

Classic Baths Terms of Trade

1. DEFINITIONS

- a. CB 'Company', 'we', 'us' or 'our', shall mean Classic Baths or any associated division, company, employee or agent.
- b. The "Customer", "You" or "Your" shall mean the purchaser of any goods or service from us.
- c. "Equipment" or "Goods" means all goods, equipment, chattels and services supplied by us to you and include "consumer goods", "inventory" and "equipment" as defined by the PPSA and any associated documents or paperwork.
- d. "Amount owing" shall mean all charges, GST, delivery and cartage charges, plus all costs, repairs, expenses, disbursements and penalties for which you are liable to pay us.
- e. "Default" includes you or any guarantor;
 - i. breaching your obligations under any agreement with us,
 - ii. ceasing to carry on business;
 - iii. an application is made (or resolution is passed) for you or any guarantor to be bankrupt or liquidated;
 - iv. having a receiver, liquidator, administrator or other statutory manager appointed
 - v. doing any act that causes or threatens the safety, condition or safekeeping of any equipment we supply to you;
 - vi. by notice or conduct indicating you no longer intend to comply with your obligations.

2. ACCEPTANCE AND GENERAL

- a. If any instruction is received by the Seller from the Buyer for the supply of Goods and/or Services it shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the Manager.
- b. None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Manager of the Seller in writing nor is the Seller bound by any such unauthorised statements
- c. No order once accepted by the Company may be cancelled and varied by the Buyer except by written agreement of the Company
- d. All goods are supplied on the basis of these terms and conditions ('terms') and any order received by us from you and/or use of your credit account with us (if any) shall constitute acceptance of these terms.
- e. These terms may be amended by us from time to time; & they express the entire understanding and agreement between you and us, and they shall prevail in the event of any conflict between these terms and the provisions of any document used by you or any other agreement with us. Also, any other agreement with us can only be varied by our express acceptance in writing.
- f. The benefits and obligations of the terms of this contract shall be governed by New Zealand law except to the extent expressly negated or varied by these terms. If any of these terms is held to be invalid, illegal or unenforceable, that term will be severed to the extent that it is invalid (and no further) and the remaining terms will be enforceable.
- g. All the rights and remedies under this agreement shall remain in full force notwithstanding any neglect, forbearance or delay in enforcing thereof.

- h. Any notice required to be provided by us to you or any guarantor, including notification of any alterations of these terms, shall be deemed to be delivered and received by you five working days after posting to your last known mailing address.

3. TERMS AND CONDITIONS

- a. These terms and conditions and any subsequent terms and conditions issued by the Company shall apply to all orders for the goods and the services made by the Buyer after the date and time at which these conditions are first delivered or sent by email, telex or facsimile to or otherwise brought to the notice of any employee, staff member or representative of the Buyer or, in the case of posting, on the day following posting to any of the Buyer's postal or street addresses. It shall be the Buyer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the Buyer and accordingly any order made by the Buyer after the date and time described above in this clause shall be deemed to be an acceptance of these conditions

4. CUSTOMERS AUTHORITY

- a. You warrant that;
 - I. you are either the Customer or the authorised agent of the Customer; or
 - II. you are authorised to accept and are accepting these terms not only personally but as agent for and on behalf of the Customer.
- b. If the Customer is a trust, these terms will bind each trustee of the trust as well as personally. Our rights against each trustee will only be limited if the trustee is an independent trustee (being a trustee who is not listed as a beneficiary) in which case the trustee's liability will be limited to the assets of the trust. This clause will however not affect the liability of an independent trustee who has guaranteed your obligations under this agreement.
- c. You shall not assign all or any of your rights or obligations under this contract unless we agree specifically in writing. You shall advise us of any alteration to your entity structure and/or of any revocation of an agent's authority to purchase. Until such written confirmation is received and specifically accepted by us in writing, you shall remain liable for any amount owing and our conduct shall not be deemed acceptance or affirmation of any assignment or revocation.

