

NETAFIM AUSTRALIA PTY LTD TERMS AND CONDITIONS

- DEFINITIONS**

GST means Goods and Services Tax payable pursuant to the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time);
Insolvency Event means the happening of any of the following events in relation to the Reseller:

 - being a company, the appointment of an administrator or controller (within the meaning of section 9 of the Corporations Act 2001 (Ch1)) or receiver or provisional liquidator or liquidator over the relevant company, the directors of the relevant company resolving that the company be wound up, the making of an order of a Court that the company be wound up or the company being deregistered for any reason or anything analogous to or having a similar effect under the law of any relevant jurisdiction; or
 - being an individual, the appointment of a trustee or controlling trustee (within the meaning of the Bankruptcy Act) over the affairs of the person, or the person being an insolvent under administration (as defined under the Corporations Act 2001 (Ch1));
Reseller means the business, company or entity, jointly and severally if there is more than one, acquiring Supplies from the Seller;
Seller means Netafim Australia Pty Ltd ACN 056 229 755; and
Supplies means the goods or services ordered by the Reseller and confirmed in the Order Confirmation by the Seller (as defined below).
- BASIS OF CONTRACT**

The Seller will supply the Supplies to the Reseller subject to these Terms and Conditions unless otherwise specifically agreed in writing between Seller and the Reseller. These Terms and Conditions apply to the exclusion of any other agreement or conditions of purchase or other terms that the Reseller may submit with an Order (as defined below) or otherwise to the Seller.
- ORDERING OR SUPPLIES**

The Reseller will order Supplies from the Seller as follows:

 - Price List: The Seller will provide to the Reseller a Price List from time to time setting out the Supplies that the Seller is willing to supply to the Reseller ("Price List").
 - Quotation: The Reseller may seek a quotation from the Seller in respect of specific orders of Supplies from the Seller ("Quotation"). If the Seller agrees to provide a Quotation to the Reseller, the Quotation will be valid for a period of 60 days unless specified otherwise in the Quotation or withdrawn prior by the Seller.
 - Custom Products: The Reseller may request that the Seller manufacture, or arrange for the manufacture, of Supplies not in the Price List pursuant to specifications provided by the Reseller ("Custom Products"). The Reseller will request a Quotation from the Seller for Custom Products.
 - Order Form: Based on the information set out in either a Price List or a Quotation, the Reseller will issue an order form to the Seller by fax or email setting out the Supplies that the Reseller wishes to order including details of the number of units and the parts or products to be ordered and any other specific details in respect of the Supplies ("Order Form"). The Order Form must specify the preferred date for delivery of the Supplies ("Delivery Date"). The Delivery Date must be a date less than 60 days from the date of the Order Form. In the event that the Reseller requests a Delivery Date longer than 60 days, the Seller may only agree to any such requests in writing on a case by case basis. The Order Form must be dated and signed by a duly authorised representative of the Reseller who is able to bind the reseller.
 - Order Confirmation: The Seller reserves the right, at its sole discretion, to accept or reject any Order Form in part or in its entirety. If the Seller decides to accept an Order Form in its entirety, the Seller will issue in writing to the Reseller a confirmation ("Order Confirmation"). Once the Order Confirmation has been issued by the Seller to the Reseller, the Reseller will be deemed to have placed an order for the Supplies ("Order") and the Reseller must accept delivery of the Supplies subject to these Terms and Conditions.
- PRICE**
 - Unless otherwise agreed in writing, the price payable for the Supplies shall be the price set out in the Order Confirmation. Following delivery of the Supplies the Seller will issue an invoice to the Reseller setting out the amount payable by the Reseller for the Supplies ("Invoice").
 - The price for the Supplies excludes GST.
 - In addition to the price payable under clause 4(a), the Reseller, upon provision of an Invoice by the Seller, must pay to the Seller any GST payable by the Seller in respect of any taxable supply made by the Seller under these Terms and Conditions.
 - Orders of less than \$500 do not include the costs of insurance, delivery, carriage, packaging and any other expense incurred in delivering the Supplies to the Reseller. Such additional costs will be advised to the Reseller.
 - Notwithstanding clause 4(f), all orders of Low Density Polyethylene (LDPE) pipe will be subject to separate insurance, delivery, carriage, packaging arrangements and ordering minimums as notified by Netafim to Resellers from time to time.
 - Where there is any change in the costs incurred by the Seller in relation to the Supplies, the Seller may vary its prices for the Supplies in order to take account of any such changes. The Reseller will be notified of such changes to the prices for the Supplies and the Reseller may terminate an Order within 2 business days of being notified of the price changes if the Reseller does not accept the changes to the prices.
- PAYMENT TERMS - CREDIT FACILITY**
 - The Reseller must pay each invoice in full within 30 days from the date in which the Invoice was issued.
 - Payment must be made either by cash, credit card or direct deposit or as otherwise specified by the Seller. All credit card payments attract a 2% credit card surcharge.
 - The Seller may transfer or assign any amount owing to the Seller by the Reseller to any third party without the prior notification or approval of the Reseller.
- PAYMENT DEFAULT**
 - If the Reseller defaults in payment by the due date of any amount payable to the Seller or an Insolvency Event occurs in respect of the Reseller, then all money which would become payable by the Reseller to the Seller at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Reseller, and the Seller may, without prejudice to any other remedy available to it:
 - charge the Reseller interest on any money overdue during the period of the default at the rate that is 2%;
 - per annum higher than the rate fixed as at the date of the default under Section 2 of the Penalty Interest Rates Act 1983 (Vic) for the period from the due date until the date of payment in full;
 - charge the Reseller for all expenses and costs (including legal costs on a full indemnity basis) reasonably incurred by the Seller resulting from the default and in taking whatever action it deems necessary to recover any sum due;
 - take all necessary action in respect of the Supplies in accordance with clause 10;
 - cease or suspend for such period as the Seller thinks fit, supply of any further Supplies to the Reseller; or
 - terminate any contract or Order with the Reseller so far as unperformed by the Seller, without effect on the accrued rights of the Seller under any contract.
 - The Seller reserves the right, at any time and in its absolute discretion, to withdraw credit facilities or impose conditions on them.
- RISK AND INSURANCE**

