

AKERS OF LAWN TRADING TERMS AND CONDITIONS

1.1 DEFINITIONS

In this Agreement, unless the subject or the context otherwise requires:

- 1.1. "Customer" means the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.
- 1.2. "Goods" means any products and/or materials provided by the Supplier pursuant to an Order.
- 1.3. "Invoices" means invoices for Goods supplied or for Services provided, or both.
- 1.4. "Order" means any quote of the Supplier for the provision of Goods and/or Services to the Customer which has been accepted by the Customer.
- 1.5. "Price" is the amount invoiced for Goods supplied and Services provided.
- 1.6. "Indirect, Special or Consequential loss or damage" includes any loss of income, profit or business, goodwill or reputation and value of intellectual property.
- 1.7. "Services" comprise the delivery and/or supply of Goods, installation and/or repairs done by the Supplier, including any advice and recommendations.
- 1.8. "Supplier" is D & J AKERS PTY LTD T/AS AKERS OF LAWN A.B.N. 32 008 107 113 of 578-580 States Road, Onkaparinga Hills S.A. 5163

1.2 INTERPRETATION

Unless the subject or context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing one gender include the other genders;
- (c) a reference to any party or other person includes that person's successors and permitted assigns;
- (d) a reference to a statute, ordinance or other legislation includes any amendment, replacement or re-enactment thereof for the time being in force and includes all regulations, by-laws and statutory instruments made thereunder;
- (e) a reference to this or any other document includes a reference to that document as amended, supplemented, novated or replaced from time to time;
- (f) a reference to a recital, clause or schedule is a reference to a recital, clause or schedule of this agreement;
- (g) a reference to writing includes all means of reproducing words in a tangible and permanently visible form;
- (h) a reference to time is a reference to time in the State of South Australia;
- (i) a reference to a person includes a natural person, corporation, partnership, trust, estate, joint venture, sole partnership, government or governmental subdivision or agency, association, cooperative and any other legal or commercial entity or undertaking;
- (j) where a party comprises two or more persons any agreement or obligation to be performed or observed by that party binds those persons jointly and each of them severally, and a reference to that party is deemed to include a reference to any one or more of those persons; and
- (k) the headings in this agreement are not to affect its interpretation.

2. GENERAL

2.1. All Orders, and any variations to Orders agreed between the Supplier and the Customer (whether in writing or verbal), shall be deemed to incorporate the terms of this Agreement.

2.2. If an inconsistency exists between an Order and this Agreement, then this Agreement will prevail.

3. PLACEMENT OF ORDERS

3.1. An Order will be automatically placed by the Customer's acceptance of a quote from the Supplier. Acceptance can be by phone, email and/or through the Supplier's website.

4. PRICE

4.1. The Price shall be the lower of the price set out on the Supplier's website as at the date of Order; and the price detailed in the Order.

5. PROVISION OF SERVICES

5.1. The Supplier reserves the right to decline requests for any Services not specified in an Order; and cancel or postpone appointments with reasonable notice to the Customer.

5.2. If the Customer fails to attend any appointment without prior notice, the Customer shall, at the discretion of the Supplier, be liable for a \$33.00 No Show Fee.

5.3. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Customer.

5.4. Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.

5.5. In the discharge of its duties, the Supplier shall endeavour to comply with all reasonable directions of the Customer that may be given from time to time as to the nature and scope of the Services provided. Nothing in this clause shall affect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate to achieve compliance with the directions.

5.6. The Supplier may agree after acceptance of an Order to provide, on request from the Customer, additional Services not included in or specifically excluded from the Order. Any Goods or Services so supplied will be under the terms and conditions of this Agreement. The Supplier and the Customer shall agree to any change in price and scope of the Services before the provision of the Services. If they fail to agree, the Supplier shall be entitled to recover a reasonable fee for the Services provided. The Customer acknowledges that charges for additional work may be based on cost plus a margin, at square metre, lineal metre, per ton or per cubic metre rates, or any other appropriate means the additional work can be quantified and is entirely at the discretion of the Supplier.

6. ACCESS

6.1. The Customer shall, where relevant, ensure the Supplier has full and safe access to the Customer's premises and any necessary equipment, materials and information to provide the Goods and Services.

6.2. The Customer may be charged an additional fee if the Supplier's work is interfered with or if proper or safe access is not provided to the Supplier.

6.3. Any delay in the Supplier being able to undertake any Services due to the failure of the Customer to supply full or safe access shall be charged at the rate set out in the Quote or if no amount is quoted, at the rate of \$250.00 + GST per hour or part thereof.

7. PAYMENT

7.1. Customer must make full payment of the Price to the Supplier on completion of the Services or delivery of the Goods.

7.2. Payment may be made in cash, by credit card or by electronic funds transfer to the account set out on the Supplier's tax invoice.

