

1. Definitions

- (a) "Australian Consumer Law" or "ACL" means Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.
- (b) "ATL" means an Authority to Leave.
- (c) "Consumer" has the meaning defined in the ACL.
- (d) "Credit Account Application" means the credit account application completed by the Customer and approved by Fontaine to allow the Customer to purchase the Products on account in accordance with these Terms and Conditions.
- (e) "Credit Limit" means the credit limit approved by Fontaine for the Customer's credit account.
- (f) "Customer" means the Customer (or any person acting on behalf of and with the authority of the Customer) to purchase Products from Fontaine.
- (g) "Customer Claim Form" means the prescribed online customer claim form on Fontaine's website (<https://engage.fontaineind.com.au/customer-claim-form>) to complete a claim for a missing or faulty Product.
- (h) "EFT" means electronic funds transfer.
- (i) "Financing Statement" has the meaning given to it in the PPSA.
- (j) "Financing Change Statement" has the meaning given to it in the PPSA.
- (k) "Fontaine" means Fontaine Industries Pty Ltd A.C.N. 151 076 836 trading as Fontaine Industries and includes its successors and assigns.
- (l) "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- (m) "Minimum Spend" means an amount not less than ten thousand Australian dollars (AUD\$10,000.00) per annum.
- (n) "Order" means an order made by the Customer with Fontaine for the purchase of the Products.
- (o) "Product(s)" means the products sold by Fontaine to the Customer as described on the tax invoices or any other forms provided by Fontaine to the Customer at the time of placing an Order.
- (p) "Price" shall mean the price payable by the Customer for the Products in accordance with these Terms and Conditions.
- (q) "Privacy Act" means the Privacy Act 1988, as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012.
- (r) "Purchase Money Security Interest" has the meaning given to it in the PPSA.
- (s) "PPSA" means the Personal Properties Securities Act 2009 (Cth).
- (t) "PPSR" means Personal Property Securities Register within the meaning of the PPSA.
- (u) "RRP" means the recommended retail price of the Products.
- (v) "Security Interest" means a security interest within the meaning of the PPSA.
- (w) "Terms and Conditions" means the Terms and Conditions of Trade described in this document.
- (x) "Trade Discount" means a discount of eight (8) percent (%) off the RRP of the Products.
- (y) "Trade Discount Application" means the trade account application completed by the Customer and approved by Fontaine to allow the Customer to purchase the Products at a Trade Discount in accordance with these Terms and Conditions.

2. Australian Consumer Law ("ACL")

- (a) Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the ACL except to the extent permitted.

3. Acceptance

- (a) The Customer acknowledges that it has read and accepted these Terms and Conditions prior to signing the Credit Account Application and the Trade Discount Application.
- (b) Each Order placed by the Customer for Products will be a separate binding agreement between the Customer and Fontaine if accepted by Fontaine. The Customer agrees to purchase the Products on these Terms and Conditions.
- (c) Fontaine may vary these Terms and Conditions from time to time in accordance with business requirements and as required by law. The Terms and Conditions will be published on the website of Fontaine and updated by Fontaine if, and when necessary.
- (d) The Customer shall give Fontaine not less than fourteen (14) days' prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, contact details and email address). The Customer shall be liable for any loss incurred by Fontaine as a result of the Customer's failure to comply with this clause.

4. Credit Account Application

- (a) Any Credit Account Application must be lodged in writing and submitted directly to Fontaine or email Fontaine at sales@fontaineind.com.au.