The risk in the Supplies and all insurance responsibility for theft, damage or otherwise in respect of the Supplies will pass to the Reseller immediately upon despatch of the Supplies from the Seller's premises.
- NO SET OFF**

The Reseller shall pay any moneys owing to the Seller under these terms in full, and shall not set off such moneys against debts or liabilities owed or allegedly owed by the Seller to the Reseller.
- DELIVERY AND QUALITY OF SUPPLIES**
 - The Seller will deliver the Supplies to the Reseller CIP (Incoterms 2000) to the delivery location agreed by the Seller and set out on the Order Confirmation.
 - All Supplies delivered by the Seller to the Reseller shall be deemed to have been received by the Reseller as soon as the delivery docket has been signed by the Reseller, their carrier or agent.
 - Under no circumstances shall the Seller be liable for any loss or damage suffered by the Reseller as a result of any late delivery or non-delivery of any supplies.
 - Any period or date for delivery of the Supplies stated by the Seller is intended as an estimate only and is not a contractual commitment. The Seller will use reasonable endeavours to meet any estimated dates for delivery of the Supplies.
- RETENTION OF TITLE AND SECURITY**
 - For the purposes of this clause, "PPSA" means the Personal Property Securities Act 2009 (Ch1) and all regulations made under that Act. All references to sections are to sections of that Act.
 - The Reseller acknowledges and agrees with the Seller that:
 - these Terms and Conditions constitute a security agreement for the purposes of PPSA;
 - the Seller may at its discretion register a financing statement in respect of any security interest created by these Terms and Conditions; and
 - a security interest is taken in all Supplies previously supplied by the Seller to the Reseller (if any) and all Supplies that will be supplied in the future by the Seller to the Reseller

during the continuation of the parties relationship.

The Reseller undertakes to:

