

TERMS AND CONDITIONS OF TRADE
LUCINO BENCHTOPS

1 Definitions

Customer and you means the person(s) stated as the Customer in the Quote.

Completion Date means the date when we expect the Services will be completed, subject to extensions of time, as stated in the Quote.

Goods means the goods described on the Quote.

Guarantor means the person (or persons) who agrees to be liable for the Customer's debts in under these terms.

Including does not imply limitation.

Quote means any invoice, letter, quotation, or any other work authorisation describing the Goods and the Services.

Price means the price for the Goods and Services calculated in accordance with the Quote, subject to any adjustments under these terms.

Services means all services supplied by the Supplier to the Customer and includes the installation work stated in the Quote (subject to consents and Variations) at the Site.

Site means the site address at which the Work is to be carried out, as stated in the Quote.

Supplier and we means Lucino Benchtops, its subsidiaries, operating divisions, successors and assigns.

Start Date means the expected start date when we expect the Services will commence on Site, as stated in the Quote.

Variation means a variation to the Work under section 11.

Work means the Goods and Services supplied by the Supplier.

Working Day has the meaning given in the Construction Contracts Act 2002.

2 Acceptance

2.1 These terms are the terms between us, the Supplier of goods and services, and you, the Customer and apply to all Goods and Services provided by us to you from time to time (unless otherwise agreed in writing). Any instructions by you to us for the supply of Goods or Services is acceptance by you of these terms.

2.2 These terms and the Quote are an entire agreement between us and you. No representation or statement not expressly stated in writing by the Supplier's manager is binding on the Supplier.

3 Quotes

3.1 A Quote is based on our current costs of labour, overheads and materials from suppliers. Any Quote only remains valid for acceptance or 28 days unless formally accepted by you within that time. The Price will be held for this 28-day period. If you accept the Quote after that period, any increase in costs after the Quote expired will be passed on to you.

3.2 Any drawings or details we submit with a Quote are for the purposes of providing the Quote only and do not form part of a contract between us.

3.3 All Quotes are GST exclusive and GST will be added to the prices quoted.

4 Payment

4.1 Time for payment for the Goods is of the essence and will be stated on the Quote. If no time is stated, then payment is due in full at the time of delivery of the Goods.

4.2 The Supplier may allow, at its sole discretion, certain approved Customers to pay on the 20th of the month following the date of an invoice.

4.3 Appliances must be paid for in full at time of confirmation deposit so that ordering can take place. If appliances are paid for with a Visa or Mastercard, a 2.5% transaction fee applies. We are unable to accept American Express or Diners card payments.

4.4 Any deposit paid will be applied towards payment of the final invoice. If the final invoice is less than the deposit, we will refund the balance to you. If the Quote provides for a deposit, and the deposit is not paid in full when required, we may at our option, without further notice suspend and/or cancel the contract for the Work, without prejudice to any other rights or remedies.

5 Delivery of Goods

5.1 Delivery of Goods shall be made to the Site at your cost. You will make all arrangements necessary to take delivery of Goods whenever they are tendered for delivery, or the Goods shall be delivered to you at our address.

5.2 Where there is no agreement to send Goods to you, delivery to a carrier at limited carrier's risk at your cost is deemed to be delivery to you.

5.3 We may deliver Goods by instalments in accordance with an agreed delivery schedule. Each separate instalment shall be invoiced and paid for in accordance with these terms.

5.4 Failure to deliver Goods for any reason will not entitle you to treat this contract as repudiated.

5.5 If Goods are in possession of a third person at the date of this agreement, delivery does not occur until the third person acknowledges that Goods are being held on your behalf.

6 Risk

6.1 Risk in Goods passes on. You are responsible for insuring the Work and we may require that proof of such insurance is provided.

6.2 If Goods are damaged or destroyed before title passes, we are entitled to receive all insurance proceeds, without prejudice to any other rights or remedies (including the right to receive the balance of the Price, whether or not the Price has become payable. Producing these terms is sufficient evidence of our right to receive proceeds without the need for further enquiries. Insurance proceeds will be applied in payment of:

- (a) first, the Price of the relevant, if unpaid;
- (b) second, the outstanding Price of any other Goods;
- (c) third, any other sums payable to us by you on any account;
- (d) fourth, any balance is to be paid to you.

7 Inspection

7.1 The Customer must inspect Goods on delivery and notify the Supplier within 7 days of delivery of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. If the invoice for Goods or Services is, or is accompanied by, a payment claim under the Construction Contracts Act 2002, the timeframe for a payment schedule to be provided is within 7 days of receipt of the claim.

7.2 If the Customer does not notify any defect or provide a payment schedule, within the timeframe above, or does not give the Supplier an opportunity to inspect Goods within a reasonable time following delivery, the Customer is deemed to have accepted Goods, and Goods will conclusively be presumed to have been supplied in conformity with the Quote, free of any defect or damage.

