

## ACCOUNT TERMS AND CONDITIONS

### 1. Definitions

- 1.1 "Seller" means Blackwoods Readymixed & Garden Supplies Pty Ltd and its successors and assigns.
- 1.2 "Buyer" means the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees to be liable for the debts of the Buyer on a principal debtor basis.
- 1.4 "Goods" means Goods supplied by the Seller to the Buyer (and where the context permits includes any supply of Services).
- 1.5 "Services" means all services supplied by the Seller to the Buyer.
- 1.6 "Price" means the cost of the Goods calculated pursuant to clause 4.1 of the term and conditions.
- 1.7 'PPSA' means the Personal Property Securities Act 2009 (Cth).

### 2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods or the Buyer's acceptance of Services and Goods supplied by the Seller will constitute acceptance of these terms and conditions.
- 2.2 Where more than one Buyer has entered into this agreement, the buyers are jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

### 3. Goods

- 3.1 The Goods are as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Seller to the Buyer.

### 4. Price And Payment

- 4.1 At the Seller's sole discretion, the Price is;
- (a) The Seller's quoted Price, provided that the Buyer accepts the Seller's quotation in writing within 30 days of the quote being given; or,
- (b) As stated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or,
- (c) Otherwise, the Seller's current price at the date of delivery of the Goods according to the Seller's current Price list.
- 4.2 Any variation from the plan of schedule works or specifications (including, but not limited to, failure by the Buyer to meet payment terms on discounted Prices) will be charged for on the basis of the Seller's quotation and will be shown as extras on the invoice. Payment for all extras must be made in full at their time of completion.
- 4.3 The Seller may, at its sole discretion, require the Buyer to pay a deposit. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods/Services and must be paid prior to provision of the Goods/Services.
- 4.4 Time is of the essence for payment for the Goods and/or Services. The due date for payment will be stated on the invoice, quotation or any other order forms. If no time is stated then payment is on delivery of the Goods and/or Services.
- 4.5 At the Seller's sole discretion, the Seller may accept payment from approved Buyers within 30 days after the end of the month in which an invoice is served on the Buyer.
- 4.6 Payment will be made by cash on delivery, cheque, bank cheque, direct credit, or by any other method as agreed to between the Buyer and the Seller.
- 4.7 The Price is increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

### 5. Delivery of Goods / Services

- 5.1 Delivery of Goods will be made to the address nominated by the Buyer. The Buyer will make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Alternatively, Goods may be collected by the Buyer at the Seller's address.
- 5.2 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.
- 5.3 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur must be reimbursed by the Buyer (without any set-off or other withholding whatever) and will be due on the date for payment of the Price. The carrier is deemed to be the Buyer's agent.
- 5.4 Where there is no agreement that the Seller will send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.
- 5.5 The Seller may deliver the Goods by separate installments (in accordance with the agreed delivery schedule). Each separate installment will be invoiced and paid for in accordance with these terms and conditions.
- 5.6 The Seller will not be liable for any loss or damage caused in accessing the Buyer's nominated address for delivery of Goods and/or Services (including, without limitation, damage to pathways, driveways and concreted, paved or grassed areas).

- 5.7 In the event that the Seller's delivery vehicle becomes bogged in the course of delivery of the Goods to the Buyers nominated address, then the Buyer will be liable for any towage/recover fees incurred by the Seller.
- 5.8 The failure of the Seller to deliver Goods or provide Services will not constitute repudiation of these terms and conditions.
- 5.9 The Seller is not liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

### 6. Risk

- 6.1 All risk for the Goods passes to the Buyer on delivery, regardless of whether the Seller retains title or not.
- 6.2 If any of the Goods are damaged or destroyed prior to title in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the price for the Goods) to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The Buyer acknowledges that the Seller's production of these terms and conditions is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

### 7. Buyers Disclaimer

- 7.1 The Buyer waives any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller.
- 7.2 The Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgment and that the Seller is not bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer (if applicable). The Buyer acknowledges that a warranty given by the Manufacturer is personal to the Buyer and is not assignable to any third party.

### 8. Defects/Return Of Goods

- 8.1 The Buyer must inspect the Goods on delivery and must within seven days of delivery notify the Seller in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer must afford the Seller an opportunity to inspect the Goods within a reasonable time following notification.
- 8.2 If the Buyer fails to give notice to the Seller in writing within seven days of delivery, the Goods will be conclusively presumed to be free from any defect or damage and in accordance with the description, quote and quantity (as applicable).
- 8.3 If the Seller acknowledges in writing that the Buyer is entitled to reject defective Goods, the Seller's liability is limited to (at the Seller's discretion) repairing the Goods provided that:
- (a) the Buyer has complied with the provision of clause 8.1;
- (b) the Goods are returned at the Buyer's cost within seven days of the delivery date;
- (c) the Goods are returned in the condition in which they are delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances; and,
- (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner.

### 9. Warranty

- 9.1 For Goods not manufactured by the Seller, the warranty is the current warranty provided by the manufacturer of the Goods. The Seller acknowledges no liability whatsoever save for the express conditions as detailed and stipulated in the manufacturer's warranty.
- 9.2 In the case of second hand Goods, the Buyer acknowledges that he has had full opportunity to inspect them and that he accepts the same with all faults. The Buyer acknowledges that the Seller makes no warranty as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Seller is not responsible for any loss or damage to the Goods, or caused by the Goods, however arising.
- 9.3 The Seller does not undertake that repair facilities and parts will be available for the Goods and will not be liable to repair any defective Goods and at its own discretion may;
- (a) notify the manufacturers of the Goods of any defect notified by the Buyer; and
- (b) request the manufacturer to repair or replace any defective Goods.