- (b) Prior to accepting any Credit Account Application, Fontaine may require a guarantor(s) to jointly and severally guarantee to Fontaine the payment of all debts by the Customer.
- (c) Fontaine may also require the Customer to provide a bank guarantee to secure the Customer's performance for the payment of debts owing to Fontaine.
- (d) Fontaine will inform the Customer in writing if its Credit Account Application is approved.
- (e) Fontaine will open a credit account for the Customer upon the approval of a Credit Account Application.
- (f) Fontaine requires a Minimum Spend to be maintained by the Customer or the Customer's credit account facility will be closed without notice to the Customer.
- (g) Fontaine may review and change the Customer's Credit Limit at any time.
- (h) The Customer is responsible for and indemnifies Fontaine for any unauthorised use of the Customer's Credit Account with Fontaine.
- (i) The Customer must notify Fontaine in writing immediately when it becomes aware of any unauthorised transactions on the Customer's Credit Account.
- (j) Fontaine may in its sole discretion and without providing any reason, suspend or terminate the Customer's Credit Account within seven (7) days of notifying the Customer in writing.
- (k) Fontaine may terminate the Customer's Credit Account immediately if:
 - (a) Fontaine was induced by a fraudulent misrepresentation or false information given by the Customer to approve a Credit Account Application;
 - (b) any money payable by the Customer to Fontaine becomes overdue;
 - (c) In the opinion of Fontaine, any change in the Customer's circumstances including the Customer's legal and beneficial ownership, change in management, or the Customer's ability to provide security for payment of the amounts which have been charged or will be charged to the Customer's Credit Account; or
 - (d) the Customer 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
 - (e) a receiver, manager, liquidator or similar person is appointed in respect of the Customer or any asset of the Customer; or
 - (f) The Customer is otherwise in default under Fontaine's Terms and Conditions of Trade.
- (l) If Fontaine suspends or terminates the Customer's Account, then any amount owing or incurred by the Customer but not billed becomes immediately due and payable by the Customer.

5. In-Store Purchases

- (a) All quotations issued by Fontaine are valid for thirty (30) days from the date of issue.
- (b) To avoid any issues re product installation, Fontaine recommends that the **Customer consults a licensed tradesperson** to assess the Product suitability based on the Customer's requirements, including installation advice for the specific purpose of the Product, in accordance with applicable Australian Standards and regulations.
- (c) If the Customer requests any assistance from Fontaine re product selection, **Fontaine provides only general product advice**, not specific advice based on individual circumstances. The Customer acknowledges that it has made its own independent decision based on its own judgment.
- (d) **The Customer is responsible to select suitable Products** and that the Products are suitable for the purpose and use, the quantities are accurate and the measurements, plans, drawings and specifications for the use of the Products are determined by the Customer before the Customer places an Order.
- (e) While Fontaine will ensure that all details, description and prices of products which are advertised are accurate, occasionally errors may occur. **Fontaine shall not be held liable for errors or omissions of an administrative nature.** Fontaine may choose to not fill any orders (or part of an order) that the Customer may have placed where errors, inaccuracies or out-of-date information occur in relation to the pricing or product specification or description including but not limited to the product label, manual, installation guide, sales promotion, offer, listing, delivery, payment terms or return policies.
- (f) If a Customer places an Order in store, the Order will only be confirmed and accepted by Fontaine after the **Customer signs to acknowledge the confirmation of the custom order**, the specific installation requirements for the Product, quantities, and compliance with measurements, plans, drawings and specifications.
- (g) Any Order accepted by Fontaine is confirmed on the basis that the Customer bears full responsibility for ensuring the suitability and specific installation requirements for the Product, quantities, and **compliance with measurements, plans, drawings and specifications**.

