

BUTYL/EPDM RUBBER CONDITIONS OF SALE

1. Definitions

In these Terms and Conditions:

Customer or You means any person or persons, company or business entity to whom Southland sells or supplies or proposes to sell or supply the Liner(s).

Delivery Date means the date that the Liner(s) are delivered to the Job Site, or when the Customer collects the Liner(s)

Installation Date (if applicable) means the date that Southland has fitted the Liner(s) and only applies in the case that Southland has been contracted to also fit (install) the Liner(s) and shall not apply to any works or installations by others. Installation by others shall be exclusively at the risk of the installer

Fabricate means patterning, cutting and bonding of the rubber material supplied by the Material Manufacturer to Southland for the purposes of creating the Liner.

Job Site means the location or address of the site that the Liner(s) are required to be delivered and/or installed as nominated in writing by the Customer.

Liner(s) means a one-piece, flexible, non-structural, synthetic rubber membrane used for the purposes of containing water of approved chemical composition which is Fabricated by Southland and supplied by Southland to the Customer.

Material Manufacturer means the manufacturer of synthetic rubber sheeting materials packaged and supplied to Southland.

Order means an order placed in any manner by the Customer for Southland to supply and/or install Liner(s) at a specific Job Site.

Price means the price payable for the supply and if applicable, installation of the Liner(s) as agreed between the Southland and the Customer in accordance with the Terms.

Quote means any document prepared by Southland and provided to the Customer which states the quantity of the Liner(s) ordered, price of the Liner(s) ordered, price of the installation and payment terms.

Southland means Southland Liners (Australia) Pty Ltd ABN 20 126 244 835.

Terms means these terms and conditions as may be updated by Southland from time to time.

2. Acceptance

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms if the Customer places an order for the Liner(s) and/or accepts delivery of the Liner(s).

2.2 These Terms can only be amended in writing and signed by the parties.

3. Payment

3.1 In consideration of the supply and/or installation of the Liner(s) at the Job Site, the Customer agrees to pay Southland without setoff, withholding or deduction, the Price which will be either the amount indicated on any invoice or Quote provided by Southland.

3.2 Payment of the Price will be made as per quoted terms

3.3 Southland reserves the right to change the Price if:

- the Purchaser requests a variation to a Quote; or,
- there is any variation to the supply and installation of the Liner(s) or the specifications of the Order outside the control of the parties including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as:
 - poor weather conditions;
 - limitations to accessing the site for installation;
 - availability of installation tools and staff;
 - change in design; or,
 - any increase to Southland's cost of materials and labour.

3.4 Unless otherwise indicated, the Price does not include GST and the Customer must pay GST on the Price at the same time the Customer pays the Price.

3.5 The Customer acknowledges that ownership of the Liner(s) shall not pass to the Customer until:

- all amounts owing to the Southland have been paid in full; and
- the Customer has met all of its other obligations to Southland in accordance with these Terms.

3.6 At its discretion, Southland may require a deposit for the Liner(s).

4. Delivery

4.1 Southland will arrange delivery of the Liner(s) to the Job Site if it is contracted to do so.

4.2 At Southland's discretion, the cost of delivery is either included in or addition to the Price.

4.3 Any time or date for delivery given by Southland is an estimate only. The Customer must still accept delivery of the Liner(s) even if late and Southland will not be liable for any loss or damage incurred by the Customer as a result of a late delivery.

5. Risk

5.1 Risk of damage to or loss of the Liner(s) passes to the Customer on the Delivery Date.

5.2 The Customer must insure the Liner(s) for Southland's interest in the Liner(s) on and from the Delivery Date.

5.3 If the Customer requests Southland to leave the Liner(s) at the Job Site, or to deliver the Liner(s) to an unattended location, then such Liner(s) shall be left at the Customer's sole risk.

