

PREMIUM VICTORIA PTY LTD
(ACN 091 178 737)
trading as PremiumOz Shower & Robes

TERMS AND CONDITIONS

1. Terms, Basis of Agreement

- 1.1. The agreement between Premium and the Customer (**'Agreement'**) is contained in:
 - (a) these terms and conditions (**'Terms'**); and
 - (b) Premium's quotation, and as otherwise advised in writing by Premium.
- 1.2. **[Entire Agreement]** Any other contractual terms of the Customer (whether included in the Customer's order or otherwise) that are contrary to, or inconsistent with, these Terms will not apply nor will they constitute a counter-offer. The Agreement constitutes the whole understanding between Premium and Customer, supersedes any prior negotiations or offers.
- 1.3. The Customer accepts these Terms by:
 - (a) receiving written acceptance of its order from Premium;
 - (b) accepting Premium's quotation; and/or
 - (c) receiving delivery or supply of Premium Products.
- 1.4. Premium may:
 - (a) reject any order by the Customer;
 - (b) accept the order subject to credit approval by Premium.
- 1.5. The Customer warrants that it is ordering Premium Products as principal and not as agent.

2. Quotations and pricing

- 2.1. Premium's prices and other charges are contained in its price list (from time to time) or as otherwise advised or quoted by Premium to the Customer.
- 2.2. Prices charged by Premium to the Customer for Premium Products will be according to Premium's quotation (which Premium may review if not accepted within 30 days) (**'Price'**).
- 2.3. **[Price Exclusions]** Unless otherwise specified in writing by Premium, prices exclude the following amounts payable by the Customer:
 - (a) any statutory, tax including any Goods and Services Tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (**'GST'**), duty or impost levied in respect of Premium Products for which Premium has not, in writing, allowed in calculating the price; and
 - (b) costs and charges in relation to insurance, packing (other than the standard packing of Premium), crating, transport and installation of Premium Products.
- 2.4. **[Variations]** The terms of the Agreement may be varied at Premium's discretion (**'Variation'**) if:
 - (a) the Customer requests any change to Premium Products and/or the Agreement; or
 - (b) in the opinion of Premium, circumstances change the performance of the Agreement as contemplated including the anticipated works, schedule, costs and charges to supply or install Premium Products.
- 2.5. **[Variations - price]** Variations will be priced by Premium having regard to its then current price list and other costs and charges associated with the Variation however Premium's margin shall not be reduced for a decrease or omission in Premium Products to be supplied.

3. Payment terms

- 3.1. The Customer will pay the Price and other amounts payable under the Agreement to Premium as follows:
 - (a) a deposit specified by Premium and/or all amounts payable, on entering into the Agreement;
 - (b) progressively in stages as claimed by Premium in respect of the supply or installation of Premium Products, and in accordance with sub-paragraph (c) for the final payment;
 - (c) any final payment for the:
 - (i) supply and installation of Premium Products, on notification by Premium that installation has been completed; or
 - (ii) supply of Premium Products on notification by Premium that Premium Products are available for collection or delivery;
 - (d) in accordance with credit terms approved by Premium from time to time; and/or
 - (e) as quoted, invoiced or notified by Premium.
- 3.2. Any deposit will be non-refundable.

- 3.3. All payments by the Customer must be:
 - (a) by electronic funds transfer, bank cheque, cheque (for Customers with approved credit terms), credit card (plus Supplier's applicable surcharge); and
 - (b) without deduction or set off for any reason.

4. Supply

- 4.1. Premium's descriptions, representations and samples of products are intended solely as a guide and not intended to be accurate.
- 4.2. **[Specification]** Premium's Specification applies to relevant Premium Products under the Agreement unless Premium informs the Customer otherwise.
- 4.3. The Customer must review any design provided by Premium, and advise Premium within 7 days of any discrepancy or error.
- 4.4. **[Variances]** There may be variances in Premium Products including minor imperfections or variations in goods or materials used such as the colour of paint or glass, or variances in the appearance of raw materials. Premium is not liable for the variances.
- 4.5. **[Custom Build]** If Premium, at the Customer's request, agrees to supply or install a custom built product, the Customer is responsible for:
 - (a) Providing, and warranting the adequacy of, the design;
 - (b) providing all necessary plans, measurements and information requested by Premium;
 - (c) promptly providing any approval or instruction requested by Premium; and / or
 - (d) any additional costs and charges incurred as a result of any inconsistency, ambiguity, discrepancy or change in respect of the matters in this clause and/or the Customer's failure to comply with this clause;to enable Premium to promptly undertake the work.
- 4.6. **[Intellectual Property]** All Intellectual Property and other information in respect of Premium Products or otherwise that Premium provides or makes available to the Customer remains the property or right of Premium.