- (h) The Price charged by Fontaine for the Products sold to the Customer shall be the Price as indicated on the tax invoice issued by Fontaine for the Products sold.
 - (i) Any applicable Trade Discount will be applied to all Orders made by the Customer.
 - (j) If a Customer places an Order at a Fontaine store, the Customer must make payment in full for the Products before the Order is accepted and confirmed by Fontaine. Except for Products purchased on account of trade credit, payment for the Products shall be due within seven (7) days from the date of the tax invoice issued by Fontaine unless otherwise agreed.
 - (k) Payment must be received in full by Fontaine prior to delivery. Title does not pass until payment is received in full.
 - (l) If a tax invoice issued by Fontaine is incorrect, the Customer must notify Fontaine in writing within two (2) days from the date of issue of the tax invoice, failing which the Customer will be deemed to have accepted the tax invoice.
 - (m) Payment may be made by cash, bank cheque, credit card, by electronic funds transfer, or by direct deposit and without deduction to the bank account nominated by Fontaine.
 - (n) GST shall be added to the Price except when they are expressly included in the Price.
- 6. Online Store Purchases**
- (a) If a Customer places an Order on Fontaine's online store, the payment for the Order must be received in full by Fontaine before the Order is accepted and confirmed by Fontaine.
 - (b) The Customer must agree to the Terms and Conditions when the online Order is placed for the supply of the Products.
 - (c) Payment may be made by credit card or by electronic funds transfer. If a Customer is at least 18 years of age, payment methods may include Afterpay and PayPal. If the Customer uses Afterpay or PayPal, the Customer must pay using the Customer's Afterpay or PayPal account by being redirected from the Fontaine website to Afterpay or PayPal. A Customer may choose a funding source for the payment by way of Afterpay or PayPal. After successful authorisation, a Customer is redirected back to the Fontaine website. This means that Afterpay or PayPal pays Fontaine in full and upfront on behalf of a Customer.
 - (d) Other methods of payment, including cash and bank cheque can be used for In-Store Purchases, but not for Orders placed through the Online Store.
 - (e) Any provisions in Clause 5 (In-Store Purchases) which are relevant to online store purchases, will be incorporated by reference to Clause 6 (Online Store Purchases) unless otherwise varied or apply only to in-store purchases.
- 7. Order Cancellation**
- (a) If Fontaine is unable to deliver or provide the Products, then Fontaine may cancel any Order by giving written notice to the Customer and arrange for a refund of payment if the Product is already paid by the Customer. Fontaine shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 8. Delivery & Inspection of Products**
- (a) Before the Customer submits the Order, the Customer will select whether the Product will be collected by the Customer or delivered to the address specified by the Customer.
 - (b) If the Customer requested for any Products to be collected at Fontaine's warehouse and the Customer fails to collect within eight (8) weeks of the date of despatch, a weekly storage fee will be charged by Fontaine.
 - (c) If the Customer fails to collect the Products despite being charged for a weekly storage fee, then the Products will be treated by Fontaine as abandoned or uncollected Products. Fontaine reserves the right to take any action to recover any losses suffered by Fontaine due to the Customer's failure to collect or pay for any Products.
 - (d) If the Products are collected by the Customer from Fontaine's premises, the Customer must inspect the Products for any visible defects. The Customer is not entitled to a remedy if the Customer had the opportunity to examine the Products before leaving Fontaine's premises, and did not find any visible defects. The Customer may only be entitled to a remedy for defects if defects could not be detected even from the most careful inspection.
 - (e) If the Customer requests that the Products be delivered by Fontaine to the Customer, then the Customer must pay for all delivery costs which are in addition to the Price.
 - (f) On delivery of the Products, the Customer will be required to sign for delivery unless the Customer gives Fontaine an ATL. If the Customer has given Fontaine an ATL, then the Customer acknowledges that he or she is giving Fontaine or their selected courier permission to leave the Products at the delivery address without obtaining a signature confirming delivery at the delivery address and will release Fontaine and its courier from any liability if the Products are stolen or damaged.