5.4 If the Customer

6. Access for Installation or Maintenance (

6.1 If the Customer has engaged Southland to install the Liner(s) at the Job Site, the Customer shall ensure that Southland has clear, free and safe access at the Job Site at all times and assist in all ways practicable to enable Southland to safely undertake the installation.

6.2 All pipework and ancillary connections intended to penetrate the liner shall, at the Customer's expense, be made suitable for effective sealing to a rubber liner in accordance with Southland's standard sealing methods available at request

6.3 Any site lifting equipment shall be made available at no cost to Southland to receive the liner and lift it to tank access hatch.

6.4 Southland shall not be liable for any loss or damage to the Job Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas).

6.5 Southland shall not be liable for any delays or contractor critical path programming issues and shall be provided no less than two week's prior notice to mobilise for any site related activity.

6.6 Southland shall not be liable for any remobilisation costs or delays associated with site readiness or any site delays resulting from Southland crew availability

7. Warranties

7.1 The Customer shall inspect the Liner within seven (7) days and notify Southland for any alleged defect, error or omission of Southland or any damage or failure to comply with the description or Quote. The Customer will afford Southland to inspect the Liner(s) within a reasonable time following such notification if the Customer believes the Liner(s) are defective in any way. If the Customer shall fail to comply with these provisions the Liner(s) will be presumed to be free from any defect or damage.

7.2 Southland's defects liability period for any workmanship by Southland shall not exceed twelve (12) months from the Delivery Date or, (exclusively in the case that Southland is also contracted to install the Liners), twelve (12) months from the Installation Date of works by Southland only. Southland's defect liability period shall be independent of, and not adjusted by, the Customer's defects liability date (or conditions), nor shall the Installation Date be adjusted by delays in connected components and associated trades (such as pipework or pumps or the building itself). The Material Manufacturer's Guarantee shall apply exclusively thereafter.

7.3 The Customer warrants that it will:

- conduct appropriate annual maintenance of the Liner in accordance with maintenance schedule (at the Customer's expense and a minimum of 12 monthly inspections by Southland or its duly authorised agent);
- use or manage the Liner in accordance with Southland or the Material Manufacturer's recommendations or standards; and,
- only authorise the installation or movement of the Liner by a person who is an authorised installer.

8. Limitation on Liability

8.1 Southland is not liable for any claim or loss related to:

- any claim or post installation use of the Liner after expiration of Southland's Defects Liability period as noted above in clause 7.2;
- any breach of the Customer's warranties noted in above clause 7.3;
- any other economic, indirect or consequential loss, or damage to other goods or building;

(d) damaged caused by or contributed by:

- handling, storage or erection of the Liner by others;
- reasonable wear and tear;
- the introduction (either by localised dosing or government supply) into Liner contents of any chemical including, but not limited to a substance that has:
 - a chlorinated concentration that exceeds 0.2PPM at ambient temperature; or
 - impurities, deleterious material or hydrocarbons;
- in the case of a tank Liner, any evidence of unlogged unauthorised entry into the tank; in the case of a tank Liner, any evidence of work on tank walls, pipework or penetrations that potentially disturb Liner seal integrity;
- water egress or ingress or collection of water behind the Liner(s) from external sources as evidenced by, but not limited to, the identification of:
 - corroded pipes that penetrate the Liner(s) below potential water level.
 - dirt, debris, rock, concrete, nails or other similar materials found on the Liner base;
 - structural or tank wall(s) which are also structural retaining walls that show signs of ground water ingress in continuous connected areas of that same wall; faultly or poorly directed inlet valves or inlets;
 - condensation in unvented tanks;
 - water ingress from poorly sealed manholes;
 - Insufficient control over water levels such that water contents or wave actions are allowed to exceed Liner(s) hang height
- planter boxes, poorly sealed tank soffit or other environmental actions immediately above the Liner(s) that allow water to track behind the Liner(s);
- any dewatering, pumping, draining, dehumidifying, drying, or any costs associated with the emptying, filling or commissioning of tanks and associated hydraulics.
- any works that are required within a tank structure deemed to be unsafe or not practicable via normal confined space access methods (normal confined space access methods typically require only gas detector, harness, tripod and rescue winch system); any issues related to impracticable access to tanks (including, but not limited to, restriction or blockage by structure, pipes, pumps or other which make normal service of the Liner(s) impracticable);
- installations or buildings which fail to incorporate backup or redundancy systems for essential services appropriate to allow reasonable maintenance and repair to the Liner(s);
- tanks with electrical switch boxes or associated high voltage services mounted to walls which cannot be isolated or otherwise relocated to a non-wet wall; and,
- any conditions or alterations to the tank structure and access since the Delivery Date that adversely alter tank accessibility.