5. QUOTATION

- a. The Buyer may request a Quotation from the Company setting out the price and quantity of the Goods to be supplied. If the Quotation is acceptable to the Buyer, the Buyer may place an order.
- b. If the order is not placed with the Company within (14) days of the date of the Quotation then the Quotation shall be subject to further written confirmation by the Company in its absolute discretion. Prices quoted are for the quantity requested. The Company may in its absolute discretion vary the price if the order quantity is different from that contained in the Quotation

6. PRICES AND RATES

- a. Unless otherwise agreed by us in writing shown on the face of the agreement, the price of the goods or service shall be our price ruling at the date of dispatch or as quoted. Unless specifically stated otherwise, all quotes are stated in New Zealand dollars.
- b. Pricing and estimations are indicative only and subject to variation by us without notice.
- c. Unless specifically stated, the price will be increased by the amount of any GST and other applicable taxes and duties. We may also increase the price as a result of;
 - i. any fluctuation (including currency exchange) affecting the cost of supply, production or delivery that occurs between our acceptance of the order and the date of delivery
 - ii. any and all costs incurred as a result of your method of payment, including without limitation, any credit card costs.
- d. Failures, breakdowns, damage, or our termination of the contract resulting from your negligence or misuse shall not in any way reduce our rights.

7. PAYMENT, LATE PAYMENT, DEFAULT OF PAYMENT, AND CONSEQUENCES OF DEFAULT OF PAYMENT

- a. The method of payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Seller
- b. Subject to any provision to the contrary in the Contract, payment (shall be cash unless otherwise arranged in advance and confirmed in writing by the General Manager or his appointee) shall be received on or before the 20th day of the month following the date of the Company's invoice to the Buyer which invoice shall be issued promptly on or after delivery of the goods
- c. The Buyer shall not be entitled to withhold payment or to make any deductions from or set off against the Contract Price without the prior or written consent of the Company. The Buyer waives the right to withhold payment pending the resolution of any dispute between the Buyer and Seller.
- d. Late payment shall incur interest at the rate of 22% per annum calculated on a daily basis, shall be payable on any monies outstanding under the Contract from the date payment was due until the date payment is received by the Company, but without prejudice to the Company's other rights or remedies in respect of the Buyer's default in failing to make payment on the due date.
- e. If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the costs of collection.
- f. Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions.
- g. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- h. If any account remains unpaid at the end of the second month after supply of the Goods or Services the following shall apply: An immediate amount of the greater of \$200.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

- i. in the event that: any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- ii. the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- iii. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer;
- iv. then 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 Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
- v. all amounts owing to the Seller shall, whether or not due for payment, immediately become payable

8. DELIVERY AND TIMING OF SERVICES

- a. The time agreed for delivery shall not be an essential term of this contract unless you give us written notice making time of the essence.
- b. Delivery shall be deemed complete when we give possession of the goods to a carrier (including our own vehicle) for delivery to you, or as you have directed. This means you are liable for any damage in transit. All carriage and delivery charges shall be payable by you, including any costs for the bath to be returned to Classic Baths for any warranty issues and returned back to you.
- c. We reserve the right to deliver any goods or services by instalments and each instalment shall be deemed to be a separate contract subject to the same conditions as the main contract.
- d. Failure by us to deliver one or more instalments, shall not entitle you to cancel any contract relating to the goods.

9. LICENCE TO ENTER PREMISES

- a. You irrevocably authorise us to bring our vehicle/s onto your property (or the property where the equipment is located) to deliver and/or recover the goods or equipment and/or to inspect the goods or equipment so as to ensure your compliance with these terms, We shall not be responsible to you or any third party for any damage that may be done by our vehicle or us during the delivery or collection of the goods or equipment

10. OCCUPIERS LIABILITY AND ACCESS

- a. From commencement to completion of the works, the Company shall be deemed (as between Company and Buyer) always to be the legal occupier of the site and other parts of the section used for access to site or in connection with the works.
- b. If any part of the works is enclosed or locked by the Company while construction work is not in progress the owner or the mortgagee shall not enter such parts except at reasonable times by prior arrangements with the Company, who is entitled to be present.
- c. For the purpose of inspecting the works the mortgagee shall be entitled to the same right of entry as the Owner