 - (g) Delivery of the Products to a third party nominated by the Customer is deemed to be delivery to the Customer.
 - (h) If Fontaine arranges delivery to the Customer's location or premises of a third party as nominated by the Customer as the delivery address, the Customer releases Fontaine from any claims which the Customer may have against Fontaine in respect of damage occasioned to the Customer's premises or injury to persons arising out of any loading, unloading or delivery of the Products to such premises.
 - (i) Fontaine shall not be liable for any loss or damage whatsoever due to its failure to deliver the Products if caused by circumstances beyond Fontaine's control.
 - (j) Upon signing the delivery slip, the Products shall be deemed to be delivered to the Customer.
 - (k) The Customer is required to inspect all Products promptly upon receipt.
 - (l) If a Customer makes a claim about a Product being missing or faulty, the Customer must complete a Customer Claim Form via an online form on Fontaine's website (<https://engage.fontaineind.com.au/customer-claim-form>).
 - (m) Only written claims in the prescribed Customer Claim Form (completed by the Customer) within seven (7) days of the receipt of the Product will be considered by Fontaine. Otherwise, the Products shall be deemed to be free from any visible defect or damage, and complete (with no missing items).
 - (n) Before the Customer is entitled to a refund, Fontaine must have received the Product within seven (7) days of the receipt of the Product to enable Fontaine to inspect and assess the Product to verify the eligibility of the refund.
 - (o) In order to assess the Customer's claim, Fontaine will need photo evidence of the Product alleged.
 - (p) Upon receipt of a completed Customer Claim Form, Fontaine will use every effort to contact the Customer within two (2) business days in order to progress the claim.
 - (q) Upon receipt of the Product returned, if the Product meets Fontaine's Customer Claim Form, Fontaine will provide the Customer with the choice of a store credit or a refund.
 - (r) If the Customer prefers a refund for any items returned, payment of any refund exceeds less than five hundred dollars (\$500) will be processed within seven (7) business days from the date of confirmation from Fontaine, using the original payment method for the card (except in circumstances where the original card has expired or if it was lost, stolen or cancelled).
 - (s) If any item returned by a Customer exceed five hundred dollars (\$500), the refund method will be processed on Fontaine's discretion within seven (7) business days from the date of confirmation from Fontaine. The Customer may be required to provide additional information to comply with Fontaine's fraud prevention policy.
- 9. Delivery Options and Terms**
- (a) When a Product is delivered, the Customer will be given various delivery options.
 - (b) If the Product is delivered by Fontaine's Standard Delivery Service, the following terms and conditions will follow:
 - i. One (1) business day handling (picking and packing of order).
 - ii. Once packed allow additional two to three (2-3) business days for delivery.
 - iii. Deliveries will only be scheduled on weekdays (Monday to Friday).
 - iv. A preferred delivery day or date cannot be noted unless the Customer books a Premium Service.
 - v. Fontaine's despatch team will contact the Customer during the handling period to arrange a suitable delivery time. The Customer can opt to delay or reschedule the delivery at this time. The Customer must be available to arrange a time for delivery or the Order may be delayed.
 - vi. The Customer's order can be expected to be delivered within three to four (3-4) business days, this includes handling and delivery but excludes any deliveries that are delayed due to reasons beyond the reasonable control of Fontaine including public holiday delays.
 - vii. Prior to the Customer's delivery, the Customer will be contacted by a member of Fontaine's dispatch team to confirm the delivery day. The day before the scheduled delivery, the driver will provide the Customer with an approximate delivery time within a two (2)-hour timeframe. Timeframes are an estimate only, and the Customer will be notified of significant delay.
 - viii. All delivery services are limited to the ground floor of the delivery address being the doorstep, driveway, garage, or carport only. Fontaine drivers and staff are not permitted to enter the delivery premises due to Occupational, Health and Safety requirements.
 - ix. All delivery services require safe and reasonable access to the premises. Any stairs or elevated areas, steep or unmade driveways, narrow streets and access points or unforeseen obstructions may be deemed unsafe for delivery and therefore unavailable in such locations.

