

1. **DEFINITIONS**
- 1.1. The Supplier is D & J AKERS PTY LTD T/AS AKERS OF LAWN.
  - 1.2. The Customer is the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.
  - 1.3. The Guarantor is the person(s), or entity, who agrees to be liable for the debts of the Customer.
  - 1.4. The Order shall be defined as any request for the provision of Goods and/or Services by the Customer with the Supplier which has been accepted by the Supplier.
  - 1.5. The Goods are the products and/or materials provided by the Supplier.
  - 1.6. The Services comprise the delivery and/or supply of Goods, installation and/or repairs done by the Supplier, including any advice or recommendations.
  - 1.7. The Price is the amount invoiced for Goods supplied or Services provided.
  - 1.8. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
  - 1.9. Invoices include invoices for Goods supplied or for Services provided, or both
2. **GENERAL**
- 2.1. These Terms and Conditions together with the Supplier's written or verbal quotation and the Supplier's Credit Application Form form part of this Agreement.
  - 2.2. Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions notwithstanding any inconsistencies which may be introduced in the Customer Order or acceptance unless expressly agreed to by the Supplier in writing. In the event that an inconsistency exists and/or arises it is acknowledged between the parties that these Terms and Conditions will prevail.
  - 2.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
  - 2.4. The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
  - 2.5. In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
  - 2.6. Where more than one Customer completes this Agreement each shall be liable jointly and severally.
  - 2.7. If any provision of these Terms and Conditions 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 provision shall be deemed as severed from these Terms and Conditions.
  - 2.8. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.
  - 2.9. The failure by the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
  - 2.10. The Customer acknowledges that the Supplier may use these Terms and Conditions on its website and that it may provide notice to the Customer of any amendments. In this event, the Terms and Conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such Terms and Conditions and/or amendments.
3. **PLACEMENT OF ORDERS**
- 3.1. Orders placed by the Customer with the Supplier will be considered valid when placing the Order by telephone, e-mail, and/or through the Supplier's website.
  - 3.2. Any written Quotation given by the Supplier shall expire thirty (30) days after the date of the written quotation. Quotations may also be provided to the Customer by verbal communication over the telephone.
  - 3.3. All prices are based on taxes and statutory charges current at the time of the Quotation. Should these vary during the period from the date of the Quotation 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.
4. **PRICE**
- 4.1. At the Supplier's sole discretion the Price shall be either:
    - 4.1.1. As detailed on invoices provided by the Supplier to the Customer in respect of Goods supplied or Services provided; or
    - 4.1.2. The Supplier's quoted Price as for the Order (subject to clause 4.2).
  - 4.2. The Supplier reserves the right to change the Price in the event of a variation to the Supplier's Order, and notice in writing will be provided by the Supplier within a reasonable time.
5. **PROVISION OF SERVICES**
- 5.1. The Supplier reserves their right to:
    - 5.1.1. Decline requests for any Services requested by the Customer.
    - 5.1.2. 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 during the term of this Agreement.
  - 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 comply with all reasonable resolutions, regulations and directions of the Customer that may lawfully be given from time to time as to the nature and scope of the Services provided.
  - 5.6. Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.
  - 5.7. The Supplier may agree to provide, on request from the Customer, additional Services not included or specifically excluded in the Quotation/Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Services includes, but is not limited to, alterations, amendments, or additional works requested by the Customer and any additional visits by the Supplier after provision of the Goods and/or Services at the request of the Customer.
  - 5.8. In an event occurring as a result of clause 6.7, the Supplier reserves the right to apply additional charges at their discretion for the work requested under clause 6.7. This additional work may be charged by either, but not limited to square metre, lineal metre, per ton or per cubic metre, or any other appropriate means the additional work can be quantified and is entirely at the discretion of the Supplier.
- 5.9. Any variation to the original quote as per clause 6.7 that requires third party contractors to be engaged to complete such works will be charged to the Customer accordingly.
- 5.10. Delivery of any Goods by the Supplier to the Customer shall be deemed to be complete when the Goods are collected by the Customer or are delivered to the Customer or to the carrier as nominated by the Supplier and/or Customer.
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.
  - 6.2. The Customer will be charged an additional fee if the Supplier's work is interfered with or no proper or safe access is provided to the Supplier.
7. **PAYMENT POLICY**
- 7.1. Any reference to Customer shall include all Customers, unless it refers to a specific group of Customers but is subject to prior arrangement with the Supplier.
  - 7.2. Customers must make full payment to the Supplier on completion of the service provided and/or goods supplied and delivered.
  - 7.3. The Customer, at the Supplier's discretion and with a prior arrangement between the Customer and Supplier may accept seven (7) day payment terms.
8. **GOODS AND SERVICES TAX**
- 8.1. GST refers to Goods and Services tax under the *Goods and Services Act 1999* ("GST Act") and terms used herein have the meanings contained within the *GST Act*.
  - 8.2. It is hereby agreed between the Customer and the Supplier that the consideration for the Supplier expressed in this Agreement is exclusive of the Supplier's liability of GST.
    - 8.2.1. On sale:
      - 8.2.1.1. The Customer will pay to the Supplier, in addition to the total purchase Price, the amount payable by the Supplier of GST on the taxable supply made by the Supplier under this Agreement;
      - 8.2.1.2. The Supplier shall deliver to the Customer a Tax Invoice for the supply in a form which complies with the *GST Act* and Regulations.
9. **DISHONOUR OF CHEQUE**
- 9.1. If any cheque issued by the Customer or by any third party in payment of the Price is dishonoured:
    - 9.1.1. The Supplier may refuse to supply any further Goods and/or Services until satisfactory payment is received in full, including bank fees and charges;
    - 9.1.2. The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Customer.