5. Supply and Installation

- 5.1. Any times stated for supply or installation of Premium Products are estimates only and Premium will not be liable for failure or delay to supply or install Premium Products by any estimated date due to shortages of labour and/or goods and/or for any other reason.
- 5.2. **[Risk, Insurance]** The risk of damage to, loss or deterioration of any Premium Products will pass to the Customer on the earlier of dispatch or expiry of two (2) Business Days from the date of notification by Premium to the Customer that Premium Products are available for collection. The Customer:
 - (a) must insure Premium Products for their replacement value for loss arising from fire, theft, accidental or other similar loss or damage from the time that risk passes to the Customer;
 - (b) must provide Premium with a Certificate of Currency of the insurance on request; and
 - (c) acknowledges that these Terms may be produced to the Insurer as the Customer's consent that Premium is entitled to the relevant insurance proceeds to the extent of any amount outstanding to Premium for Premium Products.
- 5.3. **[Delivery]** If the Customer does not accept supply of Premium Products, Premium may instead deliver them to a place of storage nominated by the Customer and, failing such nomination, store them as it considers appropriate. The Customer will be liable for all costs and charges incurred by Premium on account of storage, detention, additional cartage/delivery or other remedial action.
- 5.4. **[Installation]** The Customer must, if Premium agrees to install Premium Products:
 - (a) promptly and accurately set out or mark the site;
 - (b) facilitate convenient delivery of goods to the point of installation without additional cost to Premium;
 - (c) promptly make the site fully accessible to Premium including access to:
 - (i) measure and assess the site; and/or
 - (ii) all necessary utilities required for installation;
 - (d) promptly inform Premium of the nature and location of all relevant utilities, fittings and equipment at site;
 - (e) allow and facilitate Premium to install in stages or as Premium requires;
 - (f) reimburse Premium on request for any charges incurred by Premium for electricians, plumbers or other trades;
 - (g) not impede, prevent or interfere with the supply or installation of Premium Products;

