

## Readiplumb Services Pty Ltd – Terms & Conditions of Trade (Commercial Clients Only)

- 1. Definitions**
- 1.1 "Readiplumb" shall mean Readiplumb Services Pty Ltd and its successors and assigns.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by Readiplumb to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by Readiplumb to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between Readiplumb and the Client subject to clause 4 of this contract.
- 2. Acceptance**
- 2.1 Any instructions received by Readiplumb from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Readiplumb shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of Readiplumb.
- 2.4 None of Readiplumb's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Readiplumb in writing nor is Readiplumb bound by any such unauthorised statements.
- 2.5 The Client undertakes to give Readiplumb not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice).
- 3. Goods**
- 3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by Readiplumb to the Client.
- 4. Price And Payment**
- 4.1 At Readiplumb's sole discretion the Price shall be either;
- (a) as indicated on invoices provided by Readiplumb to the Client in respect of Goods supplied; or
- (b) Readiplumb's quoted Price (subject to clause 4.2) which shall be binding upon Readiplumb provided that the Client shall accept in writing Readiplumb's quotation within thirty (30) days.
- 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of Readiplumb's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 If there are any delays due to the failure of the Client their sub-contactors or agent(s) to provide access to the site or the correct information to enable Readiplumb to carry out the Services then the Client shall be charged for the delays at Readiplumb's quoted rate. The Client shall also be responsible for all other expenses and costs incurred by Readiplumb due to delays caused by the Client their sub-contactors or agent(s).
- 4.4 At Readiplumb's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
- 4.6 At Readiplumb's sole discretion, payment for approved Clients shall be made by instalments in accordance with Readiplumb's delivery/payment schedule.
- 4.7 At Readiplumb's sole discretion, for certain approved Clients payment will be due either seven (7) or thirty (30) days following the date of the invoice.
- 4.8 At Readiplumb's sole discretion, payment for approved Client's shall be due on thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 4.9 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card (American Express and Diners cards excluded, a surcharge of up to 4% may be applicable) or by direct credit, or by any other method as agreed to between the Client and Readiplumb.
- 4.10 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by Readiplumb.
- 5. Delivery Of Goods / Services**
- 5.1 Delivery of the Goods shall be made to the Client's nominated address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.2 Readiplumb may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.4 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed 5%, and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.5 The failure of Readiplumb to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 Readiplumb shall not be liable for any loss or damage whatever due to failure by Readiplumb to deliver the Goods (or any of them) promptly or at all.
- 6. Risk**
- 6.1 If Readiplumb retains property in the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Client, Readiplumb is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by Readiplumb is sufficient evidence of Readiplumb's rights to receive the insurance proceeds without the need for any person dealing with Readiplumb to make further enquiries.
- 7. Client's Disclaimer**
- 7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of Readiplumb and the Client acknowledges that he buys the Goods relying solely upon his own skill and judgement.
- 8. Defects / Returns**
- 8.1 The Client shall inspect the Goods on delivery and shall within three (3) days of delivery notify Readiplumb of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Readiplumb an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 8.2 For defective Goods, which Readiplumb has agreed in writing that the Client is entitled to reject, Readiplumb's liability is limited to either (a)
- Readiplumb's discretion) replacing the Goods or repairing the Goods provided that the Client has complied with the provisions of clause 8.1
- (i) Until such time that ownership in the Goods passes to the Client, if the Goods are so converted, the parties agree that Readiplumb will be the owner of the end products.
- 9. Warranty**
- 9.1 Subject to the conditions of warranty set out in Clause 9.2 Readiplumb warrants that if any defect in any workmanship of Readiplumb becomes apparent and is reported to Readiplumb within twelve (12) months of the date of delivery (time being of the essence) then Readiplumb will either (at Readiplumb's sole discretion) repair the defect or remedy the workmanship.
- 9.2 The conditions applicable to the warranty given by Clause 9.1 are:
- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- i) Failure on the part of the Client to properly maintain any Goods; or
- ii) Failure on the part of the Client to follow any instructions or guidelines provided by Readiplumb; or
- iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
- iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- v) Fair wear and tear, any accident or act of God.
- (b) The warranty shall also be subject to the conditions stated in the Warranty document provided by Readiplumb to the Client.
- (c) The warranty shall cease and Readiplumb shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Readiplumb's consent.
- (d) In respect of all claims Readiplumb shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Client's claim.
- 9.3 For Goods not manufactured by Readiplumb, the warranty shall be the current warranty provided by the manufacturer of the Goods. Readiplumb shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.
- 10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 11. Intellectual Property**
- 11.1 Where Readiplumb has designed or drawn Goods for the Client, then the copyright in those designs and drawings shall remain vested in Readiplumb, and shall only be used by the Client at Readiplumb's discretion.
