

1. Definitions

1.1. Definitions

Unless the context otherwise requires, the meanings of terms used in the Agreement are as follows:

- (a) **Account Application** means the account application or similar document on Pittella's standard form (including any online account creation process via Pittella's Website) completed by or on behalf of the Customer (or any other form accepted by Pittella in writing) that refers to Pittella's standard terms and has been accepted by Pittella;
- (b) **Additional Charge** means any fees or charges for additional goods or services provided or performed (or arranged) by Pittella at the Customer's request or reasonably required as a result of the Customer's conduct;
- (c) **Customer** means the person that orders Products from Pittella from time to time, including any persons named as the 'customer', 'applicant' or similar expression in a corresponding Account Application or the holder of an online account in respect of the Website and, where the context permits, the officers, employees and agents of the foregoing;
- (d) **Liability** includes any cost, loss, liability, charge (government or otherwise), tax, duty, penalty, fine, expense (including solicitors' fees on a full indemnity basis), demand, proceeding, suit, action or cause of action, whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated, actual or contingent;
- (e) **Order** means an order for Products placed by or on behalf of the Customer from time to time (including via the Website store) that is accepted by Pittella in writing, and where an order is subsequently amended, refers to the final amended order that is accepted by Pittella in accordance with these Standard Terms;
- (f) **Pittella** means Pittella Pty Ltd ACN 082 546 003;
- (g) **Pittella Policies** each of Pittella's published or otherwise disclosed policies in effect from time to time, including its privacy policy, the terms of use on the Website (**Website Terms of Use**), any of Pittella's terms applicable to online portals or other electronic facilities, the material published on the Website relating to specific finishes for the Products and any of Pittella's other policies referred to in any of such documents;
- (h) **Products** means any goods (including ancillary or related services) supplied or procured by Pittella for the Customer from time to time, and when the term is used in the context of a particular Order means the Products the subject of that Order;
- (i) **Standard Terms** means the standard terms and conditions contained in this document, as amended from time to time; and
- (j) **Website** means Pittella's website, located at <https://www.pittella.com.au/>, and (where the context permits) such other of Pittella's websites from time to time.

2. General

2.1. Documents comprising the Agreement

The '**Agreement**' comprises these Standard Terms and any Account Application. These Standard Terms will prevail over any other documents referred to in this Agreement in the event of an inconsistency. To the extent the law permits, no other terms or conditions (including those contained in any document submitted by the Customer) will apply to the supply of any Products nor will it impose any obligations on Pittella, except where terms and conditions form part of the Agreement pursuant to paragraph 0 above.

2.2. When Customer bound

These Standard Terms apply to all transactions between the Customer and Pittella relating to the sale of Products and the provision of related services (including all quotations, contracts and variations) and the Customer will be bound by these Standard Terms from the time it first signs a document forming part of the Agreement, creates an account via the Website or from when the Customer first places an Order (whichever is the earlier).

2.3. Update to Standard Terms

To the extent the law permits, Pittella may amend these Standard Terms and will notify the Customer of the amendments by publishing the amended Standard Terms on its Website or by written notice to the Customer, and the amended terms will apply to any Orders placed for Products after such notice.

3. Orders

3.1. Submitting Orders

- (a) The Customer may submit an Order for the purchase of Products through any means permitted by Pittella from time to time (which may include by telephone, email, letter or through the Website). Every Order must include any information Pittella may reasonably require, including details of the relevant Products to be ordered

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(including any applicable product codes and selected finishes for the Products), the Customer's requested collection or delivery date and address (if applicable).

- (b) Alternatively, Pittella may prepare an Order on the Customer's behalf and include details of the Products to be supplied in a quote, proposal or similar document, and upon such document being accepted by the Customer it will be considered an 'Order' for the purposes of this Agreement.
- (c) Following receipt of an Order or any requested changes to the Order, Pittella may notify the Customer of any required changes or additional matters to be included in the Order (including any changes to prices or Additional Charges, which may be an estimate or rate. If this occurs, the Customer must promptly confirm in writing that it accepts or rejects the variations proposed by Pittella and Pittella is under no obligation to accept or fulfill the Order until the Customer does so.