11. OWNERSHIP OF EQUIPMENT AND OUR RIGHT TO RETAKE POSSESSION

- a. Any Equipment supplied by us to you, whether in consideration of rental or free of charge, shall remain our property. Whilst our Equipment is in your possession, you shall:
 - i. not attempt to sell, assign, mortgage, sublet, lend or otherwise deal with or part with the possession or control of our Equipment or any part thereof.
 - ii. not alter or make any additions to the Equipment, including, but without limitation, alter make any additions to, deface or erase any identifying mark, plate or number or any part thereof, on or in the Equipment of any other part of the Equipment or in any other manner interfere with the Equipment; &
 - iii. irrevocably permit us (or our agents) at any time without notice to enter all premises at which we believe on reasonable grounds the Equipment to be stored, to inspect remove, or repossess the Equipment supplied by us

12. LIABILITY

- a. We are not liable for any loss or liability suffered by you or any third party as the result of the breakdown of the Goods or Equipment however caused.
- b. You shall indemnify us for any loss incurred as a result of you breaching these terms. You will also indemnify us against any claim whatsoever by a third person in respect of any loss, injury or liability arising from this hiring or arising out of the use of the Goods or Equipment by you.
- c. To the maximum extent permitted, we shall not be liable to you or any Guarantor (or any agents or employees) whether in contract, tort or otherwise for:
 - i. any minor variation in product specifications including but not limited to colour or design, which may occur from time to time; or
 - ii. any loss of profits, consequential, indirect or special loss; or
 - iii. any delay or failure by us to perform our obligations under this contract whether arising directly, or indirectly, and including force majeure or any damage, injury, cost or loss of any kind.
- d. Where it is found we are liable to you, unless otherwise agreed in writing. the maximum cost of our liability, however arising, shall not exceed the lesser of;
 - i. the contract price', or;
 - ii. the value of the goods or service which are the subject of the claim
- e. Nothing in these clauses shall excuse payment of the Amount Owing as it becomes due under these terms.

13. WARRANTY

- a. Installation - The Company warrants that it will repair or make good any defects in the goods for installation/s undertaken by Classic Baths. Written notice of the claim must be received by the Company within (4 Weeks) from the date the service was undertaken and or the goods were installed. No claim shall be accepted under such warranty if any attempt to repair the defective goods is made by any person not authorised by Company, or if the defective goods have been modified or incorrectly stored, maintain or used. If the Company elects to repair or replace any defective goods, such work shall be undertaken at such a place as the Company may reasonably specify and the Buyer shall be responsible at its cost and risk for shipment of the defective goods to the place specified. If the Company fails to perform its warranty obligations under this clause 12, liability for such failure shall be subject to the limitation contained in clause 12.

- b. The Company may at its own discretion call upon the Sub-contractor, Manufacturer or Supplier of the goods or service to become party to the warranty resolution and the Buyer will co-operate with the terms of this process
- c. Delivery - Your acceptance signature upon delivery acknowledges that you have received your bath order in good condition and or working order, any faults or damages found after acceptance of delivery are not covered by warranty. Classic Baths duly notes that all baths are inspected and signed off prior to delivery if your order is found to be faulty or damaged at the time of delivery you will be required to refuse delivery and request that your order be returned to Classic Baths where it will be inspected and if required a replacement order will be arranged and re-sent.

14. CONSUMER GUARANTEES ACT 1993 ("CGA")

- a. If the CGA applies, these terms shall be read subject to your rights under the CGA, provided that where you acquire the goods for business purposes the CGA shall not apply.
- b. If you on sell the goods to a third party, you agree
 - i. where permitted by law, to contract out of the CGA', &
 - ii. to neither give or make any assertion or representation in relation to our goods without our prior written approval nor hold yourself out to be our agent.
 - iii. to indemnify us for any losses incurred due to third party claims against us as Manufacturer/Importer

15. INTELLECTUAL PROPERTY

- a. All Intellectual Property shall remain our property and any Supplier entitled thereto and neither we nor our Suppliers transfer any right, title or interest in the Intellectual Property to you.
- b. Copyright in all plans and other documents and in the works executed from them shall remain our exclusive property and may be used only for the purposes for which they were supplied

16. PRIVACY ACT CONSENT & RIGHTS

- a. Where you are an individual, you understand this information is being collected in accordance with the Privacy Act 1993 and that you have rights of access to and correction of personal information held by us. You agree and authorise us to obtain or divulge any information about you (including adverse information) from or to any third party (including credit reporting and debt collection agencies) in the course of our business activities including credit assessment, debt collection and direct marketing activities.
- b. You warrant that all information provided to us has been collected in accordance with the principles of the Privacy Act 1993 and that any third party has authorised the use or disclosure of any personal intonation in any way deemed necessary by us for the purpose of carrying out the service requested by the third party. You further undertake to indemnify us against any claims arising from any action taken by itself on your behalf.