- x. All delivery services are a 'One Person Service' (unless a Two (2)-Person Delivery Service has been booked). Customers must arrange someone (known to the Customer) to be present to receive the goods, and who is also capable of assisting with the unload of any bulky items. The Customer releases Fontaine from any claims which the Customer may have against Fontaine in respect of damage occasioned to the Customer's premises or injury to persons arising out of any loading, unloading or delivery of the Products to such premises.
 - xi. A Two (2)-Person Delivery Service will be required if the Customer has not arranged a person to assist with the unloading of any bulky items.
 - xii. The driver reserves the right to reschedule a delivery in the instance a Two (2)-Person Delivery Service is required but only a standard delivery has been booked.
 - xiii. Premium delivery services incur additional charges, are subject to availability, and must be paid for prior to booking the service.
 - xiv. To ensure Customer's premium delivery service timelines are met, the Customer must place the order before the order time cut off applicable.
 - xv. In some cases, a premium delivery service cannot be booked and is deemed "not available" in this case Fontaine will notify the Customer as soon as possible.
- (c) For other delivery options besides Fontaine's Standard Delivery Service, the Customer will be advised of the relevant terms and conditions when the Customer selects the delivery option for the Product.
- (d) Whichever delivery options are used, Fontaine shall not be responsible for any delays in delivery caused by a third party or for other reasons beyond the reasonable control of Fontaine.
- 10. Thirty (30)-Day Change of Mind Return Policy – Refund**
- (a) Fontaine offers Customers a thirty (30)-day change-of-mind refund policy with the following exceptions:
- i. Clearance items
 - ii. Special items
 - iii. Custom-made items
 - iv. Custom-ordered items
- (b) In the case of a change of mind, the Customer must ensure that any item to be returned meets the Fontaine's Returns Policy, as follows:
- i. The Customer must return the Product within thirty (30) days of the fulfilment date of the Product.
 - ii. All returns for refund must be accompanied by proof of purchase.
 - iii. All returned products must be unused, in original packaging, complete instruction manual and all included accessories to be in saleable condition, with no signs of any installation or any damage to the product.
 - iv. Fontaine may require a photo identification such as an Australian driver's licence to record the Customer's record and to verify the Customer's signature.
 - v. Fontaine must have received the Product, inspected and assessed to confirm that the Customer is eligible and entitled to a store credit or refund.
 - vi. The Customer cannot return the Product for a full refund only to simultaneously re-purchase the Product at a new discounted price (to effectively obtain a partial refund for an item which was reduced in price since the initial purchase date).
 - vii. The Customer must pay for the shipping fee for the item to be returned; and arrange for the item to be returned in accordance with Fontaine's Returns Policy.
 - viii. Upon receipt of the item returned, if the item meets Fontaine's Returns Policy, Fontaine will provide the Customer with the choice of a store credit or a refund.
 - ix. If the Customer prefers a refund for any items returned, payment of any refund exceeds less than five hundred dollars (\$500) will be processed within seven (7) business days from the date of confirmation from Fontaine, using the original payment method for the card (except in circumstances where the original card has expired or if it was lost, stolen or cancelled).
 - x. If any item returned by a Customer exceed five hundred dollars (\$500), the refund method will be processed on Fontaine's discretion within seven (7) business days from the date of confirmation from Fontaine. Customer may be required additional information to comply with Fontaine's fraud prevention policy.
- 11. 90-Day Return Policy – Store Credit**
- (a) If the thirty (30)-Day Change-of-Mind refund policy has expired, the Customer can return products for a store credit (with the exception of clearance items, special items, custom-made and custom-ordered products) on the following conditions:
- i. A cancellation fee of twenty (20)% of the Price will apply.
 - ii. All eligible returns will be issued only with a store credit.
- iii. The Customer must return the Product within ninety (90) days of the fulfilment date of the Product.
 - iv. All returns for refund must be accompanied by proof of purchase.
 - v. All returned products must be unused, in original packaging, complete instruction manual and all included accessories to be in saleable condition, with no signs of any installation or any damage to the product.
 - vi. Fontaine may require a photo identification such as an Australian driver's licence to record the Customer's record and to verify the Customer's signature.
 - vii. Fontaine must have received the Product, inspected and assessed to confirm that the Customer is eligible and entitled to a store credit.
 - viii. The Customer cannot return the Product for a store credit only to simultaneously re-purchase the Product at a new discounted price (to effectively obtain a partial refund for an item which was reduced in price since the initial purchase date).
 - ix. The Customer must pay for the shipping fee for the item to be returned; and arrange for the item to be returned in accordance with Fontaine's Return Policy.
 - x. Upon receipt of the item returned, if the item meets Fontaine's Return Policy, Fontaine will issue a store credit.
- 12. Pre-Order Cancellation**
- (a) If the Customer cancels a pre-order, there is no cancellation fee if the product is not available in stock. In that case, Fontaine will provide the Customer with the choice of a store credit or a refund.
- (b) If the Customer cancels a product available in stock (which was previously on pre-order), then the Customer must comply with the Fontaine's Return's Policy for either the thirty (30)-day Change-of-Mind Refund Policy or the ninety (90)-Day Return Policy.
- (c) If Fontaine cancels a pre-order due to unforeseen circumstances or unavailability of supplies, then Fontaine will provide a refund for the pre-order amount paid.
- 13. Pre-Despatch Cancellation**
- If an Order is ready for dispatch but is holding for a Customer as requested by the Customer, then a cancellation fee of twenty percent (20%) of the Price will apply if the Customer subsequently cancels the Order at Pre-Despatch
- 14. Despatched Cancellation**
- If the Customer cancels an Order and the item is despatched (shipped), then the Customer must comply with Fontaine's ninety (90)-Day Return Policy.
- 15. ACL Return Policy**
- (a) Under the Australian Consumer Law, the Customer is entitled to a refund or replacement of a faulty Product which has a major problem.
- (b) The Customer must ensure that any item to be returned meets the Fontaine's Returns Policy, as follows:
- i. If a Customer makes a claim about a Product missing or faulty, the Customer must complete a Customer Claim Form via an online form on Fontaine's website (<https://engage.fontaineind.com.au/customer-claim-form>).
 - ii. Only written claims in the prescribed Customer Claim Form completed by the Customer will be considered by Fontaine.
 - iii. The return is made within a reasonable time depending on the nature of the Products.
 - iv. Upon receipt of a completed Customer Claim Form, Fontaine will use every effort to contact the Customer within two (2) business days hours to progress the claim.
 - v. Fontaine must have received the Product, inspected and assessed to confirm that the Customer is eligible for a refund before the Customer is entitled to a refund.
 - vi. All returns for refund must be accompanied by proof of purchase.
 - vii. Fontaine may require a photo identification such as an Australian driver's licence to record the Customer's record and to verify the Customer's signature.
 - viii. If Fontaine confirms that the Product is faulty, Fontaine will reimburse the Customer for any reasonable return costs.
 - ix. If Fontaine confirms that the Product is not faulty, the Customer must pay for the Product to be collected and inspected by Fontaine.
 - x. If the Product has been installed at the Customer's premises, then Fontaine will send a trade professional to inspect the Product. If the trade professional determines that Fontaine is not liable for any claim, then the Customer bears the costs which are incurred by Fontaine in connection with the inspection of such Product including the cost of engaging a trade professional to inspect the Product.