3.2. Acceptance of Orders

- (a) Each Order placed with Pittella is irrevocable and may not be varied by the Customer without Pittella's written consent. Pittella may accept or reject any Order in whole or in part. An Order is only binding on Pittella if it is accepted by Pittella in writing (at which point a contract is formed for the supply of the relevant Products on the terms of this Agreement). Any electronic notification that an Order has been accepted via the Website will not be treated as acceptance of an Order.
- (b) Once Pittella accepts an Order, it will advise the Customer of the proposed date that the Products will be ready for collection (or delivery, if agreed by Pittella). To the extent the law permits, any indication from Pittella of the time frame for the supply of the Products is an estimate only and Pittella will not be liable to the Customer for any Liability suffered if the time frame is not met.
- (c) If the Customer wishes to vary an Order after it has been accepted by Pittella, Pittella reserves its right to further amend the Order or its quoted prices, including by adding Additional Charges in respect of any extra costs incurred in connection with the variation. Pittella may accept or reject any variation in its absolute discretion.
- (d) To the extent the law permits, the Customer is not able to return any Products to Pittella or seek a refund of any monies paid to Pittella other than in accordance with these Standard Terms, and, for the avoidance of doubt, no Products may be returned to the Customer due to change of mind or similar matters.

4. Pricing, invoicing and payment

4.1. Price for Products

- (a) If the Products are purchased via the ordering and payment systems made available on the Website, the price payable for the Products will be the total price displayed when the order is formally placed (which will generally be the price on the 'checkout' page) via the Website (subject to any contrary provisions in these Standard Terms or Pittella's Website terms of use). For the avoidance of doubt, if there is a range of prices advertised on the Website for a type or class of products the subject of an Order, the range of prices is not binding on Pittella (as the actual price will depend on various matters such as the size of the product and the chosen finishes for the product) and only the final price displayed when the Order is placed will be the price for the Products.
- (b) If Pittella provides a Customer with a quote that sets out the price of the Products, the price specified in the quote is valid for 30 days or such earlier period specified in the quote, unless Pittella notifies the Customer otherwise at the time Pittella confirms the Order placed pursuant to the quote. Nothing in this clause shall prejudice Pittella's ability to either accept or reject an Order.
- (c) Otherwise, the price payable for the Products will be the price advised to the Customer by Pittella prior to (or at the time of) acceptance of the Order, and if no such price is advised then Pittella will charge its then current prices at the time of acceptance of the Order on the basis that the Products were purchased via the Website. Any indication of prices in any advertised or other material is not binding on Pittella, except as stated above.
- (d) Where the Customer is acting as distributor for Pittella, it agrees not to on-sell any Products for a price greater than Pittella's trade price specified on the Website at the time the Order was accepted. Pittella reserves the right to change its trade price at any time.

4.2. Additional Charges

- (a) Where these Standard Terms entitle Pittella to impose any Additional Charges, the amount of the Additional Charge will be calculated based on the sum or rate specified in an accepted Order or invoice (including a pro forma invoice) (if any), otherwise the sum reasonably determined by Pittella that represents its full costs and expenses incurred in connection with the matter giving rise to the Additional Charge plus a mark-up of 15%.
- (b) Pittella may impose Additional Charges in respect of specific packaging, freight, transport, handling or insurance charges that are not specifically included in the accepted Order or in respect of any breach of this Agreement by the Customer. For Orders placed via the Website where the Customer specifies a delivery address when placing the Order, the price specified when placing the Order will include the costs of delivery of the Products to that address (but will not include any other costs in connection with the supply of the Products, including any

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costs for unloading the Products, any import duties or any similar government charges or taxes), unless the Customer is notified otherwise prior to Pittella accepting the Order in writing.

4.3. Invoicing

Pittella may issue an invoice (including a pro forma invoice) to the Customer at any time, including at the time of accepting an Order or after the Products have been supplied. The amount payable by the Customer will be the amount set out in the invoice, consisting of the price for the Products and any Additional Charges. This paragraph does not release the Customer from any other obligations to pay as provided for in the Agreement and Pittella is under no obligation to supply or deliver any Products when any invoice has not been paid when due.

4.4. Payment terms

- (a) The Customer must pay any invoice issued by Pittella immediately upon receipt and in any event prior to collection of any Products (or dispatch of the Products from Pittella's premises, if applicable).
- (b) Any requested credit terms or limits submitted to Pittella will not be binding, unless expressly approved by Pittella in writing in respect of a particular Order. If credit terms are offered, then the Customer must make payment strictly in accordance with those credit terms, and in any event prior to the last day in the month following supply of the Products.
- (c) All monies are payable to Pittella at its principal place of business without set-off or counterclaim in the manner Pittella reasonably requires from time to time. Pittella may apply any payment received from the Customer to any amount owing or payable by the Customer on any account.
- (d) The Customer will pay Pittella on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to Pittella, calculated on daily balances and compounding monthly until paid. Interest is payable at the end of the month in which the interest accrued or earlier on demand.