- sign any and all further documents and provide any and all further information, such information to be complete, accurate and up to date in all respects, which the Seller may reasonably require to register a financing statement or a financing change statement on the Personal Property Securities Register established under the PPSA; indemnify and upon demand reimburse the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any property charged thereby;
 - not register a financing change statement or an amendment demand in relation to any security interest created by these Terms and Conditions without the prior written consent of the Seller; and
 - give the Seller not less than fourteen (14) days prior written notice of any proposed changes in the Reseller's name or any other change in the Reseller's details.
- The Reseller and the Seller agree that to the extent mentioned by section 115(a)-(r) of the PPSA, they agree to contract out of each of the provisions of the PPSA listed in section 115(a)-(r) of the PPSA and the Reseller hereby waives its rights under each of the sections of the PPSA referred to in those sections.
 - The Reseller unconditionally ratifies any actions taken by the Seller under clauses 10(a) to 10(d).
 - Notwithstanding delivery of the Supplies to the Reseller, all right title and interest in the Supplies remains with the Seller until the Reseller has made full payment to the Seller of all and any amounts due and payable to the Seller by the Reseller ("Outstanding Amount").
 - If the Supplies are re-sold prior to payment to the Seller of the Outstanding Amount, the Reseller holds the proceeds from the sale of Supplies on trust for the Seller. Where the Reseller has mixed or used the Supplies and other materials to create other Supplies, all right title and interest in those other Supplies shall immediately pass to the Seller until the Reseller has made full payment to the Seller of the Outstanding Amount.
 - The Reseller shall keep the Supplies or goods constructed from the Supplies in a fiduciary capacity as bailee for the Seller. The Seller hereby grants a licence to the Reseller to dispose of the Supplies in the normal course of the Resellers' business.
 - Until the date of full payment of the Outstanding Amount the Reseller must store the Supplies clearly identified as the property of the Seller and if requested, must supply, within the time specified by the Seller, an inventory of all Supplies in the Reseller's possession. The Reseller must allow any representative of the Seller access to its premises to conduct any stocktake of its Supplies without notice.
 - In the event of a default by the Reseller in respect of any of the terms of these Terms and Conditions including the payment of any Outstanding Amount under these Terms and Conditions, the Seller has the right (without giving notice) to retake possession of the Supplies and the Reseller authorises the Seller or its representative, servant, agent or employee to enter the Reseller's premises upon which the Supplies are housed or stored for the purpose of retaking possession of same. The Seller is not liable for any cost, losses, damages, expenses or other moneys incurred or lost by the Reseller as a result directly or indirectly of the Seller retaking possession of the Supplies. In the event the Seller retakes possession of the Supplies the Seller is entitled to sell the Supplies free of any claim from the Reseller.
- SUITABILITY OF SUPPLIES**
 - Any description of Supplies given by the Seller is for the purposes of identification only and the Reseller acknowledges that any sale of Supplies under these terms is not a sale by description.
 - The Reseller acknowledges that it relies entirely upon its own knowledge, skill and judgment and that of its agents and employees in selecting and ordering Supplies from the Seller. The Seller will not provide any advice, express or implied, as to whether particular Supplies are fit for any purpose, unless expressly agreed in writing signed by the Seller.
- WARRANTIES & GUARANTEES**
 - The Seller will provide to the Reseller the Netafim Product Warranty document (as amended from time to time). The warranty is available on our website at www.netafim.com.au.
 - The Reseller must provide a Netafim Product Warranty document to a customer for any subsequent sales over \$5,000 (AUD) or as otherwise instructed by the Seller or required by any State or Federal legislation.
 - Subject to any State or Federal legislation, the Reseller will not, without the Seller's prior written consent, give any customer which the Reseller sells Supplies to any express warranties or instruction of use in respect of Supplies which are in addition to those set out in the Netafim Product Warranty document or instructions of use provided by the Seller without the Seller's prior written consent.
 - The Reseller must comply with any State or Federal legislation in providing guarantees or warranties to a customer and with any other applicable laws.
 - Supplies must be used, handled and assembled with due care and in compliance with any instructions given by the Seller and/or the manufacturer otherwise the warranty on the Supplies may be void.
 - Any change or modification made by the Reseller to the Supplies without the prior written consent of the Seller is at the Reseller's sole risk and voids all Seller's warranties.
- LIMITATION OF LIABILITY**
 - Subject to any State or Federal legislation, at the Seller's sole discretion the Seller's obligations to the Reseller in respect of a breach of any of these Terms and Conditions (whether implied by statute or otherwise) shall be limited to a refund, credit note, repair or the replacement of the Supplies.
 - Subject to any State or Federal legislation, the Seller will not be liable to the Reseller or any other persons under any circumstances for any direct, incidental or consequential loss or damage (including loss or damage caused by negligence or willful acts of default of the Seller, or its employees or agents) whatsoever arising from a breach of any of these Terms and Conditions or any other statutory implied warranty, term or condition in relation to the Supplies.
 - Subject to any State or Federal legislation, the Seller will not be liable for any costs, claims, damages or demands arising from personal injury, loss or damage to Supplies whatsoever occurring to the Reseller or its employees or agents by reason of:
 - the Supplies or their design, production or processing;
 - the loading and delivery of the Supplies or any failure to deliver or delay in delivering the Supplies;
 - any act or omission of the Seller or its servants and agents; or
 - any statement or representation made by an employee or agent of the Seller in respect of the Supplies.
 - In no case shall the Seller be liable for consequential loss or damage.
 - Subject to any State or Federal legislation, except as specifically set out in these Terms and Conditions and any Netafim Product Warranty document (as amended from time to time), any warranty in respect of the Supplies is hereby expressly excluded to the maximum extent permitted.
 - Subject to any State or Federal legislation, replacement, repair or refund of the Supplies is the absolute limit of the Seller's liability whatsoever arising under or in connection with the description, quality, condition, performance, assembly, manufacture, design, merchantability or fitness for purpose of the Supplies or alternatively the sale, use, storage or any other dealings with the Supplies by the Reseller.
 - The Seller will not be liable for any loss or damage suffered by the Reseller where the Seller has failed to meet any delivery date or cancels or suspends the supply of Supplies.
 - Nothing in these Terms and Conditions is to be interpreted as excluding, restricting or modifying, or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable, including the Australian Consumer Law (set out in Schedule 2 of the Competition and Consumer Act 2010 (Ch1)) ("CCA"), to the sale of Supplies which cannot be excluded, restricted or modified.
- INDEMNITY**

