

The Grout Guy terms and conditions

1 Definitions

1.1 In these terms and conditions:

- (1) **Customer** means the person purchasing the goods and/or services upon these terms and conditions and any entity acting on behalf of or with the authority of the Customer; and
- (2) **Supplier** means The Grout Guy Pty Ltd trading as The Grout Guy and any related body corporate of the Supplier within the meaning of section 50 of the *Corporations Act 2001* and any successor or assignee.

2 Binding terms and conditions

2.1 The only terms which are binding upon the Supplier are:

- (1) those set out in these terms and conditions or otherwise agreed to in writing by the Supplier; and
- (2) those, if any, which are imposed by law and which cannot be excluded.

3 Price

3.1 Any prices shown in the Supplier's quotations are valid for 90 days from the date of the quotation and are otherwise subject to alteration without notice at the Supplier's sole discretion.

3.2 Any variations to the prices shown in the Supplier's quotation and/or of the goods and/or services to be supplied must be agreed in writing.

4 Goods and services tax

4.1 In this clause 4:

- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations; words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires; and
- (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;

4.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of these terms and conditions for any supply made under or in connection with these terms and conditions (including the price at which the goods and/or services are sold) does not include GST.

4.3 To the extent that any supply made under or in connection with these terms and conditions (including the supply of the goods and/or services) is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

5 Acceptance

5.1 The Customer must inspect the goods and/or services immediately upon completion and must within 7 days after the date of inspection give written notice to the Supplier, with particulars, of any claim that the goods and/or services are not in accordance with the contract. If the Customer fails to give that notice, then to the extent permitted by statute the goods and/or services must be treated as having been accepted by the Customer and the Customer must pay for the goods and/or services in accordance with the provisions of these terms and conditions.

6 Payment

6.1 Payment for goods and/or services sold by the Supplier to the Customer must be tendered in full no later than the date of sale or as otherwise specified by the Supplier.

6.2 Payment must be treated as made:

- (1) if cash, direct credit or credit card is tendered – on the date it is tendered; and
- (2) if a cheque or other negotiable instrument is tendered – on the date upon which the cheque or other negotiable instrument is negotiated and cleared by the Supplier's bankers.

6.3 Time is of the essence in respect of the Customer's obligation to make payment for goods and/or services sold by the Supplier to the Customer.

6.4 If the Customer defaults in making payment to the Supplier in accordance with these terms and conditions the Supplier may in its absolute discretion:

- (1) charge the Customer interest calculated on the portion of the Customer's account overdue at the rate of 2% per month from the date on which the default arose; and
- (2) require the Customer to reimburse the Supplier for all collection costs including legal costs incurred by the Supplier calculated on a solicitor and client basis as a consequence of the Supplier instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Supplier in its discretion decides.

6.5 Any payments tendered by the Customer to the Supplier must be applied as follows:

- (1) first as reimbursement for any collection costs incurred by the Supplier in accordance with clause 6.4(2);
- (2) secondly, in payment of any interest charged to the Customer in accordance with clause 6.4(1); and
- (3) thirdly, in satisfaction or part satisfaction of the oldest portion of the Customer's account.

6.6 If the Customer cancels or otherwise does not complete an order for goods and/or services, the Supplier may retain the deposit at its discretion.

7 Cancellation fee

7.1 If the Customer cancels an appointment for the Supplier to provide goods and/or services within 24 hours of the scheduled appointment, a cancellation fee of \$220 inclusive GST will be payable by the Customer to the Supplier regardless of the reason for the cancellation.

8 Warranties, exclusions and limitations

8.1 The Supplier warrants a full shower re-grout will stay waterproof for a period of 10 years from the date of service on the terms and conditions set out in the Supplier's warranty document.

8.2 The only other conditions and warranties which are binding on the Supplier in respect of:

- (1) the state, quality or condition of the goods and/or services supplied by it to the Customer; or
- (2) advice, recommendations, information or services supplied by it, its employees, servants or agents to the Customer regarding the goods, their use and application;

are those imposed and required to be binding by statute.

8.3 To the extent permitted by statute the liability, if any, of the Supplier arising from the breach of the conditions or warranties referred to in clause 8 is, at the Supplier's option, limited to and completely discharged:

- (1) in the case of the goods, by either:
 - (a) the supply by the Supplier of equivalent goods; or
 - (b) the replacement by the Supplier of the goods supplied to the Customer; and
- (2) in the case of advice, recommendations, information or services, by supplying the advice, recommendations, information or services again.

8.4 Except as provided in this clause 8 all conditions and warranties implied by law in respect of the state, quality or condition of the goods and/or services which may apart from this clause be binding on the Supplier are excluded.

8.5 The Customer acknowledges that the Customer does not rely and it is unreasonable for the Customer to rely on the skill or judgment of the Supplier as to whether the goods supplied are reasonably fit for any purpose for which they are being acquired, and that the sale is not a sale of goods by description or sample. Whilst the Supplier will endeavour to ensure that the colour and texture of the grout supplied will match any description or sample that may be provided, it does not warrant that it will be an exact match.

8.6 Except to the extent provided in this clause 8 the Supplier has no liability (including liability in negligence) to any person for:

- (1) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the goods or advice, recommendations, information or services; and
- (2) in particular without limiting clause 8.6(1) any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the goods or advice, recommendations, information or services.

8.7 If the Supplier replaces any tiles or other items, whilst it will endeavour to ensure that any replacement items will be an exact match to the existing item with respect to colour and texture, it does not warrant that such replacement item will be an exact match.

8.8 The Supplier will have no liability to the Customer whatsoever if the Customer has not paid the Supplier for the relevant goods and/or services.

9 Indemnity

9.1 The Customer indemnifies the Supplier, regardless of any negligence on the part of the Supplier, against:

- (1) all losses incurred by the Supplier;
- (2) all liabilities incurred by the Supplier; and
- (3) all costs actually payable by the Supplier to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by the Supplier in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

arising directly or indirectly as a result of or in connection with the supply of goods and/or services by the Supplier to the Customer unless caused by wilful misconduct on the part of the Supplier or any of its employees or agents acting within the scope of their employment.

9.2 The Customer must pay to the Supplier all liabilities, costs and other expenses referred to in clause 9.1, whether or not the Supplier has paid or satisfied them.

10 Privacy

10.1 Where goods are supplied to the Customer on credit the Customer irrevocably authorises the Supplier, its employees and agents to make such enquiries as it considers necessary to investigate the credit worthiness of the Customer including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Customer or any other credit providers (**Information Sources**) and the Customer authorises the Information Sources to disclose to the Supplier all information concerning the Customer which is within their possession and which is requested by the Supplier.

11 Entire understanding

11.1 These terms and conditions are the entire agreement and understanding between the Supplier and the Customer on everything connected with the subject matter of these terms and conditions.

12 Governing law and jurisdiction

12.1 The law of the State or Territory where the Supplier supplies the goods and/or services to the Customer governs these terms and conditions.

12.2 The parties submit to the non-exclusive jurisdiction of the courts of the State or Territory where the Supplier supplies the goods and/or services to the Customer and of the Commonwealth of Australia.