4.5. GST

Unless Pittella otherwise agrees in the Order, any amounts quoted or prices payable for any supply to be made by Pittella exclude any GST, taxes, duties (such as import duties), excise fees, tariffs or other government or mandatory charges that are payable in respect of the supply of the Products or any currency conversion, banking or similar fees in respect of any payments to Pittella, which the Customer must pay promptly (or otherwise on demand).

5. Terms of supply of Products

5.1. Delivery of the Products

Pittella may, in its absolute discretion, agree to deliver the Products. If Pittella has agreed to deliver the Products, then unless Pittella otherwise agreed at the time of accepting the Order:

- (a) the delivery terms will be notified to the Customer prior to dispatch of the Products and the Customer must arrange for all approvals or clearances required, as well as the safe unloading of the Products at the delivery location at the time the Products are delivered, with risk in the Products to pass at the time immediately before unloading of the Products at the delivery location (or such earlier time provided for in the delivery terms notified by Pittella);
- (b) any claims against Pittella in respect of loss or damage to the Products in transit while the Products are still at Pittella's risk will be limited to the monies that Pittella receives (or would be entitled to receive but for this clause) under any applicable insurance policy taken out by Pittella; and
- (c) if the prices in the Order do not specifically include delivery costs or where the Customer requests Pittella or its delivery provider to unload or place the Products at a location other than on the street at the delivery location, then the Customer will incur Additional Charges in respect of the delivery which will include the costs charged to Pittella plus a mark-up of 15%.

5.2. Collection of the Products

- (a) If Pittella has not agreed to deliver the Products to the Customer, the Customer will be notified of the date the Products will be available for collection and the collection address. The Customer must (at its cost and risk) arrange for collection, loading and transport of the Products from that premises (during normal business hours) on the date so notified, and risk in the Products will pass once the Customer begins loading the Products. Pittella will not be liable for any damage to the Products while loading or in transit where the Products are collected by or on behalf of the Customer.
- (b) If the Customer does not collect the Products from Pittella's premises within 10 days of the collection date notified to the Customer, then risk in the Products passes to the Customer from that date and Pittella may store the Products and charge the Customer storage costs and expenses as Additional Charges. If the Products are not collected within 30 days of the collection date notified to the Customer, Pittella may dispose of the Products and recover any Liability incurred by Pittella in doing so.

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5.3. Risk and title

- (a) Property and title in Products does not pass to the Customer until delivery or collection (as the case may be and all money owing to Pittella on any account is paid in full without any set off or counterclaim (despite the Customer paying for the Products in advance). Pending payment in full, the Customer must ensure that if the Products are damaged or destroyed then the proceeds of any insurance policy are paid directly to Pittella.
- (b) If the Customer fails to pay any amounts due to Pittella, Pittella, its agents and their respective employees and contractors have the right and are granted an irrevocable licence to, at any time and without notice, enter the Customer's premises (or any other location) to exercise Pittella's rights under the Agreement, including the right to repossess the Products or any part of them.
- (c) To the extent the law permits, the Customer waives any rights it has under the PPSA (including any rights to receive notices, statements or documents from Pittella), Pittella need not comply with any provisions of the PPSA (but Pittella may rely on all rights and remedies under the PPSA and Pittella will separately have all the rights and remedies under Chapter 4 of the PPSA as if they were stated in these T&Cs but without any corresponding obligations). Customers must do all things requested to preserve Pittella's rights under the Agreement (including providing all information and notifying Pittella of any changes to any details or information regarding any security interest held by Pittella and signing any further documents requested by Pittella to give effect to its security).

6. Warranties and liability

6.1. Warranties by Customer

To the extent permitted by law, the Customer warrants, acknowledges and agrees at all times that:

- (a) all Products are being purchased by the Customer are used solely for use in the Customer's business for the purposes of resupply and the Customer is not purchasing the Products for personal or domestic use, unless Pittella acknowledges otherwise in writing;
- (b) as the Products are building materials that are designed for installation by qualified builders who are familiar with Pittella's products and understand Pittella's installation and other guides, the Customer will ensure that only suitably qualified and licenced persons instal the Products and that any installation is done in a proper workmanlike manner in accordance with the specifications of the Products and any other requirements notified by Pittella from time to time (which the Customer acknowledges receiving prior to placing any Order for the Products);
- (c) any person submitting an Order is properly authorised to do so and bind the Customer to this Agreement, and the person submitting any Order or signing any constituent part of the Agreement separately warrants that he or she is duly authorised to bind the Customer;
- (d) Pittella are not engineers, builders or experts in respect of the functionality of the Products, rather Pittella relies on the information provided by the Customer (and any builders, architects or other advisers engaged by the Customer) in making any suggestion regarding its products, and the Customer must ensure that the Product is fit for its intended purpose (whether disclosed or not) prior to placing an Order by obtaining professional advice and engaging builders, architects or other advisers to consider any products suggested by Pittella to ensure the products are fit for purpose and in accordance with any drawings, plans or other documentation. Any advice or recommendations provided by Pittella have been made in reliance on the information so provided and if the Customer's requirements change (or Pittella is not properly informed) then the Products may not be suitable for the Customer's purposes;
- (e) each Product is designed for the specific purpose stated in Pittella's Policies, and if the Product is used for other purposes then it may not function as intended or expected, so the Customer must only use the Product for the purpose specified by Pittella;
- (f) Pittella's products may come in a variety of finishes or have different features, and those finishes or features may impact the functionality, longevity or other characteristics of the Products, as some finishes are more susceptible to wear, tear and tarnishing (or other variations in appearance) than others, so the Customer must ensure that it reads each of the Pittella Policies (including the information published on the Website and as otherwise provided to the Customer) in respect of such matters and satisfies itself as to the chosen finishes or features of the relevant products before selecting the relevant Product and placing an Order;
- (g) the particulars in the Order and all other information provided to Pittella in connection with the Agreement (including in any Account Application) are true, correct and not misleading in any respect (including by way of omission) and are up to date;
- (h) Pittella remains the absolute owner of all intellectual property rights (of any description, including within the meaning of that term in the Website Terms of Use) in connection with the Products, any material published on the Website and any designs, drawings, guides, instructions or similar matters relating to the Products or Pittella, and the Customer will not claim any interests in the foregoing nor will it infringe any such rights; and

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- (i) if the Customer is the trustee of any trust, the Agreement is binding on the Customer in its personal capacity and in its capacity as trustee of any trust, the Customer is validly appointed as the sole trustee and will not allow any new trustee to be appointed and the Customer has the right to be fully indemnified out of the trust assets and from the beneficiaries for all liabilities in connection with the Agreement.

6.2. Pittella Policies

The Customer acknowledges and agrees that they have read and understood the Pittella Policies and will ensure their respective employees, agents and contractors (including any end user of the Products) at all times comply with the Pittella Policies (which, for the avoidance of doubt, will not form part of the Agreement or create any enforceable rights against Pittella). Despite the foregoing, where the Pittella Policies grant Pittella rights (including in respect of pricing errors on the Website or in respect of the handling of personal information), those rights are enforceable by Pittella despite the Pittella Policies not forming part of the Agreement.

6.3. Implied terms

- (a) Subject to paragraph (b) below and any express warranties against defects provided for in these Standard Terms, any condition or warranty which would otherwise be implied in the Agreement which is capable of being excluded is hereby excluded, and all information, specifications and samples provided by Pittella in relation to the Products are approximations only and small deviations or slight variations from them which do not substantially affect the Customer's use of the Products will not entitle the Customer to reject the Products, or to make any claim or seek to recover any Liabilities in respect of them.
- (b) The Australian Consumer Law may give to the Customer certain guarantees. Where such guarantees apply to the supply of Products and liability for breach of any such guarantee can be limited, Pittella's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of goods, to the replacement or repair of the goods or the costs of resupply or replacement of the goods or with respect to services to the supply of services again or cost of re-supplying the services again.

6.4. Acceptance of goods

The Customer undertakes to promptly inspect the Products upon receipt for any visible defects or faults, any discrepancies with the Order (including any incorrect quantities or types of products) and any other similar issues or non-compliance with this Agreement or the Order that would be apparent upon a proper inspection of the Products. If the Customer fails to notify Pittella in writing of any such matters within 14 days from date of delivery or collection (and in any event prior to any Products being installed), then the Customer is deemed to have accepted the Products and that the Products are fully compliant with the Agreement. Nothing in this clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

6.5. Pittella's warranties

Unless otherwise specified in an Order or on the Website page for the particular Product, Pittella provides a limited warranty against material defects in workmanship or materials whereby Pittella will replace or repair any defective Products without charge (or repay to the Customer the price paid for the Products, at Pittella's discretion) provided the defects are not of the kind referred to in the preceding clause and the Customer notifies Pittella of the claim on this warranty within one year from the date the relevant defective Products are supplied. This warranty is conditional on the Customer complying with applicable provisions in this Agreement in relation to the Products (including in respect of the use, selection and installation of the Products) and provided the Customer returns the defective Products to Pittella on request with proof of purchase. As Pittella may change the design of its products without notice, any replaced or repaired products may not correspond with the defective Products. This limited warranty is in addition to any rights the Customer may have under the Australian Consumer Law, but is subject to any additional conditions published on the Website.

