all terms and conditions previously issued by Wags. WAGS is only prepared to sell goods upon these terms and conditions and no contract for the supply of goods shall exist between WAGS and the Buyer except upon these terms and conditions, unless their exclusion or modification is agreed to in writing by Wags. Any order placed by the Buyer is deemed to be an order incorporating these terms and conditions notwithstanding any inconsistencies in the order of the Buyer. Where the Buyer places an order for goods which contains terms and conditions different from those herein, subsequent delivery to the Buyer shall be deemed to be a counter-offer to supply the goods on these terms and conditions and such a counter-offer shall be deemed to be accepted by the Buyer by acceptance of the goods where delivered.
3. The price shall be subject to alteration upon written notice to the Buyer of that price ruling as at the Delivery date. Should there be any variation in details, sizes and quantities, delivery instructions or any other item or matter on which the quotation or invoice was based WAGS reserves the right to revise and amend the contract price accordingly.
- 4.(a) The terms of payment are statement balance net cash by the 30th day of the following calendar month after dispatch from WAGS store. Should the 30th day of the following calendar month fall on a weekend or public holiday, payment is required by the next working day.
  - (b) WAGS reserves the right to charge interest on overdue accounts at a rate equal to the Westpac Indicator interest rate. Such interest shall be computed from the date of notification of the overdue amount by letter signed by any Director or Company Secretary of WAGS detailing the amount outstanding and the rate of interest.
5. WAGS shall make all reasonable efforts to have the goods delivered to the Buyer on the date agreed between the parties as the delivery date, but WAGS shall be under no liability whatsoever should delivery not be made on this date.
6. Risk in the goods shall pass to the Buyer upon despatch of the goods to the Buyer or the agent of the buyer or to a carrier commissioned by the Buyer. Acceptance of the goods delivered shall be deemed for all purposes to have taken place at the expiration of seven (7) days from the date of each delivery.
- 7.(a) The parties agree that the property in and title to the goods shall pass to the Buyer when the goods have been paid for in full, until which time they shall remain the property of Wags.
  - (b) The Buyer may use or resell the goods in the ordinary course of business prior to WAGS receiving payment in full but until such use or resale or until WAGS receives payment of the price in full, whichever first occurs, the Buyer shall endeavour to store the goods in such a way that they are separately identifiable as the goods of WAGS and not remove any marks identifying the goods. If the Buyer resells the goods as aforesaid, then as between the Buyer and its purchaser, the Buyer shall be a principal and not the agent of WAGS and the Buyer shall account to WAGS for that part of the proceeds of sale as is equal to the price payable by the Buyer to WAGS in respect of such goods.
  - (c) If WAGS has reason to believe that the Buyer is unable to pay its debts or if any of the events set out in Clause 17 below occurs, WAGS may (but without limiting other rights or remedies available to WAGS at law, in equity or by statute) and the Buyer hereby acknowledges the right of WAGS to repossess the goods at its discretion.

8. Invoices, weights, gauges, sizes and tares of WAGS shall be treated as prima facie accurate.
9. Subject to Clause 10 below, the Buyer acknowledges that neither WAGS nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the goods for any particular purpose or any other matter.
10. These terms and conditions shall not exclude, limit, restrict or modify the rights, entitlements and remedies conferred upon the Buyer or the liabilities imposed upon WAGS by any condition or warranty implied by any Commonwealth, State or Territory Act rendering void or prohibiting such exclusion, limitation, restriction or modification. Except in so far as any such rights, entitlements, remedies and liabilities cannot be excluded or limited, all warranties and conditions in relation to the goods whether expressed or implied by statute, common law of trade custom or usage or otherwise are hereby expressly excluded.