7.3. The Customer, at the Supplier's discretion and by prior arrangement may establish account facilities with the Supplier. The Customer acknowledges that in such circumstances, the Customer will be required to provide a written application for the establishment of an Account and that Supplier may require the provision of personal guarantees to better secure any debt.

8. TITLE AND RISK

8.1. Title will pass to the Customer upon payment in clear funds being received.

8.2. Risk in the Goods shall pass upon delivery to the Customer.

8.3. Unless otherwise agreed, delivery will occur at the address set out in the Order.

9. GOODS AND SERVICES TAX

9.1. GST refers to Goods and Services tax under the A New Tax System (Goods and Services Tax) Act 1999 ("GST Act") and terms used herein have the meanings contained within the GST Act.

9.2. The Supplier shall deliver to the Customer a Tax Invoice for the supply in a form which complies with the GST Act.

9.3. If this is a sale to a consumer, the Price is inclusive of GST.

9.4. Where clause 9.3 does not apply, that the Price for the Goods and Services is exclusive of the Supplier's liability of GST. On sale, the Customer will pay to the Supplier, in addition to the total of the Price, the amount of GST payable by the Supplier on the taxable supply made under this Agreement; and

9.5. Should any taxes or other statutory charges be imposed or if there is a change in the rate of any tax or statutory charge imposed between the date of the Quotation and to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

10. DISHONOUR OF CHEQUE

10.1. If any cheque tendered in payment of the Price is dishonoured:

10.1.1. the Supplier may refuse to supply any further Goods and/or Services until satisfactory payment is received in full;

10.1.2. the Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this Agreement and to elect between terminating and affirming this Agreement, and in each case claim and recover compensation for loss or damage suffered from the Customer; and

10.1.3. the Customer may be liable for all bank fees and charges on dishonour and a dishonoured cheque fee of not more than \$50.00.

11. DEFAULT AND SECURITY

11.1. Except where prior arrangements have been made, Invoices issued by the Supplier shall be due and payable on completion of the Services or delivery of the Goods.

11.2. Where full payment is not made on the due date:-

11.2.1. interest shall be charged on all amounts outstanding for more than fourteen (14) days. Interest will be calculated on any balance outstanding 14 days after the due date for payment on a monthly basis at the rate being 2% above the benchmark cash rate fixed by the Reserve Bank.

11.2.2. the Supplier may, without prejudice to any other remedy it may have and on fourteen days notice after the due date for payment (the "Notice Period") forward the Customer's outstanding account to a debt collection agency or legal firm for further action;

11.2.3. the Customer shall indemnify the Supplier for all costs, fees and charges (including commission costs charged by a debt recovery agency) and legal costs and disbursements on an indemnity basis, incurred by the Supplier on or after the expiry of the Notice Period; and

11.2.4. the amount due under the Invoice and the amount payable under this clause 11.2 will be payable as a liquidated debt on demand.

12. LIABILITY

12.1. The Customer acknowledges that the Supplier shall not be liable for, and the Customer releases the Supplier to the fullest extent permitted by law from any demands, claims, actions, suits, costs and expenses now or later arising in relation to: faulty or defective Goods and/or Services supplied; and physical, mental, or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods and/or Services.

12.2. Except as provided in this Agreement, and to the extent permitted by law all express and implied warranties, guarantees and conditions under statute or general law as to merchantable quality, description, quality, suitability or fitness of the Goods and services for any purpose or as to design, assembly, installation, materials or workmanship or otherwise is expressly excluded.

12.3. The Customer acknowledges that in the event of any breach of this Agreement or negligence by the Supplier the Customer shall be limited to damages that under no circumstances shall exceed the Price.

12.4. Customer acknowledges that:-

12.4.1. Warranties for the Goods are provided by the manufacturer of those materials and products and should be claimed in accordance with the manufacturers' warranty.

12.4.2. Customer is responsible for the maintenance of all Goods supplied (including instant lawns or sprinkler systems) in accordance with guidelines issued by the manufacturer or Supplier (as the case may be).

12.4.3. the fitness for purpose and durability of the Goods may be affected by the installation, construction, misuse, unintended use or irregular use of Goods and the Supplier will not be liable for any failure of or defect in the Goods arising out of or in connection with use of the Goods other than for their intended purpose.

13. CONSUMER GUARANTEES

13.1. *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 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.*

13.2. If any condition or warranty is implied in this Agreement pursuant to any Act of Parliament, our liability for breach of the condition shall be limited to any one or more of the following:

13.3. If Goods have a minor defect, the Supplier will provide a repair or offer the Customer a replacement or a refund.

13.4. If Goods have a major defect, the Customer is entitled to reject the Goods and receive a refund; or reject the Goods and receive an identical replacement, or one of similar value if reasonably available; or keep the Goods and receive compensation for the reduction in value of the Goods caused by the problem.

13.4.1. If the breach relates to Services at our option: the supplying of the services again; or the payment of having the cost of the services supplied again.