9. Intellectual property

9.1 Where Southland has designed, drawn or developed specified Liner(s) for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Southland.

9.2 The Customer warrants that all designs, specifications or instructions given to Southland will not cause Southland to infringe any patent, registered design or trademark in the execution of the Quote and the Customer agrees to indemnify Southland against any action taken by a third party against Southland in respect of any such infringement.

10. Cancellation

10.1 Southland can cancel these Terms or can cancel delivery any time before the Liner(s) are delivered, by giving written notice to the Customer.

10.2 On giving such notice, Southland shall repay to the Customer any money paid by the Customer for the Liner(s). Southland shall not be liable for any loss or damage whatsoever arising from such cancellation.

10.3 The Customer agrees to pay all of Southland's costs, charges and expenses incurred due to the Customer's default of these Terms including Southland's legal costs on the indemnity basis.

11. Consumer rights

11.1 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or the *Fair Trading Act 1989* (Qld).

12. Building and Construction Industry Payments Act 2004

12.1 At Southland's sole discretion, if there are any disputes or claims for unpaid Liner(s) or installation of such Liner(s) then the provisions of the *Building and Construction Industry Payments Act 2004* (Qld) may apply.

12.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the *Building and Construction Industry Payments Act 2004* (Qld), except to the extent permitted by the Act where applicable.

13. Personal Property Securities Act 2009 ("PPSA")

13.1 Upon agreeing to these Terms, the Customer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all Liner(s) that have previously been supplied and that will be supplied in the future by the Southland to the Customer.

13.2 The Customer undertakes to:

- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Southland may reasonably require to;
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 13.2(a)(i) or 13.2(a)(ii);
- indemnify, and upon demand reimburse, Southland for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Liner(s) charged thereby;
- not register a financing change statement in respect of a security interest without the prior written consent of Southland;
- not register, or permit to be registered, a financing statement or a financing change statement in relation to the Liner(s) in favour of a third party without the prior written consent of Southland;
- immediately advise Southland of any material change in its business practices of selling Liner(s) which would result in a change in the nature of proceeds derived from such sales.

13.3 Southland and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

13.4 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

13.5 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

13.6 Unless otherwise agreed to in writing by Southland, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

13.7 The Customer must unconditionally ratify any actions taken by Southland under cl 13.2 to 13.4.

13.8 Subject to any express provisions to the contrary, nothing in these Terms are intended to have the effect of contracting out of any of the provisions of the PPSA.

14. General

14.1 If Southland fails, at any time, to insist upon strict performance of any obligations under the Agreement, or if Southland fails to exercise any rights or remedies under the Agreement, this does not constitute a waiver or concession of such rights or remedies and will not relieve the Customer from compliance with these Terms.

14.2 A waiver by Southland of any default will not constitute a waiver of any subsequent default.

14.3 No waiver by Southland under these Terms will be effective unless it is expressly stated to be a waiver and is communicated to the Customer in writing.

14.4 If any provision of these Terms is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, it is to be severed so the validity and enforceability of the remaining provisions are not affected.

15. The parties expressly agree that these Terms will be governed by and interpreted in accordance with the laws of Queensland