The Reseller will at all times indemnify the Seller, and the Seller's officers, employees and agents ("those indemnified") from and against any loss (including legal costs and expenses) or liability, suffered or incurred by any of those indemnified arising from any claim against those indemnified where the claim is referable to:

 - a breach by the Reseller of its obligations under these Terms and Conditions, the CCA or a breach of the Reseller's obligations to the customer which the Reseller sells the Supplies to;
 - any willful, unlawful, or negligent act or omission of the Reseller; or
 - loss or damage of a type for which the Seller would not have been liable to the Reseller had a claim for Defective Supplies (as defined below) been made by the Reseller under these Terms and Conditions.
- TERMINATION**
 - The Seller may terminate any Order immediately by notice in writing ("Notice"); if the Reseller is in breach of any term of these Terms and Conditions and the Buyer does not remedy any breach within five (5) days of receiving written notification;
 - if an Insolvency Event occurs in relation to the Reseller;

- if the Reseller, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
 - if the Reseller is a company, there is a change in control of the board of directors or the shareholders of the Reseller; or
 - if the Reseller ceases or threatens to cease conducting its business in the normal manner.
- If Notice is given to the Reseller, the Seller may in addition to terminating any Orders or other agreements:
 - repossess the Supplies from the Reseller for which payment has not been received;
 - retain any monies paid by the Reseller, and set those off against any Outstanding Amounts;
 - be regarded as discharged from any further obligations under these Terms and Conditions; and
 - purse any additional or alternative remedies provided by any State or Federal legislation.
 - Subject to any State or Federal legislation, the Seller may also terminate any Order for any other reason determined by the Seller provided that 30 days written notice is given to the Reseller.
- CANCELLING AN ORDER & RETURNS**
 - Subject to clause 16(b), the Reseller may cancel an Order at any time upon written notification to the Seller.
 - Where an Order has been placed by a Reseller and the Seller has issued an Order Confirmation, the Reseller may not cancel an Order without prior written approval of the Seller (at the Seller's absolute discretion) in the following circumstances:
 - the Supplies have been despatched by the Seller;
 - in the case of Custom Products, the Supplies have been manufactured or part manufactured; or
 - the Order has a total value greater than \$20,000 (AUD).
 - The Seller shall accept the return of any Supplies, other than Custom Products or where the Order has a value greater than \$20,000 (AUD), within 3 months of the date of the Invoice ("Returned Supplies"). For the avoidance of doubt, only Supplies listed in the Price List may be returned in accordance with this clause 16(c).
 - Returned Supplies must be in marketable condition as determined by the Seller at its sole discretion ("Marketable Condition"). The Reseller must pay for the return of the Returned Supplies to the Reseller. If the Seller reasonably considers that Returned Supplies are not in a Marketable Condition, the Seller is not obligated to keep the Supplies and the Reseller must pay for the Returned Supplies return delivery costs to the Reseller.
 - Returned Supplies will be subject to a 15% restocking fee from the amount of the Invoice ("Restocking Fee"). The Reseller will be credited to their account an amount equal to the Invoice less the Restocking Fee and less original freight charges.
 - The Seller shall not be obliged to accept the return of any Supplies after 3 months from the date of the Invoice, but may, in its absolute discretion, accept the return of Supplies after 3 months from the date of the Invoice on whatever conditions the Seller thinks fit.
 - The Reseller must inspect the Supplies and advise the Seller within 14 days of delivery if Supplies supplied were not ordered, are not of merchantable quality or not fit for the purpose required ("Defective Supplies"). After the 14 day period, return of Defective Supplies will be in accordance with any State or Federal legislation.
 - The Seller will accept return of Defective Supplies and will provide a refund for the invoice price. The Reseller must comply with any return procedures of the Seller.
 - If the Seller reasonably considers that Supplies returned by the Reseller are not Defective Supplies, the Reseller must pay for their return to the Reseller and the Seller is not obligated to keep the Supplies.
 - Under no circumstances will the Seller accept return of Custom Products unless they are deemed to be Defective Supplies.
 - Under no circumstances must the Reseller sell Defective Supplies.
- POTENTIAL CLAIMS**