- xi. For Products which were returned by a Customer, payment of any refund will be processed to the same card, except in circumstances where the original card has expired or if it was lost, stolen or cancelled.
- xii. If the Customer prefers a refund for any items returned, payment of any refund exceeds less than five hundred dollars (\$500) will be processed within seven (7) days from the date of confirmation from Fontaine, using the original payment method for the card (except in circumstances where the original card has expired or if it was lost, stolen or cancelled).
- xiii. If any item returned by a Customer exceed five hundred dollars (\$500), the refund method will be processed on Fontaine's discretion within seven (7) days from the date of confirmation from Fontaine. Customer may be required additional information to comply with Fontaine's fraud prevention policy.

16. Promotions/Discounts/Markdown/Sale Prices

- (a) Fontaine's Returns Policy applies to faulty Products which were purchased at promotions, discounts, markdown or sale prices if they are covered by consumer guarantees.
- (b) No return for a refund due to damaged boxes or minor cosmetic defects if a discount was received by the Customer for those reasons.
- (c) Promotions, discounts, markdowns or sale prices will only be honoured during the relevant sale period or while stock lasts.
- (d) Any coupon codes for promotion, discount, markdown or sale prices are valid at the time of order placed.
- (e) Coupon codes for promotion, discount, markdown or sale prices will not be valid or honoured if orders are placed without inserting the correct relevant code.
- (f) If a Customer receives offers and promotions via email or other marketing communication and a Customer is required to take certain steps such as subscribing to Fontaine's website or a promotion coupon specifies a minimum spend, the Customer is responsible for complying with any eligibility requirements.
- (g) Fontaine reserves the right to withdraw the promotion, discount, markdown or sale offer at any time without notice.
- (h) Fontaine reserves the right to extend the promotion, discount, markdown or sale offer at any time without notice.

17. Guarantee and Warranty

- (a) All faulty products sold by Fontaine come with consumer guarantees.
- (b) If the Customer is a Consumer for the purposes of the ACL, then Fontaine's Products come with guarantees that cannot be excluded under the ACL.
 - i. For a **major** defect, the Customer is entitled to a replacement or refund (and compensation for any other reasonably foreseeable loss or damage).
 - ii. For a **minor** defect where the Products fail to be of acceptable quality, the Customer is entitled to have the Products repaired or replaced.
- (c) Some manufacturers provide warranties to certain Products. These warranties are subject to the terms and conditions of the manufacturers.
- (d) Manufacturer's warranties are covered for certain Products by various periods of warranty from the date of purchase of a Product to be free from defects due to faulty workmanship and materials.
- (e) Products are sold subject to individual manufacturer's warranty. These warranties are stipulated in the Products listings and descriptions, of which are typically as follows:

Product Category	Warranty Duration
Accessories & Tapware	
Accessories	Seven (7) Year Product Warranty
Heated Towel Ladders	Three (3) Year Product Warranty
Tapware	Seven (7) Year Product Warranty
Tapware (Pull-Out)	Five (5) Year Product Warranty
Tapware & Accessories (Ambulant & Care)	Five (5) Year Product Warranty
Tapware & Accessories (Rosa Range)	Five (5) Year Product Warranty
Bathroom Products	
Basins	Five (5) Year Product Warranty
Basins (Black)	Three (3) Year Product Warranty
Basins (Stone)	Two (2) Year Product Warranty
Baths	Seven (7) Year Product Warranty
Cabinets	Two (2) Year Product Warranty*
Shower Bases	Two (2) Year Product Warranty
Shower Grates	Five (5) Year Product Warranty
Shower Screens	Seven (7) Year Product Warranty
Shower Wall Liners & Panels	Five (5) Year Product Warranty
Toilets	Seven (7) Year Product Warranty**
Toilets (Ambulant & Care)	Five (5) Year Product Warranty
Toilets (Rina, Fienza, Johnson Suisse)	Two (2) Year Product Warranty