17. PERSONAL PROPERTY SECURITIES ACT 1999–“PPSA”

- a. Interpretation-all section references in this clause shall mean the relevant clause in the PPSA
- b. Security: We may register a financing statement on the Personal Property Securities Register (PPSR) to reflect our interest in the equipment. Likewise, upon consenting to these terms or by accepting supply from us, you acknowledge and agree that;
 - i. you grant a security interest (by virtue of our retention of title clause) to us in all present goods supplied by us to you (if any) and all after acquired goods supplied by us to you (or for your account). You further agree that the security interest is a Purchase Money Security Interest
 - ii. you will not allow any goods to become an accession to any property that is not subject to the security interest granted pursuant to these terms'.
 - iii. you will not do, or omit to do, or allow be doing or omitting to be done, anything which might adversely affect any security interest in goods granted in our favour and you will not move any of the goods outside New Zealand
- c. Financing Statement You acknowledge, agree and undertake (as the case may be) to;
 - i. sign any further documents and/or provide any further information (which information you warrant to be complete accurate and up to date in all respects) which we may reasonably require to register a financing statement or financing change statement on the Personal Properties Securities Register.
 - ii. irrevocably, appoint us to be your attorney, to do anything which you agree to do under this agreement and anything which the attorney thinks desirable to protect the Company's interest under this agreement and you ratify anything done by the attorney under this clause.
 - iii. not register a change demand without our prior written consent, which may be given or withheld at our absolute discretion.
 - iv. you will, upon demand, meet our costs;
 - in relation to registering a financial statement or financing change statement, or releasing any financing statement on the Personal Property Securities Register,
 - enforcing our security interest including our legal costs on a solicitor client basis
 - v. give us not less than 14 days prior written notice of any proposed change in your name, and/or any other change in your details or otherwise (including but not limited to) a change in the your place of incorporation. address, location, nature of business, ownership, facsimile or phone number, or business practice
- d. Waiver and Contract Out – You and we agree that;
 - i. sections 108, 109(1) and 120(1) of the PPSA are contracted out of in respect of particular Goods if and only for as long as we are not the secured party with priority over all secured parties in respect of those Goods,
 - ii. nothing in sections 114 (1) (a), 117(l) (c), 122,133 and 134 of the PPSA shall apply to these Terms.
- e. To the maximum extent permitted by law, you and we agree to waive your right to:
 - i. receive a statement of account under section 116
 - ii. recover any surplus under section 119
 - iii. receive notice of any proposal of ours to retain collateral under section 120(2);
 - iv. object to any proposal from us to retain collateral under section 121;
 - v. not have any goods damaged when we remove an accession under section 125;
 - vi. not be reimbursed for damage caused when a secured party removes an accession under section 126;
 - vii. refuse permission to remove an accession under section 127,

- viii. receive notice of the removal of an accession under section 129
- ix. apply to the Court for an order concerning the removal of an accession under section 131'
- x. redeem collateral under section 132; and
- xi. receive a copy of any Verification Statement in respect of any financing statement or financing change statement relating to the security interest

18. CONSTRUCTION CONTRACTS ACT 2002 ("CCA")

- a. We reserve the right to invoke the Credit Construction Contracts Act 2002 in respect of any supply pursuant to these terms of trade to which the CCA may apply.
- b. Where any sale by us to you is deemed a 'Construction Contract' within the meaning of the CCA, and is bound by that Act, there shall be no progress payments and the goods shall be paid for in one lump sum within the provisions of these terms of trade

19. DISPUTES RESOLUTIONS

- a. The Company will endeavour to resolve any dispute between the Buyer and itself without the need for Court proceedings. Any such attempt is without legal prejudice.
- b. The Buyer agrees that any court proceedings taken against Company shall be undertaken in the Court district nearest to the Company unless a mutually agreed upon alternative is chosen