### 10. Australian Consumer Law (ACL) and Fair Trading Acts

- 10.1 Nothing in these terms and conditions is intended to have the affect of contracting out of any applicable provisions of *Australian Consumer Law and Fair Trading Act 2012 (Cth)* and the *Fair Trading Amendment (Australian Consumer Law) Act 2010 (Vic)*, except to the extent permitted by those Acts.

### 11. Default & Consequences Of Default

- 11.1 Interest on overdue invoices accrues from the date when payment becomes due daily until the date of payment at a rate of 15% per calendar month and will accrue at such a rate after as well as before any judgment.
- 11.2 If the Buyer defaults in payment of any invoice when due, the buyer will indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- 11.3 If the Buyer's payment is dishonored by their bank, then the Seller reserves the right to increase the amount of the Price by any charges for dishonored cheques charged by the Seller's bank.

- 11.4 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relative to payment); the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the buyer for any loss or damage the buyer suffers because the Seller exercised its rights under this clause.
- 11.5 In the event that:
- any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
  - the buyer 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 (provisional or otherwise), administrator, trustee in bankruptcy or similar person is appointed in respect of the Buyer, the Guarantor or any asset of the Buyer or Guarantor;
- then without prejudice to the Seller's other remedies at law:
- the Seller is entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
  - all amounts owing to the Seller, whether or not due for payment, become immediately payable.
- 12. Title**
- 12.1 It is the intention of the Seller and agreed by the Buyer that title in the Goods will not pass until the Buyer has paid all amounts owing for the particular Goods.
- 12.2 It is further agreed that
- Until such time as ownership of the Goods passes from the Seller to the buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods will cease.
  - If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or use by the Buyer, or any premises as the invitee of the buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage caused.
- 13. Security And Charge**
- 13.1 Notwithstanding anything to the contrary contained in these terms and conditions or any other rights which the Seller may have:
- Where the Buyer or the Guarantor (if any) is the owner of land, realty, personal property or any other asset capable of being charged, both the Buyer and the Guarantor agree to charge all of their joint or several interest in the land, realty, personal property or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) may register this security interest by way of a caveat and/or registration on the Personal Property Security Register. The Seller will release the caveat and/or registration at the Buyer's expense, once the Buyer's account has been closed and all payments and other monetary obligations payable have been met.
  - Should the Seller elect to register its security interest, the Buyer and Guarantor will indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- 14. Cancellation**
- 14.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller is not liable for any loss or damage whatever arising from such cancellation.
- 15. Privacy Act 1988**
- 15.1 The Buyer and the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 15.2 The Buyer and the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- To assess an application by Buyer;
  - To notify other credit providers of a default by the Buyer;
  - To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
  - To assess the credit worthiness of Buyer or Guarantor/s.
- 15.3 The Buyer consents to the Seller being give a consumer credit report to collect overdue payment on commercial credit (section 18K(1)(h) *Privacy Act 1988*).
- 15.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as agreed between the Buyer and Seller or required by law from time to time:
- Provision of Services & Goods;
  - Marketing of Services and or Goods by the Seller, its agents or distributors in relation to the Services and goods;
  - Analysing, verifying or checking the Buyer's credit, payment or status in relation to provision of Services/Goods;
  - Processing of any payment instructions, direct debit facilities or credit facilities requested by Buyer; and
  - Enabling the daily operation of Buyer's account or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.
- 15.5 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:
- To obtain a consumer credit report about the Buyer; or
  - Allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.
- 16. Unpaid Sellers rights to Dispose Of Goods**
- 16.1 In the event that:
- The Seller retains possession or control of the Goods; and
  - Payment of the Price is due to the Seller; and
  - The Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
  - The Seller has not received the Price of the Goods
- then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.
- 17. Personal Property Security Register**
- 17.1 The Buyer acknowledges that the security interest in clause 13.1 will include all present and after-acquired property (as defined in the PPSA and to which the PPSA applies) and all present and after-acquired property (as defined in the PPSA and to which the PPSA applies) in which the Buyer has rights.
- 17.2 The Seller and Buyer agree that, to the extent permitted by section 115(1) of the PPSA, the following sections of the PPSA will not apply to the extent permitted by section 115(1) - Sections 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143.
- 17.3 The Seller and Buyer agree that, to the extent permitted by section 115(7) of the PPSA, the following sections of the PPSA will not apply - Sections 127, 129(2) and (3), 132, 134(2), 135, 136(3), (4) and (5), and 137.
- 17.4 The Buyer waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and the right to receive said notice cannot be waived.
- 18. General**
- 18.1 The Buyer acknowledges that any invoices or other documents required to be served on it may be served by being e-mailed to the Buyer's nominated e-mail address, and will be deemed to have been received on sending.
- 18.2 If any provision of these terms and conditions is invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions are not affected, prejudiced or impaired.
- 18.3 All Services/Goods supplied by the Seller are subject to the laws of Victoria and the Seller takes no responsibility for changes in the law which affects the Services/Goods supplied.
- 18.4 The Seller is under no liability whatever to the Buyer for any indirect loss or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 18.5 In the event of any breach of this contract by the Seller the remedies of the Buyer are limited to damages for the replacement value of the Goods supplied. Under no circumstances will the liability of the Seller exceed the Price of the Goods.
- 18.6 The Buyer must not set off against the Price amounts due from the Seller.
- 18.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change.
- 18.8 Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.