- (h) immediately on completion of installation, undertake any necessary protection work or measures to ensure that Premium Products are not damaged; and /or
 - (i) take responsibility for compliance with all occupational health and safety laws applicable to the site to ensure the safety of Premium, its employees, consultants and subcontractors, and all other persons and property.
- 5.5. **[Claims]** The Customer must inspect Premium Products immediately on supply or installation and notify Premium within 5 working Business Days of any ascertainable defect, shortage, complaint or other claim. If the Customer does not give such notice, it is deemed to have accepted Premium Products.
- 5.6. **[Subcontract]** Premium may subcontract any part of the work to be performed under the Agreement.
- 5.7. **[Compliance with Laws]**
- (a) The Customer will comply with all laws applicable to the Customer's use of Premium Products, and warrants that it has obtained all necessary permits and other approvals for the installation and use of Premium Products.
 - (b) If the Customer is a 'builder' under the *Domestic Building Contracts Act (Vic) 1995 ('DBCAs')*, the Customer warrants that:
 - (i) it has effected any domestic building insurance required by the *Building Act (1993)*; and
 - (ii) it has, or will, enter into a 'domestic building contract' (as defined in the DBCA) with a third party to carry out the work to be undertaken by Premium and any other work.
- 6. General**
- 6.1. For the purposes of the Security of Payment Act:
- (a) 'reference dates' for payments and the purposes of s.9(2) Security of Payment Act are as determined by Premium under clause 3.1;
 - (b) without limiting clause 3.3(b), no deduction shall be made from any payment claim for liquidated damages, defects, or any other liability of Premium to the Customer;
 - (c) variations under clauses 2.4 and 2.5 are agreed to be a 'first class of variation' under s.10A(2) Security of Payment Act.
- 6.2. **[Force majeure]** If in Premium's opinion, it is prevented from or delayed in performing an obligation under the Agreement by a Force Majeure Event, then the obligation is suspended during the period of the Force Majeure Event and such further period as reasonable in the circumstances.
- 6.3. The Customer indemnifies Premium against any claims, proceedings, damages, loss, cost or charge connected with:
- (a) any breach or anticipated breach of the Agreement by the Customer;
 - (b) any custom built work referred to in clause 4.5 including any infringement of Intellectual Property rights; and / or
 - (c) any supply or installation of Premium Products.
- 6.4. Premium may deduct by way of set off from any amount owing or which may become owing to the Customer under any Agreement any loss, cost, charge or other amount owing or which may become owing by the Customer to Premium in connection with the Agreement in respect of any failure of the Customer or any other matter contemplated by the Agreement.
- 6.5. The termination or end of the Agreement for any reason will not affect any express or implied provision intended to apply or continue subsequently including the provisions of clauses 4.6, 6.2, 6.3, 7 and 10.
- 7. Personal Property Securities Act (Cth) 2009 ('PPSA')**
- 7.1. Each Agreement constitutes a 'Security Agreement' for the purposes of the PPSA and create a security interest in all of the Customer's present and after-acquired Premium Products supplied by Premium.
- 7.2. Until full payment has been made for all Premium Products, and any other sums in any way outstanding from the Customer to Premium from time to time:
- (a) property in Premium Products will not pass to the Customer, and the Customer holds Premium Products as bailee for Premium (returning the same to Premium on request);
 - (b) Premium retains a security interest in all Premium Products previously supplied by Premium to the Customer (if any) and all Premium Products that will be supplied in the future by Premium to the Customer during the continuance of the parties' relationship;
 - (c) the Customer holds the insurance proceeds referred to in clause 5.2(c) on trust for Premium; and
 - (d) Premium is irrevocably authorised to enter any premises where Premium Products are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of Premium Products, and any property to which Premium Products are attached, or in which Premium Products are incorporated.
- 7.3. If the Customer purchases Premium Products for the purpose of resupply, or resupplies, Premium Products:
- (a) Premium Products are inventory for the purposes of the PPSA; the Customer is only authorised to sell Premium Products (or any portion of them) to third parties as the fiduciary agent of Premium provided that there will be no right to bind Premium to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for Premium Products (or any portion of them) will be held on trust for Premium pursuant to the fiduciary relationship.
 - (b) If Premium Products (or any portion of them) are attached, fixed, transformed or incorporated into any other goods or products produced by the Customer (or a third party), then Premium will have a security interest in those goods or products, and the Customer must hold a proportion of any payment ('**relevant proportion**') received by the Customer for such goods or products on trust for Premium, and Premium will have a security interest in that relevant proportion. The relevant proportion will equal the dollar value of the portion of Premium Products incorporated or transformed, and any part payment (not exceeding the relevant proportion) received by the Customer for such goods or products is received as payment first of the relevant proportion.
- 7.4. If Premium Products (or any portion of them) are attached, fixed, transformed or incorporated into any other goods or products produced by the Customer (or a third party), then Premium will have a security interest in those goods or products, and the Customer must hold a proportion of any payment ('**relevant proportion**') received by the Customer for such goods or products on trust for Premium, and Premium will have a security interest in that relevant proportion. The relevant proportion will equal the dollar value of the portion of Premium Products incorporated or transformed, and any part payment (not exceeding the relevant proportion) received by the Customer for such goods or products is received as payment first of the relevant proportion.
- 7.5. The Customer must:
- (a) promptly and at its own cost, sign any further documents and provide any further information (such information to be complete, accurate and up-to-date in all respects) that Premium may reasonably require to register a financing statement, financing change statement or any other required document on the Personal Property Securities Register;
 - (b) indemnify, and on demand reimburse, Premium for all expenses incurred in registering a financing statement, financing change statement or any other required document on the Personal Property Securities Register or releasing any Premium Products charged thereby;
 - (c) not register, or permit to be registered, a financing change statement or a financing change statement in respect of a security interest without the prior written consent of Premium;
 - (d) give Premium at least 14 days prior written notice of any proposed change in the Customer's name or any other change in the Customer's details; and
 - (e) immediately advise Premium of any material change in its business practices that would result in a change in the nature of proceeds derived from any sales of Premium Products.
- 7.6. Premium and the Customer agree that nothing in sections 130(1)(a) and 143 of the PPSA will apply to the Agreement.
- 7.7. The Customer waives its rights as a debtor under sections 92, 93, 94, 95, 97, 118, 121, 132, 135, 137, 140 and 142 of the PPSA.
- 7.8. The Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 7.9. Premium's enforcement rights under the Agreement are in addition to those under Chapter 4 of the PPSA.
- 8. Warranties**
- 8.1. Subject to clause 8.2:
- (a) the only guarantee, warranty or condition provided in relation to any Premium Products is the Warranty Terms Premium provides to the Customer for the Agreement; and
 - (b) Premium excludes all liability in relation to Premium Products, whether in contract, tort or otherwise, including all liability for any consequential or other loss or damage.
- 8.2. Subject to clause 8.3, nothing in clause 8.1 excludes, restricts or modifies, if relevant:
- (a) the application of any consumer guarantee in the Australian Consumer law ('**Consumer Guarantee**') or any similar provision in the law of any State or Territory that cannot be excluded, restricted or modified (Similar or other Provision);
 - (b) the exercise of any right conferred by a Consumer Guarantee or Similar or other Provision; and/or
 - (c) Premium's liability under any Consumer Guarantee or Similar or other Provision.