    - 9.1.3. The Customer may be liable for a dishonoured cheque fee of \$40.00.
10. **DEFAULT AND SECURITY**
- 10.1. Invoices issued by the Supplier shall be due and payable upon provision of Goods and/or completion of Service for Non-Account Customers, and invoices issued by the Supplier shall be due and payable within seven (7) days of the date of issue for Account Customers ("Default Date") depending on terms agreed with the Supplier as per the terms outlined in Clause 8. Without prejudice to any other rights of the Supplier, the Customer may be charged monthly account keeping fees of \$20.00 on any payment in arrears.
  - 10.2. If the Supplier does not receive the Outstanding Balance for the Goods and/or Services on or before the Default Date, the Supplier may, without prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt collection agency for further action. The Customer acknowledges and agrees that:
    - 10.2.1. After the Default Date, the Outstanding Balance shall include, but not limited to, all applicable fees and charges under this Agreement;
    - 10.2.2. The Supplier may incur commission costs charged by the debt recovery agency on the Aggregate Sum (as defined below) at an applicable rate agreed between the Supplier and the debt recovery agency ("Commission Rate");
    - 10.2.3. The Customer will be responsible for payment of the aggregate of the Outstanding Balance on the Customer's account and all commission costs incurred by the Supplier ("Aggregate Sum"), the intention of the parties being that the Supplier will receive the whole outstanding balance after the deduction of commission costs and other expenses;
    - 10.2.4. The Aggregate Sum will be calculated as follows:  

$$\text{Aggregate Sum} = \frac{\text{Outstanding Balance}}{(1 - \text{Commission Rate})}$$
    - 10.2.5. The Aggregate Sum may be referred to a debt collection agency for further action;
    - 10.2.6. The Aggregate Sum will be payable as a liquidated debt on demand;
  - 10.3. The Customer is also responsible for all expenses in relation to the collection of the Aggregate Sum including, but not limited to, all charges and fees, legal costs on an Indemnity basis, and disbursements.
11. **RISK AND LIABILITY**
- 11.1. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from:
    - 11.1.1. Any claims in respect of faulty or defective design of any Goods supplied and/or services provided.
    - 11.1.2. Physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of supply, layout, assembly, installation or operation of the Goods supplied and/or services provided.
  - 11.2. Except as provided in these conditions 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.
  - 11.3. The Supplier does not represent that it will carry out any Services and/or provide and/or deliver any Goods unless it is included in the Quote.
12. **TERMINATION AND CANCELLATION**
- Cancellation by Supplier**
- 12.1. The Supplier may cancel any Order to which these Terms and Conditions apply 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.
- 12.2. 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, whether or not due for payment, become immediately payable in the event that:
- 12.2.1. Any money payable to the Supplier becomes overdue and after a request for payment in writing has been made; or
  - 12.2.2. The Customer becomes insolvent, convenes a meeting with its creditors or makes an arrangement with creditors, or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - 12.2.3. 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 (7) days.
- Cancellation by Customer**
- 12.3. Any Order cannot be cancelled by the Customer unless expressly agreed to by the Supplier in writing.
  - 12.4. In the event that the Customer cancels delivery of Goods and/or Services to be provided the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
  - 12.5. If the Customer places an Order with the Supplier and the Supplier places an Order with a third party Supplier or sub-contractors for services to be provided to meet the Customer's request, the Customer shall be liable for the Price of the Goods ordered if the Customer cancels the Order and the Goods have already been dispatched and/or sub-contracted works already performed and any other charges associated with the sub-contracted work.
- Limitation of damage**
- 12.6. The Customer acknowledges that in the event of any breach of this Agreement/Order by the Supplier including indirect, special or consequential loss, the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price.
13. **SET-OFF**
- 13.1. 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.
  - 13.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.
14. **INSURANCE**
- 14.1. The Customer is responsible to effect whatever insurance cover he requires at his own expense.
15. **DISPUTES / CLAIMS**
- 15.1. The Customer agrees that should a dispute arise regarding services provided, the dispute must be addressed with the Supplier within seven (7) days of issuance of tax invoice for those services provided or goods supplied.
  - 15.2. Failure to address any issues arising from delivery of goods with the Supplier within seven (7) days of delivery forfeits any rights the Customer may have against the Supplier.
16. **JURISDICTION**
- 16.1. 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.
17. **PRIVACY ACT 1988**
- 17.1. The Customer and/or the Guarantor/s agree for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.
  - 17.2. The Customer and/or the Guarantor/s agree that the Supplier may exchange information about the Customer and the 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:
    - 17.2.1. To assess an application by Customer;
    - 17.2.2. To notify other credit providers of a default by the Customer;
    - 17.2.3. 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;
    - 17.2.4. To assess the credit worthiness of Customer and/or Guarantor/s.
  - 17.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).
  - 17.4. 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:
    - 17.4.1. Provision of Goods and/or Services;
    - 17.4.2. Marketing of Goods by the Supplier, its agents or distributors in relation to the Goods;
    - 17.4.3. Analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods and/or Services;
    - 17.4.4. Processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer;
    - 17.4.5. 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.
  - 17.5. The Supplier may give information about the Customer to a credit reporting agency for the following purposes:
    - 17.5.1. To obtain a consumer credit report about the Customer;
    - 17.5.2. Allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
18. **ENTIRE AGREEMENT**
- 18.1. These Terms and Conditions set out in this Agreement constitute the whole Agreement made between the Customer and the Supplier.
  - 18.2. This Agreement can only be amended in writing signed by each of the parties.
  - 18.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.
  - 18.4. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Commonwealth Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.