11. (a) Unless the goods supplied by WAGS are of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of WAGS pursuant to Clause 10 above for breach of any non-excludable condition or warranty shall be limited to any one or more of the following:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
  - (iv) the payment of the cost of having the goods repaired.(b) Subject to Clause 10 above, WAGS shall not be liable to the Buyer, its servants, agents or contractors for any direct, indirect, incidental or consequential damages of any nature howsoever caused (whether based on negligence or other tort or contract or otherwise) including but not limited to loss of profits, production, sales opportunity or business reputation, direct or indirect labour cost and overhead expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly out of or in any way attributable to the sale of the goods.
12. WAGS reserves the right to sub-contract the supply and or delivery of the goods where appropriate.
- 13 (A) The sale to and purchase by the Buyer of goods does not confer on the Buyer any licence or right under any copyright, patent, design or trade mark or any other intellectual property right which is the property of Wags.
  - (B) All drawings and technical specifications furnished by WAGS to the Buyer are copyright, confidential and supplied for the sole purpose of the particular contract concerned. The Buyer shall not communicate any details of the drawings or technical specifications to any third party without the prior written consent of WAGS and shall not make any copies of or use the drawings or technical specifications for any purpose other than as expressly authorised by Wags.
  - (C) The Buyer forfeits any right of claim against WAGS if any alteration to the goods is carried out without the Seller's written consent. The Buyer further acknowledges sole responsibility for any damage or injury to property or persons caused by any unauthorised alterations.
14. The Buyer shall not assign any of its rights or obligations hereunder without the prior written consent of WAGS
15. In addition to any lien to which WAGS may be entitled by statute or common law, WAGS shall, in the event of the insolvency of the Buyer or winding up (the Buyer being a company) be thereupon entitled to a general lien on all property whatsoever owned by the Buyer and in the possession of WAGS at the time of such lien to cover the unpaid price of any goods supplied by WAGS to the Buyer.
16. Failure by WAGS to insist upon strict performance by the Buyer of any of these terms and conditions shall not be taken to be a waiver of any rights of WAGS in relation hereto and in any event shall not be taken to be a waiver of these terms and conditions on any subsequent occasion.

17. If any payment is outstanding for more than seven (7) days after the due date (whether legally or formally demanded or not) or the Buyer fails to observe or perform any of these terms and conditions or a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Buyer or a receiver or receiver and manager is appointed in respect of the property or any part of the property of the Buyer or the Buyer (being a company) is de-registered or the Buyer makes or proposes to make an arrangement with its creditors or the Buyer is placed under official management or execution is levied upon the assets of the Buyer and is not satisfied within seven (7) days, WAGS may at any time thereafter terminate any contract for the sale of goods summarily by notice in writing to the Buyer but without prejudice to the rights of WAGS hereunder including its right to demand and sue for all outstanding amounts owed by the Buyer to Wags.
18. WAGS shall use all reasonable endeavours to fulfil its contractual obligations, but if the contract becomes impossible to perform or is otherwise frustrated, the Buyer shall be liable to pay to WAGS all costs which Wags suppliers or sub-contractors have incurred directly or indirectly or for which WAGS is liable under the contract at the time of frustration or impossibility of performance. WAGS shall not however require payment for any standard parts or materials, which WAGS may be able to use at the time in any other contract then current. Any prepayments which may have been made to WAGSS under the contract shall be applied towards satisfaction of such sum as may become due to it and the excess (if any) prepayment shall be refunded to the Buyer.
19. A notice given by WAGS to the Buyer or the Buyer to WAGS shall be in writing, give the address of the recipient as set out on the reverse hereof or as varied by written notice, be left at or sent by registered post, telex or facsimile to that address and be in the English language.
20. The Buyer shall be liable to pay any tax payable in respect of the goods or any part of them. Exemption from tax is conditional upon the acceptance of any exemption certificate by the Taxation Department. Where WAGS reasonably doubts that the Taxation Department shall accept any certificate, tax shall be charged to the Buyer.
21. WAGS will use all reasonable endeavours to supply the quantity of goods ordered by the Buyer. However good delivery shall be constituted when underage and overage is not more than 15%.
22. If one or more provisions of these terms and conditions is or becomes void, voidable or unenforceable for any reason, all other provisions shall remain in full force and effect.