7.3 Where Goods are second hand, you acknowledge you have had full opportunity to inspect Goods, you accept them with all faults, no warranty is given by us as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. We shall not be responsible for any loss or damage to Goods, or caused by Goods, or any parts however arising.

8 Timing of installation

8.1 We prepare drawings and documentation for the manufacture of your Goods when of the Quote is accepted and any deposit required in the Quote has been paid. We are entitled to rely on the accuracy of and are not obliged to check any plans, specifications or other information supplied. After site measurement we will supply you with copies of the prepared drawings and documentation.

8.2 Subject to receiving sufficient access to the Site, we will commence the Services on the Start Date and complete the Services by the Completion Date, subject to any extensions of time under clauses 8.3 and 8.4. If it is necessary to work outside ordinary working hours to meet your completion target or due to any other circumstances outside our control, you are liable for any extra cost incurred.

8.3 We are not liable for any delay in carrying out the Services due directly or indirectly to circumstances reasonably outside our control, including disputes with subcontractors, bad weather, force majeure, accidents, fire, shortage of labour and/or materials, labour disputes, variations, failure of suppliers to deliver, or acts of any government, territorial authority or similar body.

8.4 If an extension of time is required to the Completion Date due to any of the above reasons or any other reason beyond our reasonable control, we shall provide written notice to you of any such extension reasonably promptly after the delay becomes apparent, together with details of the new Completion Date.

9 Your responsibilities

9.1 You will give us access to the Site and proper facilities for carrying out the Services within a reasonable time after acceptance of the Quote or at a date notified by you and agreed by us in writing.

9.2 You must ensure that you have legal entitlement to the Site to allow the Services to be carried out, and must obtain all necessary consents for the Work (including for any Variations) and must obtain a code compliance certificate (if required) when the Work is complete. We may require you provide a copy of all consents before commencing the Work or any Variation. Where a consent is required and you failed to obtain it, we may apply for the consent as your agent and at your cost.

9.3 You must advise us of any particular hazards relating to the Site, and take all practicable steps to ensure your own safety throughout the Services and cooperate fully in implementing our health and safety and environmental policies and procedures.

9.4 If any materials, plant, and equipment required for Services expressed to be 'Customer supplied' or 'owner supplied', you must ensure that such

materials comply with the Building Code and are fit for purpose, and all plant and equipment complies with all health and safety legislation, codes and requirements, and sign a declaration and indemnity in a form required by us to this effect. For avoidance of doubt, any Customer-supplied or owner-supplied materials which are faulty do not constitute a defect in Work.

10 Our responsibilities

- 10.1 We will carry out the Services with reasonable skill and care, in accordance with the plans and specifications (if any), the Building Act 2004, the Building Code and any building consents issued in respect of the Work. We may sublet the whole or any portion of the Work, and will be responsible for the work of our subcontractors.
- 10.2 We will supply you with the current warranty provided by the manufacturer of Goods and are under no liability whatsoever except for the express conditions as detailed in the manufacturer's warranty.
- 10.3 To the maximum extent permitted by law, we do not warrant that repair facilities and parts will be available for Goods.
- 10.4 We are liable to repair any defective Goods and at our discretion may:
- (a) notify the manufacturers of Goods of any defect notified by the Customer; and
 - (b) request the manufacturers to repair or replace any defective Goods.
- 10.5 We will remedy any defect in Goods which you notify to us under clause 7, or, in respect of the Services which you notify to us in writing within 12 months of completion of Services (if section 362Q of Building Act 2004 applies) or within 7 days of completion of Services otherwise. Your notice must be sufficiently detailed to clearly identify what Goods or Services are claimed defective. We are not liable for any defect within reasonable tolerances, failure to achieve standards of finish or detail beyond what is required by the contract (subject to consents and Variations) and for any defect caused by or arising out of the actions of any person outside our control, for any faults in the performance or durability of materials supplied by you, fair wear and tear, or failure to maintain Goods.
- 10.6 We shall have a reasonable opportunity to rectify any defects in Goods or Services identified and you may not engage anyone else to rectify the defects until a reasonable time has elapsed and you have given us at least 5 Working Days' notice of your intention to engage someone else. If you engage someone else to rectify the defects when you are not entitled to do so, then without prejudice to our other rights and remedies, to the maximum extent permitted by law, we will be immediately discharged from any further obligation or liability in respect of the Work.
- 10.7 These terms do not limit implied warranties in s362I to s362K of the Building Act 2004.