Kitchen Products	
Kitchen Accessories	Two (2) Year Product Warranty
Kitchen Appliances	Two (2) Year Parts & Labour Warranty
Kitchen Sinks	Seven (7) Year Product Warranty
Kitchen Sinks (Chloe)	Five (5) Year Product Warranty
Kitchen Sinks (Granite)	Five (5) Year Product Warranty
Mirror Products	
Mirrors (Flat)	Five (5) Year Product Warranty
Mirrors (LED)	Two (2) Year Product Warranty
Mirror Cabinets	Two (2) Year Product Warranty
Stone & Timber Products	
Bench Basins	Five (5) Year Product Warranty
Stone Basins	Two (2) Year Product Warranty
Stone Benchtops	Five (5) Year Product Warranty
Timber Products	One (1) Year Product Warranty

*excludes timber cabinets refer to timber products section **In-wall cisterns, valves, seats, button assemblies, links, flush pipes, and other internal components are covered by a Three (3) Year replacement warranty.

^ Some sale items, clearance items, new factory items, seconds, or selected ranges and products may subject to independent product warranty, which will be clearly stipulated in the product listings and the tax invoice.

- (f) To the extent permitted by law, Fontaine will not be liable for any personal injury, direct or indirect or consequential loss arising out of or in relation to the supply of a defective Product.
- (g) All samples, display models, descriptions, specifications, illustrations, drawings contained in catalogues, price lists or other advertising materials of Fontaine are intended by Fontaine to be a general description of the Products only. The Products supplied by Fontaine may be subject to minor modifications and tolerances consistent with usual industry standards and practice.
- (h) The Customer agrees that the following variations in the Products will not be considered to be defects for the purposes of this clause:
 - i. Minor surface imperfection and finish variation in a Product which is handmade, hand-painted or hand-sprayed due to the nature of the process which is carried out by hand.
 - ii. Variations in the crystalline structure, mineral inclusions, veining and colour of which are the inherent features of a Product such as natural stone.
 - iii. Naturally occurring variations in the colour, knots, grain variation, gum marks, pinholes, hairline cracks and mineral streaks of natural timber.
 - iv. Minor variations in colour, shading, size, texture, crazing and other imperfections in ceramic Products due to the nature of the production process of ceramic Products.
- (i) Notwithstanding the above clauses, the warranty provided by Fontaine and consumer guarantees shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - i. Failure by the Customer to properly use any Products; or
 - ii. Failure by the Customer to ensure that Products are properly installed by licensed trade professionals, in accordance with the applicable Australian Standards and regulations.
 - iii. failure on the part of the Customer to follow any instructions or guidelines provided by Fontaine; or
 - iv. any use of any Products otherwise than for its intended use; or
 - v. fair wear and tear, or
 - vi. any faults which the Customer was made aware of prior to making the Order; or
 - vii. Losses which are not reasonably foreseeable as being caused by the defective Product; or
 - viii. Other causes other than faulty workmanship or materials e.g. water leakage to storage cabinets supplied by Fontaine.

18. Risk

- (a) All risk for the Products passes to the Customer on delivery.
- (b) If the Customer gives Fontaine an ATL to leave the Products outside Fontaine's premises for collection or to deliver the Products to an unattended location, then such Products shall be left at the Customer's sole risk, and it shall be the Customer's responsibility to ensure the Products are insured adequately.

19. Title

- (a) Title in the Products shall not pass to the Customer until the Customer has paid Fontaine all amounts owing for the Products and there is no debt owing by the Customer to Fontaine on any account.

- (b) Until such time as Fontaine has received full payment for the Products, Fontaine holds a lien over the Products and may enter the Customer's premises to recover possession of the unpaid Products. Alternatively, Fontaine can issue proceedings to recover the Price of the Products delivered to the Customer notwithstanding that title in the Products may not have passed to the Customer.

20. No Representation

The Customer shall rely on its own knowledge and expertise in selecting the Products for its intended purpose. Any recommendation or assistance given by Fontaine shall be accepted at the Customer's risk and shall not be relied on or deemed to be a representation by Fontaine as to the suitability of the Product of which the Customer has relied on.