13.5. If the Customer claims that Goods and/or the provision of Services are defective it should contact the Supplier by email at enquiries@akersoflawn.com.au or by phone on (08) 8326 3255 and a representative will assist the Customer. Any replacement Goods become the Customer's property and the returned Goods become the Supplier's property.

14. TERMINATION AND CANCELLATION

Cancellation by Supplier

14.1. The Supplier may cancel any Order or cancel delivery of Goods and/or the provision of Services at any time before the Goods are delivered or the Services are provided, by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.

14.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall become immediately payable in the event that:

14.2.1. any money payable to the Supplier becomes overdue and after a request for payment in writing has been made; or

14.2.2. 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

14.2.3. a receiver, manager, liquidator or similar person is appointed in respect of the Customer or any asset of the Customer or any judgment is taken out against the Customer and remains unpaid for more than seven days.

Cancellation by Customer

14.3. The Customer may cancel any Order up to seven days before the Goods are delivered or the Services are provided by giving written notice to the Supplier.

14.4. Subject to clause 14.5 if the Customer cancels an Order less than seven days before delivery of Goods and/or Services are to be provided, the Customer shall be liable for any loss incurred by the Supplier (including, indirect, special or consequential loss or damage).

14.5. If the Customer places an Order with the Supplier and the Supplier places an Order with a third party Supplier, or subcontracts for services to be provided to meet the Customer's request, and if the Customer cancels the Order and the Goods have already been dispatched and/or sub-contracted works already performed, the Customer shall be liable for:

14.5.1. the Price of the Goods ordered; and

14.5.2. the actual amount paid or payable by the Supplier to any affected sub-contractor plus 50%.

15. SET-OFF

15.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.

15.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

16. DISPUTES / CLAIMS

16.1. The Customer agrees that should a dispute arise regarding Goods or Services provided, the dispute must be addressed with the Supplier within seven days of issuance of tax invoice for those services provided or goods supplied.

16.2. Failure to address any issues arising from delivery of goods with the Supplier within seven days of delivery forfeits any rights the Customer may have against the Supplier.

17. JURISDICTION

17.1. This Agreement is deemed to be made in the State of South Australia and all disputes hereunder shall be determined by the appropriate courts of South Australia.

18. INTELLECTUAL PROPERTY

18.1. The Supplier owns or has the right to use for the purposes of its business all present and future rights to intellectual property in its Goods and Services (developed in whole or in part by the Supplier), its branding on its Goods and Services and all related Documents, including inventions and improvements, trade marks (whether registered or common law trade marks), patents, designs, copyright, and any corresponding property rights.

18.2. The Customer may not use the Supplier's trade marks, including the registered trade mark 'Akers of Lawns' (words and logo) in connection with any product or service that is not the Supplier's, in any manner that is likely to cause confusion among customers, without the Supplier's written permission.

18.3. All other intellectual property (including trade marks) not owned by the Supplier that appear on the Supplier's goods and services and its website, is the property of respective third parties, who may or may not be affiliated with or connected to the Supplier.

19. ENTIRE AGREEMENT

19.1. This Agreement constitutes the whole Agreement made between the Customer and the Supplier.

19.2. Subject to clause 2.1, the parties expressly waive all prior representations made by them or on their behalf that are in conflict with any terms in this Agreement.

20. SEVERANCE

20.1. If any words of this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending words shall be deemed as severed from this Agreement.

21. WAIVER

21.1. The failure by the Supplier to enforce any provision of the Agreement shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.

ACCOUNT CUSTOMERS ONLY

22. PRIVACY ACT 1988

22.1. The Customer agrees for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and any person nominated as a Guarantor/s of the Customer's obligations in relation to credit provided by the Supplier.

22.2. The Customer agrees that the Supplier may exchange information about the Customer and any Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

22.2.1. to assess an application by Customer;

22.2.2. to notify other credit providers of a default by the Customer;

22.2.3. to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and

22.2.4. to assess the credit worthiness of Customer and/or any Guarantor/s.

22.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Privacy Act 1988, section 18K(1)(h)).

22.4. The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes and for other purposes as shall be agreed between the Customer and Supplier or required by law from time to time:

22.4.1. provision of Goods and/or Services;

22.4.2. marketing of Goods by the Supplier, its agents or distributors in relation to the Goods;

22.4.3. analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods and/or Services;

22.4.4. processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and

22.4.5. enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods and/or Services.

22.5. The Supplier may give information about the Customer to a credit reporting agency for the following purposes:

22.5.1. to obtain a consumer credit report about the Customer; and

22.5.2. to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

22.6. The Supplier will take all reasonable steps to secure the Customer's personal information from unauthorised access, loss, modification and disclosure by:

22.6.1. storing the personal information in a secure area (whether physically or by digital encryption);

22.6.2. auditing and monitoring internal staff access to personal information; and

22.6.3. destroying and de-identifying personal information when it is no longer needed for any purpose permitted under the Privacy Act 1988.