- 8.3. Where permitted and to the full extent permitted by law, Premium's liability under any Consumer Guarantee or Similar or other Provision is limited, at Premium's option, to:
- (a) in the case of goods, the repair or replacement of those goods, the supply of equivalent goods, the payment of the cost of repairing or replacing the goods or acquiring equivalent goods; and
 - (b) in the case of services, supplying those services again, or paying the cost of having the services supplied again.

9. Notification of Material Circumstance

- 9.1. Subject to clause 9.2, the Customer must notify Premium in writing within seven (7) days of:
- (a) any alteration of the name, ownership or senior management of the Customer or its business name; and/or
 - (b) the appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 9.2. The Customer will remain liable to Premium for all Premium Products supplied to the new owner of the Customer's business by Premium which were ordered by the Customer.

10. Default

- 10.1. If the Customer:
- (a) defaults in making any payment or performing any other obligation under any Agreement;
 - (b) falsely represents any matter or breaches any provision of any application for credit to Premium;
 - (c) commits an act of bankruptcy or insolvency or passes a resolution for winding up or to appoint an administrator or an application is made for its winding up or convenes a meeting of creditors or enters into any arrangement with its creditors or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally;
 - (d) has a liquidator, administrator, receiver or manager or similar functionary appointed to itself or its assets;
 - (e) has a secured party take possession of any of its property for the purpose of the PPSA or otherwise; and / or
 - (f) has execution of legal process issued against itself or its property that is not satisfied or stayed within fourteen (14) days;
- then, without prejudice to Premium's other rights, Premium may in respect of any Agreement:
- (g) treat the deposit as forfeited by the Customer;
 - (h) suspend the further supply of Premium Products;
 - (i) require all amounts payable to Premium, whether or not due for payment, to be immediately payable;
 - (j) recover possession of Premium Products;
 - (k) charge the Customer interest on any amount outstanding at the rate prescribed from time to time under the Penalty Interest Rates Act 1983 (Vic) plus 2 per cent calculated daily on any overdue amount;
 - (l) cancel or change the terms of payment before supply of any Premium Products to the Customer;
 - (m) exercise any rights under the Security of Payment Act;
 - (n) terminate any Agreement immediately by written notice to the Customer; and/or
 - (o) charge the Customer for all reasonable loss, cost and expense (including suspension costs, debt collection costs and legal costs on an indemnity basis) incurred resulting from the default or any other matter in this clause 6.1 in relation to the exercise of Premium's rights against the Customer ('**Recovery Costs**').