21. Default & Consequences of Default

- (a) Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic) plus two percent (2%). All payments made by the Purchaser will first be applied to the accrued interest.
- (b) In the event that the Customer's payment is dishonoured for any reason, the Customer shall be liable for any dishonour fees incurred by Fontaine.
- (c) If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Fontaine from and against all costs and disbursements incurred by Fontaine in pursuing the debt including legal costs on a solicitor and own client basis and Fontaine's collection agency costs.
- (d) Without prejudice to any other remedies Fontaine may have, if at any time the Customer is in breach of any obligation (including those relating to payment), then Fontaine may suspend or terminate the supply of the Products to the Customer.
- (e) Without prejudice to Fontaine's other remedies at law, Fontaine shall be entitled to cancel all or any part of an Order which remains unfulfilled and all amounts owing to Fontaine become immediately payable in the event that:
- any money payable to Fontaine becomes overdue, or in Fontaine's opinion the Customer will be unable to meet its payments as they fall due; or
 - the Customer 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
 - a receiver, manager, liquidator or similar person is appointed in respect of the Customer or any asset of the Customer; or
 - The Customer fails to notify Fontaine in writing of any change in its legal and beneficial ownership and/or management including any change in directors and shareholders within seven days of the date of any such change.

22. Dispute Resolution

- (a) If a dispute arises between the parties, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute.
- (b) Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.
- (c) The parties agree not to take any legal action against each other until they have attempted to resolve the dispute in good faith

23. Personal Properties Securities Act 2009 ("PPSA")

- (a) For so long as any monies owing by the Customer to Fontaine under the Order remain unpaid, the Customer acknowledges that Fontaine has a Security Interest in the Products under the PPSA.
- (b) For the purposes of the PPSA:
- terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA;
 - these Terms and Conditions are a security agreement and Fontaine has a Purchase Money Security Interest in all present and future Products supplied by Fontaine to the Customer and the proceeds of the Products;
 - the Security Interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
 - the Customer must do whatever is necessary in order to give a valid Security Interest over the Products which is able to be registered by Fontaine on the Personal Property Securities Register.
 - The Security Interest attaches to the Products when delivery occurs and not at any later time.
 - Fontaine may apply to register a Security Interest in the Products at any time before or after delivery of the Products.

- (c) The Customer undertakes to execute all documents and provide all information of which Fontaine may require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register.
- (d) The Customer agrees to indemnify and reimburse Fontaine for all expenses incurred in registering a Financing Statement or Financing Change Statement in relation to Security Interests on the PPSR or releasing any Security Interests.
- (e) The Customer must not register or permit to be registered a Financing Change Statement in the Products without the prior written consent of Fontaine.
- (f) The Customer must provide Fontaine with not less than seven (7) days' prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or any other such change in the Customer's details registered on the PPSR to register a Financing Change Statement
- (g) To the extent permissible under the PPSA, the Customer waives its right to receive notice of any verification of the registration.
- (h) To the extent permitted by the PPSA, Fontaine and the Customer agree that for the purposes of enforcement by Fontaine of its Security Interest under Sections 115(1) and 115 (7) of the PPSA:
- Fontaine need not comply with Sections 95, 118, 121 (4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - Sections 142 and 143 of the PPSA do not apply.
- (i) For the purposes of Section 115(7) of the PPSA, Fontaine need not comply with Sections 132 and 137(3) of the PPSA.

24. Privacy Act

- (a) The Customer and/or the Guarantor/s agree for Fontaine to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s and to make such enquiries as necessary including trade references or any other credit provider from time to time in relation to credit provided by Fontaine.
- (b) Fontaine's rights to obtain personal credit information about the Customer under this clause will be subject to the restrictions contained in the Privacy Act.

25. General

- (a) 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.
- (b) These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria.
- (c) To the extent permitted by law, Fontaine shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Fontaine of these terms and conditions. In the event of any breach of this contract by Fontaine, the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Products.
- (d) The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Fontaine nor to withhold payment of any invoice because part of that invoice is in dispute.
- (e) Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, infectious disease, epidemic or pandemic; or other event beyond the reasonable control of either party. If Fontaine cannot perform its obligations due to such reasons, Fontaine may terminate the agreement with the Customer by giving written notice.
- (f) The failure by Fontaine to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Fontaine's right to subsequently enforce that provision.
- (g) A notice sent by either party must be in writing and handed personally, by email or by prepaid post to the last known address of the receiving party.
- (h) Please note when opting out of Fontaine Industries promotional emails via the unsubscribe link, you are opting out of the email marketing only. When opting out of SMS communications via the opt out reply function, you are opting out of SMS marketing only. For more information about opting out of marketing communications, please contact us by email at support@fontaineind.com.au or 1300 884 081.