11 Variations

- 11.1 You may request variations to the Work, but may not (unless otherwise agreed in writing) request a Variation omitting or reducing the Work to be performed. Except for the Variations in clause 11.2, all variations must be in writing and contain the following:
- (a) A description of the work required under the Variation;
 - (b) Any required amendments to the consents as issued or any additional approvals, consents or licences that will be required;
 - (c) Any agreed adjustment to the Price and/or the Completion.
- 11.2 We are entitled to claim a Variation for:
- (a) any emergency works required for health and safety or environmental reasons;
 - (b) additional work and/or changes to the Work caused by any consent requirements;
 - (c) unforeseen physical conditions, substitutions of any materials, wages and price changes; or
 - (d) any increase in costs arising from a failure or delay on your part in complying with these terms.
- 11.3 All Variations claimed under clause 11.2 will be calculated on the basis of time and materials (charge-up basis), at the following rates:
- | | |
|------------------------|--|
| Labour | Factory labour (including machine time) is \$80 per hour
Installation labour is \$95 per hour |
| Materials | Cost plus 20% |
| Vehicle charges | \$1.00 per kilometre. |
- 11.4 Without limiting this clause 11, any cost increases from sources beyond our control (e. g., changes in prices charged by suppliers or subcontractors to us, or in government charges) are to your account.

12 Default and consequences of default

- 12.1 Any amount not paid when due incurs interest at 2.5% per month (both before or after any judgement). In addition to any other rights or remedies, you indemnify us for all costs of non-payment by you including debt collection and enforcement costs on a solicitor own client basis.
- 12.2 Without prejudice to any other rights or remedies we may have, if at any time you breach any obligation (including those relating to payment), we

may suspend or terminate the supply of Goods or Services to you and any of our other obligations under the terms. We will not be liable to you for any loss or damage you suffer because we exercise our rights under this clause.

- 12.3 If you become insolvent, propose or enter into an arrangement with creditors, or a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of you or any asset of yours:

- (a) we may cancel all or any part of any order which remains unperformed, without prejudice to other rights or remedies; and
- (b) all amounts owing to us shall, whether or not due for payment, immediately become payable.

- 12.4 You agree that you may not be entitled to set off against the Price amounts due from us.

13 Title and Personal Property Securities Act 1999

- 13.1 You acknowledge that:

- (a) title in all Goods and materials supplied as part of the Work remains vested in us until all amounts owing to us have been paid in full; and
- (b) the legal and beneficial ownership to any other equipment or items brought onto the Site by us remains vested in us at all times.

- 13.2 To secure such obligations, under the Personal Property Securities Act 1999 (PPSA), you agree that a security interest is granted in the property described in clause 13.1 (and all proceeds of that property). We may apply all payments in such manner as is desirable to preserve any purchase money security interest in that property.

- 13.3 Nothing in section 116, 120(2), 121, 125 to 127, 129, 131, 133 and 134 of the PPSA applies to the security interest, and you waive the right to receive a verification statement. You undertake you will:

- (a) not register a change demand without our prior written consent;
- (b) give us at least 14 days' notice of any change in your name and/or address details; and
- (c) immediately advise us of any change in your business which changes in the nature of proceeds derived from Goods.

14 Business Transactions

- 14.1 If the Work is carried out for the purposes of a business, and, to the maximum extent permitted by law, all guarantees, warranties, rights, or remedies implied by the Consumer Guarantees Act 1993, Fair Trading Act 1986 and other guarantees, warranties, or provisions otherwise implied by statute or other law are expressly excluded.

15 Notices

- 15.1 All notices must be in writing and delivered or sent by post or email to the addresses set out in the Quote. Our address for service and postal address is the physical address set out in the Quote.

- 15.2 A notice is deemed to be received:

- (a) if personally delivered, when delivered; or
- (b) if posted, 5 Working Days after posting; or
- (c) if sent by email, when the email leaves the sender's communications system, provided that the sender:
 - (i) does not receive any error message relating to the email; or
 - (ii) receives confirmation the email was delivered (including an automated delivery receipt from the recipient's communications system).

- 15.3 Despite clause 15.2, any notice received after 5pm, or received on a day that is not a Working Day, is not received until 9am on the next Working Day.

16 Dispute Resolution

- 16.1 If there is any dispute between the parties, the party raising the dispute must give the other party written notice specifying particulars of the dispute. If negotiations do not resolve the dispute, either party may (to the extent it relates to construction work) refer a dispute to adjudication under the Construction Contracts Act 2002.

17 Privacy Act

- 17.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Supplier to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing any Goods and Work provided by the Supplier to any other party.

18 General

- 18.1 If any provision is invalid, void, illegal or unenforceable, that provision is severed from these terms and the remaining provisions unaffected.
- 18.2 To the maximum extent permitted by law, the Supplier is not liable for any indirect loss and/or costs, or any loss of profit, suffered by the Customer, and the maximum liability of the Supplier in respect of any Work shall be the Price for that Work.