If there is any claim or likely claim against the Seller in respect of the Supplies which comes to the Reseller's attention (other than a claim by the Reseller against the Seller), the Reseller will immediately inform the Seller providing full details of the claim or likely claim.
- RESALES**

The Seller may set out or refer to a recommended retail price for Supplies. In such a case, the price set out or referred to is a recommended price only and there is no obligation for the Reseller to comply with the recommended retail price.
- FORCE MAJEURE**

If as a direct or indirect result of natural disaster, industrial dispute, accident, government restriction, war, civil disturbance or any other cause, of whatever nature, outside of the Seller's control the Seller is unable to perform its obligations under these Terms and Conditions, the Seller is released from those obligations to the extent of such inability, and the Reseller shall not be entitled to claim compensation for any such failure by the Seller to perform its obligations.
- WAIVER**

Failure by the Seller to enforce any of these terms in respect of any breach by the Reseller shall not be construed as a waiver of any of the Seller's rights or a waiver of the Seller's right to enforce the term in respect of that breach in the future. The only persons authorised to waive a breach by the Reseller are the Managing Director or Chief Financial Officer of the Seller and the Reseller shall not seek to rely upon a waiver purportedly given on behalf of the Seller by any other person.
- GOVERNING LAW**

These terms shall be governed by and construed in accordance with the laws in force in Victoria, Australia and the Reseller submits to the jurisdiction of the courts of Victoria, Australia.
- SEVERANCE**

If any provision of these Terms and Conditions are contrary to any State or Federal legislation (for example by being illegal, void or unenforceable) that provision shall be read down to the extent necessary to become valid and enforceable or, if this is not possible, shall be deemed to be severed from these Terms and Conditions, without affecting the remaining provisions of these Terms and Conditions.
- ASSIGNMENT AND NOVATION**

Any rights and benefits arising from these Terms and Conditions must not be assigned by the Reseller without the Seller's prior written consent. Subject only to notice being given to the Reseller, the Reseller consents to the assignment or novation of these Terms and Conditions by the Seller.
- INTELLECTUAL PROPERTY**
 - All intellectual property (including without limitation any trade marks (registered or unregistered), designs, layouts and confidential information copyright in all plans, drawings, designs and text) which are disclosed to the Reseller by the Seller shall be solely owned by the Seller and shall be delivered up to the Seller by the Reseller immediately on the Seller's request. The Reseller acknowledges that no intellectual property licence is granted by these Terms and Conditions, except and only to the extent necessary to enable the Reseller to resell the Supplies.
 - The Reseller is prohibited from reverse engineering any of the Supplies.
 - The Reseller will immediately notify the Seller of any actual or potential infringement of the Seller's intellectual property rights which comes to the Reseller's attention.
- CONFIDENTIAL INFORMATION**

The Reseller shall treat all information disclosed to it by or on behalf of the Seller, or acquired by the Reseller concerning the Seller or the Supplies as the Seller's confidential information and shall not use or disclose the same except:

 - to the extent necessary in order to make effective use of the Supplies;
 - to obtain professional advice concerning these Terms and Conditions;
 - to the extent disclosure is required by any State or Federal legislation; or
 - to the extent any relevant information shall become public knowledge other than through the Reseller's act or omission.
- RESSELLER WARRANTY**

The Reseller warrants that it has acted reasonably and in good faith to the Seller in disclosing to the Seller, prior to signing these Terms and Conditions, all information which may have materially affected the Seller's agreement to supply the Supplies to the Reseller on these Terms and Conditions. The Reseller Warranty is available on Netafim's website www.netafim.com.au.