- 11.2 The Client warrants that all designs or instructions to Readiplumb will not cause Readiplumb to infringe any patent, registered design or trademark in the execution of the Client's order.
- 12. Default & Consequences Of Default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify Readiplumb from and against all Readiplumb's costs and disbursements including on a solicitor and own client basis and in addition all of Readiplumb's nominee's costs of collection.
- 12.3 Without prejudice to any other remedies Readiplumb may have, if at any time the Client is in breach of any obligation (including those relating to payment), Readiplumb may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Readiplumb will not be liable to the Client for any loss or damage the Client suffers because Readiplumb exercised its rights under this clause.
- 12.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 In the event that:
- (a) any money payable to Readiplumb becomes overdue, or in Readiplumb's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client
- then without prejudice to Readiplumb's other remedies at law:
- (i) Readiplumb shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to Readiplumb shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 12.1 hereof.
- 13. Title**
- 13.1 It is the intention of Readiplumb and agreed by the Client that property in the Goods shall not pass until:
- (a) The Client has paid all amounts owing for the particular Goods, and
- (b) The Client has met all other obligations due by the Client to Readiplumb in respect of all contracts between Readiplumb and the Client, and that where practicable the Goods shall be kept separate until Readiplumb shall have received payment and all other obligations of the Client are met.
- 13.2 Receipt by Readiplumb of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Readiplumb's ownership of rights in respect of the Goods shall continue.
- 13.3 It is further agreed that:
- (a) Until such time as ownership of the Goods shall pass from Readiplumb to the Client Readiplumb may give notice in writing to the Client to return the Goods or any of them to Readiplumb. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
- (b) Readiplumb shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (c) If the Client fails to return the Goods to Readiplumb then Readiplumb or Readiplumb's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods.
- (d) The Client is only a bailee of the Goods and until such time as Readiplumb has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for Readiplumb.
- (e) The Client shall not deal with the money of Readiplumb in any way which may be adverse to Readiplumb.
- (f) The Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Readiplumb.
- (g) Readiplumb may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to Readiplumb arising out of these terms and conditions, and Readiplumb may take any lawful steps to require payment of the amounts due and the Price.
- (h) Readiplumb may issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.
- 14. Security And Charge**
- 14.1 Despite anything to the contrary contained herein or any other rights which Readiplumb may have hereunder:
- (a) Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Readiplumb or Readiplumb's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that Readiplumb (or Readiplumb's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should Readiplumb elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Readiplumb from and against all Readiplumb's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint Readiplumb or Readiplumb's nominee as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as Readiplumb and/or Readiplumb's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of Readiplumb and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and indebtedness to Readiplumb and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in Readiplumb's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
- 15. Cancellation**
- 15.1 Readiplumb may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. Readiplumb shall not be liable for any loss or damage whatever arising from such cancellation.
- 16. Privacy Act 1988**
- 16.1 The Client and/or the Guarantor/s agree for Readiplumb to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by Readiplumb.
- 16.2 The Client and/or the Guarantor/s agree that Readiplumb may exchange information about Client and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) To assess an application by Client;
- (b) To notify other credit providers of a default by the Client;
- (c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and
- (d) To assess the credit worthiness of Client and/or Guarantor/s.
- 16.3 The Client consents to Readiplumb being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Client agrees that Personal Data provided may be used and retained by Readiplumb for the following purposes and for other purposes as shall be agreed between the Client and Readiplumb or required by law from time to time:
- (a) provision of Services & Goods;
- (b) marketing of Services and/or Goods by Readiplumb, its agents or distributors in relation to the Services and Goods;
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services/Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services and Goods.
- 16.5 Readiplumb may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 17. Unpaid Seller's Rights**
- 17.1 Where the Client has left any item with Readiplumb for repair, modification, exchange or for Readiplumb to perform any other Service in relation to the item and Readiplumb has not received or been tendered the whole of the Price, or the payment has been dishonoured, Readiplumb shall have:
- (a) a lien on the item;
- (b) the right to retain the item for the Price while Readiplumb is in possession of them;
- (c) a right of resale,
- (d) the foregoing right of disposal,
- provided that the lien of Readiplumb shall continue despite the commencement of proceedings or judgement for the Price having been obtained.
- 18. General**
- 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 All Goods supplied by Readiplumb are subject to the laws of Queensland and Readiplumb takes no responsibility for changes in the law which affect the Goods supplied.
- 18.3 Readiplumb shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Readiplumb of these terms and conditions.
- 18.4 In the event of any breach of this contract by Readiplumb the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of Readiplumb exceed the Price of the Goods.
- 18.5 The Client shall not set off against the Price amounts due from Readiplumb.
- 18.6 Readiplumb may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.7 Readiplumb reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which Readiplumb notifies the Client of such change.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 19. Building and Construction Industry Security of Payments Act 1999**
- 19.1 At Readiplumb's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 19.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.