6.6. Indemnity

- (a) To the extent the law permits, the Customer indemnifies and must keep indemnified Pittella against any and all Liabilities incurred, suffered or otherwise arising in connection with any breach by the Customer of any provision of the Agreement (including any inaccuracy of the warranties provided by the Customer or any purported cancellation or variation of an Order without Pittella's prior written consent), Pittella's Policies or any other obligation owed to Pittella or any third party from time to time.
- (b) To the extent the law permits, Pittella is not liable for any direct, indirect, punitive, incidental, special, consequential losses or damages (including damages for loss of use, data or profits) arising out of or in any way connected with the provision of (or failure to provide) Products, whether based on terms of trade, negligence, strict liability or otherwise, even if Pittella has been advised of the possibility of such losses or damages.

7. General Provisions

7.1. Assignment

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The Customer must not assign or otherwise deal with any of its rights or obligations under the Agreement without the prior written consent of Pittella. Pittella may assign or otherwise deal with any of its rights or obligations under the Agreement without the Customer's consent.

7.2. Variation and waiver

Any variations to the Agreement will not have any effect whatsoever unless in writing and signed by Pittella. Any failure of Pittella to exercise any or all of its rights or powers under the Agreement at any time and for any period of time shall not constitute a waiver of any of Pittella's rights or powers arising pursuant to the Agreement.

7.3. Force Majeure

If the performance of the Agreement or any obligation under it (except for any obligation to pay) is prevented, restricted, interfered with or materially prejudiced by reason of circumstances beyond the reasonable control of the party obliged to perform it (including any Act of God, act of any governmental or competent authority, a pandemic or government response to a pandemic, the imposition of any new taxes, excise fees, tariffs or other mandatory charges or an increase in same, default of any suppliers under any contract to which Pittella is a party or seizure or stoppage of Products in transit), the party so affected (upon giving prompt notice to the other party) shall be excused from performance to the extent of the prevention, restriction or interference, but the party so affected shall use its best endeavours to avoid or remove the causes of non-performance and shall continue performance under the Agreement with the utmost despatch whenever such causes are removed or diminished. If such causes are not reasonably able to be overcome, then the parties will negotiate in good faith alternative arrangements for the performance of the Agreement.

7.4. Entire agreement

To the extent the law permits, the Agreement represents all the terms and conditions between the parties, and the Customer acknowledges that it has not entered into the Agreement (or placed any Order) in reliance on, or as a result of, any promise, representation, statement, conduct or inducement of any kind relating to any matter in connection with the Agreement from Pittella or its agents. The parties agree that the United Nations Convention on Contracts for the International Sale of Products does not apply to the Agreement or the supply of any Products.

7.5. Severance

If a provision of the Agreement is not permitted by law (**Void Term**), then the Void Term shall be read down to the extent required to ensure it is enforceable; if the Void Term is unenforceable due to it imposing liability on the Customer, the Customer shall be liable to the extent the Customer caused or contributed to the liability; if the Void Term is unenforceable due to releasing Pittella from an obligation, Pittella will still be liable to perform the obligation to the extent Pittella either caused or contributed to the obligation being breached. If the foregoing does not cure the invalidity or unenforceability, the Agreement does not include the Void Term and the remainder of the Agreement continues in full force.

7.6. Governing Law

The Agreement is governed by the laws of Victoria, Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that State.

7.7. Discretion

Where the Agreement allows Pittella a discretion or power (including where 'may' is used), the discretion or power may be exercised in Pittella's absolute discretion, without giving reasons and may be conditional. Where the Agreement requires Pittella to agree to something or Pittella's consent to be obtained, the agreement must be in writing by a duly authorised representative of Pittella and the consent must be prior written consent.

7.8. Interpretation

In the Agreement:

- (a) headings used in these Standard Terms are for convenience only and do not affect interpretation of these Standard Terms;
- (b) the provisions of the Agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for proposing or preparing the Agreement ; and
- (c) the words 'includes', 'including', are not words of limitation nor does the incorporation of more than one obligation limit any other obligation contained in that provision;
- (d) where an expression is defined, another part of speech or grammatical form of that expression have a corresponding meaning;
- (e) the singular includes the plural and vice versa, words importing a gender include every other gender and a reference to a person includes a corporation, trust, partnership, unincorporated body, government agency, or other entity whether or not it comprises a separate legal entity;

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- (f) a reference to a party includes the party's executors, administrators, successors, permitted substitutes, permitted assigns and, in the case of a trustee, includes any substituted or additional trustee; and
- (g) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether an agreement, deed or otherwise) and includes any variation, replacement or novation of it.