- 10.2. [**Order of Payments**] Any payments received from the Customer will be applied first to satisfy accrued interest, next to Recovery Costs and then to other amounts outstanding.

11. Dispute Resolution

If there is a dispute:

- (a) Either party may notify details to the other;
- (b) The parties must conduct good faith discussions within 21 days of the notification to endeavour to resolve the dispute;
- (c) If the dispute remains unresolved, either party may refer the dispute to the Resolution Institute for mediation under its rules, and request the Resolution Institute to appoint a mediator if they cannot agree on a mediator within 5 Business Days;
- (d) The costs of the reference to Resolution Institute will be shared equally; and

- (e) This clause does not prevent either party from taking any legal action if urgent relief is required or Premium considers it necessary.

12. Miscellaneous

- (a) If the Customer consists of two (2) or more legal persons, the Agreement binds each of them jointly and severally.
- (b) The Agreement will be governed by and interpreted according to the laws of Victoria. Premium and the Customer consent and submit to the non-exclusive jurisdiction of the Courts of Victoria.
- (c) Premium's failure to enforce any of provision of the Agreement will not be construed as a waiver of its rights.
- (d) A notice must be in writing and may be delivered, sent by email, facsimile or pre-paid mail, or the last known address of the addressee. Notices sent by email or facsimile are deemed received on sending of the email (unless the sender promptly receives an email message that the email could not be delivered to the addressee) or on confirmation of successful transmission by facsimile.
- (e) A reference to 'any Agreement' means all Agreements, or any of them.
- (f) Headings and marginal notes are for convenient reference only and do not affect interpretation.
- (g) A reference to the singular includes the plural and vice versa.
- (h) No rule of construction applies to the disadvantage of Premium because it was responsible for the preparation of these Terms or the Agreement or any other document between the parties.
- (i) Premium may amend these Terms at any time and the Terms (as amended) will apply to any subsequent Agreement between the Customer and Premium.

13. Interpretation

In these Terms unless the context indicates otherwise:

'**Business Day**' means any day except for public holidays and weekends;

'**Customer**' means the person acquiring Premium Products from Premium, and the person's successors;

'**Financing change statement**' has the meaning given to it by the PPSA;

'**Financing statement**' has the meaning given to it by the PPSA;

'**Force Majeure Event**' means any of the following:

- acts of God, earthquake, fire, flood, storm;
- war, riot, insurrection, terrorism, vandalism or sabotage;
- strikes, labour disputes and other forms of industrial disturbance;
- explosion;
- power shortage, breakdown of plant, machinery of equipment;
- unanticipated shortage of labour and / or goods; and / or
- anything beyond the control of Premium;

'**goods**' means any good, including parts and materials;

'**PPSA**' means *Personal Property Securities Act (Cth) 2009*;

'**Intellectual Property**' means all inventions, know-how, patents, patent applications, registered and unregistered trademarks, services marks, registered and unregistered designs, copyright and all other rights resulting from intellectual activity in, but not limited to, the industrial, scientific, literary or artistic fields;

'**Premium Products**' means shower screens, mirrors, splashbacks, wardrobes, accessories and other products and services supplied and/or installed by Premium;

'**Security Agreement**' means the security agreement under the PPSA created between the Customer and Premium;

'**Security interest**' has the meaning given to it by the PPSA;

'**Security of Payment Act**' means the *Building and Construction Industry Security of Payment Act (Vic) 2002* or similar legislation applicable in other jurisdictions;

'**Specification**' means Premium's Specification set out in these Terms below;

'**Supplier**' means Premium Victoria Pty Ltd (ACN 091 178 737) its successors and assigns;

'**Warranty Terms**' means the Premium Victoria Pty Ltd Warranty Terms made available by Premium to the Customer.

SPECIFICATION

1. [**Built-in-Wardrobes**] Unless otherwise specified by Premium:
- 1.1 No floor or backing board is included;
 - 1.2 All shelving will be standard 445 mm deep;

1.3 All side walls and shelving will be white melamine;

1.4 No painting or staining of doors, shelving or side walls is included.

2. **[Splashbacks]** Splashbacks may need to be split into smaller sizes to accommodate manual handling restrictions.

3. Manufacturing by Premium meets the requirements of applicable current Australian Standards.