

## VapourSeal Pty Ltd – TERMS AND CONDITIONS OF SALE OF GOODS AND SERVICES

This list of terms reflects some but not all of the terms and conditions of sale (“Terms”) for VapourSeal Pty Ltd (ACN 668728943), which are available at [www.vapourseal.com.au](http://www.vapourseal.com.au)

1. The Terms apply to the customer and to VapourSeal in respect of Goods or Services ordered by the customer. Any terms and conditions set out in the Customer’s purchase order deviating from or inconsistent with the Terms shall not bind VapourSeal.
2. Risk in the Goods passes at the point of delivery. VapourSeal is deemed to have delivered Goods when they are made available for unloading at the Customer’s nominated delivery point. If goods are to be collected by the Customer from VapourSeal’s place of business, delivery of Goods occurs when the Goods are made available to be loaded on the Customer’s vehicle.
3. Except as otherwise agreed by VapourSeal in writing, terms of payment are cash on order. Any extension of credit to the Customer by VapourSeal shall be at the sole discretion of VapourSeal and, where extended, unless otherwise advised in writing by VapourSeal, VapourSeal requires payment in full within 30 days of the end of the month in which delivery occurs.
4. Whilst the risk of Goods passes on delivery, legal and equitable title remains with VapourSeal until payment in full for all debts accrued or owed by the Customer to VapourSeal is received by VapourSeal. Until VapourSeal has received payment for the Goods in full:
  - (a) VapourSeal reserves the right to enter the Customer’s premises and retake possession of the Goods, reserves the right to keep or resell any Goods repossessed and reserves any other rights it may have at law or under the PPSA; and
  - (b) The Customer agrees to take the Goods as bailee for VapourSeal and must insure the Goods.
5. Until VapourSeal has received payment for the Goods in full, the customer acknowledges that VapourSeal shall have a Purchase Money Security Interest which attaches over such Goods and their proceeds and a Security Interest on the personal Property Securities Register established by the PPSA and, where reasonable, amend the registration.
6. The Customer must not grant any other person a Security Interest in respect of the Goods or allow an Excluded Interest to exist over the Goods.
7. The Customer agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which VapourSeal asks and considers necessary for the purposes of: ensuring that Security Interest created under the Terms is enforceable, perfected and otherwise effective; or enabling VapourSeal to apply for any registration, or give any notification, in connection with a Security interest created under the Terms so that the Security Interest has the priority required by VapourSeal, including anything VapourSeal reasonably asks the Customer to do in connection with the PPSA.
8. Without prejudice to any other rights VapourSeal may have against the Customer, and to the extent permitted by the law:
  - (a) The Customer must indemnify VapourSeal for any Losses incurred by VapourSeal should the Customer breach any of the Terms or cancel any purchase order or part of a purchase order for the Goods or Services; and
  - (b) The Customer indemnifies VapourSeal against any Claim made or initiated against VapourSeal by any third party in respect of any damage, death or injury caused by or in any way attributable to the Goods or Services supplied by VapourSeal.
9. There is no need for VapourSeal to suffer Loss before enforcing clause 8.
10. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. These rights are limited to where the Customer is a “consumer” under the Australian Consumer Law.
11. In addition to any consumer guarantees that VapourSeal may have to provide the Customer under the Australian Consumer Law, VapourSeal provides the customer with limited warranties as described in VapourSeal’s technical data sheets. This warranty expires 3 months after the date of sale of the Goods, unless VapourSeal states otherwise in writing.
12. VapourSeal shall bear its own costs and expenses of responding to the Customer’s warranty claim. However, the Customer must bear the Customer’s own costs in making a warranty claim and all costs of transport of the Goods to VapourSeal.
13. In relation to this Warranty, VapourSeal is not required to pay for claims:
  - (a) made outside of the warranty period;
  - (b) for consequential or indirect losses, damages, costs, expenses (including loss of profits, loss of revenue, loss of opportunity, loss of business, loss of reputation, loss of goodwill) or any other losses beyond the normal measure;
  - (c) where the goods have not been installed in accordance with VapourSeal’s instructions or the manufacturers’ recommendations;
  - (d) where the Goods have been modified or are otherwise not installed in their original condition; or
  - (e) where the Goods have been subject to inappropriate use, negligence, accident, or any other external factor outside the control of VapourSeal.
14. To make a warranty claim the Customer must contact VapourSeal directly on (03) 9544 1977 during Business Hours, by email at [info@vapourseal.com.au](mailto:info@vapourseal.com.au) or by post PO Box 1092 Huntingdale Vic 3166 within 7 days of identifying the alleged defect and within the warranty period.
15. VapourSeal may need to inspect the Goods and may require the Customer to provide VapourSeal with the Goods or access to the Goods within 7 days.
16. Within 21 days of carrying out any inspection (if necessary) or otherwise within 21 days of the date of the warranty claim, VapourSeal shall determine whether or not to honour the warranty claim and shall notify the Customer.
17. Subject to clauses 11-16 and to the extent permitted by the law, all implied conditions, warranties, guarantees and undertakings are expressly excluded and except as provided in clause 18, VapourSeal is not liable for any Losses arising out of or in connection with any breach of contract by VapourSeal or any negligence of VapourSeal, its employees or agents and the Customer releases VapourSeal from all Claims for such Losses.
18. To the extent permitted by the law, if VapourSeal is liable for a breach of guarantee implied by the Australian Consumer Law (not being a condition or warranty implied by Section 64 of the Australian Consumer Law) then its liability for a breach of any such guarantee shall be limited, at its option, to any one or more of the following:
  - (a) in the case of Goods: the replacement of the Goods or the supply of equivalent goods; the repair of the Goods; the payment of the cost of replacing the Goods or acquiring equivalent goods, or the payment of the cost of having the Goods repaired;
  - (b) in the case of Services: the supply of the Services again, or the payment of the cost of having the Services supplied again.
19. The Customer acknowledges that it does not rely and that it is unreasonable for the Customer to rely on the skill or judgement of VapourSeal as to whether the Goods are reasonably fit for the purpose for which the Goods are being acquired or (and the Customer acknowledges that it does not rely and that it is unreasonable to rely on VapourSeal skill or judgement) as to the fitness for purpose for which the Services are being acquired and any materials supplied in connection with those services.
20. The laws of the State of Victoria govern the Terms. The parties submit to the non-exclusive jurisdiction of the Courts of Victoria and the Federal Court of Australia.
21. Certain words and phrases used in this list of terms are defined in the Terms.